

Mr. Anil Rathi vs Shri Sharma Steeltech (India) Pvt. Ltd. ... on 23 October, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 654/2019

MR. ANIL RATHI

..... Plaintiff
Through: Mr. Sagar Chandra, Ms. Srijan Uppal,
Ms. Mehek Dua and Mr. R.K.
Rajwanshi, Advs.
versus

SHRI SHARMA STEELTECH (INDIA) PVT. LTD. & ORS.
..... Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 23.10.2020 This matter is being heard through video-conferencing.

1. This is an application filed by the plaintiff seeking impleadment of following defendants as defendant Nos.18, 19 & 20.

"(i) Defendant No.18 being Hannu Steel Pvt. Ltd. having its address at 505, Second Floor, FIE, Patparganj Industrial Area, New Delhi- 110092.

(ii) Defendant No.19 being Swarup Rolling Mills Ltd. having its address at Flat No.139, Upper Ground Floor, Defence Enclave New Delhi, 110092 and also at 25th K.M. Stone, Village Salarpur, Jansath, Uttar Pradesh-251314 and also at 200/1, North Civil Lines, Muzaffarnagar, Uttar Pradesh, and

(iii) Defendant No.20 being Shamli Steels Pvt. Ltd. having its address at D-16S, 1, 2nd Floor, City Chambers, Central Market, Prashant Vihar, New Delhi-110085."

Mr. Subhash Chawla, Adv. appears and states hence forth he shall not appear for defendants 1 to 4 and proposed defendants 18, 19 and 20.

2. This is an application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC with the following prayers:

"It is therefore respectfully prayed before this Hon'ble Court that it may be pleased to grant the following orders in favour of the Plaintiff and against the Proposed Defendant Nos. 18, 19 & 20:

i. Pass an ad interim injunction restraining the Proposed Defendant Nos. 18, 19 and 20/Defendant Nos. 18, 19 and 20, their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf from manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in TMT Bars, steel bars, common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal under the trademark "RATHI" or from adopting any other mark or label which is identical or deceptively similar to the Plaintiff's registered trade mark "RATHI" amounting to infringement of the Plaintiff's registered trademark, passing off, dilution and unfair competition;

ii. Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. Mr. Sagar Chandra, learned counsel appearing for the plaintiff states that the licenses to these proposed defendants have been issued by Mr. Shrivats Rathi / defendant No.8 contrary to the MoU / Trust deed. He has relied upon the judgment of this Court dated September 15, 2020 in applications being I.As. 16991/2019 & 16994/2019 wherein this Court has in para 94 stated as under:

"94. Accordingly, defendant Nos. 1 to 6 and 8 in CS (COMM) 654/2019 as well as defendant Nos. 1 to 9 in CS (COMM) 655/2019 and their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf are hereby restrained from issuing licenses, manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in TMT Bars, Steel bars, common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal under the trademark 'RATHI' or from adopting any other mark or label which is identical or deceptively similar to registered trade mark 'RATHI' amounting to infringement of registered trademark, passing off, dilution and unfair competition, during the pendency of the Suits."

4. He states that the proposed defendants being similarly placed, as the defendant Nos.1 to 4 in the suit against whom the restraint order has been passed, similar order need to be passed against them as well. According to him, even though the appeal has been filed against the aforesaid order, no stay has been granted by the Appellate Court rather the stay application has been dismissed by the Appellate Court.

5. He has also drawn my attention to an affidavit filed by Mr. Shrivats Rathi / defendant No.8 in these proceedings wherein in para 5 to 8 the following has been stated:

"5. That deponent has duly informed the defendants no. 1 to 4 as well as his other licensee namely Swarup Rolling Mills, M/s Hannu Steels, M/s Shamli Steels Pvt. Ltd., M/s Enershell Alloys and Steels Pvt. Ltd. and Ms/ Ganraj Ispat Pvt. Ltd. About the orders dated 15/09/2020 as well as Orders dated 06/10/2020 passed by Hon'ble Appellate Court; and instructed them not to use the mark for which license user agreement was made by the deponent through M/s Rathi Saria Limited or in his individual capacity. I say that all these persons / companies now do not have any permission / authority from deponent / Rathi Saria Limited to use the mark "RATHI" either individually or with some prefix or suffix until the decision of Hon'ble Appellate Court.

