

The Himalaya Drug Company & Ors vs Pureca Laboratories (P) Ltd on 5 November, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

\$~5

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 170/2020

THE HIMALAYA DRUG COMPANY & ORS.

Through: Ms. Prachi Agarwal, Adv.

versus

PURECA LABORATORIES (P) LTD

.....Defen

Through: Mr. Harsh Raghuvanshi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 05.11.2020 [Court hearing convened via video-conferencing on account of COVID-19]

1. Ms. Prachi Agarwal, who appears for the plaintiffs, says that the captioned application has been moved as the defendant continues to violate the orders passed by this Court dated 15.06.2020 and 20.08.2020. 1.1 Ms. Agarwal has also drawn my attention to the order dated 05.10.2020. A perusal of the order dated 05.10.2020 shows that Mr. Harsh Raghuvanshi, who had appeared for the defendant, on that date as well, had made a statement that the defendant would have no objection if the prayers made in paragraph 66 (i) to (iv) and (vi) of the plaint are decreed. 1.2 Accordingly, a decree was passed to that effect.

1.3 Insofar as the remaining prayers made in the plaint were concerned i.e. those contained in paragraph 66 (v), (vii) to (ix), Mr. Raghuvanshi was directed to file an affidavit disclosing the sales made prior to the issuance of the interim order dated 15.06.2020. For this purpose, Mr. Raghuvanshi was given two weeks' time.

1.4 On that date, counsel for the plaintiffs had indicated that the defendant continues to publish the infringing trademark on its Facebook page and also continues to advertise the same on various third-party e-commerce portals. 1.5 Mr. Raghuvanshi had indicated that the defendant has no control over the posts taken out on third party e-commerce portals. However, Mr. Raghuvanshi had indicated that the posts made by the defendant had been taken down.

2. Ms. Agarwal says that the situation has gone from bad to worse. According to her, the defendant continues to infringe the plaintiffs' registered trademarks.

2.1 Ms. Agarwal further says that the defendant continues to manufacture and sell its products under the infringing trademark. It is contended that the products of the defendant are advertised for sale on e-commerce website i.e. www.indiamart.com by an entity going by the name Devi Chem, Shop No. 1613, Lajpat Rai Market, Delhi-110006.

2.2 Ms. Agarwal also contends that the defendant continues to advertise its products under the infringing mark "PURE HANDS" on its social media webpage maintained with www.facebook.com.

2.3 It is also contended by Ms. Agarwal that the defendants have openly advertised and sold their products under the infringing mark via the website www.giftsbyte.com.

2.4 In the application, there is also a reference to an entity going by the name "Total Solutions". The said entity seems to be run and managed, according to Ms. Agarwal, through one, Mr. Ankur Agarwal from Shop no. F-9, 1st Floor, Pacific North Mall, Pitampura, Delhi - 110034. 2.5 Ms. Agarwal says that the defendant, thus, directly or indirectly, is selling its products under the infringing mark. It is contended that huge quantities of products are being sold as the minimum order value that the buyers can place is ranging between 160 pieces to 320 pieces.

3. Having regard to the assertions made in the application, issue notice to the non-applicants/respondents.

3.1 Mr. Harsh Raghuvanshi accepts service on behalf of the non- applicants/respondents.

4. In the meanwhile, the advertisements concerning the non- applicants/respondents from the following websites: i.e. www.indiamart.com, www.facebook.com; and www.giftsbyte.com, will be taken down.

5. Furthermore, at the request of Ms. Agarwal, Mrs. Kavita Jha [mobile number: +91-9818174307] is appointed as a Court Commissioner. 5.1 The Court Commissioner will visit the sites concerning Total Solutions [i.e. Shop no. F-9, 1st Floor, Pacific North Mall, Pitampura, Delhi

- 110034] and Devi Chem [i.e. Shop no. 1613, Lajpat Rai Market, Delhi- 110006].

5.2 The Court Commissioner will seize the products/goods, if any found, at the locations given hereinabove, in case they bear the infringing mark or a mark which is deceptively similar to the mark of the plaintiffs. For the sake of convenience, photographs of the infringing products of the defendant are extracted hereafter:

5.3 The Court Commissioner will also ascertain as to whether any promotional material, in any form, including in the form of pamphlets, labels, stationery, cartons [hereafter collectively referred to as "promotional material"] are available at the concerned site. In the event, such like promotional material is available at the aforementioned sites, the same shall also be seized.

5.4 The Court Commissioner will draw up an inventory of the aforementioned goods and/or promotional material. Upon seizure of the goods and/or promotional material, the Court Commissioner will hand over the same on superdari to the authorized representative of the concerned entities i.e. Total Solutions and Devi Chem.

5.5 For her efforts, the Court Commissioner will be paid a fee of Rs. 1, 00,000/-, in addition to the out of pocket expenses; the burden qua which will be borne by the plaintiffs.

5.6 In case the Court Commissioner faces any impediment in the execution of the commission, she will have liberty to approach the Station House Officer [in short "SHO"] of the concerned area to seek necessary assistance. In the event, such a request is made, the concerned SHO will render assistance in that behalf.

5.7 The Court Commissioner will have the power to break open locks and de-seal the subject sites in case the need arises qua the same. 5.8 The Court Commissioner, while executing the commission, will bear in mind, that there is no intrusion of privacy or violation of norms or protocol put in place by the Government/Statutory authorities in connection with the Coronavirus pandemic.

6. All concerned will act on a digitally signed copy of the order passed today.

7. The Court Commissioner will file her report before the next date of hearing.

8. Mr. Harsh Raghvanshi is directed to comply with the directions contained in order dated 05.10.2020 within the next five days. 8.1 The affidavit of the defendant will detail out all that which was directed via the order dated 05.10.2020.

8.2 The directors of the defendant i.e. Mr. Vaibhav Vohra, Mr. Arpit Vohra, and Mr. Subhash Chandra Vohra [who are arrayed as respondent nos. 2 to 4 in the captioned application] shall join the proceedings, via the video-conferencing mechanism, on the next date of hearing. 8.3 Besides this, Total Solutions and Devi Chem are also arrayed as parties to the proceedings in the suit not only for adjudication of the remaining reliefs but also to allow them to have their say in the matter. 8.4 Ms. Agrawal will file an amended memo of parties within the next 10 days.

9. List the captioned application on 07.12.2020. CS (COMM) 170/2020

10. List the matter on 07.12.2020.

11. The date already fixed i.e. 10.12.2020 shall stand cancelled.

RAJIV SHAKDHER, J NOVEMBER 05, 2020 Click here to check corrigendum, if any