

Hindustan Sanitaryware and Industries Ltd. Vs. Dip Crafts Industries

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Court : Delhi

Decided On : Dec-13-2002

Reported in : 2003(26)PTC163(Del)

Judge : Mukundakam Sharma, J.

Acts : [Designs Act, 2000](#) - Sections 22; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rules 1 and 2

Appeal No. : I.A. No. 8555 of 2002 in Suit No. 1485 of 2002

Appellant : Hindustan Sanitaryware and Industries Ltd.

Respondent : Dip Crafts Industries

Advocate for Def. : R.K. Tewari, Adv.

Advocate for Pet/Ap. : S.K. Bansal,; Sanjeev Singh and; Swarn Rajan, Advs

Judgement :

Dr. Mukundakam Sharma, J.

1. This order shall dispose of the application filed by the plaintiff under Order XXXIX Rules 1 & 2, CPC praying for a temporary injunction against the defendant, restraining the said defendant, its servants, agents, distributors, stockists and all others acting on its behalf from manufacturing, selling offering for sale, advertising or displaying directly or indirectly or dealing in any other manner whatsoever in the impugned designs named 'Stylush', 'Corel' and 'Ultra' or any other designs which are identical to or deceptively similar or an obvious fraudulent imitation thereto in relation to bath tubs of the plaintiff named as 'Tiffany', 'Strauss' and ' Aruba' which would amount to passing off, piracy and infringement of the plaintiff's design registration Nos. 183452, 183457 and 183458.

2. The case of the plaintiff as pleaded is that it developed bath tubs, particularly, those bath tubs under the titles and designations Tiffany', 'Aruba' and 'Strauss', which are also duly registered in favor of the plaintiff under the Designs Act, 1911. Registration certificates in respect of the said designs have been placed on record which indicates that the said three bath tubs under the title and designation Tiffany', 'Aruba' and 'Strauss' were duly registered under the Designs Act in the name of the plaintiff which is still subsisting in law. It is pleaded that by virtue of the said registrations, the plaintiff has the exclusive rights to use and apply the said designs in respect of its products and manufacture and market such products and that none else could be permitted to use the said designs or some other designs or any other design being an obvious or fraudulent imitation thereof without leave and license of the plaintiff.

3. It is alleged that the defendant is marketing and selling bath tubs under the impugned designs under the title and designation 'Stylush', 'Corel' or 'Ultra' which are said to be fraudulent and obvious imitation to the plaintiff's bath tubs under the aforesaid designs. It is alleged that the defendants are trying to infringe the

registered design of the plaintiffs as also passing off and indulging in activities within the meaning of Section 22 of the [Designs Act, 2000](#).

4. Summons and notices were issued in the suit whereupon, the defendant has entered appearance and filed a written statement and reply to the injunction application. It is stated by the defendant in the said reply that the designs in question got registered by the plaintiff are not new designs within the definition of Designs Act. It is also alleged that the impugned designs of the plaintiff are merely a trade variant of the existing business of bath tubs and are prior published designs and the same are neither new nor original. In support of the said contention, three affidavits have been filed by the defendant to prove and establish that the plaintiff has been dealing with the marketing goods of the similar designs since 1997. A catalogue is also placed on record by the defendant containing similar designs under the titles and designations 'Tiffany', 'Aruba' and 'Strauss' and an affidavit of the printer of the said catalogue is also placed on record.

5. The aforesaid injunction application is placed before me for consideration on which I have heard the learned counsel appearing for the parties.

