

M/S Jindal (India) Limited vs M/S Rawalwasia Steel Plant Private ... on 9 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 554/2024 & I.A. Nos. 32625/2024, 32626/2024,
32627/2024 & 32628/2024

M/S JINDAL (INDIA) LIMITED

Through:

Mr. J. Sai Deepak with
Virmani, Mr. Rishabh Sr
Y. Sharma, Mr. P Deka a
Gupta, Advocates.
(M): 9958349040

versus

M/S RAWALWASIA STEEL PLANT PRIVATE
LIMITED

.....Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

% 09.07.2024 I.A. No. 32626/2024 (Exemption from filing clearer copies)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking an exemption from filing pleadings with proper margins, original documents/certified copies, typed copies/documents with appropriate margins and English translation etc.

2. Exemption is granted, subject to all just exceptions.

3. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance, within four weeks from today or before the next date of hearing, whichever is earlier.

4. Accordingly, the present application is disposed of. I.A. No. 32627/2024 (seeking leave to file additional documents)

5. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) CPC as amended by the Commercial Courts Act, 2015 read with Section 151 CPC, seeking liberty to file additional documents at the appropriate stage.

6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the present application is disposed of. I.A. No. 32628/2024 (Application for exemption from instituting Pre- litigation Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 CPC for exemption from instituting Pre-litigation Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-litigation Mediation, is granted.

10. Accordingly, the application stands disposed of. CS (COMM) 554/2024

11. Learned counsel appearing for the plaintiff has drawn the attention of this Court to the proof of service.

12. None appears for the defendant, despite advance service.

13. Let the plaint be registered as suit.

14. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

15. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar (Judicial) for marking of exhibits on 23rd July, 2024.

17. List before the Court on 23rd August, 2024.

I.A. No. 32625/2024 (Application on behalf of the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking interim injunction)

18. The present suit has been filed for infringement of trademark/copyright, passing off goods, delivery upon, rendition of accounts of profits, along with further damages, etc.

19. Learned counsel appearing for the plaintiff submits that the present application concerns the plaintiff's trademark and copyright rights in the marks "JINDAL", " " and "JINDAL with the device

of map of India" for goods of the plaintiff.

20. It is submitted that the defendant is in violation/infringement of the plaintiff's registered trademark/writing style/color combination rights in "JINDAL", " " and "JINDAL with the device of map of India".

21. Attention of this Court has been drawn to the table showing the comparison between the trademark of the plaintiff and the defendant, which is as follows:-

22. It is submitted that the plaintiff company is duly incorporated vide incorporation certificate dated 14th January, 1952. Further, the plaintiff company is engaged in the business of producing and selling of its goods under the provisions of the Trade Marks Act, 1999. It is submitted that since the year 1952, the plaintiff company has been continuously carrying on its trade under the trademark "JINDAL", " " and "JINDAL with the device of map of India" in respect of its goods. It is submitted that the plaintiff company is registered proprietor of their reputed trademark "JINDAL" & "JINDAL with the device of map of India" label/logo/device along with other marks under the provisions of the Trade Marks Act, 1999.

23. Attention of this Court has been drawn to the table showing the registered trademark of the plaintiff, which is as follows:-

By:AMAN UNIYAL Signing Date:13.07.2024 14:51:57

24. Thus, it is submitted that by virtue of the registrations, the plaintiff has the exclusive right to use the said trademarks, and by virtue of Section 31 of the Trade Marks Act, 1999, the registrations are prima facie evidence of their validity.

25. It is further submitted that the plaintiff's company is also the legal owner and legitimately registered proprietor of the artistic works entitled "JINDAL", " " and "JINDAL with the device of map of India". It is submitted that plaintiff company is also author of the said artistic works, as below:

26. It is submitted that cause of action arose firstly in January, 2024, and subsequently in June, 2024.

27. It is submitted that the mark of the plaintiff, "JINDAL", " " and "JINDAL with the device of map of India" is prima facie distinctive of the plaintiff's goods and has also become a house mark by the passage of time. It is submitted that plaintiff came to know in January, 2024/ June 2024, that defendant /respondent, a private limited company known as Rawalwasia Steel Plant Private Limited has adopted a new trademark "HINDJAL HISAR"/" " in respect of Galvanised and black steel tubes and pipes and other goods.

28. It is submitted that the defendant had also applied for the impugned trademark "HINDJAL HISAR"/" " on 14th April, 2023 on the "proposed to be used" basis.

29. Learned counsel appearing for the plaintiff has handed over copy of E-mail dated 08th July, 2024 received from the defendant, which were sent by the defendant to the plaintiff, after advance service of the present plaint, was served upon the defendant.

30. By E-mail dated 08th July, 2024, the defendant has clearly stated that they have withdrawn the aforesaid infringing trademarks. The said E-mail sent by the defendant to the plaintiff, is reproduced as under:-

"Rawalwasia Steel plant gipipes@gmail.com To: Raguellaw admin@raguellaw.com
Cc: Rishabh Srivastava <rishabh@raguellaw.com>, Sahil Gupta sahil@raguellaw.com Respected Sir, Hope you find this mail in the best of health. It is for your kind information that all the three Trade Marks were never used and were only proposed to be used.

