



\$~23

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

+ **CS(COMM) 562/2016**

WESTERN DIGITAL TECHNOLOGIES INC & ANR Plaintiffs

Through: **Mr. Saikrishna Rajagopal, Advocate**
with Mr. Prithvi Singh, Advocate.

versus

RAJESH VERMA & ANR

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% 17.05.2016

I.A. No.6212/2016 (exemption)

1. Exemption allowed subject to just exceptions.

I.A. stands disposed of.

+CS(COMM) No.562/2016 and I.A. Nos.6209/2016 (stay), 6210/2016 (appointment of Local Commissioner) & 6211/2016 (for filing additional documents)

2. Plaintiffs are owners of trademarks WESTERN DIGITAL and/or WD and also the logo of WD with respect to electronic products such as storage devices, media players, routers/switches/bridges etc. Plaintiffs supply its goods to original equipment manufacturers. Plaintiffs

CS(COMM) No.562/2016

page 1 of 5



have registered the aforesaid trademarks in India and dates of registrations are 18.3.2005, 6.4.2005 and 14.12.2004. Plaintiffs allege that defendants import hard disk drives and LCD monitors and subject matter of disputes in the present suit concern hard disk drives imported by the defendants. The case of the plaintiffs is that when it received a notice from the custom authorities it ran a check in its records which showed serial numbers of hard disks which were referred to in the notice of the custom authorities were in fact supplied to original equipment manufacturers and the defendants who have imported the hard drives have in all probability taken these hard disk drives after pulling them from old machines, cleaning up the data, refurbishing and repacking them, resulting in its material alteration whereby subject hard drives cannot be sold under the trademark of the plaintiffs in view of the protection afforded to the plaintiffs under Section 30(1) of the Trade Marks Act, 1999.

3. In view of the arguments urged on behalf of the plaintiffs, till further orders unless varied by the Court, defendants are restrained from in any manner selling any hard drives except without taking a certificate from the plaintiffs with respect to the same being original hard drives as originally

CS(COMM) No.562/2016

page 2 of 5



sold i.e defendants cannot sell the hard drives which have been pulled up from old machines after cleaning up the data, refurbishing and repacking the hard drives.

4. At the request of plaintiffs, Mr. Ashish Chauhan, Advocate Mobile No.9999468603 is appointed as a Local Commissioner to release the goods of the defendants from the custom authorities at Mumbai and the goods when released by the custom authorities will come directly into the possession of the Local Commissioner and not to the defendants. Custom authorities are directed to release the subject goods to the defendants through the Local Commissioner. These goods will be under the lock and key and custody of the Local Commissioner and put in a storage space which will be provided by the defendants. The object of taking the goods/ released the same from the custom authority is to prevent accumulation of further storage/custom/demurrage charges against the defendants but with the condition that release is not being made from the custom authorities in order for the defendants to deal with the same including to sell the same. Local Commissioner will ensure that storage space provided by the defendants is secure including the fact that the goods themselves be put in a

CS(COMM) No.562/2016

page 3 of 5



sealed cover/container to be provided by the defendants. Local Commissioner Mr. Ashish Chauhan, Advocate will be paid fees of Rs.1,10,000/- plus all out of pocket expenses towards travel, stay at Mumbai etc.

5. I also appoint Ms. Gurleen Kaur, Advocate Mobile No.9971857408 to visit the premises of the defendants at Ahora IT Mart LLP, B-6B 49-50 Red Rose Building, Nehru Place, New Delhi-110019 so as to make an inventory of all the products which the defendants may have in their possession bearing the trademark WESTERN DIGITAL and WD or the logo WD of the plaintiffs. After making the inventory of the stock, the same will be released on superdari by the Local Commissioner to the defendants. Defendants will sell such goods only after taking a certificate from the plaintiffs with respect to the same not being in any manner refurbished but being in the condition of the goods being as sold originally by the plaintiff. Local Commissioner Ms. Gurleen Kaur, Advocate will be paid fees of Rs.65,000/- plus all out of pocket expenses. The concerned SHO/head of the police station will provide the necessary police help/personnel to the Local Commissioner Ms. Gurleen Kaur for the purpose

CS(COMM) No.562/2016

page 4 of 5



of execution of the commission and it will be the personal responsibility of the SHO/head of the local police station that confidentiality of the present order is maintained till the commission is executed.

6. Summons in the suit and notices in the applications be issued to the defendants, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable before the Joint Registrar on 9th August, 2016. Plaintiffs will comply with the provision of Order 39 Rule 3 of Code of Civil Procedure, 1908 (CPC) within two weeks. Dasti.

VALMIKI J. MEHTA, J

MAY 17, 2016

Ne

CS(COMM) No.562/2016

page 5 of 5