6. Counsel appearing for the plaintiff has taken me through the registration certificates issued by the authority which indicates that the bath tubs under the titles and designation 'Tiffany', 'Aruba' and 'Strauss' are registered designs of the plaintiff under the 'Designs Act. The said registration certificates were issued on 18th September, 2000. A legal notice was also issued by the plaintiff prior to filing of the present suit which is dated 16th February, 2002. A reply was sent by the defendant as against the aforesaid legal notice wherein the plea that was taken by the defendant was that the designs of the bath tubs marketed and sold by the defendant under the titles and designations 'Stylush', 'Corel' or 'Ultra' is the result of years of labour by the designers of the Dip Craft Industries, namely, the defendant and that the similarity in designs with the three designs of the plaintiff is purely coincidental. In the said reply by the defendant, the registration of the plaintiff in respect of all the three designs is not disputed. In the said reply which was sent by the defendant immediately after receipt of the legal notice, no such plea of prior publication of the impugned designs was raised or mentioned. Subsequently that is after filing of the suit, it appears that the defendant became wiser and took up a plea of prior publication of the impugned designs in support of which certain documents have been placed on record to which reference was also made by the counsel appearing for the defendant, A catalogue which is placed as (Annexure E) by the defendant contains various designs of the defendant which also include the impugned designs, namely, 'Stylush', 'Corel' and 'Ultra'. In the said catalogue, the name of the printer is not mentioned although the same was required to be mentioned by the defendant. The document further does not contain any date of publication of the catalogue nor the name of the publisher is mentioned.

7. An affidavit is now filed by the defendant of the alleged printer of the said catalogue and the Bill of the said printer is also placed at page 58 of the document file. The said bill/invoice is of Shubham Printers. Three bills in support of the aforesaid plea have been placed on record which are dated 1st April, 1998, 7th April, 1998 and 25th June, 1998. I have perused the said three bills. None of the said bills indicate that by the aforesaid bills/invoices any of the bath tubs of the impugned designs under the model 'Stylush', 'Corel' and 'Ultra' was sold by the defendant. therefore, no reliance can be placed on the said documents which do not co-relate with the impugned designs. The catalogue also being without any date and particulars regarding the name of the printer and publisher is not worthy or consideration. Those four documents do not support the plea of the defendant that the designs were pre-published. The defendant has also placed on record, a registration certificate of the Delhi Sales Tax Authorities indicating that the defendant is a registered dealer. The said documents placed on record relating to the sales tax assessment and the bills, prima facie, do not prove and establish the plea of the defendant that the defendant has been selling and/or marketing the impugned designs under the name 'Stylush', 'Corel' and 'Ultra', prior to the registrations obtained by the plaintiff in respect of similar designs of bath tubs under the name 'Tiffany', 'Strauss' and 'Aruba'.

8. I have compared the designs of the plaintiff and of the defendant in respect of the said three impugned designs, namely, 'Stylush', 'Corel' and 'Ultra' of the defendant, and find that the said designs are similar to that

of the registered designs of the plaintiff namely, 'Tiffany', 'Strauss' and 'Aruba'. The Court has to Judge the similarity or the difference of a particular design through the eye alone, as was held by the Calcutta High Court in Castrol India Ltd. v. Tide Water Oils Co. (I) Ltd. 1996 (16) PTC 202.

9. The plaintiff has claimed novelty of the bath tubs in respect of shape, configuration and surface pattern which was also granted by the Competent Authority. The infringement alleged also relates to shape, configuration and surface. Having compared the designs of the plaintiff with the alleged impugned designs of the defendant, I find that there is substantial and sufficient resemblance between the allegedly infringed designs and the plaintiff's registered designs and, therefore, the present application filed by the plaintiff has sufficient force.

10. In Castrol India Ltd. (supra), it was held by the Calcutta High Court that it is not every resemblance in respect of the same article which would be actionable at the instance of the registered proprietor of the design and that the copy must be a fraudulent or obvious imitation but, then the word imitation would not mean duplication in the sense that the copy complained of need not be an exact replica.

11. I respectfully agree with the aforesaid observations of the Calcutta High Court and applying the same principles, I am of the prima facie view that the defendant is guilty of the infringement of the plaintiff's registered design. In that view of the matter, a temporary injunction is granted in favor of the plaintiff and against the defendant, restraining the defendant from infringing/pirating or attempting or causing enabling or assisting others to infringe/pirate the copyright in the registered Design Nos.183452, 183457 and 183458 of the plaintiff or in any way using a design which is deceptively or confusingly similar to such registered designs of the plaintiff, till the disposal of the suit.

12. In terms of the aforesaid order, the application stands disposed of.

S. No. 1485/2002.

The plaintiff is granted three weeks time to file the replication.

The parties shall file their additional/original documents, if any, within three weeks. The suit be listed before the Joint Registrar on 11th February, 2002, for admission/denial of documents.

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