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

% *Date of Decision: 01st June, 2022*

+ CS(COMM) 205/2018

HEETICH MARKETING-UND

VERTRIEBS GMBH & CO. KG., & ANR Plaintiffs

Through: Mr. Souradeep Mukhopadhyay,
Advocate.

versus

GUPTA STORE Defendant

Through: Mr. Abhishek Saket, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

I.A. 8861/2022 (under Chapter XVA Rule 1 of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 of the CPC, by Plaintiffs)

1. Present application has been preferred on behalf of the Plaintiffs under Chapter XVA Rule 1 of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 CPC, 1908 for a summary judgment against the Defendant.

2. Issue notice.

3. Mr. Abhishek Saket, learned counsel accepts notice on behalf of the Defendant and, on instructions, submits that Defendant has no objection to the application being allowed and the suit being decreed.

4. Present suit was filed by the Plaintiffs against the Defendant seeking to restrain the Defendant from infringing the Plaintiffs' trademarks

'HETTICH' and the HETTICH logo  and  and restraint against passing off as well as for delivery up, damages, etc.

5. It is averred by the Plaintiffs that the trade name and trademark HETTICH owes its origin to its founding father, way back in the year 1888. Plaintiffs are a part of diversified group of companies, having operations in multiple countries across the world and engaged in manufacturing, marketing and selling furniture, fittings, door hinges, runners, etc., which has led to the said mark becoming distinctive of Plaintiffs' products and Plaintiffs' immense goodwill and reputation has strongly vested in the trademark HETTICH. Plaintiffs have multiple trademark registrations in the trademarks in over 76 countries with the earliest registration in Germany dating back to 1961.

6. The Defendant is a retail store engaged in sale of hardware products including furniture fixtures and components. Plaintiffs learnt on 29.07.2014 that Defendant is engaged in selling counterfeit HETTICH products, whereupon the present suit was filed.

7. On 01.09.2014, *ex-parte ad interim* injunction was granted by this Court and a Local Commissioner was appointed, whose report bears testimony to the fact that Defendant was in possession of counterfeit products bearing the HETTICH trademarks.

8. Learned counsel for the Plaintiffs submits that in the written statement filed by the Defendant, the only defence taken is that it has not engaged in procuring or selling the counterfeit products but has sold those which were available in the store believing them to be genuine products emanating from the Plaintiffs. Since the Defendant has not sought to challenge the Plaintiffs' exclusive rights over the HETTICH trademarks, it has no basis to resist a decree of permanent injunction. In view of this, there remains no need to record evidence to determine whether the Plaintiffs are the registered

proprietors of the HETTICH trademarks or whether the Plaintiffs are entitled to a decree restraining the Defendant from selling counterfeit products under the said trademark.

9. It is thus the contention of the learned counsel for the Plaintiffs that the Defendant has no real prospect of defending the claims of infringement and resisting a decree of permanent injunction against the Defendant and the relief should be summarily decided in favour of the Plaintiffs.

10. I have heard the learned counsels for the parties and perused the record.

11. Aptly encapsulated the case of Plaintiffs is that trademark and trade name, 'HETTICH', owes its origin to Plaintiffs' founding father, Mr. Karl-Hettich, who had developed and mechanized the production of anchor escapements for Black-Forest cuckoo clocks in the year 1888. This business legacy was carried forward by Mr. August Hettich, who had developed a production line for piano hinges in the year 1928. This led to the genesis of the Plaintiffs' business, which has expanded globally over the decades and has become popular under the trade mark and trade name 'HETTICH'.

12. Plaintiffs are part of a diversified group of companies, having operations in multiple countries across the world and engaged in manufacturing, marketing and selling furniture fittings like door hinges, runners and drawers, hardware systems/items for modular kitchens, residential and office segments, etc. Due to Plaintiffs' immense success and popularity across the globe, Plaintiffs are recognized as global leaders in furniture fittings industry. Notably, each member of Plaintiffs' group of companies uses the mark 'HETTICH' as part of their corporate/trade name and the trademark HETTICH is also extensively and prominently used on

and in association with, Plaintiffs' furniture fittings. This has led to the mark 'HETTICH' becoming extremely distinctive of Plaintiffs' products and Plaintiffs' immense goodwill and reputation has become strongly vested in the trademark 'HETTICH'. Due to long, continuous and extensive use of the trademark HETTICH by the Plaintiffs in India, members of the public, on coming across any product bearing identical or similar mark, are likely to be confused into believing that the product emanates from the Plaintiffs or is associated with them.