Since there seems to be issue with your clients trademark so we have withdrawn the said trademarks.

Neither have we ever mentioned the trademark anywhere, neither have we advertised for it in any manner and never used it. I have attached all the withdrawals application along with the email reports for your kind attention."

31. By another E-mail dated 08th July, 2024, the defendant has also written to the Registrar of Trademarks, wherein, the defendant has stated that it wishes to withdraw the application of Trademark which has been filed for registration of its marks. The said E-mail issued by the defendant to the Trademark Registry, with a copy to the plaintiff herein, is reproduced as under:-

"Trademarks SMSA <trademarks.smsa@gmail.com> To: DELHI TMR <delhi.tmr@nic.in> Cc: mumbai.tmr@nic.in, "mumopp.tmr" <mumopp.tmr@nic.in> The Registrar of Trade Marks, Trade Marks Registry, Intellectual Property Bhawan, Plot no. 32, Sector 14, Dwarka, New Delhi-110075.

Re.: Trade Mark Application No. 5914901 in Class 6 of the Mark "TINJAL" in the Name of Rawalwasia Steel Plant Private Limited.

Dear Sir/Madam, We act for and on behalf of Rawalwasia Steel Plant Private Limited, having its office at 6th KM Stone, Delhi Road, Hisar, Haryana - 125005, India, who is the Applicant in the matter.

It is submitted that the Applicant wishes to withdraw the above application of trade mark which has been filed for the registration of the TINJAL dated 28.04.2023.

In view of the above, it is most humbly requested the present application may be treated as withdrawn and necessary orders to this effect may be passed. The Learned Registrar is requested to kindly confirm the withdrawal of said application for our

official record.

Thanking you, Yours faithfully, (SUSHANT SINGH) Advocate"

32. Another E-mail of the same date i.e., 08th July, 2024, was written by the defendant to the Registrar of Trademarks, for withdrawal of its application. The same is reproduced as under:-

"Trademarks SMSA <trademarks.smsa@gmail.com> To: DELHI TMR <delhi.tmr@nic.in> Cc: mumbai.tmr@nic.in, "mumopp.tmr" mumopp.tmr@nic.in, Sushant Singh smsalawchambers@gmail.com, Sushant Singh <sushantlaw@gmail.com> The Registrar of Trade Marks, Trade Marks Registry, Intellectual Property Bhawan, Plot no. 32, Sector 14, Dwarka, New Delhi-110075 Re.: Trade Mark Application No. 5897307 in Class 6 of the Mark "HINDJAL HISAR" in the Name of Rawalwasia Steel Plant Private Limited.

Dear Sir/Madam, We act for and on behalf of Rawalwasia Steel Plant Private Limited, having its office at 6th KM Stone, Delhi Road, Hisar, Haryana-125005, India, who is the Applicant in the matter.

It is submitted that the Applicant wishes to withdraw the above application of trade mark which has been filed for the registration of the HINDJAL HISAR dated 14.04.2023.

In view of the above, it is most humbly requested the present application may be treated as withdrawn and necessary orders to this effect may be passed.

The Learned Registrar is requested to kindly confirm the withdrawal of said application for our official record.

Thanking you, Yours faithfully, (SUSHANT SINGH) Advocate"

33. Learned counsel appearing for the plaintiff submits that despite the receipt of the aforesaid E-mail, it is imperative that defendant is injuncted, as no one has appeared on behalf of defendant despite advance service. He further submits that though an E-mail has been written by the defendant to the Trademark Registry for withdrawal of their application for registration of their trademark, however, no proper procedure has been followed by the defendant for withdrawing the said application from the Trademark Registry. Thus, he submits that in the interregnum, it is imperative that rights of the plaintiff are protected. He further submits that in the said E-mail, there is no undertaking by the defendant that they shall not use their infringing marks commercially.

34. Considering the aforesaid, the plaintiff has made a prima facie case in its favour. The balance of convenience also lies in favour of the plaintiff and against the defendant. This Court is of the view that in view of the identical and deceptively similar trademark of the defendant with the plaintiff, great damage shall be caused to the plaintiff, in case, no interim relief is granted in favour of the

plaintiff.

35. Accordingly, considering the submissions made before this Court, it is directed that the defendant, their principal officers, directors, partners, agents, franchisees, servants, licensees and all others acting for and on and on their behalf are restrained from making, selling, offering for sale, advertising and in any manner dealing or any other similar, allied cognate goods using the trademark and copyright " " or any other mark/name which is identical or deceptively similar to the plaintiff/applicant's registered trademark "JINDAL", "JINDAL with the device of map of India"/ " " and any other similar variants from doing any other activities whereby directly or indirectly infringing the plaintiff/applicant's registered Trademarks and Copyrights "JINDAL", "JINDAL with the device of map of India"/ " " and any other similar variants.

36. Issue notice to the defendant by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

37. Reply, if any, be filed within a period of four weeks from the date of service.

38. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

39. Compliance of Order XXXIX Rule 3 CPC, be done within a period of ten days from today.

40. List before the Court on 23rd August, 2024.

MINI PUSHKARNA, J JULY 9, 2024/c