

(1999) 03 DEL CK 0007

In the Delhi High Court

Case No : IA. No. 11909/96 in S.No. 2887/96

Puneet Industrial Controls (P) Ltd. and Others

APPELLANT

Vs

Aditya Enterprises Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1999) 2 AD 820 : (1999) 78 DLT 811

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. R.K. Aggarwal, for the Appellant; Mr. Ashok Bhasin and Mr. P.L. Sebastain, for the Respondent

Judgement

K. Ramamoorthy, J.—The plaintiffs have filed the this application for injunction. The point involved in the case lies in a very narrow compass. The plaintiffs filed the Suit No.2852-94 against M/s. Classic Electronics and Mr. Sanjay Chanana.

2. The main case of the plaintiffs against the defendants in the present suit is that the defendants 1 & 2 are infringing the copyright of the plaintiffs in the drawing for the manufacture of electronic relays and timers through a firm by the name of Classic Electronics and the defendants 1 & 2 are only allies of the Classic Electronics and Mr. Sanjay Chanana. According to the plaintiffs, Mr. Sanjay Chanana of Classic Electronics in order to get over the order of injunction, is doing business through defendants 1 & 2.

3. Defendants 1 & 2 had never been, according to the plaintiffs, in the business of manufacture of electronic relays and timers. According to the plaintiffs, the third defendant who was purchasing goods from the plaintiffs is now purchasing the same relays from Mr. Sanjay Chanana using the name of the first defendant. The plaintiffs have filed the following documents:-

1. Annexure A - photographs of relays and timers showing the product design and the electrical/electronic circuits and EPOXY sealing used by the plaintiffs, M/

s. Classic Electronics and the defendant No.1.

2. Annexure B - Copy of the Certificate of Registration issued by the Directorate of Industries, Delhi Administration to the first plaintiff.

3. Annexure C - Copy of letter dated 16.8.80 from DESU certifying supplies made to it by plaintiff between 1976 to 1980.

4. Annexure D - Copy of the advertisement made in the Trademarks Journal dated 16.10.96 for the trademark PIC for electric and electronic relays.

5. Annexure E - Copy of the Certificate of Incorporation dated 31.3.1992 of the first plaintiff company.

6. Annexure F - Copies of the letters dated 20.5.94 and 23.5.94 written by customers from Bangalore to Mr. Sanjay Chanana.

7. Annexure G - Copy of the letter dated 15.11.1994 from a customer to the plaintiffs.

8. Annexure H - Copy of the interim ex-parte order dated 19.12.1994 passed in IA.11853/94 in S.2852/94.

9. Annexure I - Copies of the invoices issued by the plaintiff to M/s. Sharma Electricals.

10. Annexure J - Copies of the invoices issued by Classic Electronics to Sharma Electricals.

11. Annexure K - Copy of extract from the record slip of cheques showing issuance of cheques by M/s. Classic Electronics in favor of M/s. Aditya Enterprises, the first defendant in the present suit. This is to show that even during the pendency of the earlier suit the Classic Electronics had been doing business through the first defendant.

12. Annexure L - Copy of the notice on behalf of the plaintiff dated 16.10.1995 to the first defendant company.

4. The first defendant on the 21st of February, 1997 filed a typed set containing affidavit by the second defendant, Test Report of dated 31.1.1997 from the Electronics Regional Test Laboratory (North), NSI Laboratory, Department of Electronics, Government of India. On the 6th of January, 1997, defendants 1 & 2 filed a typed set containing the following documents:-

1. Written statement filed by defendants 1 & 2.

2. Affidavit in support of the written statement.

3. Annexure D.9 - Certificate of Incorporation dated 11.12.1981 by the Registrar of Companies, Delhi & Haryana.

4. Annexure D.10 - Test Report dated 5.5.1997 in continuation of the earlier

report dated 31.1.97 issued by the Electronics Regional Test Laboratory (North), NSI Laboratory, Department of Electronics, Government of India.

