



2025:DHC:6190-DB



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

+ RFA(COMM) 174/2024

M/S SURYA ROSHNI LIMITEDAPPELLANT

Through: Mr. Rishabh Srivastva and Ms.
Yasheswini Sharma, Advs.

versus

M/S SURIYA SUNLITE LED PVT LTDRESPONDENT

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****ORDER (ORAL)****28.07.2025**

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C. HARI SHANKAR, J.

1. This appeal is directed against order dated 23 February 2024 passed by the learned District Judge (Commercial Court)-05¹, in CS(Comm) 5165/2021². By the impugned order, the learned Commercial Court has dismissed the suit of the appellant-plaintiff as being one of no evidence.

2. At the time of issuing notice in this appeal, the following order was passed by a Coordinate Bench of this Court:

“RFA(COMM) 174/2024

6. The appellant has filed the present appeal impugning the order dated 23.02.2024 passed by the learned Commercial Court, rejecting the appellant's suit being CS(COMM) 5165/2021, captioned as *M/s Surya Roshni Limited v M/s Suriya Sunlite LED*

¹ “learned Commercial Court” hereinafter

² M/s Surya Roshni Ltd v M/s Suriya Sunlite LED Pvt Ltd



Pvt. Ltd. The appellant had filed the said suit *inter alia* praying seeking a decree of permanent injunction against the respondent from using any trademark identical to the appellant's registered trademarks, as set out in the plaint. The appellant had also sought decree of damages along with the cost in addition to decree for rendition of accounts and for delivery up of all infringing materials.

7. The said suit was instituted on 07.12.2021.

8. The learned Commercial Court had issued an ad-interim injunction dated 08.02.2021 restraining the respondent from using the trademarks in question. The Court had also appointed a Local Commissioner to inspect and seize the goods bearing the trademark in question.

9. The order sheets indicate that the respondent (defendant in the suit) did not file the written statement within stipulated period, and filed written statement belatedly on 10.02.2022, without an affidavit of admission or denial of documents.

10. The respondent had entered appearance on 10.02.2022 and along with the written statement an application seeking vacation of the ex-parte order was filed. However, the respondent failed to appear on several hearings thereafter and by an order dated 01.10.2022; was proceeded ex-parte.

11. However, thereafter, respondent filed an application under Order IX Rule 7 of Civil Procedure Code, 1908 for setting aside the ex-parte order dated 01.10.2022. The said application was subsequently rejected on 05.10.2023.

12. In the meanwhile, the appellant and the respondent arrived at a settlement and the statement of the authorised representatives of the appellant as well as of the respondent was recorded on 02.03.2023. The said statements are reproduced below:-

“Statement of Sh. Ambrish Shrivastva, AR of plaintiff.

The matter has been settled in Rs. 5,00,000/- as damages and also with the undertaking of the defendant that he shall not use, market, advertise and sell any kind of transaction commercial or otherwise in relation to electric bulbs/LED bulbs with the trademark/copyright/ tradedress/SURYA or SURYA SUNLITE or SURIYA or SURIYA SUNUTE which infringes the tradename/ trademark/copyright of the plaintiff impression SURYA or SURYAROSHNI with or without logo of rising sun. The defendant has further undertaken not to use tradename/trademark/copyright /tradedress which is identical or similar to the mark/copyright of the plaintiff.



The settled amount of damages of Rs. 5,00,000/- shall be payable by the defendant in four EMIs, each of Rs. 1,25,000/- on the very first date of April, May, June and July, 2023. In case of two consecutive defaults of EMIs, the defendant shall be liable pay the whole settled amount of Rs. five lakhs and the earlier paid EMIs shall be forfeited.”

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“Statement of Sh. Nasir Ul Din Wani, S/o Gias Din, R/o Punara, Basant Garh Khanad, Udhampur, Jammu and Kashmir.

The matter has been settled in Rs. 5,00,000/- as damages. I undertake that I will not use, market, advertise and sell any kind of transaction commercial or otherwise in relation to electric bulbs/LED bulbs with the trademark/copyright/trade dress SURYA or SURYA SUNLITE or SURIYA or SURIYA SUNLITE which infringes the tradename/trademark/copyright of the plaintiff impression SURYA or SURYAROSHNI with or without logo of rising sun. I also undertake not to use tradename/trademark/copyright/trade dress which is identical or similar to the mark/copyright of the plaintiff.

