
(2017) 11 DEL CK 0215

In the Delhi High Court

Case No : Civil Suit (COMM) No. 391 Of 2017, Miscellaneous Application No. 6724 Of 2017

Gold Peak Industries (Holdings) Limited

APPELLANT

Vs

Bharat Dhawan And Anr

RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

Citation : (2017) 11 DEL CK 0215

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Shrawan Chopra, Pundreek Dwivedi, Puneet Kaushik

Final Decision : Disposed Of

Judgement

Manmohan, J

1. At the outset, learned counsel for defendant No.1 states that his client has never dealt with GP Batteries at any given point of time. He also states

that defendant No.1 does not intend to deal with GP Batteries even in future.

2. The statement made by learned counsel for defendant No.1 is accepted by this Court and defendant No.1 is held bound by the same.

3. In view of the aforesaid statement, learned counsel for plaintiff does not wish to proceed any further against defendant No.1. Consequently,

defendant No.1 is deleted from the array of parties.

4. The right of the defendant No. 2 to file the written statement was closed on 4th September, 2017. Since today also, none appears on behalf of

defendant No.2, it is proceeded ex parte.

5. At this stage, learned counsel for the plaintiff states that in view of the judgment of this Court in Satya Infrastructure Ltd. & Ors. Vs. Satya Infra

& Estates Pvt. Ltd., 2013 SCC OnLine Del 508, the present suit should be decreed qua the relief of injunction against defendant No. 2. The relevant portion of the said judgment relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

6. Learned counsel for the plaintiff further states that he has instructions not to press for any relief other than the relief of permanent injunction and costs, as prayed for in paragraph 50(i), (ii), (iii) and (vii) of the plaint.

7. The relevant facts of the present case as pointed out by learned counsel for the plaintiff are as under:-

A. The plaintiff, established in 1964, is the parent company of the Gold Peak Group and is listed on the Stock Exchange of Hong Kong since 1984.

The Gold Peak Group consists of the plaintiff along with GP Industries Limited, GP Batteries International Limited and other companies and is engaged in the business of Electronic and Acoustics, Automotive Wire Harness and other Industrial Investments.

B. The plaintiff's group company GP Batteries International Limited is one of the world's major suppliers of primary and rechargeable batteries supplying an extensive range of battery products to original equipment manufacturers, leading battery companies as well as consumer retail markets under the trade mark GP.

C. The trade mark GP has been coined by the plaintiff as an acronym to represent its company under the Gold Peak Group and GP Batteries International Limited and has been exclusively authorised by the plaintiff to use the said mark. The trade mark GP is used specifically for the

plaintiff's business activities and the goods sold under the said mark are extremely popular.

D. The plaintiff is the registered proprietor of the trade mark GP in various jurisdictions of the world including India. The Indian trade mark registration

in favour of the plaintiff is effective from 25th February, 1984 and is in Class 9 which covers batteries and car stereos.

E. The plaintiff sells its products in a unique packaging/trade dress which has come to be associated only with the product of the plaintiff. The unique

colour combination and positioning of text on the packaging used by the plaintiff is associated with the products of the plaintiff.

F. The plaintiff's group company GP Batteries International Limited has entered into an agreement with Godrej and Boyce and Mfg. Co. Ltd. by

which Godrej and Boyce and Mfg. Co. Ltd. has been exclusively authorised to import the plaintiff's products in India under the mark GODREJ

GP and no other entity apart from Godrej is entitled to import any of the GP products into India.

G. Defendant No.2 is engaged in the business of selling and distributing GP batteries bearing the model GP 23AE and GP 27A. The plaintiff's

group company is not currently manufacturing GP batteries models GP 23A or GP 23AE or GP 27A or GP 27AE in the packaging used by the

defendant No.2 and neither the same are being imported by the plaintiff's group company's exclusive importer Godrej and Boyce and Mfg.

Co. Ltd. Further, the packaging in which the said batteries are being sold by the defendant No.2 is the old packaging currently not used by the plaintiff.

H. The plaintiff upon the aforesaid discovery deputed an investigator to ascertain whether counterfeit GP batteries were being sold in New Delhi

which revealed that the defendant No.2 was selling counterfeit GP batteries and was also capable of providing huge quantities of the same within a

short span of time.

I. The plaintiff thereafter served a legal notice upon the defendant No.2. No reply was received from the defendant No. 2.

J. The battery models that are being distributed by the defendant No.2 are being sold in a packaging containing the unique colour combination that has

come to be associated with the plaintiff on account of extensive use by the plaintiff of the same in the past. Further, since the packaging in which the

defendant No.2 is selling its products is currently not being used by the plaintiff, the presence of these batteries itself in the market indicates that the same are counterfeit and not genuine. A comparison of the original GP Batteries of the plaintiff and the defendant No.2 is reproduced hereinbelow:-

K. The packaging at the back of the counterfeit battery models indicates that the same are the product of the Gold Peak Group and the website

www.gpbatteries.com is also mentioned. However, the plaintiff has never operated or owned the said website and the mention of the Gold Peak

Group and the use of the name "gpbatteries" is an obvious and intentional attempt by the defendant No.2 to mislead the consumers and members of the trade.

L. The report of the Local Commissioners appointed by this Court vide order dated 29th May, 2017 confirms that the defendant No. 2 was found to be

dealing in counterfeit GP batteries and around 17 boxes of GP 27A and 8 boxes plus 15 loose strips of GP 23AE batteries were recovered from the premises of the defendant No. 2.

5. In view of the averments made in the plaint, which remain uncontroverted by the defendant No.2, this Court is of the view that the plaintiff is

entitled to the judgment in terms of the relief claimed for in paragraph 50(i), (ii), (iii) and (vii) of the plaint.

6. In view of the above, the suit is decreed in favour of the plaintiff and against defendant No.2 in terms of paragraph 50(i), (ii), (iii) and (vii) of the

plaint along with the actual costs. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court-

fees, Local Commissioner's fees and other expenses etc. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication

of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly.

7. Consequently, the present suit and applications stand disposed of.