

Karan Industries and ors. Vs. D.C.M. Limited and ors.

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Court : Delhi

Decided On : Nov-11-1993

Reported in : 1993IVAD(Delhi)637; 53(1994)DLT284; 1993(27)DRJ528

Judge : J.K. Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Interim Application No. 171 of 1993 and Suit No. 55 of 1993

Appellant : Karan Industries and ors.

Respondent : D.C.M. Limited and ors.

Advocate for Pet/Ap. : Mukul Rohatagi,; J. Sethi,; Rajeev Sawhney,;

Judgement :

J.K. Mehra, J.

(1) This is an application under Order 39 Rules 1 and 2 read with Section 151 Cpc for grant of ad interim injunction against the defendants praying as under:-

'(A)attach property No.25 Sardar Patel Marg, New Delhi and Industrial Unit of D.C.M.Engineering Products, with Plant and Machinery at Village Asron, District Hoshiarpur, Near Ropar, Punjab and/or in the alternative direct the defendants to furnish adequate security, sufficient to satisfy the decree to the satisfaction of this

Hon'ble Court; (b) restrain the defendants, their servants, agents and assigns from either using for manufacturing, alienating, parting with possession or in any other manner transferring by sale or otherwise, 7 patterns of the Plaintiffs and the castings made there from; (c) restrain the Defendant Nos.3 and 4 from leaving the Local Limits of jurisdiction of this Hon'ble Court without prior permission of this Hon'ble Court; (d) pass an ad interim ex parte order in terms of prayers (a), (b) and (c) above; and'

(2) The arguments on this application have been heard afresh after remand by the Division Bench. I have gone through the pleadings of the parties with the help of the counsel for the plaintiffs and the defendants. According to the plaintiffs, sometimes in the year 1979, plaintiff No.6 came in touch with defendant No.2 and both agreed to transact business with each other where after the plaintiff No. 1 placed an order on Defendant No. 1 for blocks/patterns which would thereafter be used by the defendants to produce the casting of cylinder heads. It is further alleged in the plaint that it was clearly understood that the defendants would use the blocks/patterns for manufacturing and supply of the casting to the plaintiffs exclusively and none else. However, neither any order for blocks/ patterns was placed by the plaintiffs on the defendants nor any agreement, as alleged by the plaintiff, containing the aforesaid condition/understanding, has been filed by the plaintiff. The plaintiff has further alleged having paid various sums of money towards the purchase of such patterns from the defendants and seven such patterns are listed in paragraph-4 of the plaint along with the amounts paid by the plaintiff to the defendants. The defendants have not disputed having received the sum of Rs.2,54,000.00 and Rs.2,00,000/- in 1980 and 1988 respectively, but have stated that this money was paid by the plaintiff towards the cost of development of patterns and that there was no agreement to supply dies/patterns. The defendants have alleged that the present suit is a counter-blast to the defendant's Suit No. 1276/92 filed in March 1992 against the plaintiffs for recovery of their dues and have referred to inter alia plaintiff's letter dated 17.5.88. The defendants have also stated that they have been developing and manufacturing in series dies/patterns developed by them since 1977 and that the plaintiffs like many others were buyers of the cylinder head castings only, which were produced by the defendants by using the said dies/pat-terns. The defendants have placed on

record letters dated 22.10.1980 and 21.5.1988 wherefrom it is clear that the plaintiffs were buyers only of the casting and in latter letter, they have further provided a condition, which is as follows :-

1.CASTING RATE: Casting's rate shall be as follows:

1.1760 pieces of Cylinder Heads (PC/DI) shall be billed at Rs.500.00 (Rs. five hundred) per piece.

1.2The rate for subsequent supplies shall be Rs.1,000.00 (Rs. one thousand) per piece.

2.TAX/DUTY : The rate is ex-your Works. All taxes & duties shall be paid by us over & above the basic price.

3.INSURANCE: Transit insurance shall be arranged by us at our ex- pense.

4.REJECTIONS: 4.1 Castings found defective during the initial stages of development shall be returned.

4.2Once the development stage is over, Dcm will supply additional 5 pieces for every 100 pieces billed to take care of rejections because of foundary defects. Such castings shall be salvaged by us. It was also agreed that DCM's liability shall be limited to additional supply of 5 pieces. '5.PAYMENT: Full payment shall be released by us on the receipt of the goods in our stores.