I undertake to pay the settled amount of damages of Rs. 5,00,000/- in four EMIs, each of Rs. 1,25,000/-, on the very first date of April, May, June and July, 2023. In case of two consecutive defaults of EMIs, I shall be liable to pay the whole settled amount of Rs. five lakhs and the earlier paid EMIs shall be forfeited.”

13. On the same date, the learned Commercial Court passed an order directing the parties to appear before the Special Lok Adalat. The order indicates that the Court had noted the terms of settlement, however, it further directed that if the parties did not adhere to their statement they were produce the remaining goods. The parties were also directed to appear before the Lok Adalat on 19.03.2023. The operative part of the said order reads as under:-

“The defendant has brought some seized goods to be taken into custody by the plaintiff.

At the very outset, counsel for the plaintiff expressed apprehension that quantity of the brought goods was scant. She was asked to count the goods and file inventory. The report filed by her shows that there is huge deficiency of quantity of goods.

Matter has been settled and in this regard, statement of defendant and AR of the plaintiff recorded separately. Matter is settled in ₹



5 lakhs with the further condition that the defendant shall not use, market, advertise and sell any kind of transition commercial or otherwise, in relation to electric bulbs/LED bulbs with trademark/copyright/trade-dress SURYA or SURYA SUNLITE or SURIYA or SURIYA SUNLITE which infringes the trade-name/trademark/copyright of the plaintiff impression SURYA or SURYAROSHNI with or without logo of rising sun. he further undertook not to use trade-name/trademark/copyright/trade-dress which is identical or similar to the mark/copyright of the plaintiff. He further undertook to pay the settled amount of ₹ 5 lakhs in four EMIs, each of ₹ 1.25 lakh on the first date of April, May, June and July 2023. The default clause is that if there was two consecutive defaults of EMIs, he shall be liable to pay ₹ 5 lakhs and earlier paid amount shall be forfeited. To the same effect is the statement of AR of the plaintiff.

If parties did not stick with the statements, they are required to file replies to each others applications and defendant is directed to produce the remaining goods on next date.

Special Lok Adalat is scheduled to be held on 19-03-2023 in which IPR cases shall also be dealt with. So parties are directed to appear before Special Lok Adalat on that day.

Matter is adjourned for receiving report from lok Adalat on 01-04-2023.”

14. *Prima facie*, we are unable to find any reason for referring the parties to Special Lok Adalat when it is apparent that the parties had arrived at a settlement before the learned Commercial Court. It is also material to note that the parties had appeared before the Lok Adalat on 19.03.2023 and the matter was sent back to the concerned Court with the view that the settlement had already arrived between the parties, and the disputes seem to have been amicably resolved as per the terms of the settlement as recorded in the order dated 02.03.2023.

15. Thereafter, the matter was listed before the learned Commercial Court on several occasions, which was deferred for one reason or the other including non-appearance of counsel.

16. We are of the view that in the given circumstances, *prima facie*, the suit was required to be decreed in terms of the settlement and not dismissed.

17. Issue notice to respondent through all permissible modes, returnable on 07.08.2024.”



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3. Despite issuance of notice, none has appeared for the respondent. Every conceivable mode of attempting service on the respondent has been effected including publication in the local newspapers. There is still no appearance on behalf of the respondent.

4. Clearly, as the dispute between the respondents stood settled on 2 March 2023, the respondent is not interested in prosecuting the matter.

5. In that view of the matter, we set aside the impugned order dated 23 February 2024. CS (Comm) 5165/2021, filed between the parties, shall stand decreed in terms of the settlement as recorded in the order dated 2 March 2023 passed by the learned Commercial Court and reproduced in para 12 of the order dated 8 May 2024.

6. The parties shall remain bound by the terms of the aforesaid settlement.

7. The appeal stands allowed accordingly.

8. The appellant shall be entitled to refund of the court fees deposited by it, if any.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 28, 2025/Ar