

(2001) 08 DEL CK 0168

Delhi High Court

Case No: IA No. 1815 of 2001 in S 390 of 2001

S.S. Products of India

APPELLANT

Vs

Star Plast

RESPONDENT

Date of Decision: Aug. 17, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20
- Designs Act, 1911 - Section 53

Citation: (2001) 60 ECC 347

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: V.P. Dalmiya, for the Appellant; Rakesh Sharma, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

S S Product of India is a partnership concerned. It has filed the present suit for permanent injunction invoking Section 53 of the Designs Act, 1911 besides delivery of infringing material as well as for rendition of accounts.

2. The facts alleged are that plaintiff firm is a reputed manufacturer and trader of all types of air pumps including air pumps for cycle etc. It had developed new design air pumps having distinctive features, design for shape, configuration of air pumps. The plaintiff firm has been getting the designs of air pumps developed and marketed registered under the provisions of Designs Act, 1911. It is the registered owner of the design of air pump i.e. design no.176150 dated 6th April, 1998.

3. Assertions of the plaintiff are that the said designed had been so designed first time in India and is original design made by the plaintiff. The design and its registration is still valid. In May 2000 It came to the notice of the plaintiff firm that the defendants and their associates with dishonest intentions and mala fide

intentions have started manufacturing air pump for cycle which is similar and identical to the plaintiff. As per the plaintiff this has been so done with dishonest intentions because the pump manufactured by the defendant is virtually similar to that of the plaintiff's design.

4. During the pendency of the civil suit ad interim injunction had been claimed vide is 1851/2001 to restrain the defendant/respondent, its agents and distributors from manufacturing, selling or offering for sale or infringing the registered design of the plaintiff. By the present order the above said interim application is proposed to disposed.

5. In the written statement filed the defendant has contested the suit. It has been pointed that certain material facts has been suppressed. As per the defendant the plaintiff has not disclosed that design of the answering defendant is also registered vide registration No. 182208 dated 27th April, 2000. It has been duly registered by the Controller General of Patents & Design which has also issued the certificate of registration of design. The suit filed u/s 53 of the Designs act was stated to be not maintainable. Plea has also been raised that defendant has been manufacturing and seeling the air pumps and it is in no way infringing the registered design of the plaintiff. In the alternative it has been pointed that the air pump registered in favor of the defendant is different from the design of the plaintiff's air pumps in various forms and details of the said defense have been enumerated in the written statement. Furthermore, plea has been raised that this court has no jurisdiction to entertain the suit. The registered office of the plaintiff as well as the defendant are at Ludhiana. There is no proof of alleged business in Delhi.

6. The first and foremost question that comes up for consideration in the peculiar facts is as to whether plaintiff on the assertions made is entitled to prima facie show that this design has been infringed or in other words is entitled to claim ad interim injunction or not. The facts show that plaintiff has got a registered design for air pump no. 176150 dated 6th April, 1998. In this process what is obvious is that both the parties have got their designs registered. When such is the situation in that event the proper remedy in any case would be to that the parties should avail their remedies u/s 53 of the Designs Act. When both the parties are holding registration of the design then each of them can use that design for its products. It is a different matter that either party may seek cancellation of the design of the other in accordance with law but so long as designs occur and are being held, it would be improper to grant an ad interim injunction in favor of another.

7. Reference in this connection with advantage can well be made to the decision in the case of M/s Tobu Enterprises Pvt. Ltd. vs. M/s Meghna Enterprises 1983 PTC 359. Relying on the cited decision, this court later in the case of [Indo Asahi Glass Co. Ltd. Vs. Jai Mala Roller Glass Ltd. and another](#), held:

"... as long as both, the plaintiff's design and the defendant's design stand registered, the plaintiff cannot be granted relief of temporary injunction. In order to safeguard the rights of the plaintiff, if ultimately they are established in the suit, at the most the defendant can be required to maintain proper accounts of its sales of the goods under the disputed design till the disposal of the suit and file the copies of the statements of accounts in Court quarterly till the disposal of the suit.

One finds in respectful agreement with view point so expressed.

8. There is another way of looking at the matter. This pertains to the objections raised by the defendant in terms that the civil suit at Delhi has no jurisdiction to entertain the said suit. In paragraph 13 of the plaintiff, the has pleaded:-

That this Hon"ble court has the jurisdiction to try the present suit as both the plaintiff and the defendant are carrying on their business for gain within the jurisdiction of this Hon"ble court and infringement by the defendant is also taking place at Delhi.

9. This has been denied vehemently by the defendant asserting that neither of the plaintiff has registered office at Delhi nor it works for gain within the jurisdiction of this court. In support of his defense, learned counsel for the defendant relied upon the decision of this court in case of Lok Nath Prasad Gupta vs. Bijay Kumar Gupta 1995 I AD (Delhi) 830. Section 20 of the CPC in this regard can well be taken note of and reads as under:-

20. Other suits to be instituted where defendants reside or cause of action arises- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement, of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arose.

10. Though the plaintiff has made certain assertions but in the memo of parties it has clearly been mentioned that both the parties are residents of places other than the Delhi. u/s 20 a civil suit could be instituted a place where the defendant resides or carries on business or where the cause of action may arises. The other exceptions of there being more than one defendants need not be gone into for purposes of the present order. From the aforesaid it is clear that it must be shown that the

defendant is a resident of Delhi or carries on business at Delhi. Admittedly, as referred to above defendant is not a resident of Delhi. He is shown to be resident of village Gill, District Ludhiana. There is no registered office of the plaintiff shown to be in Delhi. It is not even prima facie established that defendant has been indulging in massive sale at Delhi so as to indicate that he is carrying on business at Delhi. In the absence of any such fact it must prima facie for purpose of the present order be held that the civil court at Delhi has no jurisdiction to entertain the suit. No cause of action is shown to have arisen within the jurisdiction of the civil courts at Delhi. As an off shoot of the aforesaid it must be held that prima facie the plaintiff has not been able to establish a case and consequently the other question of balance of convenience and irreparable injury need not be gone into. is 1815/2001 must fail and is accordingly dismissed. Rejoinder, if any, may be filed within four weeks. List it for framing of the issues on 21st January,2002.