(3) The above conditions clearly seem to lend credence to the plea of the defendants that initially payments were made by the plaintiffs for the development of dies, but what the plaintiff was to buy from the defendants was only the casting so much so that the defective casting produced with the help of the said dies/patterns were to be returned in the initial stages and thereafter the plaintiff was to get five pieces of casting etc. with every hundred supplied. Assuming what the plaintiff has alleged was correct initially, but a perusal of the correspondence filed by the plaintiff shows a distinct change in their stand. It does appear that in the initial letter, understanding of the plaintiff was that the dies and casting were theirs. With that understanding, they wrote on 12.11.1990 stating therein, 'In case

you will not supply the casting, we would take our patterns/blocks and stop our business dealing with you.' This stand appears to have undergone a complete change in their letter dated 11.6.1991, which inter-alia reads as under:-

'THIS has reft: once to our various reminders and telephonic conversations, you have not returned our patterns and not resumed supply of castings. We have taken steps to make our patterns which are ready and nearing completion. Now we do not need the patterns. Please return our pattern money with interest nil date, upon receipt of this letter. We understand that you are still supplying castings made out of our patterns to our competitors and harming our business. We propose to take legal action against you for your illegal action. We never expected such type of conduct from a company of your repute, more so when we had an express agreement with your brother Mr. Vivek which was honoured even after he left the company and you took over as C.M.D. We request you to kindly look, into the matter and arrange to settle our payments, at your earliest.'

(4) This was followed by yet another letter dated 1.10.1991. The plaintiffs wrote to the defendants, slating many other things as under:-

'NOW we have developed our new seven patterns and are trying to re- establish in the ma.ket.oui after a gap of one year, it will take time to overcome our loss and regain lost goodwill and turnover..... Keeping all this in view, we request not only to send the pattern money, interest, but also amounts you have received from supply to others...'

Thus by 11.6.1991 and 1.10.1991, the defendants have given up their claims to the patterns and had started asking, demanding amounts paid for the patterns and interest. Thereafter on 2.04.1992, plaintiffs wrote two letters, one after the other, reading alike except for difference in the amount. The first letter dated 2.4.1992, reads as under :-

'PLEASE find enclosed our debit note for Rs.27,06,896.00 (Rupees Twenty seven lakhs six thousand eight hundred ninety six only) towards principle sum paid to you for patterns money and interest thereon till 31.3.1992. Further we have suffered tremendous loss of money. Goodwill, reputation and on the other hand

earned illegal profits at our cost. We have handed over all our files to our legal advisor, who have been instructed to take all necessary steps against you for recovery of afore- said amounts from you through Court.'

Second letter is identical except the amount of Rs.5,09,250.00 , being the cost of the development of patterns claimed as principal amount of Rs.2,15,400.00 and interest thereon from 1.6.1988 to 31.3.1992 at the rate of 24% p.a. compounded yearly amounting to Rs.2,93,800.00 . Thus by 11.6.1991, the plaintiffs had completely changed their stand so much. so that they have not only claimed back the alleged cost of patterns, but have also claimed interest thereon, thereby completely giving up their claim to dyes/patterns. I need not, for the purposes of this application, go into the merits of such claims for money.

(5) The order dated 10.6.87 explained in letter dated 15.6.87 further shows that the order was for the development of the dies and patterns and that the cumulative reading of the said order, the letters dated 22nd October 1980 and 25th May 1988 would lead one to infer that what was sought to be purchased by the plaintiffs was the castings produced with the help of the dies/patterns developed by the defendants at the order of the plaintiff. The present suit is not for specific performance as is clear from prayers in the plaint which are as under:-

'(A) pass a decree for Rs. 1,07,82,851.00 in favor of the plaintiffs and against each of the Defendants, with pendent lite and future interest (c) 24% per annum from the date of institution of suit till date of realisation. (b) pass a decree of permanent injunction restraining the Defendants, their servants, agents and assigns from either using, for sale or manufacture of castings or otherwise, or in any other way dealing with, for business or otherwise, the patterns of the plaintiffs.'

(6) Before any interim injunction can be granted the Court has got to consider the following:-

1. Whether the plaintiff has prima facie a good case to succeed in the suit. In deciding this it will also be necessary to consider the effect of the plaintiffs having themselves quantified the damages and as also claimed the return of the price of the goods along with interest and damages and not claimed the goods and

whether any relief of injunction can be granted inspire of provisions of Sec.41(e)(g) and (h) and Section 14(l)(a) of the Specific Relief Act.

2.What is the effect of the plaintiffs' approaching the court for an injunction after a delay of more than 2 years?.

3.Whether the plaintiff would suffer irreparable loss or injury if the injunction is not granted?

4.Balance of convenience.

