

# Eureka Forbes Limited (Formerly Forbes ... vs Santosh Nath And Ors on 23 May, 2023

**Author: Amit Bansal**

**Bench: Amit Bansal**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 334/2023

EUREKA FORBES LIMITED (FORMERLY  
FORBES ENVIRO SOLUTIONS LIMITED)

Through: Mr. Amit Sibal, Se  
Mr. Hemant Daswani  
Bajpai, Mr. Saksha  
Mr. Darpan S  
Mr. Sarabjeet Singh

ve

SANTOSH NATH AND ORS.

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL  
ORDER

% 23.05.2023 I.A. 10058/2023 (for exemption)

1. Subject to the plaintiff filing the original, clear and legible and translated copies of the documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

2. The application is disposed of.

I.A. 10057/2023 (exemption from advance service to the defendants)

3. The present application has been filed on behalf of the plaintiff seeking exemption from advance service to the defendants.

4. In view of the fact that the plaintiff is seeking appointment of Local Commissioners to visit the premises of the defendants to prepare inventories and seize the stocks bearing the impugned marks, the application is allowed, This is a digitally signed order.

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I.A. 10056/2023 (u/S 12A of the Commercial Courts Act)

5. In view of the urgent interim relief sought, the plaintiff is granted exemption from the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

6. Accordingly, the application stands disposed of. I.A. 10055/2023 (O-XI R-1(4) of the CPC)

7. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

8. The plaintiff is granted thirty days' time to file additional documents.

9. Accordingly, the application is disposed of.

CS(COMM) 334/2023

10. Let the plaint be registered as a suit.

11. Issue summons.

12. Summons be issued to the defendants through all modes. The summons shall state that the written statements shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statements, the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statements shall not be taken on record.

13. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statements. Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

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14. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar on 21st August, 2023 for completion of service and pleadings.

17. List before the Court on 25th September, 2023. I.A. 10053/2023 (O-XXXIX R-1 & 2 of the CPC)

18. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks and copyrights of the plaintiff, passing off their products as those of the plaintiff and other ancillary reliefs.

19. It has been averred in the plaint that the plaintiff is a portfolio company of Advent International, a global private equity firm. In the year 1982, the predecessor-in-title of the plaintiff, Samuel Osborn (India) Limited, introduced a water purification system that was premised on UV technology under the trademark 'AQUAGUARD'. The plaintiff currently operates in over 135 cities across India through its authorized channels, with 19,850 dealers all over the country and is engaged in the business of manufacturing, marketing, and selling home appliances such as water purifiers, vacuum cleaners, air purifiers and other products under the marks 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAXX'. The plaintiff also provides services such as repair and maintenance for its water This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/09/2023 at 00:34:31 purification system to cater to the needs of its customers.

20. The plaintiff has obtained trademark registrations in respect of the marks 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAXX' and other formative marks, details of which are given at pages 169 to 218 and pages 1166 to 1182 of the documents filed along with the plaint.

21. It is further averred in the plaint that the plaintiff has grown to become the market leader in the field with over four decades of operations in the Indian market. By virtue of such extensive use, the trademark 'AQUAGUARD' has acquired immense reputation and goodwill in the market. The mark 'AQUAGUARD' is associated exclusively with the products of the plaintiff. Copies of sales invoices of the products under the mark AQUAGUARD have been filed on behalf of the plaintiff. The plaintiff has also filed sales turnover from the year 1983-1984 to the year 2021-2022 (pages 1199-1200 of the documents). The annual sales turnover of the plaintiff in the year 2021-2022 was over Rs.276 crores.

22. It is also averred in the plaint that the plaintiff's get- ups/artworks/labels in respect of the aforesaid trademarks are the "original artistic work" within the meaning of Section 2(c) the Copyright Act, 1957, and the plaintiff is the first owner of the copyrights therein by virtue of Section 17 of the said Act. The plaintiff has also obtained copyright registrations in respect of the aforesaid get-ups/artworks/labels.

