

Hamdard National Foundation (India) & ... vs Amazon India Limited & Anr on 5 September, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (COMM) 607/2022 & I.As. 14189-92/2022

HAMDARD NATIONAL FOUNDATION (INDIA)

& ANR.

..... Plaintiff

Through: Mr. Shivendra Pratap Singh, Mr.
Sunil Mishra and Mr. Navdeep
Suhag, Advocates. (M:8826906894)

versus

AMAZON INDIA LIMITED & ANR.

..... Defendant

Through: Mr. Sidharth Chopra, Ms. Sneha
and Mr. Vivek Ayyagari, Advocates
(M:9560400687)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 05.09.2022

1. This hearing has been done through hybrid mode.

I.A.14190/2022 (for exemption)

2. This is an application seeking exemption from filing certified/cleared/typed or translated copies of documents. Exemption is allowed, subject to all just exceptions.

3. I.A.14190/2022 is disposed of.

I.A.14191/2022 (additional documents)

4. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

5. I.A.14191/2022 is disposed of.

I.A.14192/2022 (u/S 12A)

6. This is an application seeking exemption instituting pre-litigation mediation. In view of the orders passed in CS (COMM) 132/2022 titled Upgrad Education v. Intellipaat Software and the recent order of this Court dated 29th August, 2022 passed in CS(COMM) 582/2022 titled Bolt Technology OU v. Ujoy Technology Private Limited & Anr., the exemption is granted.

7. I.A.14192/2022 is allowed and disposed of.

CS (COMM) 607/2022

8. Let the plaint be registered as a suit.

9. Issue summons to the Defendants. Mr. Siddharth Chopra, Id. Counsel accepts summons on behalf of Amazon.

10. Let the written statement(s) to the Plaint be positively filed within 30 days from the date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

11. Liberty is given to the Plaintiffs to file a replication within 30 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiffs, 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 Joint Registrar for marking of exhibits on 10th October, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

13. List before Court on 31st October, 2022.

I.A.14189/2022 (u/O XXXIX Rules 1 & 2 CPC)

14. The present suit has been filed by Hamdard National Foundation (India)- Plaintiff No.1 and Hamdard Dawakhana also trading as Hamdard Laboratories India- Plaintiff No.2 against two companies namely Amazon India Limited- Defendant No.1 and M/s. Golden Leaf, C/o Amazon Seller Services Pvt. Limited- Defendant No.2. The suit relates to the product and mark of the Plaintiffs 'ROOH AFZA'. The case of the Plaintiffs is that Plaintiff Nos.1 & 2 are engaged in the business of manufacturing and selling various Unani and Ayurvedic medicines, oils, syrups and non-alcoholic beverages. The Hamdard Group of the Plaintiffs has a history which dates back to over 100 years when well-known Unani practitioner 'Hakeem Hafiz Abdul Majeed' set up a Unani clinic under the name 'Hamdard Dawakhana'. Over the years, the activities of the Plaintiffs have expanded and they have been involved in research and development.

15. The Plaintiffs own rights in the marks 'HAMDARD' and 'ROOH AFZA' details of which are mentioned in paragraph no. 11 of the plaint. The mark 'ROOH AFZA' was adopted by the Plaintiffs in 1907 and the said product is a market leader in its segment. The mark 'ROOH AFZA' has been used by the Plaintiffs for a range of products including non-alcoholic sharbets and beverages, for which Plaintiff No.2 has obtained the assignment on 11th August, 1975 from Plaintiff No.1. The mark ROOH AFZA is registered in India and one of the registrations of the Plaintiffs dates back to 3rd August, 1942. Other trademarks have also been registered by the Plaintiffs for variants of 'ROOH AFZA', including the labels and flavour variants etc., The annual sales of the products under the mark 'ROOH AFZA' brand are over Rs.200 crores and a substantial amount has also been incurred by the Plaintiffs in the advertisement and promotion of the brand.

16. The grievance of the Plaintiffs in the present case is that Defendant No.1- Amazon India Limited, runs the e-commerce website www.amazon.in. Defendant No.2- M/s. Golden Leaf, which claims to have the contact details- C/o Amazon Sellers Service Pvt. Ltd., 26/1, 10th Floor, Brigade World Trade Center, Dr. Rajkumar Road, Bengaluru- 560055 (Karnataka), is a seller on the www.amazon.in platform selling and offering for sale the product 'ROOH AFZA'.

17. Mr. Shivendra Pratap Singh, Id. Counsel for the Plaintiffs submits that the Plaintiffs noticed various 'ROOH AFZA' products at www.amazon.in platform and addressed notices to the sellers as also to Amazon India. The said sellers were 'M/s Royal Sales' and 'M/s. Good Health Enterprises'. Upon these notices having been issued on 4th September, 2021 and 9th December, 2021, the said listings were removed from www.amazon.in platform. However, recently another listing by one 'M/s. Golden Leaf' was found by the Plaintiffs on the website of Defendant No.1 and upon clicking on 'Golden Leaf', the contact details were shown as 'C/o Amazon Sellers Services Pvt. Ltd'. The Plaintiffs effected purchases of the said product on 6th December, 2021 and found to their utter shock and surprise that the said product was not manufactured by the Plaintiffs. Id. counsel for the Plaintiffs submits that the said product is manufactured in Pakistan and also does not comply with the legal requirements of the Legal Metrology Act, 2009 (hereinafter referred as "LMA"), the Legal Metrology (Packaged Commodities) Rules, 2011, and the Food Safety and Standards Act, 2006 (hereinafter referred as 'FSSAI') which governs such products.

