

Mittal Electronics vs Sujata Home Appliances (P.) Ltd. & Ors on 11 January, 2021

Author: Jayant Nath

Bench: Jayant Nath

\$~0S-7

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM.) 60/2020
MITTAL ELECTRONICS Plaintiff
Through Mr.Mohan Vidhani, Adv.

versus

SUJATA HOME APPLIANCES (P.) LTD. & ORS..... Defendant
Through Ms.Meenakshi Ogra, Adv. for
applicant/defendant

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH
ORDER

% 11.01.2021 This hearing is conducted through Video Conferencing.

1. This application is filed by the defendant seeking release of seized geysers with consequential reliefs. It is prayed that the applicant be allowed to sell the geysers under different brand name/mark (not containing the mark SUJATA). On 7.2.2020 this court had passed an ex parte injunction in favour of the plaintiff whereby the defendants, their distributors etc. were restrained from manufacturing, selling, importing, exporting, offering for sale, advertising their products including geysers, water purifiers and RO systems and other products. This court had also appointed Local Commissioners to inspect the premises of the defendant.

2. It is pleaded that defendant No.1 was using its registered mark Sujata for its products, namely, water purifier, water filters and RO systems. Hence, an application under Order 39 Rule 4 CPC was filed. Vide judgment CS(Comm.)60/2020 Page 1 dated 9.9.2020 this court lifted the injunction relating to water filter, water purifier and RO systems.

3. I have heard learned counsel for the parties. Learned counsel for the plaintiff has stressed that vide order dated 9.12.2020 the Local Commissioners who had visited the premises of the defendant were reappointed as Local Commissioners to visit the premises of the defendant to see if the seal that was fixed by the Local Commissioners on the earlier visit had been tampered with. It is stated that the Local Commissioner found the seal tampered and the defendant is guilty of Contempt of Court and this application should not be allowed.

4. Learned counsel for the applicant/defendant has denied the above submissions. She states that there is no report of any shortage of geysers as has been pleaded. She states that some of the observations in the report are beyond the mandate of the Local Commissioner.

5. I may note that on 9.9.2020 this court had modified the ex parte injunction dated 7.2.2020 and injunction was granted in favour of the plaintiff and against the defendant in terms of prayer in para 36 of IA No.1751/2020 except for water filter, water purifier and RO systems, which the defendant would continue to manufacture and sell under the mark SUJATA. The goods seized by the Local Commissioner and on superdari with defendants were also released in favour of the defendants.

6. This application came up for hearing on 9.12.2020 when a plea was raised by learned counsel for the plaintiff that the seal of some of the products has been broken and few geysers are lying in unsealed and untaped condition. By consent of parties the Local Commissioners were asked to re-inspect the premises at Bathinda, Punjab and Bawana, Delhi. The two Local CS(Comm.)60/2020 Page 2 Commissioners Mr.Shreyas Jain, Adv. and Mr. Asif Ahmed, Advocate were appointed to revisit the said premises and to see if some of the geysers were not sealed at that time or the geysers' seal has been tampered by breaking the tape and also to see if the number of geysers available at the said spot are the same for which the inventory was prepared by the learned Local Commissioners.

7. I have been taken through the reports of the two Local Commissioners. Mr.Shreyas Jain in his report dated 30.12.2020 has made the following observations:-

"7. That during inspection on 20.12.2020 it was found that the 2 lots of geyser (13 & 7) i.e. 13 geysers at ground floor and 7 geysers at first floor which were seized with tape and duly signed with marker were found in same quantity but seal was tampered. It was informed by Mr. Pradeep (defendant's accountant) along with Jitender Kumar Bansal (owner) that seal of these 13 geysers got tampered because location of the product was changed and seal might got removed during shifting process. That subsequently in another lot of 7 geysers, undersigned found that seal was not intact, tape used for sealing was crumbled as if it was opened and tried to paste again. Most importantly, undersigned found extra markings made from black marker in comparison from markings done at original sealing, the same is evident from pictures taken on 14.02.2020 and 20.12.2020. It is important to mention here that some of the extra marking were done on glue side of wrinkled tape and it was shown to Mr. Jitender Kumar also to which he had no answer. Copy of pictures taken on 14.02.2020 and 20.12.2020 is annexed as ANNEXURE A-1 (colly)

8.....

9. That with respect to geysers mentioned by the undersigned in the CS(Comm.)60/2020 Page 3 inventory were found in same quantity, in fact some of the categories when re-counted were found more. Undersigned found 36 pieces of optima 25 liter and in the inventory 102 pieces of insta gas geyser was mentioned which when re-counted found 114.

10. That it is important to mention here that undersigned while preparing inventory had not gone through the goods lying in the box and had made inventory on the basis of figures, on re- examination on sampling basis undersigned asked to open the box and check if the goods are there or not and found that on same shelves few boxes consist of old geyser/damaged geyser.

11....

12. That in order to verify goods with tampered seal, undersigned had also verified some of the boxes to satisfy whether in actual new goods as per the box are there or not. And during this verification process only undersigned found that some of the boxes which were not sealed but were mentioned in the inventory were either empty, or were with old and damaged product.

13....

14. That undersigned had prepared an onspot proceedings and on request shared with both parties to read the contents of report. Defendant's owner, Mr. Jitender were in constant touch with his counsel over telephone and had tried to create hassle in execution of commission (as per his counsel's direction L.C. should do all the work on his own and cannot take any assistance of other man person) and shared the on spot proceedings with his counsel and started a detailed discussion over it and was not comfortable with the seal tampering content and wanted alteration as quantity was intact. A copy of the on spot proceedings is annexed herewith as ANNEXURE A-4."

