

(2007) 05 JH CK 0016
In the Jharkhand High Court
Case No : M.A. No. 19 of 2007

SRMB Udyog Limited

APPELLANT

Vs

Atibir Hitech (Ret) Limited and Sri Durga Steel

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Designs Act, 2000 — Section 19, 22

Citation : AIR 2008 Jhar 32 : (2007) 2 BLJR 2208 : (2007) 3 JCR 374

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Sayantan Basu, Indrajit Sinha, Prashant Pallav and Birendra Burman, for the Appellant; Gautam Chakravarty Shubhashis Sen Gupta, M.S. Mittal, A.K. Yadav, N.K. Pasari, J.S. Pasari and Sheela Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Kumar Merathia, J.—This appeal has been filed against the order dated 23.12.2006 passed by the District Judge, Deoghar in Title Suit No. 3 of 2006 rejecting the application filed on behalf of the plaintiff-appellant for injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

2. The appellant-plaintiff filed a suit along with an injunction petition in the court of the learned District Judge, Deoghar, inter alia, for declaration that the plaintiff is the owner of the design bearing No. 191744 and holds the copyright in the said design; and for permanent injunction restraining the defendants etc, from in any way infringing with the said design.

3. The plaintiff's case in short is that it got the said design registered on 4.4.2003 and was using the same. The plaintiff learnt in July, 2006 that defendant No. 1 is selling rod with the said x-rib design through defendant No. 2. The defendants have been infringing and passing off the said registered design by selling rods in the market with the said design. Due to which, plaintiff is suffering huge loss, which cannot be quantified in terms of money. Defendant No. 1 filed

its objection to the injunction petition. It's case, inter alia, is that the defendants are manufacturing and selling the rods as per the design registered in their favour being Design No. 202344 on 16.12.2005. After hearing the parties, by the impugned order, the learned District Judge rejected such prayer of injunction.

4. Mr. Sayantan Basu, learned Counsel appearing for the plaintiff appellant submitted as follows:

The findings of the learned District Judge will show that there is deceptive similarity in the design of the plaintiff and the defendant No. 1. The learned District Judge should have prima facie gone into the grounds taken by the defendant No. 1 in its petition u/s 19 of the Designs Act, 2000 (for short "the Act") filed before the Controller and also the bona fides of defendant No. 1, before refusing injunction. He mainly relied on Metro Plastic Industries (Regd) v. Glaxy Footwear, New Delhi 2000 PTC 1.

5. Mr. Gautam Chakravarty, learned Senior Advocate, appearing for the defendants respondents, submitted as follows:

The learned Judge has found that the designs are distinctively different. The plaintiff could not show that the designs were identical, imitation or fraudulent. The trial court rightly did not enter into the grounds taken by the defendants before the Controller in the petition filed by the defendant for cancellation of the plaintiff's design and took care of not making even prima facie observations on such grounds as the cases of the parties before the Controller, who has exclusive jurisdiction in such matters, may not be prejudiced. The learned Judge has taken into consideration the relevant aspects of the matter. The pecuniary limit of compensation is fixed under the Act for contravention of Section 22 of the Act. The plaintiff cannot stop the business of the defendant No. 1 by seeking injunction. Referring to paragraph 28 of the judgment of Delhi High Court in Rotela Auto Components (P) Ltd. and Anr. v. Taspal Singh and Ors. 2002 (24) PTC 449 (Del), he submitted that the judgment of Metro Plastic Industries (Regd) (Supra) has been distinguished, as in the case of Metro Plastic Industries (Regd) (Supra), the scope of the provisions under the Designs Act, 1911 were under consideration.

6. After considering the respective cases of the parties, the learned District Judge prima facie found that the question, whether there is an infringement of design or not, is pending for decision before the competent authority, the Controller of Designs, who has got jurisdiction alone to cancel or rectify the design duly registered with him. He also found that the plaintiff's design was registered in April, 2003, but the design of defendant No. 1 was also registered in December, 2005. The learned Judge perused the specimen of both the bars and found that apparently both are distinctively different though there is some resemblance which alone cannot be a ground for grant of injunction. The learned Judge was of the opinion that the use of lawful registered design by defendant No. 1 cannot be restrained by grant of injunction. The learned judge found that the plaintiff has

not made out a prima facie case for grant of injunction and the balance of convenience and irreparable loss lean in favour of the defendants.

7. The submission of Mr. Basu that the trial court has found that the design of defendant No. 1 is deceptively similar is not correct, rather the court has found that they are distinctively different. Only because there is some resemblance, the learned District Judge did not think it proper to grant injunction as defendant No. 1 was also using its registered design. It appears that both the parties have filed petitions before the Controller for cancellation of registration of the designs registered in favour of the other party. The argument of Mr. Basu that the learned Judge should have tested prima facie the ground taken by defendant No. 1 in the petition u/s 19 of the Act is also not acceptable. The learned Judge has taken care not to go into the merits of such petition filed on behalf of the defendant No. 1 to avoid prejudice to the cases of the parties before the Controller. I am also not inclined to discuss the arguments advanced on behalf of the parties on merits of their respective cases and the judgments relied by them in detail for the same reason.

8. On the whole, I am satisfied that there is no jurisdictional or legal error and the learned Judge has considered the relevant aspects while rejecting the prayer of injunction and the same needs no interference.

However, it is made clear that the order passed by the learned District Judge, or this order, in the matter of prayer for injunction, will not prejudice the parties before the Controller.

9. In the result, this appeal is dismissed. However, there will be no order as to costs.