

MANU/DE/0206/2011

Equivalent Citation: 2011(45)PTC237(Del)

IN THE HIGH COURT OF DELHI

I.A. Nos. 3714/2004 and 2051/2005 (both u/Order 39 Rules 1 and 2 Civil Procedure Code) and I.A. No. 8355/2010 (u/Order 3 Rule IV(2) for discharge of counsel for the plaintiffs) in C.S.(OS) 627/2004

Decided On: 28.01.2011

Appellants: **Michael Casey Enterprises Ltd. and Ors.**

Vs.

Respondent: **TVC Sky Shop**

[Alongwith I.A. Nos. 8081/2004 and 2058/2005 (both u/Order 39 Rules 1 and 2 Civil Procedure Code) and I.A. No. 8356/2010 (u/Order 3 Rule IV(2) for discharge of counsel for the plaintiffs) in C.S.(OS) 1373/2004]

Hon'ble Judges/Coram:

Rajiv Sahai Endlaw, J.

Counsels:

For Appellant/Petitioner/plaintiff: Hemant Singh, Sachin Gupta and Pallavi Singh, Adv.

For Respondents/Defendant: Pratibha M. Singh and Bitika Sharma, Adv.

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Copyright Act, 1957 - Section 2, Copyright Act, 1957 - Section 15; Designs Act, 2000 - Section 2; Designs Rules, 2001

Cases Referred:

J.C. Bamford Excavators Ltd. v. Action Construction Equipment Ltd. 2006 (33) PTC 161 (Del.); Microfibres, Inc. v. Girdhar and Co. MANU/DE/8193/2006 : 2006 (32) PTC 157 (Del.); Polymer Papers Ltd. v. Gurmit Singh 2002 (25) PTC 327 (Del.); AGA Medical Corporation v. Faisal Kapadi MANU/DE/0070/2003 : 2003 (26) PTC 349 (Del.); Dart Industries Inc. v. Techno Plast 2007 (4) RAJ 457 (Del.); Action Construction Equipment Pvt. Ltd. v. Escorts Construction Equipment Ltd. MANU/DE/0325/1999 : 79 (1999) DLT 300; Badat and Co., Bombay v. East India Trading Co. MANU/SC/0011/1963 : AIR 1964 SC 538; John Richard Brady v. Chemical Process Equipments Pvt. Ltd. MANU/DE/0586/1987 : AIR 1987 Delhi 372; Escorts Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd. 1999 PTC 36 (DEL); Frito-Lay India v. Amit Goswamy 1999 PTC 647; R.G. Anand v. Delux Films MANU/SC/0256/1978 : AIR 1978 SC 1613; Canon Kabushiki Kaisha v. Green Cartridge Co. (Hong Kong) Ltd. (1997) 3 W.L.R. 13; Dorling v. Honnor Marine Ltd. 1964(1) All. E.R. 241; Weir Pumps Ltd. v. CML Pumps Ltd. and Central Electricity Generating Board and Weir Pumps Ltd. 2 I.P.R. 129

Citing Reference:

Mentioned 14

Case Note:

Intellectual Property Right - Injunction - Grant of - Whether suits for permanent injunction restraining passing off, infringement of copyright, rendition of accounts, delivery be allowed? - Held, no case for interim relief is made out without evidence being led, applications for interim reliefs are dismissed and applications of discharge are allowed - None having appeared for Plaintiffs inspite of applications for discharge having been kept pending for considerable time and suits are also dismissed in default of appearance - Suit Dismissed

Disposition:

Application dismissed

JUDGMENT

Rajiv Sahai Endlaw, J.

1. The three Plaintiffs have filed the two suits for permanent injunction restraining passing off, infringement of copyright, rendition of accounts, delivery etc.

manupatra 2. The suits have been filed claiming that the Plaintiffs are engaged in the business of marketing inter alia of health equipment; that one of the health and fitness equipment marketed by the Plaintiffs is an apparatus marketed under the trade mark "AB KING PRO", designed to generate negative contractions of abdominal muscles by acting as a reverse crunch for a complete workout and a fuller range of motion; that the said equipment had been extensively advertised by the Plaintiff No. 3 through various media including newspapers, magazines etc. throughout the Indian sub-continent and had become popular amongst the public and acquired formidable goodwill and reputation; that the Plaintiff No. 1 is the proprietor of the said equipment and had licensed the said proprietary rights to the Plaintiff No. 2 who had further sub-licensed it to Plaintiff No. 3 for the Indian sub-continent; that the equipment is an inventive product conceived, developed and designed by the Plaintiff No. 1 and having a patent granted by the United States Design and Patent Office; that the said patent contains several engineering drawings which illustrate the functional features thereof; the said engineering drawings constitute original artistic works within the meaning of Section 2(c) of the Copyright Act, 1957 and entitled to copyright protection in India; that the Defendants are engaged in the business of marketing of variety of goods through advertisements on television and had started selling health and fitness equipment under the trademarks "PERFECT ABS" and "AB PRO PLUS" respectively, which are three dimensional reproduction of engineering drawings of the Plaintiffs' "AB KING PRO". Alleging infringement of copyright, reliefs as aforesaid are claimed in the suit.

