

Lucky Exports Vs. the Controller of Patents and Designs and ors.

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Court : Kolkata

Decided On : Sep-16-2010

Judge : Patherya, J.

Appeal No. : AID No. 6 of 2010

Appellant : Lucky Exports

Respondent : The Controller of Patents and Designs and ors.

Advocate for Def. : MR.SAMARESH CHAKRABORTY ; MR.PARTHA BASU, Adv.

Advocate for Pet/Ap. : MR.S.K.KAPUR,SR ; MR.S.BOSE ; MR.A.GHOSH ; MR.P.SINHA ; MR.A.CHANDRA,Adv.

Judgement :

The Court : This appeal has been filed under section 36 of the Designs Act 2000. The case of the appellant is that Coaster Brake Hub was manufactured and marketed by Russia since 1920. Subsequently, the appellant acquired the design of such Coaster Brake Hub and started manufacturing and marketing the same.

It later transpired that the respondents were registered in the said design since 2005 and in fact a suit was filed in the court of the District Judge Ludhiana. As no interim relief was granted, an appeal was filed on 24th July, 2009.

An order was passed in view of the application filed under section 19 of the 2000 Act directing that the same be heard and in the event the same was dismissed, the respondents would be precluded from manufacturing the product registered.

The application under section 19 of the 2000 Act was heard and disposed of by order dated 25th August, 2010 whereby the application for cancellation has been rejected. Hence, the instant appeal has been filed and orders sought. Counsel for the appellant submits that in the plaint filed in Ludhiana the partners of the respondent no.3 have claimed to have invented Coaster Brake Hub and upon such inventory have manufactured the same and marketed the product and, therefore, acquired goodwill.

The registration of the said product is in October, 2005 but prior thereto advertisements have been published in February and May 2005. These publications have been enclosed in the plaint filed before the Ludhiana Court. Therefore, the bar of section 4(b) of the 2000 Act is operative and the initial registration could not have been granted.

As registration was granted, an application was filed under section 19 for cancellation thereof. The respondent no.2 in dismissing such application has erred and not taken into consideration section 4(b) of the 2000 Act.

Therefore, the order is liable to be set aside and as an interim measure, the same be stayed. Counsel for the respondent no.3 submits that Rule 12 of the 2001 Rules postulates a statement of novelty on the application. Such endorsement was made on the reverse of the application and has not been made a part of this appeal. In fact, from a reading of the order dated 25th August, 2010 it will appear that the design being new or original was accepted by the respondent no.2 disbelieving the case made out by the appellant as no evidence was produced before respondent no.2 in respect thereof.

The order passed in appeal by the Punjab and Haryana High Court rightly restrained the appellant from manufacturing the product in case its application under section 19 failed as the respondents are a registered design holder. The papers in respect of the said appeal was received by the advocate for the

respondents in the evening of 15th September, 2010 and for insufficient time he could not take instructions from his clients.

Therefore, the matter be adjourned till 20th September, 2010. As the order dated 25th August, 2010 calls for no interference, no interim order be passed. Having considered the submissions of the parties and from a perusal of the order dated 25th August, 2010, it appears that the plaint filed in the Ludhiana Court by the respondent no.3 was perused by the respondent no.2.

On the basis of such perusal certain conclusions have been reached. Such conclusions prima facie have only be restricted to section 4(a) of the 2000 Act. The annexure to the plaint also included advertisements which admittedly have been disclosed by the respondent no.3 who is the plaintiff in the suit before the Ludhiana Court.

Why such advertisements were not considered by the respondent no.2 is not known as section 4(b) prohibits registration of designs in case of disclosure to the public prior to the date of the application for registration. These advertisements have been produced as evidence by the respondent no.3 and admittedly are before the date of application i.e. 10th October, 2005.

Some of the advertisements are in February 2005 and May 2005 and therefore are admittedly prior to 10th October, 2005. The aforesaid, therefore, entitles the appellant to stay of the order dated 25th August, 2010 till 22nd September, 2010. Matter to appear in the list on 21st September, 2010.

All parties concerned are to act on a Photostat signed copy of this order on the usual undertakings.

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