

Cpc). Chasvinder Singh vs Swiss Auto Pvt Ltd & Ors on 19 February, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 715/2016 & IA No.12715/2018 (u/O XXXIX R-2A CPC).
CHASVINDER SINGH Plaintiff
Through: Mr. Suwarn Rajan Chauhan, Ms.
Savita Malhotra, Suman Malhotra,
Adv.
versus
SWISS AUTO PVT LTD & ORS Defendants
Through: Mr. Chander Lall, Sr. Adv. with Mr.
Lalit Bhardwaj and Mr. Jatin Sharma,
Adv.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 19.02.2019 IA No.1054/2019 (of the defendants under Order XXXIX R-2A CPC).

1. The senior counsel for the defendants/applicants has in Court handed over a packaging of harness manufactured and packed by the plaintiff and being marketed as "SWILEC" with the endorsement "SAP SWISS is the registered trade mark of Swiss Auto Products" and contends that the same is in violation of para 17 of the order dated 29th October, 2018.

2. The explanation of the counsel for the plaintiff is that para 17 of the order dated 29th October, 2018 only restrains the plaintiff from using the trade mark "SAP SWISS" for the specified products and the plaintiff is not using the trade mark "SAP SWISS" but the trade mark "SWILEC" and thus there is no violation.

3. Such arguments are creation of the ingenuity of the counsel and an attempt to bypass the order of injunction against the plaintiff and of which CS(COMM) 715/2016 page 1 of 4 there is no stay till now, though an appeal is stated to have been preferred. The sale of the prohibited product, even though under the mark "SWILEC", but clearly showing the origin thereof from the plaintiff and also using the mark "SAP SWISS", though to disclose that it is the registered trade mark of the plaintiff, is clearly in overreach the restraint order. A bare reading of the order dated 29th October, 2018 in entirety would show the purport of the order to be that while the plaintiff stands restrained from using the mark "SAP SWISS" in relation to four products, the defendants/applicants stand restrained from using the said mark in relation to other products. The use by the plaintiff of the mark "SWILEC" but showing the origin from the plaintiff and also bearing the marks "SAP SWISS",

shows a connection between "SWILEC" and "SAP SWISS" and is clearly a violation of the order.

4. The senior counsel for the defendants/applicants in this context has also drawn attention to the communication of the plaintiff with its dealers/retailers with respect to the products qua which the plaintiff stands restrained and the invoices raised by the plaintiff for sale of the said products and the promotion material used by the plaintiff with respect to the said product.

5. The explanation of the counsel for plaintiff, that the said e-mails have originated from SAP Swiss Solutions Pvt. Ltd. which is not the plaintiff but the plaintiff is a director therein, is again an instance of misdirection and ingenuity.

6. The plaintiff to appear in person on 4th April, 2019.

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7. It is clarified that the injunction order dated 29th October, 2018 restrains the plaintiff with immediate effect from indulging in the aforesaid violations also or by using any other ways of overreaching the said order. IA No.12829/2018 (of the plaintiff under Section 151 CPC).

8. The plaintiff seeks expungement of portions of the affidavit by way of examination-in-chief of the defendant no.2 as DW1, contending the same to be beyond pleadings of the defendants.

9. The senior counsel for the defendants admits that the parts objected to are wider than the written statement of the defendants in this suit but contends that soon after filing of this suit, the defendants had filed CS(OS) No.232/2017 for partition and mandatory injunction directing the plaintiff herein to execute the Assignment Deeds with respect to trade mark and copyright in favour of the defendants herein; however the said suit was disposed of on 8th January, 2018 and vide which order, issues were also framed in this suit. It is contended that the issue no.(i) framed in this suit qua the existence of any concluded binding Family Settlement with respect to the trade mark owes its genesis to the claim of the defendants herein, in CS(OS) No.232/2017 since disposed of.

10. The senior counsel for the defendants further states that during the hearing of the appeal against the order dated 29th October, 2018 listed before the Division Bench yesterday the said question had come up and appeal stands adjourned to 11th March, 2019.

11. The senior counsel for the defendants states that the defendants are exploring the possibility of filing a counter suit, claiming the relief of mandatory injunction for execution of Assignments Deeds, as was claimed CS(COMM) 715/2016 page 3 of 4 in CS(OS) No.232/2017, though also contends that the issue no.(i) framed in this suit is wide enough for such a direction to be issued.

12. I have wondered whether not institution of a counter suit at this stage would not give rise to other legal pleas of Section 10 of the Code of Civil Procedure, 1908 (CPC) and/or Order II Rule 2 of the CPC, as is contended by the counsel for the plaintiff, and whether not a better course of action for the defendants would be to amend their written statement with the pleas as taken in the plaint in

CS(OS) No.232/2017.

13. The counsel for the plaintiff points out that the defendants had preferred an appeal against the order dated 8th January, 2018 of disposal of CS(OS) No.232/2017 and which appeal was subsequently withdrawn.

14. The counsels to address further on the aforesaid aspect on 4th April, 2019.

A copy of this order be given dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J FEBRUARY 19, 2019 „pp ..

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