(1)

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): DELHI

No. 59158-248 Genl./J.Clr./HCS /2019 Dated, Delhi the 30/10/19.

30 OCT 2019

Subject: Compliance of directions contained in order dated 27.08.2019 passed by Hon'ble Ms. Justice Pratibha M. Singh, Hon'ble High Court of Delhi, New Delhi, in CM(M) No. 1059/2018 titled "Amrish Agarwal, Trading as Mahalaxmi Product. Vs. Venus Home Appliances Pvt. Ltd.

Copy of the letter no. 33561-X/C-1 dated 22.10.2019, received from the Registrar General, Hon'ble High Court of Delhi, New Delhi along with copy of order dated 27.08.2019 passed by Hon'ble Ms. Justice Prathiba M. Singh in CM (M) No.1059/2018 titled "Amrish Agarwal, Trading as Mahalaxmi Product. Vs. M/s Venus Home Appliances Pvt. Ltd. " is circulated for information and necessary action/ compliance to:-

1. *All the Ld. Judicial Officers, Central District, Tis Hazari Courts, Delhi.*
2. *The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir./Acd./2019/4306 dated 06.08.2019.*
3. *The Chairman, Website Committee, Tis Hazari Courts, Delhi with request to direct the concerned official to upload the same on the Website of Delhi District Courts.*
4. *P.S to Ld. District & Sessions Judge (HQs) Tis Hazari Courts, Delhi.*
5. *Dealing Assistant, R&I Branch, for uploading the same on LAYERS.*
6. *For uploading the same on Centralized Website through LAYERS.*

(BHUPESH KUMAR)
Officer-In-Charge, Genl. Branch, (C)
Addl. District & Sessions Judge
Tis Hazari Courts, Delhi

Encl.: As above.

No. 2386 **Genl./J.Clr./HCS /2019** **Dated, Delhi the** 30 OCT 2019

Copy to:

The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.

Officer-In-Charge, Genl. Branch, (C)
Addl. District & Sessions Judge
Tis Hazari Courts, Delhi

IN THE DELHI HIGH COURT OF NEW DELHI

No. 33561-A C-1Dt.: 22-10-19 (2)

From,

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1. The District Judge, (Headquarter), Tis Hazari Court, Delhi.
2. The District Judge, District-Central, Tis Hazari Court, Delhi.
3. The District Judge, District-West, Tis Hazari Court, Delhi.
4. The District Judge, District North-West, Rohini Courts,Delhi.
5. The District Judge, District North,Rohini Courts, Delhi.
6. The District Judge, East, Karkardooma Court, Delhi.
7. The District Judge, North-East, Karkardooma Courts, Delhi.
8. The District Judge, Shahdara, Karkardooma Courts, Delhi.
9. The District Judge, South, Saket Courts, New Delhi.
10. The Districts Judge, South-East, Saket Court, New Delhi.
11. The District Judge, South-West, Dwarka Court, New Delhi.
12. The District Judge, District-New Delhi, Patiala Houes Court,New Delhi.
13. The District Judge-cum-Special Judge, Rouse Avenue, New Delhi.
14. Controller General of Patents, Designs of Trade Marks, Plot No. 32, Sector-14, Dwarka, New Delhi-110075.
15. Joint Secretary, DPIIT, Room No. 135, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi.

C.M. No. _____ in **CM (M) No.1059/2018**

Amirsh Agarwal. ... Petitioner/s
Trading as Mahalaxmi Product.

Versus

M/s Venus Home Appliances Pvt. Ltd. ... Respondent/s

Sir,

I am directed to forward herewith for information and immediate compliance of a copy of order dated 27/08/2019 by the Hon'ble Ms. Justice Prathiba M. Singh of this Court in the above noted case.

Vide order dt. 27/08/2019 , the Hon'ble Court has directed to circulate the Order of 27/08/2019 to all ld. District Judges so that the directions contained therein can be brought to the notice of the Judicial Officers,especially in the commercial courts. The Hon'ble Court has also directed to comunicate the same to the Controller General of Patents, Designs and Trade Marks and the Joint Secretary, DPIIT.

You are therefore requested to ensure the compliance of the order Dt. 27/08/2019.

DJ/SS (HQs)
23.X.19
O/C (General)

Yours faithfully,

22/10/19
Administrative Officer (J) C-1
For Registrar General

Encl: Copy of Order dt. 27/08/2019
Memo of Parties.

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(3)

IN THE HIGH COURT OF DELHI AT NEW DELHI
(CIVIL APPELLATE JURISDICTION)

C.M.(MAIN). No. 1059 of 2018

IN THE MATTER OF:

Shri Amrish Agarwal
Trading as Mahalaxmi Product ...Petitioner

Versus

M/s Venus Home Appliances Pvt. Ltd. ...Respondent

This petition is being filed herewith against impugned impugned order dated 04.08.2018 passed by Shri Joginder Prakash Nahar, ADJ-04,(Central) Tis Hazari District Court, Delhi in the subject matter suit T.M. No. 1111 of 2016, titled as M/s Venus Home Appliances Pvt. Ltd. Vs. Shri Amrish Aggarwal, whereby the Ld. ADJ was pleased to allow the application of the respondent under Order 7 Rule 14 CPC at the final hearing of the Suit.

