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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 60/2020**

MITTAL ELECTRONICS Plaintiff

Represented by: Mr.Mohan Vidhani, Mr.Rahul
Vidhani, Mr.Saurabh Kumar and
Mr.Ashish Singh, Advocates.

versus

SUJATA HOME APPLIANCES (P) LTD. & ORS..... Defendants

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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07.02.2020

I.A. 1754/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. Original documents, if any, be filed within 30 days.
3. Application is disposed of.

I.A. 1753/2020 (under Order XI Rule 1 (4) CPC)

1. Additional documents, if any, be filed within 30 days.
2. Application is disposed of.

CS(COMM) 60/2020 & I.A. 1751/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as a suit.
2. Issue summons in the suit and notice in the application to the defendants on the plaintiff taking steps through ordinary and dasti process, registered A.D. and speed post returnable on 11th March, 2020 before the

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learned Joint Registrar for completion of service, pleadings and admission/denial of documents.

3. Summons to the defendants shall indicate that the written statement to the plaintiff shall be positively filed within 30 days of the receipt of the summons. Liberty is given to the plaintiff to file the replication within three weeks of the receipt of the advance copy of the written statement.

4. Parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

5. Affidavit of admission/ denial of documents shall be filed by the parties along with the pleadings.

6. List the suit and the application 21st April, 2020.

7. Case of the plaintiff is that the predecessor of the plaintiff adopted the trademark 'SUJATA' in the year 1980 in respect of electrical goods and home appliances such as juicer, mixer, grinder, grater, shredder, chopper, mincer, kneader, atta chakki, electric spin drier, electric flat iron, heating, cooling, ventilating, steam generating and cooling appliances. From the year 1991 to 2018 the plaintiff's trademark 'SUJATA' is registered in various classes including classes 7, 8, 9, 11 and 35. Besides the 14 registrations for the mark 'SUJATA' more than ten applications for registration of the said trademark in various classes are also pending. Plaintiff is also the owner of the domain name www.sujataappliances.com. Plaintiff has substantial turnover and advertisement expenses. The turnover

of the plaintiff from the financial year 2005-2006 has grown from 0.78 crores to 229.20 crores in the financial year 2019-2020 till 31st January, 2020 and the advertisement expenses have swelled upto ₹12.53 crores. Case of the plaintiff is that today 'SUJATA' is a name in the home appliances.

8. The plaintiff came to know about the defendants' activities when the plaintiff received a complaint of a 'SUJATA' water heater which was not working properly and on inspection it was found that the said product was not manufactured by the plaintiff. On investigation it was found that the defendants are selling their products including geysers, water purifier, RO system, its parts and accessories, Alkaline Ionizer and Vegetable purifier etc. under the trade name Star SUJATA however, the word star is very innocuously written so as to be not visible. Further the defendants have also domain name registration and are advertising their products through the said websites, that is, www.sujataro.com and www.sujatahomeappliances.com and the website www.sujatahomeappliances.com has been redirected to www.sujataro.com. Investigation revealed that the defendant No.1, who is the marketing the appliances is getting the same manufactured from defendant No.2 and defendant No.4 while defendant No.3 is the distributor of defendant No.1 and without any license from the plaintiff the defendants are copying the trademark of the plaintiff which has now achieved the status of a 'well known' trademark and selling their goods as of that of the plaintiff thereby not only infringing the plaintiff's trademark but also passing of defendants' goods as that of the plaintiff.

9. Considering the averments in the plaint as also the documents filed therewith the plaintiff has made out a prima facie case in its favour and in

case no ex-parte ad-interim injunction is granted, the plaintiff will suffer irreparable loss. Balance of convenience also lies in favour of the plaintiff and against the defendants.

10. Consequently, the defendants, their directors, partners, owners, dealers, distributors, agents, servants, employees etc. are restrained from manufacturing, selling, importing, exporting, offering for sale, advertising their products including geysers, water purifiers, RO systems, Ionizer, Vegetable Purifier, Juicer, Mixer, Grinder, Heating, Cooling, Ventilating, Steam Generating and Cooling appliances etc. under the trademark Star SUJATA/SUJATA or any other identical or deceptively similar trademark in terms of prayer in para-36 of the application under Order XXXIX Rule 1 and 2 CPC.