18. Mr. Siddharth Chopra, Id. Counsel appears for Amazon Sellers Service Pvt. Ltd. (hereinafter 'Amazon Sellers') upon seeing the matter in the cause list and submits that Defendant No.1- Amazon India Limited is not connected with the company, Amazon Sellers Service Pvt. Ltd., which runs the e-commerce platform www.amazon.in, in any manner. He, however, submits that if the URLs of the infringing listings are furnished to him, the same shall be taken down. He also submits that Amazon Sellers has not received the copy of the paper book.

19. Let a copy of the paper book be supplied to Mr. Chopra, Id. Counsel for Amazon Sellers today itself. Id. counsel for the Plaintiffs submits that purchases were affected by the Plaintiffs thrice from three sellers through www.amazon.in platform and on all three occasions, the product which was supplied was claimed to be manufactured by 'Hamdard Laboratories (Waqf), Pakistan' from Karachi, Pakistan. Let copies of all the invoices showing purchases be supplied by Id. Counsel for the Plaintiffs to Mr. Chopra, Id. Counsel.

20. Ld. Counsel for the Plaintiffs has produced the 'Hamdard ROOH AFZA' product bottle which is stated to be purchased by them through www.amazon.in platform. A perusal of the physical products shows that the same is shown to be manufactured by 'Hamdard Laboratory (Waqf), Karachi, Pakistan'. There are no other details of the manufacturer mentioned on the product apart from just the name of the manufacturer. No address, email address or telephone number of the manufacturer is available at the label of the product. The label on the bottle produced by the Plaintiffs is as under:

21. The manufacturing date on the product is shown as March, 2020 and the expiry date is March, 2022. The Plaintiffs' case is that this product also does not comply with the LMA and FSSAI regulations. It is also not clear as to how these products are being imported from Pakistan when clearly the Plaintiffs have statutory rights in the marks in India.

22. The Court has, during the course of hearing, also accessed the website www.amazon.in which reveals that there are various 'ROOH AFZA' products being offered for sale. However, on a cursory browsing the names of the sellers, their addresses/contact details are not clear.

23. Clearly, 'ROOH AFZA' is a product which has been consumed by the Indian public for over a century now. The same being a drink for human consumption, the quality standards have to comply with the applicable regulations prescribed by the FSSAI and LMA. It is surprising that an imported product is being sold on www.amazon.in platform without the complete details of the manufacturer being disclosed. Moreover, when one clicks on the link 'Visit the Hamdard Store', which is provided next to the product listing of Defendant No.2, the consumer is taken to the webpage of 'Hamdard Laboratories India' on www.amazon.com, which is of the Plaintiffs. Thus, any consumer or user on the www.amazon.in platform is likely to confuse the 'ROOH AFZA' product originating from Hamdard Laboratories (Waqf), Pakistan as being connected or originating from the Plaintiffs. Until and unless the consumer actually receives the product, the consumer has no way of knowing as to whether the product being sold is that of the Plaintiffs or not. This can have an adverse impact on the consumers, inasmuch as the details of the sellers are not known. Since www.amazon.in claims to be an intermediary it has an obligation to disclose names of sellers, their contact details etc., on the product listings.

24. Under these circumstances, the Court is convinced that the Plaintiffs have made out a prima facie case for grant of an ad-interim injunction. The balance of convenience lies in the favour of the Plaintiffs and if an injunction is not granted at this stage, irreparable injury would be caused to the Plaintiffs. Mr. Siddharth Chopra, Id. counsel, wishes to seek instructions. However, considering the nature of the dispute, urgent interim injunction orders are required to be passed not only in order to recognize the Plaintiffs' rights but also to ensure that the products not meant for consumption in India are not sold on the www.amazon.in platform. Accordingly, the following directions are issued:

(1) The listings of infringing 'ROOH AFZA' products on the website www.amazon.in not originating from the Plaintiffs shall be removed within 48 hours. If the Plaintiffs have details of the said URLs, the same shall be submitted to Mr. Chopra Id.

Counsel for Amazon Sellers Service Pvt. Ltd.

(2) The said company shall also check up as to who are the sellers who are selling 'ROOH AFZA' products on its platform and if any of the said products are found not to be originating from the Plaintiffs, their listings shall be removed immediately. (3) If any of the product listings show the products are manufactured or originating from the Plaintiffs, in such a situation, www.amazon.in shall give notice to the said seller to confirm that the same originate from the Plaintiffs and if so, such listings shall be retained.

(4) Since Amazon Sellers claims to be an intermediary under the Information Technology Act, 2000, it shall file an affidavit clarifying as to whether the details of the sellers, including the place of manufacturing of the products, the complete address of the sellers, and the contact details, including the telephone number, email address etc. are mentioned on the ROOH AFZA product listings, invoices, product labels etc. If the same are not available on the product listings, Amazon Sellers shall clarify as to in what manner consumers expected to obtain such details from www.amazon.in platform. The said affidavit shall be filed within four weeks.

(5) The ld. Counsel for Amazon Sellers shall provide the details of the sellers of all the 'ROOH AFZA' product listings on its website to the Plaintiffs, within one week, who may then take steps in accordance with law for impleadment etc., if so advised.

(6) The Plaintiffs are permitted to inform Amazon Sellers of any listings which they may come across even in the future, in respect of 'ROOH AFZA' branded products which are not manufactured and sold by the Plaintiffs so that the same can be immediately removed from the website within 48 hours of the intimation.

25. Let reply to the application be filed within 4 weeks. Amended memo of parties be filed changing the name of Amazon India Limited to Amazon Sellers Service Pvt. Ltd.

26. List before the Court on 31st October, 2022.

PRATHIBA M. SINGH, J.

SEPTEMBER 5, 2022/dk/sk