MEMO OF PARTIES

Shri Amrish Agarwal
Trading as Mahalaxmi Product
Sandeep Cinema Compound
Muzaffar Nagar (UP) ...Petitioner

Versus

M/s Venus Home Appliances Pvt. Ltd.
41-A, Mandir Lane
Yusuf Sarai, New Delhi ...Respondent

[K.G. Bansal & S. K. Bansal]
Advocates for the Petitioner
K.G.Bansal & Company
52, Sukhdev Vihar, Mathura Road
New Delhi-110025
Phone No.26843455, 32959881
Fax: 26828578, 26938783
E-Mail: unitedmark@unitedipr.com

Place: New Delhi

Date:27.08.2018.

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th August, 2019.

\+ **CM (M) 1059/2018**

AMRISH AGARWAL ..... Petitioner

Through: Mr. Ajay Amitabh Suman and Mr. Vinay Kumar Shukla, Advocates. (M:9990389539)

versus

M/S VENUS HOME APPLIANCES PVT. LTD. ..... Respondent

Through: Mr. R. K. Aggarwal and Ms. Aparajita Sharan, Advocates. (M:9654010731)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 36518/2018 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 1059/2018 & CM APPLs. 36516-17/2018

2. The present petition has been filed challenging order dated 4th August, 2018 by which the ld. Trial Court has taken on record the Legal Proceedings Certificate relating to the trademark '*VENUS*'. The objection by the Petitioner/Defendant (*hereinafter, 'Defendant'*) is that the evidence is concluded and the Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) is seeking to file the said documents at the stage of final arguments.

3. He relies upon a judgment of a ld. Single Judge of this Court in ***Gold Rock World v Veejay Lakshmi Engineering Works Ltd. (2008) 149 PLR 40*** to argue, that at this belated stage, the document could not have been taken

(5)

on record. Ld. counsel appearing for the Plaintiff, on a query from this Court states that though the trademark registration was itself not filed at the initial stage, only the renewal certificate was on record and the same was duly exhibited.

4. In a trademark infringement matter, the Court ought to be able to see the mark. Either the Legal Proceeding Certificate or registration certificate along with the Journal extract ought to have been filed by the Plaintiff, to enable the Court to see that the trademark itself is registered. In this case, the Legal Proceeding Certificate was not filed during the entire pendency of the suit. It was only at the final stage of arguments that the Plaintiff sought to file the Legal Proceeding Certificate.

5. In matters involving trademark infringement, there is no doubt that the trademark registration itself is a matter of public record, and can be accessed by visiting the Trademark Registry's website itself. However, in order for the Court to consider the registration, documentary evidence in the form of either the trademark registration along with the journal extracts or the Legal Proceeding Certificate ought to be placed on record. In the present petition, initially, except the renewal certificate no other document was filed and the ld. Trial Court has taken the Legal Proceeding Certificate on record at the final stage. Though the documents are public record, usually the normal course, which is adopted is to obtain certified copies of the said public record in order to rely on the same in suit proceedings or other proceedings. In the present case, neither was done by the Plaintiff. The Defendant, thus, opposes allowing the Legal Proceeding Certificate to be taken on record.

6. The Court has heard the parties and perused the pleadings in the

plaint, which are clearly based on the registration of the trademark 'VENUS'. The trademark registration certificate ought to have been filed at the initial stage, however, since substantive justice is to be done in the matter and the trademark registration itself was pleaded by the Plaintiff, the Legal Proceeding Certificate is permitted to be taken on record, subject to payment of Rs.50,000/- as costs to the paid to the Defendant.

7. It is further directed that in trade mark infringement matters the following documents ought to be necessarily filed along with the plaint:

i. Legal Proceedings certificate (LPC) of the trade mark showing the mark, date of application, date of user claimed, conditions and disclaimers if any, assignments and licences granted, renewals etc.,

ii. If the LPC is not available, at the time of filing of the suit and urgent orders of injunction are being sought, a copy of the trade mark registration certificate, copy of the trade mark journal along with the latest status report from the website of the Trade Mark Registry. This should be accompanied by an averment in the pleadings that LPC is applied for. Specific averment ought to be made that there are no disclaimers imposed on the mark and the mark stands renewed. Any licences and assignments ought to be pleaded;

iii. Usually, at the time of admission/denial, parties ought not to be permitted to deny the factum of registration and other facts accompanying the registration as the same are easily verifiable from public record online;

iv. In the case of (ii), the party ought to file the LPC prior to the commencement of the trial, if any aspect of the trade mark registration is being disputed by the opposite side;

(7)

The present order be communicated to all the ld. District Judges by the worthy Registrar General of this Court so that the directions contained herein can be brought to the notice of the Judicial officers especially in the commercial courts. In addition, the order be also communicated to the Controller General of Patents, Designs and Trade Marks (Ph:-022-24132735, Email:- cgoffice-mh@nic.in) as also the Joint Secretary, DPIIT (Ph:- 022-23062983) to ensure that LPCs when applied for are issued without delay and in any case within a period of 30 days.

8. With these observations, the petition is disposed of. All pending applications also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 27, 2019/dk

TRUE COPY

EXAMINER