5. Annexure D.11 - Technical specifications of relays.

6. Annexure D.12 - Affidavit of Shri J. S. Shamby dated 6.5.1997.

5. On the 3rd of October, 1997, the plaintiffs submitted a typed set containing the following documents:-

1. Copy of the certificate dated 14.5.1997 issued by M/s. Kanbro Sales Corporation certifying the sale of PLA Relays to M/s. Aditya Enterprises during the period from 12.12.95 to 20.7.96.

2. Copy of the invoice dated 12.12.95 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd.

3. Copy of the invoice dated 19.12.95 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd.

4. Copy of the invoice dated 30.01.96 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd.

5. Copy of the invoice dated 12.02.96 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd.

6. Copy of the invoice dated 19.02.96 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd.

7. Copy of the invoice dated 07.03.96 issued by M/s. Kanbro Sales Corporation to M/s. Aditya Enterprises Pvt. Ltd. (These invoices show the purchase of relays by the second defendant. If the first defendant was manufacturing relays from 1995, there is no need for the second defendant to make the purchases.)

8. Copy of Seizure Memo showing the goods seized by the police on 21.7.97 on the search of the premises 557, Sector 16, Faridabad.

9. Copy of English translation of the Seizure Memo mentioned at S. No. 8.

10. Copy of Order of search warrants issued by the Metropolitan Magistrate.

11. Photographs showing the inside portion of the premises of the first defendant.

6. On the 27th of November, 1997, the plaintiffs filed, in support of their case, an affidavit of Mr. S. N. Phadke with photographs.

7. On the 3rd of March, 1998, notes of arguments were submitted by defendants 1 & 2 with following documents:-

1. Certificate of Mr. Vihan Khera from the College of Engineering, Pune.

2. Summons issued by the Labour Commissioner in the case of Devinder Kumar.

3. Affidavit of Mr. Anil Saxena, employee of the first defendant.

4. Literature with regard to preset.
5. Quotations and specifications of M/s. Rachna Engineers dated 10.5.97.
6. Affidavit of Mr. Vihan Khera.
7. Four Test Reports dated 27.1.1998 issued by the Electronics Test & Development Centre, Government of India, Gurgaon.
8. On the 27th of March, 1998, the plaintiffs filed an affidavit of the second plaintiff, Mr. Prem Dua, to show how the products of the Classic Electronics and the first defendant are similar.
9. It may also be noticed that in reply to the application filed by the plaintiffs, the first defendant filed the following documents:-
 1. Affidavit of defendant No. 2 in support of reply filed by the defendants 1 & 2.
 2. Annexure D.1 - Reply on behalf of the defendants dated 5.11.95 to the notice dated dated 16.10.95 given by the plaintiffs.
 3. Annexure D.2 - Reply dated 17.6.1996 by the counsel for the plaintiffs.
 4. Annexure D.3 - Reply dated 22.7.96 by the counsel for the defendants 1 & 2.
 5. Annexure D.4 - Copies of drawings of top and main PCB.
 6. Annexure D.5 - Affidavit of Vihan Khera
 7. Annexure D.6 - Photographs and drawings.
10. It is stated in the reply that the plaintiffs issued notice on the 16th of October, 1995 to the first defendant. The first defendant given the reply on the 5th of November, 1995. There was second notice by the plaintiffs on the 17th of June, 1996 and there was reply by the first defendant on the 22nd of July, 1996. According to the first defendant, the issuance of the notice in October, 1995 has not been mentioned by the plaintiffs in the plaint.
11. The plaintiffs claim copyright in the drawing and according to the plaintiffs, Mr. Sanjay Chanana had copied the drawings and was doing business as if he had his own drawings. That was the subject matter of the earlier suit which had been referred to earlier. The case of the plaintiffs is that Sanjay Chanana is doing business through the first defendant.
12. The sheet anchor of the case of the first defendant is that the affidavit filed by Mr. Vihan Khera who is stated to be an electronic engineer by profession. The affidavit was filed on the 17th of December, 1996. It is stated in the affidavit that Mr. Vihan Khera did B.E. (Electronics) from Pune University in 1993 and he is specialist in electronic timers and electronic relays. Mr. Satnam Singh Anand of M/s. Aditya Enterprises Private Limited approached him for guidance and technical know-how for industrial manufacturing and commercial production of timers and electronic control relays. It is stated in the affidavit that Mr. Satnam S. Anand

