

(2001) 04 DEL CK 0133
In the Delhi High Court
Case No : Suit No. 76 of 2001

Koninklijke Philips Electronics N.V. and Another	APPELLANT
Vs	
Overseas Business Corporation and Others	RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3

Citation : (2001) 04 DEL CK 0133

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : V.P. Singh and Praveen Anand, for the Appellant;

Judgement

Madan B. Lokur, J.

is No. 3593/2001

1. One week's Lime is granted to the plaintiffs to deposit the Court fees.

2. is stands disposed of.

is No. 3596/2000

3. Dismissed as infructuous.

Suit No. 766/2001

4. Let the plaint be registered as a suit. Issue summons to the Defendants in the ordinary process as well as by Registered A.D. post returnable on 3rd August, 2001 before the Joint Registrar.

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5. Notice for the same date.

6. The plaintiff manufactures consumer products including televisions under the trade mark PHILIPS. plaintiff No. 1 is a registered proprietor of this trade mark

and plaintiff No. 2 is the licensed user of this trade mark. The trade mark PHILIPS is said to be in existence since some time 1891. The trade mark is also registered under the provisions of the Trade and Merchandise Marks Act, 1958. The plaintiffs say that they have recently come to know that Defendants No. 1 to 3 are trying to export a consignment of 855 pieces of 14" black and white televisions bearing the trade mark PHTLIBS. These television sets are lying at ICD Tuglakabad, New Delhi.

7. There is a deceptive similarity between the trade mark of the plaintiffs and the mark which is being used by Defendants No. 1 to 3. It is quite clear that Defendants No. 1 to 3 are trying to pass off their goods as those of the plaintiffs. This is likely to cause confusion in the minds of the consumers that the goods are those of the plaintiffs.

8. Having regard to the averments made in the plaint as well as the documents filed by the plaintiffs on record, I am satisfied that the plaintiffs have made out a prima facie case for the grant of an ad interim ex parte injunction. Delay in granting the injunction may defeat the interests of justice.

9. Under the circumstances, Defendants No. 1 to 3 are restrained from exporting 855 pieces of 14" television sets under the mark PHILIBS. They are also restrained from disposing of these televisions sets under the mark PHILIBS in any other part of the country. Defendant No. 4 is restrained from releasing or allowing the said consignment of 855 pieces of 14" black and white televisions under the mark PHILIBS to be taken out of the country.

10. The plaintiffs shall comply with the provisions of Order XXXIX Rule 3 of the CPC within three days.

is No. 3594/2001

11. This is an application for the appointment of the Local Commissioner. Since I have taken a prima facie view that Defendants No. 1 to 3 are trying to pass off their goods as those of the plaintiffs, it will be necessary to appoint a Local Commissioner to inspect the premises of Defendants No. 1 to 3 at Overseas Business Corporation, E-46, Sector-3, NOIDA, U.P. to ascertain whether Defendants No. 1 to 3 are manufacturing any other items carrying the mark PHILIBS. If so, the Local Commissioner will be entitled to seize these goods and make an inventory of them and hand over the same on superdari basis to Defendants No. 1 to 3.

12. I appoint Mr. Iqbal Shamsi, Advocate, 339, Lawyers Chamber, Delhi. High Court, New Delhi as the Local Commissioner.

13. The Local Commissioner will be entitled to break open the locks of the premises of Defendants No. 1 to 3 and also to take police assistance if it becomes necessary.

14. The Local Commissioner will be paid a fee of Rs. 10,000/- in the first instance.

15. The order be given to learned counsel for the plaintiffs under the signatures of the Court Master today.