6. That the above named persons / companies were duly informed of the orders dated 15/09/2020 passed by this Hon'ble Court as well as Orders passed by the Hon'ble Appellate Court through email, the copies of various emails sent by deponent on 6/10/2020, 7/10/2020, 18/10/2020 and 19/10/2020 are being annexed herewith as ANNEXURE-"B" (Colly)

7. I further say that in case of the above named persons / companies are found using the mark "RATHI", they shall be liable for legal action in their own capacity and deponent shall not be responsible for their illegal / unlawful acts if any. Further in case the fact of violation of the order dated 15/09/2020 by any of the above named persons / companies comes to notice of the deponent, he shall bring the same to notice of the Hon'ble Court.

8. That during the market search, the deponent has received information that some of the above named persons are illegally using in collusion with plaintiff or trustees of Rathi Research Center Trust, the following marks despite orders dated 15/09/2020 or this Hon'ble Court and orders dated 06/10/2020 passed by Hon'ble Appellate Court and contrary to instruction of deponent:-

S.NO. Name of Company Trademark being used Prefix / Suffix being used

1. Swarup Rolling Mills Pvt. Ltd. Rathi Stat TMT 500 ISI

2. Aman Rolling Mills Pvt. Ltd. Rathi TMT Platinum

3. Shamli Steels Pvt. Ltd. Rathi Gold

4. Bhumija Ispat LLP Rathi TMT

5. Sarvottam Rolling Mills Pvt. Ltd. Rathi Wonder 500 ISI

6. Mr. Chandra state that the stand taken by the defendant No.8 in para 8 of the affidavit is incorrect as the plaintiff has not issued any license to the five entities named therein. Rather, he states, despite being told about the order passed by this Court on September 15, 2020 they are still continuing to deal with the trademark 'RATHI'. In fact, he requests that the contempt notice be issued to them as to why the action should not be taken against them under the Contempt of Courts Act.

7. He also states that contempt notice must also be issued against the defendant Nos.2 and 3 who are also named in para 8 of the affidavit filed by Mr. Shrivats Rathi / defendant No.8. I find that the restraint order in terms of the judgment dated September 15, 2020 was also against the defendant Nos.2 and 3.

8. Let notice under the contempt of courts be issued to the defendant Nos.2 and 3 on the following addresses, returnable on November 26, 2020.

"Aman Rolling Mills Pvt. Ltd. 4th K.M. Stone, Opposite Police Chowki, Meerut Road, Muzaffarnagar, Uttar Pradesh - 251003 Also at:

Kh. No.769, Bye Pass Road, Village Sandhawali, Muzaffarnagar, Uttar Pradesh-251003 Defendant No.2 Sarvottam Rolling Mills Pvt. Ltd. 101, Gujarat Vihar, 2nd Floor, Vikas Marg, Delhi-110092.

Also at:

4th K.M. Stone, Meerut Road, Muzaffarnagar, Uttar Pradesh-251003 Email Id: s sarvottamrollingmills@rediffmail.com Defendant No.3"

9. In view of the stand taken by the defendant No.8 and the conclusion arrived at by this Court in para 94 of the aforesaid judgment and there is no stay by the Appellate Court, I deem it appropriate, pending hearing, the proposed defendant Nos.18 to 20 and their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf are hereby restrained from issuing licenses, manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in TMT Bars, Steel bars, common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal under the trademark 'RATHI' or from adopting any other mark or label which is identical or deceptively similar to registered trade mark 'RATHI' amounting to infringement of registered trademark, passing off, dilution and unfair

competition, during the pendency of the suit being CS(COMM) 654/2019.

10. Let notice be issued to the proposed defendants, on both applications returnable on November 26, 2020.

V. KAMESWAR RAO, J OCTOBER 23, 2020/aky