11. Defendants are also restrained from using the domain names www.sujatahomeappliances.com and www.sujataro.com and the email address also till the next date of hearing.

12. Compliance under Order XXXIX Rule 3 CPC be made within one week.

I.A. 1752/2020 (under Order XXVI Rule 9 CPC)

1. For the purpose of ensuring compliance of the above interim order as also the fact that there is sufficient material to show that there is prima facie infringement of the plaintiff's trademark besides passing off of defendants' goods as that of the plaintiff's, this Court finds that appointment of Local Commissioners to inspect the premises of the defendants as mentioned para-5 of the application is necessary.

2. Accordingly, Mr.Shreyas Jain, Advocate (Mob.9899999672) is appointed as the Local Commissioner to visit the following premises of the defendants.

Sujata Home Appliances (P) Ltd. (Defendant No.1)
Ram Bagh Road,
Gali No.2/2, Bathinda,
Punjab-151001.

3. Mr.Asif Ahmed, Advocate (Mob. 9560995495) is appointed as the Local Commissioner to visit the following premises of the defendants.

Sujata Home Appliances (P) Ltd. (Defendant No.1)
A-26, Sector-2,
Industrial Area, Bawana,
New Delhi-110039.

4. Mr.Bhuvanesh Sehgal, Advocate (Mob.9810149006) is appointed as the Local Commissioner to visit the following premises of the defendants.

Gorani Industries Ltd. (Defendant No.2)
32-33, Sector-F, Sanwer Road,
Indore-452015,
Madhya Pradesh.

5. Mr. Abhinav Jagannathan, Advocate (Mob. 9953541934) is appointed as the Local Commissioner to visit the following premises of the defendants.

Asija Electricals (Defendant No.3)
Near Sangwan Chowk,
Dwarkapuri, Sirsa,
Haryana-125055.

6. Mr. Tamim Qadri, Advocate (Mob. 9899959499) is appointed as the Local Commissioner to visit the following premises of the defendants.

Radiant Industries (Defendant No.4)
Plot No.951, Sector-82, JLPL Industrial Park,
Mohali-160055.

7. The Local Commissioners are directed to search the premises of the defendant, make an inventory of all the infringing products and take into custody any product bearing the plaintiff's trademark or any other deceptively similar mark on their goods.

8. The Local Commissioners need not give any advance notices to the defendants. The representative of the plaintiffs and their counsel will assist the Local Commissioners in carrying out the necessary work.

9. In case in the course of inspection or otherwise if the Local Commissioner is revealed about any other premises/ go-down/ shop where the infringing activity is going on by the defendants, the Local Commissioners would be entitled to carry out the entire exercise in respect of the said premises as well.

10. After preparing the inventory of the goods so seized, the same would be sealed and handed-over to the respective defendants or their authorised representative, who is found present in the premises on superdari after taking the due identification of the owner of the goods with the undertaking to produce the seized goods as and when called by this Court. The Local Commissioners would also be at liberty to inspect any other premises in the vicinity of the five premises as mentioned above in case infringing activity is going on in the said premises.

11. The Local Commissioners are also permitted to take videography and photography of the sites under inspection. The Local commissioners will also be entitled to break open the locks of any premises, almirah or storage area in the premises, if the defendant does not cooperate and open the locks in the presence of the local police and two respectable persons of the society.

12. The Local Commissioners will also seek production of the books of accounts including ledgers, cash book purchase and sale records of the defendants. In case the accounts are maintained in the hardcopies, photocopies of those documents will be taken and placed on record of this Court and in case the accounts are maintained in electronic form, the mirror image of the hard-drives of the laptop/ computer being used for the purpose will be taken and filed before this Court along with the report.

13. The concerned SHOs are directed to ensure that local commissions are executed uninterruptedly and would provide necessary police protection to the Local Commissioners.

14. The fee of the Local Commissioner is fixed at ₹1 lakh each besides the expenses of the photographer and the out of pocket expenses to be borne by the plaintiff.

15. Application is disposed of.

16. Copy of the order be given dasti under signatures of the court master.

MUKTA GUPTA, J.

FEBRUARY 07, 2020/‘vn’