23. The case set up in the plaint is that sometime around 20th April, 2023, the plaintiff came across online listings of the defendants no.1 to 5 of counterfeit products using the marks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAX' as well as the get-ups/artworks/labels identical to those used in the products of This is a digitally signed order.

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24. The defendants no.1 to 5 are stated to be connected with each other and carrying on the infringing activities. Defendant no.6 is a company that is the owner of the website "www.indiamart.com". The defendants no.1 to 5 have their counterfeit products listed on the said website. Screenshots of the said listings have been filed at pages 1552 to 1554 of the documents filed along with the plaint.

25. It is submitted on behalf of the plaintiff that the action of the defendants no.1 to 5 is a deliberate attempt to ride on the goodwill and reputation of the plaintiff. It is further submitted that the sale of such counterfeit products by the defendants no.1 to 5 is resulting in the dilution of the plaintiff's trade name/trademarks, thereby causing losses to the plaintiff's business.

26. Senior counsel appearing on behalf of the plaintiff further submits that the present dispute involves public interest as well, since the sale of such counterfeit products, which are used in water filtration/purification systems, may cause water borne diseases and loss of life on account of their sub- standard quality and/or their inability to ably aid in the water filtration/purification process.

27. A comparison of the products of the plaintiff and the defendants no.1 to 5 using the subject trademarks and get-ups/labels is set out below:

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28. A comparison of the above marks and get-ups/artistic works/labels of the plaintiff with those of the defendants no.1 to 5 shows that the said defendants are violating the statutory as well as common law rights of the plaintiff, which amounts to infringement of trademark and copyright as well as passing off.

29. Issue notice.

30. Notice be issued to the defendants through all modes.

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31. Replies be filed within four weeks.

32. Rejoinders thereto, if any, be filed within two weeks thereafter.

33. Based on the averments in the plaint and submissions made on behalf of the plaintiff, a prima facie case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff. Irreparable harm would be caused not only to the plaintiff but also to the public if an ex parte ad interim injunction as sought is not granted in favour of the plaintiff.

34. Consequently, till the next date of hearing, an ex parte ad interim injunction is passed in the following terms:

(i) The defendants no.1 to 5, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any other person(s) acting for and on behalf of the defendants no.1 to 5 are restrained from selling, offering for sale, marketing, advertising, manufacturing and directly or indirectly dealing in any water purification systems and parts thereof and/or any services related thereto, bearing the trademarks 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX' or any other marks either identical or deceptively similar to the plaintiff's trademarks.

(ii) The defendants no.1 to 5, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any such other person(s) acting for and on behalf of the said defendants are restrained from using, manufacturing, selling, offering for sale, distributing, marketing, advertising, exporting, importing and directly or indirectly dealing in any water purification systems and/or parts thereof and/or services related thereto bearing any get-ups/artworks/labels in the manner that are identical and/or substantially similar to the plaintiff's get-ups/artworks/labels, being This is a digitally signed order.

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(iii) The defendant no.6 is directed to immediately take down the listings of the counterfeit products of the defendants no.1 to 5 that use the marks of the plaintiff, being 'AQUAGUARD',

'AQUASFILTER' and 'ACTIVE COPPER MAX' and/or the get-ups/artworks/labels of the plaintiff, being This is a digitally signed order.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/09/2023 at 00:34:32 marks/get-ups/artworks/labels which are not taken down, the plaintiff is permitted to approach the Court. The plaintiff is further permitted to communicate to the defendant no.6 the URLs of any counterfeit products of the defendants no.1 to 5, which are using the aforesaid trademarks/get-ups/artworks/labels and are listed on the website "www.indiamart.com" in the future, which shall also be taken down by the defendant no.6 within 48 hours of such intimation.

35. Compliance under Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) be done within two weeks from today.

36. List before the Joint Registrar on 21st August, 2023 for completion of service and pleadings.

37. List before the Court on 25th September, 2023. I.A. 10054/2023 (O-XXVI R-9 of the CPC)

38. The present application has been filed seeking appointment of Local Commissioners to visit the premises of the defendants, prepare inventories and seize the products bearing the trademarks of the plaintiffs.

