



\$~44

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

+ **CS(COMM) 477/2023 and I.A. 12949/2023-12953/2023,
13050/2023**

RASHI SANTOSH SONI & ANR.

..... Plaintiffs

Through: Mr. Alankar Kirpekar and Mr.
Jaspreet Singh Kapur Advocates (M:
9650145159).

versus

K G MARKETING INDIA

..... Defendant

Through: Mr. Sachin Gupta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **19.07.2023**

1. This hearing has been done through hybrid mode.

I.A. 12951/2023 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc.

3. Exemption is allowed, subject to all just exceptions. Accordingly, this application is disposed of.

I.A. 12952/2023(for additional documents)

4. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, 'Commercial Courts Act').

5. The Plaintiffs, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

6. Accordingly, this application is disposed of.



I.A.12953/2023 (u/S 12A of the Commercial Courts Act)

7. This is an application seeking exemption from instituting pre-litigation mediation.

8. In view of the orders passed in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC-DB/004454*, this application is allowed and disposed of.

I.A. 13050/2023 (exemption from advance service to the Defendants)

9. This is an application seeking exemption from advance service to the Defendant.

10. In view of the fact that Mr. Sachin Gupta, Id. Counsel for the Defendant has appeared today with instructing Counsel, this application has become infructuous.

11. Accordingly, application is disposed of.

I.A. 12950/2023 (for appointment of local commissioner)

12. This is an application seeking appointment of a Local Commissioner. Mr. Alankar Kirpekar, Id. Counsel for the Plaintiffs submits that since Mr. Sachin Gupta, Id. Counsel for the Defendant has appeared in the matter he does not wish to press the application.

13. Accordingly, the application is disposed of.

CS(COMM) 477/2023

14. Let the plaint be registered as a suit.

15. Issue summons to the Defendant through all modes upon filing of the Process Fee.

16. The summons to the Defendant shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an



affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

17. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

18. List before the Joint Registrar for marking of exhibits on 25th September, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

19. List before Court on 22nd November, 2023.

I.A. 12949/2023 (u/O XXXIX Rules 1 & 2 CPC)

20. The present suit has been filed by the Plaintiffs seeking injunction restraining the Defendant - M/s K G Marketing India from using the Plaintiffs' mark 'SURYA GOLD' and other deceptively similar trademarks in respect of tower fans and any other products.

21. There is a history of litigation between the parties. The Defendant in the present case had filed a suit bearing no. **CS(COMM) 18/2023** titled **M/s KG Marketing India v. M/s. Rashi Santosh Soni & Anr.** claiming user since 2016. In the said suit, the Court had granted an *ex parte ad-interim* injunction against the Plaintiff herein vide order dated 16th January, 2023. However, it was later to the Court that the Defendant herein had relied upon forged and fraudulent documents and the user claim since 2016 was grossly misleading. Accordingly, the injunction in the said suit was vacated vide order dated 25th May, 2023. A voluntary statement of counsel for the



Defendant herein who was the Plaintiff in the said suit, was recorded to the effect that the Defendant did not wish to contest the suit or use the 'SURYA' trademarks. The said order reads as under:

“ I.A. No. 680/2023 (under Order XXXIX Rules 1 and 2 of CPC) and I.A. No. 10033/2023 (u/Order XXXIX Rule 4 r/w Section 151 of the Code of Civil Procedure, seeking setting aside/ vacation/ modification of the ex-parte ad interim order dated 16th January, 2023)

1. Mr. Sachin Gupta, on instructions from Mr. V. K. Puri, counsel for Plaintiff, who is present in Court, states that the Plaintiff does not wish to contest the present suit or use the 'SURYA' trademarks. Therefore, the Court may dismiss the suit and vacate the injunction granted on 16th January, 2023.

2. In light of the afore-noted statement, I.A. No. 10033/2023 is allowed and the ad-interim injunction granted vide order dated 16th January, 2023 is vacated. I.A. No. 680/2023 is dismissed.

CS(COMM) 18/2023

3. Mr. Gupta has handed over an affidavit sworn by Mr. Karan Kumar, partner of M/s KG Marketing India (Plaintiff), wherein he has tendered an unconditional and unqualified apology to the Court for the mistake in filing of the present suit for infringement. The said affidavit is taken on record.

4. Although Mr. Gupta has prayed for the suit to be dismissed, however the facts highlighted in I.A. No. 10033/2023 are compelling and require deliberation on further directions that should be issued against the Plaintiff.

5. At the request of Mr. Gupta, re-notify on the date already fixed i.e., 18th July, 2023.”

22. The said suit remains pending.

23. The case of the Plaintiffs is that the Defendant has not copied merely the mark but also the getup, the design, the layout of the packaging etc.



However, at this stage, Id. Counsel for the Plaintiff merely prays for an injunction binding the Defendant to its statement as recorded in the order dated 25th May, 2023.

24. Mr. Sachin Gupta, Id. Counsel, at this stage, submits that the intention was to only make a statement in respect of 'SURYA GOLD' on 25th May, 2023. Id. Counsel further submits that he has not received the suit paperbook.

25. Heard. The order dated 25th May, 2023 is clear and categorical to the effect that the Defendant has agreed not to use the 'SURYA' trademarks. Thus, it is not open to the Id. Counsel for the Defendant today to make any submission to the contrary, especially, considering the conduct of the Defendant who has admitted to have filed forged and fabricated advertisements before the Court.

26. In view thereof, let a copy of the suit paperbook be served upon the Id. Counsel for the Defendant today itself. In view of the statement recorded in order dated 25th May, 2023, the Defendant shall stand restrained from using any of the 'SURYA' trademarks in respect of its Tower Fans and Gas Burners.

27. List before Court on 22nd November, 2023.

PRATHIBA M. SINGH, J.

JULY 19, 2023

mr/kt