

CS (Comm) 02/2024
SUNEETA SHARMA
VS.
GERMAN PLAST INDUSTRIES PVT. LTD.

04.03.2024.

Present: Sh. Ravi Chauhan, Ld. Counsel for the plaintiff.
Sh. Nitesh Dhankhar, Ld. Counsel for the defendant.

An application under Section 151 CPC is filed by the defendant for taking modified document (Comparative Chart of the Flower Ports of the plaintiff and defendant) on record. Copy supplied to the counsel for the plaintiff.

Ld. Counsel for the defendant read over para 5 of the written statement contending that the design certificate in issue in favour of the plaintiff ought not to have been granted and the registration deserves to be cancelled. In support of contention, the Ld. Counsel for the defendant has relied upon the judgment of Hon'ble Supreme Court of India passed in Civil Appeal No.3695 of 2020 titled S. D. Containers Indore vs. M/s. Mold Tek Packaging Ltd. and read over the relevant part of Section 22 of the Design Act, 2000 in this respect which is reproduced as under:

“22. Piracy of registered design. -

(1) xx xxx xxx

(2) xx xxx xxx

(3) *In any suit or any other proceeding for relief under sub-section (2), ever ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.*

(4) *Notwithstanding anything contained in the second proviso to sub-section (2), where any ground or which the registration of a design may be cancelled*

under section 19 has been availed of as a ground of defence under sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision.

(5) When the court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs”.

The prayer is made to transfer this case to the Hon'ble Delhi High Court for the decision in view of the provisions of Section 22 of the Design Act, 2000. The request of the Ld. Counsel for the defendant acceded by the counsel for the plaintiff praying for transfer this case to the Hon'ble Delhi High Court for adjudication.

In view of the joint submissions of the parties read with Section 22 of the Design Act, 2000, this case has to be transferred by this court to the Hon'ble Delhi High Court for decision. Let this file be sent to the Ld. Registrar General, Hon'ble High Court of Delhi through Ld. Principal District & Sessions Judge, Rohini Courts (North), Delhi. Parties to appear before the Ld. Registrar General, Hon'ble Delhi High Court on **11.03.2024 at 02:00 pm**. Ahlmaid is directed to send the file complete in all respects immediately.

(GORAKH NATH PANDEY)
District Judge (Commercial Court)
North:Rohini:Delhi/04.03.2024