CS(Comm.)60/2020 Page 4

8. Similarly, reference may be had to the report of Mr.Asif Ahmed, Advocate dated 7.1.2021 where he states as follows:-

"6. Upon entering the premises in question, particularly the first floor, (where most of the goods were sealed and kept during the last inspection conducted on 14.02.2020) I noticed that many of the seal tapes were broken. This can be seen from the photographs taken by the undersigned during the course of the inspection. The same is evident all the more when the instant Photographs are compared with the ones taken by the undersigned during the earlier inspection conducted on 14.02.2020 and which are specifically annexed at Page Nos. 29,30, 35, 39, 41, 43 & 50 of LC Report dated 29.09.2020. True Copies of Photographs are collectively annexed herewith and marked as ANNEXURE -3 (COLLY).

7. The Defendant's representatives admitted that they had broken the said seal tapes but gave an explanation for the same stating that the seals were broken only for the purpose of selling the RO and its parts. They further stated that the said seal tapes

were broken purportedly after the Injunction Order dated 07.02.2020 issued by this Hon'ble Court was partially vacated vide Order dated 09.09.2020. However there were no means of verifying the aforesaid explanation since the Defendants did not show any photographs and/or video showing that the said seal tapes were in fact broken after vacation of the injunction order.

8. It is also pertinent to state herein that the sealing tape affixed on packaging boxes which were lying stacked up one over the other and duly sealed as such by the undersigned on 14.02.2020 have also been broken and the same is evident from the photographs taken by the undersigned during the course of inspection.

.....

10. To answer the second aspect of the mandate given this Hon'ble Court, namely, whether the number of geysers sealed by the undersigned Local Commissioner on 14.02.2020 tally with CS(Comm.)60/2020 Page 5 the geysers lying at the premises in question, it is submitted as follows:

(i) During the inspection conducted on 14.02.2020, the undersigned Local Commissioner had sealed a number of Geysers and/or Water Heaters which are listed at Sl. No. 25, 26, 27, 28, 29, 30, 31, 48, 68, 71, 74, 76 & 82 of the LC Report dated 28.09.2020.

(ii) On re-inspection conducted on 21.12.2020, I have found that all the aforesaid geysers/water heaters listed at the aforesaid serial numbers are lying at the premises in question except Serial No.82.

(iii) Sl. No. 82 in the LC Report dated 28.09.2020 pertained to 6 pieces of instant Water Heater (8ltrs), which have been found to be missing.

(iv) In Sl. No. 27, 28, 29, the undersigned has stated that there were 9 pieces of Instant Geyser (1ltr) bound together.

(v) However, on re-inspection conducted on 21.12.2020, the undersigned has found that there is one more set of 9 pieces of Instant Geyser that are bound together. The same may have been inadvertently left out on account of huge volume of goods that were sealed on 14.02.2020."

9. On reading of the aforesaid reports of the learned Local Commissioners it is manifest that there is an attempt to tamper with the seals affixed by the Local Commissioner and the goods that were found at the time of the first inspection do not seem to tally with the goods that were found during the second inspection. Clearly, the defendant appears to be prima facie guilty of tampering with the seals/quantity of geysers. In my opinion, this fact itself is sufficient to disentitle the defendant to any relief in view of the conduct of the defendant. This application is accordingly dismissed.

10. At this stage, learned counsel for the defendant states that they would like to vacate the premises at Delhi and seeks permission to shift the goods CS(Comm.)60/2020 Page 6 to a godown at Bathinda, Punjab.

11. Let the defendant file an application placing on record the detailed procedure which the defendant wishes to follow to ensure that all the goods that were sealed by the Local Commissioners are shifted to Bathinda in an appropriate manner. Liberty is granted to the defendant to file the said application.

Learned counsel for the plaintiff states that this application is infructuous. Application is accordingly disposed of.

Learned counsel for the plaintiff states that in this application same reliefs have been sought as in IA No.5528/2020. As prayed, the application is dismissed as withdrawn.

This application is filed under Order 1 Rule 10 CPC to implead Mr.Rajesh Bansal as defendant No.5 in the present suit and to allow amendment of the memo of parties.

It is stated that one of the pleas raised by the defendants is that the impugned mark SUJATA is a registered mark in the name of Mr.Rajesh Bansal. It has also been pleaded that Mr.Rajesh Bansal is one of the directors of defendant No.1 and defendant No.1 is using the said mark as a licensee. Hence, it is pleaded that Mr.Rajesh Bansal falsely claims to be the registered proprietor of the mark SUJATA and is involved with other defendants in the activities of allegedly infringing and violating intellectual property rights of the plaintiff and it would be appropriate that he may be impleaded as a party.

CS(Comm.)60/2020 Page 7 Learned counsel for the defendants denies the allegations against Mr.Rajesh Bansal but admits that Mr.Rajesh Bansal is the stated proprietor of the mark SUJATA.

Clearly, Mr.Bansal is a necessary and proper party. Accordingly, this application is allowed and Mr.Rajesh Bansal is impleaded as defendant No.5.

This application is filed as a consequence of application being IA. No.4298/2020. It is pleaded that by this application the plaintiff seeks to amend the plaint in view of its plea to implead Mr.Rajesh Bansal as defendant No.5. It is prayed that only consequential reliefs and averments are sought to be added in view of Mr.Rajesh Bansal being added as defendant No.5.

In view of the above, the application is accordingly allowed. CS(COMM) 60/2020 Amended memo of parties be filed within two weeks. Let the newly impleaded defendant No.5 file his written statement within thirty days. Rejoinder thereto, if any, be filed within 30 days thereafter.

List before Joint Registrar on 05.03.2021 for further proceedings. List on 27.04.2021. All pending applications be listed on that date.

JAYANT NATH, J

JANUARY 11, 2021

n

CS (Comm.) 60/2020

Page 8