3. Notices of the suits were issued and pleadings completed. No ex parte relief of injunction granted in favour of the Plaintiffs. The counsels for the parties have been heard on the applications for interim relief.

4. The controversy entails the interplay of the Copyright Act, 1957 and the Designs Act, 2000. While the endeavor of the counsel for the Plaintiffs has been to show that what is sought to be protected is a copyright, the counsel for the Defendants has contended that there is no copyright but a design and qua which the Plaintiffs are not entitled to any protection under the Designs Act, 2000. The question is whether the Plaintiffs have any copyright under Section 15 of the Copyright Act, 1957 and if so whether the same has been infringed.

5. The counsel for the Defendants have also contended that the License disclosed by the Plaintiffs was till 25th February, 2008 and there is nothing to show that the same was extended; that as per the documents even the Plaintiff No. 1 is not the owner of the copyright and the Plaintiffs are as such not entitled to any relief; that the registration relied upon by the Plaintiffs granted by the United States Design and Patent Office is an ornamental design; that Section 2(d) of the Designs Act, 2000 covers an ornamental design; that the same is capable of registration in India also as a design and has not been so registered and therefore is not entitled to any protection. Reference is also made to the affidavit by way of evidence filed by the Plaintiffs and documents filed therewith to show that even the basic measurements / dimensions on the basis whereof drawings or equipment can be made by anybody else are missing. It is further contended that the documents of assignments of the Petitioners also mentioned only design and not copyright and thus the rights claimed by the Plaintiffs can be as a design only and not as a copyright. It is yet further contended that the classification under the Designs Rules, 2001 framed under the Designs Act, 2000 is the same as in USA.

6. Reliance is placed on:

- (i) J.C. Bamford Excavators Ltd. v. Action Construction Equipment Ltd. 2006(33) PTC 161 (Del.).
- (ii) Microfibers ,Inc. v. Girdhar and Co. MANU/DE/8193/2006 : 2006(32) PTC 157 (Del.).
- (iii) Polymer Papers Ltd. v. Gurmit Singh 2002 (25) PTC 327 (Del.).
- (iv) AGA Medical Corporation v. Faisal Kapadi MANU/DE/0070/2003 : 2003 (26) PTC 349 (Del.).
- (v) Dart Industries Inc. v. Techno Plast 2007 (4) RAJ 457 (Del.).

7. The counsel for the Plaintiffs has rejoined by contending that the Defendants have not controverted that the Plaintiffs' product is original / new and have not contended that the Plaintiffs have themselves copied; that the originality of the drawings has not been contested; design as defined in USA is the same as defined in India but design patent is different; that there is no protection to functional designs in India as in USA; that it is a question of fact whether the design is functional or aesthetic and not a question of law; that there is no denial in the written statement of the functional features of the design pleaded in the plaint; that the product subject matter of the suit is purely functional and no engineering or intricate parts are involved; that even the catalogue of the Plaintiffs has been copied by the Defendants; that even if the same is not patentable it is entitled to be protected under the copyright laws; that there is nothing aesthetic about it.

8. Reliance is placed on:

- (i) Action Construction Equipment Pvt. Ltd. v. Escorts Construction Equipment Ltd. MANU/DE/0325/1999 : 79 (1999) DLT 300 (DB).
- (ii) Badat and Co., Bombay v. East India Trading Co. MANU/SC/0011/1963 : AIR 1964 SC 538.

(iii) John Richard Brady v. Chemical Process Equipments Pvt. Ltd. MANU/DE/0586/1987 : AIR 1987 Delhi 372.

(iv) Escorts Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd. 1999 PTC 36 (DEL).

(v) Frito-Lay India v. Amit Goswamy 1999 PTC 647.

(vi) R.G. Anand v. M/s Delux Films MANU/SC/0256/1978 : AIR 1978 SC 1613.

(vii) Canon Kabushiki Kaisha v. Green Cartridge Co. (Hong Kong) Ltd. (1997) 3 W.L.R. 13.

(viii) Dorling v. Honnor Marine Ltd. 1964(1) All.E.R. 241.

(ix) Weir Pumps Ltd. v. CML Pumps Ltd. and Central Electricity Generating Board and Weir Pumps Ltd. 2 I.P.R. 129.

9. While the order on the applications was reserved, I.A. No. 8355/2010 and I.A. No. 8356/2010 respectively have been filed in the two suits by the counsel for the Plaintiffs stating that no instructions are being received from the Plaintiffs and seeking discharge of the counsel.

10. In view of the aforesaid applications of the counsel for the Plaintiffs seeking discharge and further being of the opinion on the basis of the aforesaid contentions that no case for interim relief is made out without evidence being led, the applications of the Plaintiffs for interim reliefs are dismissed and the applications of the counsel for the Plaintiffs of discharge are allowed.

11. None having appeared for the Plaintiffs inspite of the applications for discharge having been kept pending for considerable time, the suits are also dismissed in default of appearance.

No order as to costs.