gave him one piece each of electronic timer, engine relay, volt relay, and frequency relay in all amounting to four of Puneet Industrial Controls Pvt. Ltd. for comparing the electronic timer, engine relay, volt relay and frequency relay manufactured by M/s. Aditya Enterprises (Pvt.) Ltd. According to the defendants, deponent of the affidavit, Mr. Vihan Khera, there are vital differences. The credentials of Mr. Vihan Khera have not been produced, and unless he is examined in Court, his capacity or competence to make statement in his affidavit cannot be admitted in evidence. The plaintiffs have also filed the affidavit of Mr. S.N. Phadke and that affidavit was filed on the 27th of November, 1997. He has also given the details about the relays. Mr. Prem Dua himself has filed an affidavit who is in the business for a long time.

13. For the purpose of this interlocutory application, in my view, what has to be considered is whether the first defendant is really engaged in the business of manufacturing of relays and timers. The case of the petitioner is that it has been in the manufacturing of the relays and timers since 1995. To prove the case of the first defendant, the straightway was to file the statement accounts of the first defendant showing volume of goods produced and the instrument possessed by the first defendant for manufacturing these relays and the sale turnover of the relays by the first defendant.

14. The learned counsel for defendants 1 & 2 admitted, at the time of the arguments, producing the instruments manufactured by the plaintiffs and the instruments manufactured by the first defendant that there is absolutely no similarity and what is manufactured by the first defendant is quite different from what is manufactured by the plaintiffs. The learned counsel for defendants 1 & 2 Mr. Ashok Bhasin, also submitted that in the market there are several types of relays and timers sold under different names just like television sets and transistors, and the plaintiffs cannot claim that no one can manufacture relays and timers.

15. The point is whether the first defendant had used the drawings of the plaintiffs or whether the first defendant had its own resources and the necessary technical know-how to have drawings for the manufacture of relays. There may be different types of relays and timers. But we had to consider whether the first defendant could manufacture relays without any reference to the drawings of the plaintiffs, especially when the case of the plaintiffs is that Mr. Sanjay Chanana and the first defendant are doing business close to each other and in view of the order of injunction passed in the earlier suit as Sanjay Chanana has not been able to manufacture relays, he has been using the services of the first defendant. As I had noticed above, in the light of this, the best possible evidence from the first defendant is its accounts or the daily records maintained for the manufacture of relays and timers and important and vital documents had been withheld by the first defendant. When that has not been done, the inference is irresistible, in my view, that the first defendant is only acting for the said Mr. Sanjay Chanana. No one can be allowed to get over an order of injunction passed

by a court of law in the manner in which it has been done by Mr. Sanjay Chanana and the first defendant. The test reports filed by the first defendant cannot be conclusive proof of the manufacturing of the items mentioned therein by the first defendant. The proof of manufacture by the first defendant of its own is different from the qualities of the instruments considered in the test reports.

16. On the materials placed before me, I am, prima facie, of the view that the plaintiffs have made out prima facie case for injunction. The balance of convenience is in favor of the plaintiffs.

17. Accordingly, there shall be an injunction restraining the defendants M/s. Aditya Enterprises and M/s. Sharma Electricals (defendant Nos.1, 2 & 3) and their associates, agents, servants etc., from making or selling the infringing goods till the disposal of the suit.

18. The I.A. stands disposed of.

19. There shall be no order as to costs.

20. Subject to the orders of Hon''ble the Acting Chief Justice, post the suit for further directions before the regular Bench on the 13th of July, 1999.