

M/S Jk Lakshmi Cement Limited vs Raj Kumar Singla Trading As M/S Shiv ... on 19 May, 2022

Author: Navin Chawla

Bench: Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 330/2022

M/S JK LAKSHMI CEMENT LIMITED

..... Plaintiff

Through: Mr. Nishchal Anand and Ms. Tanvi
Jain, Advocates

versus

RAJ KUMAR SINGLA TRADING AS M/S SHIV SHAKTI

SANITARY STORE & ANR.

..... Defendants

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 19.05.2022

1. This is an application seeking exemption from making advance service of the Suit to the defendants. It is alleged that the said service has not been made as it is apprehended that the defendants may, on service of the notice, may dispose of or sell the goods being manufactured under the Impugned Trademark. An appointment of a Local Commissioner is also prayed along with the Suit.

2. Having considered the contents of the application, the same is allowed. The plaintiff is exempted from making an advance service of the Suit to the defendants.

3. This is an application filed on behalf of the plaintiff seeking to file additional documents.

4. The plaintiff may file the additional documents strictly in accordance with the law.

5. The application stands disposed of.

6. The application is allowed, subject to all just exceptions.

7. However, if there is any illegible document, the plaintiff shall file a typed copy thereof within a period of four weeks from today. CS(COMM) 330/2022

8. Let the plaint be registered as a Suit.

9. Issue summons to the defendants to be served through all permitted modes upon the filing of the requisite process fee.

10. The summons to the defendant(s) shall indicate that the written statement(s) to the plaint shall be positively filed within a period of thirty days from the date of receipt of summons. Along with the written statement, the defendant(s) shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

11. Liberty is given to the plaintiff to file a replication within a period fifteen days of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, the affidavit(s) of admission/denial of documents of the defendant(s) be filed by the plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

12. List before the Court on 25th August, 2022.

13. Issue Notice. On the plaintiff taking steps, let notice be served on the defendants through all permissible modes, returnable on 25th August, 2022.

14. Let reply to the application be filed by the defendants within four weeks of receipt of notice. Rejoinder thereto, if any, be filed within three weeks thereafter.

15. It is the case of the plaintiff that it is a part of the "JK organization", which is a conglomerate of various companies, including the plaintiff herein and is operating multi-business, multi-product and multi-location operations. It was founded in the year 1888. It is also asserted that all the companies used the letters "JK" as part of their Trademark. It is further asserted that the plaintiff adopted the trademark "JK Lakshmi" in the year 1982 in relation to the Cement, Plaster of Paris and other allied products. It has been asserted that the plaintiff is using "JK Lakshmi" continuously and uninterruptedly. The plaintiff also invested heavily in advertising the said trademark, details whereof qua the last five years have been given in the plaint. It has an annual turnover of approximately Rupees four thousand crore in the Financial Year 2019-2020. The relevant sale figures of the products under the Trademark "JK" /JK Smart for the last six years have also been given in the plaint. The plaintiff has also obtained registration in various trademarks with the prefix "JK" and in conjunction with the word „Smart for a range of products offered by it, details whereof have also been given in a tabular form in the plaint. The plaintiff has further given details of the Suits filed by the plaintiff for protection of its mark and the orders that have been passed therein.

16. It is asserted that the plaintiff gained knowledge of the use of the Trademark "JK Smart" by the defendant no. 1 only in April 2022 through market sources on inquiry. The plaintiff learned that the defendant no. 2 has obtained registration of the said mark, albeit in Class 2, and thereafter, transferred the same to the defendant no. 1 by way of an assignment. The said assignment has also been registered.

17. It is further asserted that the registration of the trademark obtained by the defendant no. 1 is in class 2, which is not the relevant. The learned counsel for the plaintiff submits that the relevant Class of goods, that is, wall-putty, is Class 17 and 19. The learned counsel for the plaintiff submits that, therefore, the registration of the plaintiff by the defendants is, in any case, not relevant and cannot be relied upon by the defendants. The plaintiff also reserves its rights to challenge the said registration in accordance with the law.

18. The plaintiff further asserts that the goods of the defendants are identical to the ones manufactured and sold by the plaintiff and, therefore, there is a likelihood of confusion being caused. It is further asserted that the packaging of the defendants does not even disclose the name of the manufacturer, which, apart from being in violation of the Legal Metrology Act, 2009, further indicates the mala fide intent of the defendants in use of the said mark and their attempt to pass off the same as that of the plaintiff.

19. Having considered the submissions made, and perused the averments made in the plaint along with the documents, I am of the view that the plaintiff has made out a prima facie case for grant of an injunction. The balance of convenience also lies in the favour of the plaintiff, and if relief is not granted at this stage, an irreparable loss would be caused to the plaintiff.

20. Accordingly, the defendants, their servants, agents, contractors, franchises, family members and all others acting for and on their behalf, are restrained from using, manufacturing, advertising, selling, offering for sale, marketing, and advertising, their product-wall putty, under the impugned mark-"JK Smart" or any other marks which are identical and/or deceptively similar to the plaintiff till the next date of hearing.

21. Compliance with Order XXXIX, Rule 3 the Code of Civil Procedure, 1908, be made within ten days from today.

22. Having considered the above submissions and averments, I am further of the opinion that the plaintiff has been able to make out a case for an appointment of a Local Commissioner to visit the premises of the defendants, details whereof are, as under:

M/s Shiv Shakti Sanitary Store RZ-J, 5/209, Durga Park, Gali No. 10, Sagar Pur, New Delhi - 110046 Ph: 9891353264

23. I appoint Mr Dheeraj Tripathi, Advocate (R/o C-34, Aravali Kunj, Sector - 13, Rohini, Delhi, Ph: 9873377707 & 9999322242) as a Local Commissioner to visit the abovementioned premises of the defendant no.1. The Local Commissioner shall seize and seal all the goods bearing the mark „JK Smart Wall Putty , „JK Smart Acrylic Distemper and any other goods bearing the trademark „JK and „JK Smart of the plaintiff; Inspect all books of accounts of the defendants including ledgers, cash books, Purchase and Sale records, et cetera, pertaining to the sourcing and sale of impugned goods; Break open locks and seek Police assistance in order to implement the Order of this Hon ble Court; Return the seized infringing products to the defendants or their representatives on superdari upon their furnishing an undertaking that they will produce the same before court when called upon

to do so by this Court.

24. The Local Commissioner shall be at liberty to seek police assistance and protection, if required, to execute the order of this court, and the SHO of the said area is directed to provide immediate assistance to the Local Commissioner upon request.

25. The fee of the Local Commissioner is fixed at 75,000/- (Rupees seventy-five thousand) to be paid by the plaintiff at this stage.

26. The Local Commissioner shall file his Report, which shall also be accompanied by a sample product showing the use of the Impugned Trademark by the defendant no. 1.

27. The application is allowed in the above terms.

28. This order may not be uploaded on the website of the Delhi High Court for a period of one week.

29. A copy of this order be given dasti under the signatures of the Court Master to the counsel for the Plaintiff.

NAVIN CHAWLA, J MAY 19, 2022/rv