39. For the reasons stated, the application is allowed. The following persons are appointed as Local Commissioners at the cost of the plaintiff, and who shall visit the premises of the defendants no.1 to 5 in the following manner:

(Table I) NAME PREMISES TO BE FEES S. NO. & VISITED (IN RS.) MOBILE NO.

1. Ms. Harsheen 2nd floor, 1684-A, Kotla 1,00,000/-

Madan Palli, Mubarakpur Main (plus out of pocket Advocate Chopal Near Chopal, expenses) New Delhi, Delhi-

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(Mobile No.: 110003 9833551489) (Defendant no.1)

2. Ms. Abhipriya WZO/45-A, Mahavir 1,00,000/-

Rai, Advocate

(Mobile No.:  
7508549780)

3. Mr. Prateek Mehta, Advocate Old No. 5 B, New  
104, Sembudoss S  
Chennai-600001,

(Mobile No.:  
9911886609) Nadu, India  
(Defend

4. Mr. Deepak Dhyani, Advocate 1, Karunamoyee,  
Road, Dh  
Barisha, Kolkata

(Mobile No.:  
9811723901) West Bengal, Ind  
(Defend

5. Mr. Sohail Khanna, Advocate GF, Shed No. 2/B  
No. 4, Vijay Est  
Railway

Ahmedabad,  
382481  
(Defend

(Mobile No.:  
8800420426)

40. In addition to the addresses mentioned above, the Local Commissioners shall also demand the disclosure of any other premises of the defendants no.1 to 5 where the products/materials using the trademarks/get-ups/artworks/labels of the plaintiff are manufactured, stocked and/or sold by the said defendants and also visit such premises so disclosed in furtherance of execution of the commission.

41. The fees of the Local Commissioners, as fixed in the table above, shall be borne by the plaintiff.

42. The following directions are passed for execution of the commissions:

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ups/artworks/labels

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ups/artworks/labels either identical or deceptively similar to the aforesaid trademarks/get-ups/artworks/labels of the plaintiff, which are found lying in the premises of the defendants no.1 to 5. II. The Local Commissioners shall seize and seal the products and any other materials using the trademarks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX' and/or the get-ups/artworks/labels of the plaintiff, being , , , This is a digitally signed order.

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III. The Local Commissioners shall procure photocopies of the books of account and stock and excise registers maintained by the defendants This is a digitally signed order.

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Server on 25/09/2023 at 00:34:32 concerning the products and/or other materials using the impugned marks/get-up/artworks/labels.

IV. The Local Commissioners shall also take photographs of the seized stock.

V. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commissions.

VI. In case the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commissions. VII. The concerned Station House Officers of the Police Stations having jurisdiction over the aforesaid premises to be visited by the Local Commissioners shall render necessary assistance, if required, to the Local Commissioners.

VIII. Copy of this order along with a complete set of the plaint shall be served upon the defendants by the Local Commissioners at the time of execution of the commission.

IX. The Local Commissioners shall file their reports within two weeks of execution of the commission along with the photographs taken and photocopies of the books of account and stock and excise registers procured pursuant thereto.

43. At this stage, senior counsel appearing on behalf of the plaintiff submits that an additional Local Commissioner be appointed on a stand-by basis to execute the commission in the event one of the aforesaid Local Commissioners are not available.

44. Accordingly, in addition to the Local Commissioners appointed as per This is a digitally signed order.

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I. The execution of the commission shall be done in conformity with the directions contained in paragraph 42 of this order. II. In the event that the Local Commissioner appointed on stand-by basis is required to execute the commission, the total amount of fees to be paid to him by the plaintiff shall be the same amount as mentioned against the address of the premises to be visited, as given in Table I.

45. In the event that a Local Commissioner is still not available for executing the commission, the plaintiff is at liberty to approach the Court for appointment of another Local Commissioner.

46. The application stands disposed of in above terms.

47. This order shall not be uploaded on the website of this Court till the execution of the commissions.

48. Copy of this order be given to the counsel for the plaintiff dasti under signatures of the Court Master.

AMIT BANSAL, J.

MAY 23, 2023 at This is a digitally signed order.

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