(7) From the facts stated hereinabove, the clear position which emerges is

(A)the plaintiff has not claimed the dies/patterns as is clear from the prayer in the plaint and also documents referred to hereinabove which have been filed by the plaintiffs.

(B)the plaintiff has since developed its own dies/patterns and is in the process of setting up rival business in competition with the defendants.

(C)the plaintiffs have only claimed the return of the price/money advanced for development of dies/patterns with interest and damages and not the property in spices.

(D)the plaintiff who was not getting supplies of the castings since early 1990 came to court seeking injunction only in December 1992 after a lapse of more than two and a half years.

(8) Mr. Rohtagi invited my attention to the provisions of Section 10(2) Explanationn (ii) to support his argument that the dies/patterns in question are very sophisticated dies and it takes lot of time, money and technical expertise to produce those. To a court question that in that event why was specific performance and delivery of chattel or dies was not sought, Mr.Rohtagi's only answer was that he is seeking much less,that is an injunction only. He could not cite any provision of law including that of Sale of Goods Act whereby prayer (b) could be granted to a buyer even though no specific performance is sought. He could not cite any provision but contended that the plaintiffs had sought an

injunction which is a lesser relief. I fail to appreciate such an argument for it amounts to seeking a situation where the buyer does not want the goods but asks for not only the return of the price paid but interest thereon, even for the period when he was getting the castings, and at the same time wants to prevent the seller from putting those goods to any use. The plaintiff in addition to the claim of return of price and interest thereon has quantified the damage also and claimed those. Such a case would clearly be one covered by Sec.41(e) and (h) of the Specific Relief Act.

(9) It appears that the plaintiff did not initiate or thought of bringing the present suit until they had developed their own dies/patterns and had put those dies to use. In the light of that it appears to be an attempt on the part of the plaintiffs to keep the defendants out of business or from competing with the plaintiff in the open market by the device of this injunction. Such a move would to say the least be a gross abuse of the process of the court apart from being termed as mala fide and unfair action with ulterior motive of stifling competition which could not be the intention of the law.

(10) Various authorities have been cited on both the sides including : AIR 1993 SC276b wherein well known principles of grant or refusal of interim injunction have been laid down by the Hon'ble Supreme Court. Counsel for the plaintiff also relied upon a full bench of Madras High Court reported as 1924 Madras 438. That was a case wherein the full bench after examining the matter had come to the conclusion that the court could in the alternative of return of the property grant value thereof. Another case cited by the plaintiff is 1977 (2) 2nd 709 which is a case under Trade and Merchandise Act and the facts therein have no bearing on the controversy in the present suit. On alternate remedy a reference was also made to A.I.R.1940P.C.249 and A.I.R.1942 Lah47.

(11) From the admitted facts, it is clear that the contract between the plaintiffs and the defendants cannot be specifically enforced being covered by Section 14(l)(a) of the Specific Relief Act. In a case like the present one, the plaintiffs would also not be entitled to any perpetual injunction under Sec.38 of the Specific Relief Act nor to an injunction in view of Section 41(e)(g) and (h) of the Specific Relief Act

which reads as under:-

'S.41.Injunction when refused. - An injunction cannot be granted - (a).... (b)..... (c)..... (d)..... (e) to prevent the breach of a contract the performance of which would not be specifically enforced; (f)..... (g)to prevent a continuing breach in which the plaintiff has acquiesced; (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; (i)..... (j).....'

(12) Coming to the question of delay no Explanationn has been offered as to why the plaintiff did not seek injunction immediately in 1990. In a case where there is a delay of 2 and a half years in coming to the court.the court should not normally exercise its discretion in favor of the plaintiff in granting interim injunction, particularly, when the action for injunction appears to be clearly lacking in bona fides apart from suffering from laches. Such inordinate delay in the circumstances of (he present case in coming to court for injunction would also disentitle the plaintiffs to claim the relief of injunction. Refer to.

(13) From the above discussion, it is clear that the plaintiff does not have a prima facie good case for injunction.

(14) The plaintiffs claim for damages which have already been quantified in addition to return of price of goods and claim for interest thereon shows that the plaintiff will not suffer irreparable loss and injury if the interim injunction is not granted.

(15) In the light of the above discussion I am of the clear view that the balance of convenience is in favor of the defendants.

(16) The result of the above discussion is that the plaintiffs application for interim injunction is dismissed. The interim injunction already granted in favor of the plaintiff is vacated. Plaintiffs will also be liable to pay the defendants the costs of this application which are quantified at Rs.3000.00 . I may further clarify that nothing stated herein shall be deemed to be an expression of opinion on the merits of the claim in suit. I.A. stands disposed of.