13. Apart from the common law rights vested in the Plaintiffs, Plaintiffs and their group companies have also sought and secured multiple trademark registrations for the trademark 'HETTICH' across the globe. The HETTICH trademarks are registered in over 76 countries, with the earliest registration in Germany dating back to 1961. In India, Plaintiff No. 1 is the registered proprietor of the trademark HETTICH and its variants as mentioned in the plaint.

14. Defendant in the present suit is a retail store, engaged in sale of hardware products, including furniture fixtures and components. Plaintiffs had appointed the Defendant as an authorized dealer in the early 2000s, however, the business relationship was short-lived and on the date of the filing of the suit and till date parties have not had any direct business relationship.

15. On 29.07.2014, one of the employees of Plaintiff No. 2, on visiting Defendant's store noticed telescopic channels bearing Plaintiffs' registered mark 'HETTICH' which were being offered for sale, misrepresenting that the product emanates from the Plaintiffs. As noted above, Defendant admits selling the counterfeit products and the only defence put-forth is that it has

not procured or bought the counterfeit HETTICH products and is selling genuine products emanating from the Plaintiffs. Further, Local Commissioner's report supports the stand of the Plaintiffs inasmuch as a unit of counterfeit product was found in the premises of the Defendant, along with invoices evidencing sales.

16. Learned counsel for the Defendant fairly and candidly states that Defendant does not wish to contest the present application or the suit and is willing to suffer an injunction. Even otherwise from the written statement filed on behalf of the Defendant and the admission therein it is clear that Defendant has no real prospect of defending the claims of infringement and resisting a decree for permanent injunction.

17. Insofar as prayer for summary judgement is concerned, as per the Commercial Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018 and Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022, a summary judgement can be passed, if there is no real prospect of the Defendant succeeding in the matter. In fact, under Rule 27 of the IPD Rules even the filing of the application is not a *sine qua non*. Rule 27 reads as under:-

“27. Summary Adjudication

In cases before the IPD, the Court may pass summary judgment, without the requirement of filing a specific application seeking summary judgment on principles akin to those contained in Order XIII A, Civil Procedure Code, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015.”

18. Practice Direction 9(h) of the Original Side Rules reads as follows:-

“9. In the case of commercial disputes, the Court may, inter-alia, pass orders as it may think fit for the speedy disposal of

the suit or narrowing the controversy between the parties, including:-

xxx

xxx

xxx

h) conduct a Case Management Hearing under Order XV-A of the Code and as part of the said case management hearing-

xxx

xxx

xxx

ii. explore the possibility of deciding the dispute by a summary judgment without a specific application for the said purpose, on the basis of pleadings dispensing with the trial of the suit on the questions of law or of facts on which the parties are not at issue;”

19. I may also note that Order XV-A of CPC, as amended by the Commercial Courts Act, 2015, permits the Court to conduct a case management hearing even during the trial as is clear from perusal of Rules 5 and 6 thereof.

20. The legislative intent behind the provision of summary judgment is to provide to a party a remedy to seek a decree, distinct from a judgment on admission and one under Order XXXVII CPC. As held in various judgments, the remedy of summary judgment is available where there is no real prospect of the Defendant succeeding and there is no genuine issue for trial. The test, therefore, is whether a fair and just determination of a dispute is possible without trial and the necessary facts can be determined by applying the legal principles rather than requiring the parties to incur expenditure and spend time and resources to go through the rigours of a trial. The standard is not really to see if the procedure for trial is exhaustive and costly but to see if the Court has the confidence that the necessary facts and the legal principles applied thereto would be enough to arrive at a just decision.

21. Considering that the Defendant is not contesting the suit and perusal of the invoices and the report of the Local Commissioner confirms seizure of goods which are counterfeit goods it is a fit case for this Court to pass a summary judgement.

22. Accordingly, the present application is allowed and disposed of.

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23. In view of the order passed in I.A. 8861/2022, the suit is decreed in favour of the Plaintiffs and against the Defendant, in terms of para 32 of the plaint.

24. Accordingly, Defendant, its partners or proprietors, its officers, servants, agents and representatives, as the case may be, are permanently restrained from selling any counterfeit product and/or any other related goods under the trademark and trade name HETTICH and HETTICH Logo or any other deceptively similar mark thereof, amounting to infringement of Plaintiffs' registered trademarks and passing off.

25. Order dated 01.09.2014 granting interim injunction is hereby confirmed. The counterfeit goods handed over to the Defendant on *superdari* by the Local Commissioner, shall be destroyed by the Defendant as expeditiously as possible.

26. Registry is directed to draw up the Decree Sheet.

27. Suit is accordingly disposed of.

JYOTI SINGH, J

JUNE 01, 2022/rk