

## Vipon Electronics (P) Ltd. Vs Shri Akhilesh Kumar, Mrs. Rani, Mrs. Manju and Shri Vipin Kumar

**Court:** Delhi High Court

**Date of Decision:** Feb. 21, 2007

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 151, 152

**Hon'ble Judges:** J.M. Malik, J

**Bench:** Single Bench

**Advocate:** P.K. Agarwal and Noor Alam, for the Appellant; N.K. Kantawala and Ravi Chawla, for the Respondent

**Final Decision:** Disposed Off

### Judgement

J.M. Malik, J.

The original suit was filed by Akhilesh Kumar, respondent No. 1, who was one of the Directors of the appellant company

M/s Vipon Electronics Private Limited. Its other Directors were late Shri Narain Dass, his father, who is now being represented by his legal heirs

and his brother Vipin Kumar, who has been arrayed as respondent No. 4 in this appeal. The appellant used to carry on its business on a rented

property bearing No. E-2/79, Shastri Nagar, Delhi. Respondent No. 1 filed a suit against the appellant as well as two other remaining Directors to

the effect that appellant and its Directors be restrained to use brand name TELEX in any manner either for manufacturing or trading or entering into

any agreement relating to the said brand with any third party. He also prayed that permanent injunction be granted restraining them not to use the

factory premises and not to remove the goods, stocks/materials, machines, documents and books etc. belonging to the appellant without the

consent of the respondent No. 1. The learned trial court vide its order dated 27.10.2006 gave the relief in respect of Narain Dass and Vipin

Kumar. Thereafter, an application u/s 152 read with Section 151 C.P.C. for amendment/correction of order dated 27.10.2006 was moved. The

trial court vide its order dated 07.11.2006 also passed the restraint orders against the appellant as well. He also directed the respondent No. 1 not

to use the name ""TLX: in any manner till the disposal of the suit. It was also ordered that clerical mistake if any stood rectified. Aggrieved by this

order, the appellant has filed this appeal.

2. The facts germane to this case are these. The relations between the respondent No. 1 on the one hand and the remaining two Directors and the

Company on the other hand became strained. A meeting dated 08.04.2006 was held wherein all the Directors agreed to divide and distribute their

properties and liabilities. Another meeting was held between respondents No. 1 and 4 on 04.05.2006, wherein modes of the above said division

and distribution amongst the Directors were discussed and it was mutually agreed to keep the premises at E- 2/79, Shastri Nagar, Delhi closed

and non operational. They also agreed that they would not use the brand name (TELEX). As per that agreement, respondent No. 1 paid a sum of

Rs. 3,90,000/- to Vipin Kumar, respondent No. 4. However, remaining two Directors i.e. respondent No. 4 and late Shri Narain Dass continued

using the factory premises and brand name TELEX. Respondent No. 1 was not allowed to enter the factory premises and it transpired that both

the remaining Directors were shifting all the goods, stock material from the above said factory premises. Respondent No. 1 had lodged a report

with the police but no effect. Respondent No. 1 was also removed from the post of Director of the said company vide letter dated 24.05.1996,

which was sent in acceptance of his resignation letter dated 26.04.1996. Respondent No. 1 denied having given such resignation letter.

Respondent No. 1 also sent legal notice but it did not ring the bell. On the contrary, the other two Directors put new lock on the factory premises

and refused to settle the matter. Consequently, the above said suit was filed.

3. On the other hand, the case of the appellant is this. M/s Vipon Electronics Private Limited was sole proprietorship concern of Shri Narain Dass.

It used to carry on business of high speed cassette recording under the brand name TELEX. It was agreed that 82% share would be held by

Narain Dass and 18% share would be held by his sons. Subsequently, it was converted into a partnership, wherein the remaining two

Directors/sons of Narain Dass were joined. On 08.04.1996, under the settlement arrived at between the parties, Akhilesh Kumar, respondent No.

1 was to resign from the company and the brand name TELEX was to be retained by the company. On 20.08.1996, this Court restrained

respondent No. 1 and his concern from manufacturing, selling, transferring and or marketing Audio Cassette copier under the brand TLX or any

other name deceptively similar to the appellant's brand name "TELEX". The appellant and its two other Directors denied the case of respondent

No. 1 in its entirety.

4. I have heard the learned Counsel for the parties. The learned Counsel for the appellant made the following submissions. He argued with

vehemence that in judgment dated 27th October, 2006, there was no discussion or finding against the appellant. The learned trial court gravely

erred in amending the said order. The intention of a Judge can be culled out only from pleadings of the parties and the impugned order. Personal

intention of a Judge has no role to play. The said amendment cannot be said to be merely an accidental omission or mistake. The above said

amendment has the effect of reviewing the original order for which the trial Judge had no jurisdiction. Moreover, the appellant company was not a

privy to the agreement or family settlement entered into between the two brothers.

5. His arguments reveal a lack of realism. This is an admitted fact that a meeting took place on 04.08.1996. In that meeting, Narain Dass, Akhilesh

and Vipin were also present. In this agreement, it was agreed:

3. The property E-2/79, Shastri Nagar, Delhi (presently rented to M/s Vipon Electronics Pvt. Ltd.) will be retained by Mr. Akhilesh.

5. The brand Telex will be retained by M/s Vipon Electronics Pvt. Ltd. who will be vacating the premises E-2/79, Shastri Nagar, Delhi by 8th July,

1996. Mr. Akhilesh Kumar will resign from Vipon Electronics (P) Ltd. On 9th/10th April, 1996 and will keep the resignation papers with S. Maan

Singh.

It is also admitted fact that another meeting was held between Vipin Kumar and Akhilesh Kumar and they also agreed to the following facts.

5. M/s Vipon Electronics will vacate the premises E-2/79, Shastri Nagar, Delhi latest by 5th June, 1996.

6. The property E-2/79, Shastri Nagar, Delhi will be sold after the vacation.

7. Mr. Akhilesh Kumar will have no claim on the spot welding Machine lying at E-2/79, Shastri Nagar, Delhi.

8. The factory premises E-2/79, Shastri Nagar, Delhi has been closed down and will not be in operation any more.

9. The brand TELEX will not be used by either of the directors.

It is, Therefore, clear that Vipin had agreed that the brand TELEX would not be used by either of the Directors.

6. It goes beyond the pale of my comprehension as who is Shri Ashok Rawlwey, who has filed the appeal on behalf of the appellant. What

connection he has got with the appellant can be anybody's guess. Then who is Vipin Kumar" Has he got no relations with the appellant. Can he

disown the appellant or the vice versa. He is estopped from using the trade mark "TELEX" after his agreement with his brother, respondent No. 1.

Prima-facie, he cannot be permitted to waddle out of his commitments. The facts of this case speak for themselves. It is clear like a day that he has

got the present appeal filed behind the curtain. He wants to have the benefits of both worlds. It does not lie in his mouth to get the same relief

procured through his company. The Court expects round dealing from its litigants. All the above said legal jangles cannot be dismissed out of hand.

These must be investigated, evidenced and discussed down to earth. It is too early to speak my piece on all these knotty problems.

7. I see no illegality and infirmity in the order passed by the learned Additional District Judge on application u/s 152 read with Section 151 CPC

dated 27.10.2006. I see no merit in the appeal. The same is, Therefore, dismissed.

The parties are directed to appear before the trial court for further proceedings on the date already fixed i.e. 12.03.2007. Trial court record be

sent back with a copy of this order forthwith.

CM No. 17308/2006 in FAO No. 411/2006

In view of the disposal of the appeal, no further orders are required to be passed in the application. The same is disposed of.