

M/S. Nikhil Adhesives Ltd. Vs. the Assistant Controller of Patents and Designs and anr.

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Court : Kolkata

Decided On : Apr-05-2011

Judge : Patherya, J.

Appeal No. : AID No. 11 of 2010.

Appellant : M/S. Nikhil Adhesives Ltd.

Respondent : The Assistant Controller of Patents and Designs and anr.

Advocate for Pet/Ap. : Mr.Gautam Kr.Ray; Ms.Saumya Ghosh, Advs.

Judgement :

1. By this appeal the appellant seeks to set aside the order dated 30th June, 2010. The case of the appellant is that Five Star Industries was engaged by it to prepare a sketch for containers. Such sketch was delivered to it in August, 2005, thereafter a quotation was submitted by the said manufacturer to the appellant for manufacture of moulds.

2. This was at a time when one Chandresh Santosh Kumar Saraswat was in its employment. Therefore, he was aware of the design at the time of its creation. The said Mr. Saraswat resigned from the appellant company in 2006 and thereafter joined the respondent company. Such design was disclosed to Mr. Saraswat in confidence as he was one of the Directors of the appellant. By virtue of his position

he was well-aware of the design and on resignation has used such design for the respondent company which has come to light only on the application filed for cancellation under Section 19 of the 2000 Act. Therefore, the petitioner is entitled to the benefit of Section 16 of the 2000 Act as the design disclosed to Mr. Saraswat was in good faith and could not have been misutilised by him on his resignation in favour of the respondent.

3. The said was a point categorically taken before the Controller but without addressing himself to the said issue the Controller has passed his order dated 30th June, 2010 by allowing the cancellation application on the ground of prior publication. The fact of Saraswats employment with the appellant at the time when such sketch was prepared has not been considered. Therefore, the order of the Controller dated 30th June, 2010 is bad and liable to be set aside.

4. None appears on behalf of the respondent complainant although an affidavit-in-opposition has been filed wherefrom it will appear that Mr. Saraswat was appointed as the Executive Director on 19th June, 2007 and form 32 filed with the authorities in respect thereof. An objection has also been taken that no Board resolution has been annexed authorising Mr. Chandan Kumar Sinha to file an appeal and by virtue of such non-disclosure the appeal be dismissed.

5. Having considered the submissions of the parties the appellants design was registered on 9th August, 2007. The preliminary step taken for creating the design was by drawing a sketch in 2005 and in August, 2005 the said registered design was given a shape in a sketch created. Subsequently a quotation was submitted for the moulds to be manufactured for such design. This quotation was submitted in September, 2005 and thereafter the mould was created and the design found shape and the same was registered on 9th August, 2007. An application was filed for cancellation of the registered design under Section 19 of the 2000 Act. In support of such application an affidavit of evidence was also filed by one Chandresh Santosh Kumar Saraswat on 3rd December, 2008. A written statement was also filed by the appellant wherein a specific point was taken that Mr. Saraswat worked as General Manager (Consumer Division) from August, 2004 till May, 2006 when he resigned from the appellant company.

6. Therefore, it was during his period of employment with the appellant that the process of creating the registered design had been undertaken. It is only in June, 2007 i.e. after the resignation of Mr. Saraswat in May, 2006 that steps have been taken by the respondent to manufacture containers in the said registered design. This issue has not been addressed by the Controller. He has proceeded only on the basis of prior publication without considering the status and the capacity, in which Mr. Saraswat was engaged by the appellant between August, 2004 and May, 2006. Therefore, the order dated 30th June, 2010 cannot be sustained and is accordingly set aside. This, however, will not prevent the Controller from considering the other issues which were raised before him and passing an order in accordance with law.

7. In view of the aforesaid the appeal is allowed and the order dated 30th June, 2010 set aside. All parties concerned are to act on a Photostat signed copy of this order on the usual undertakings.

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