

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 09.02.2017**
Decided on: 28.02.2017

+ CS(COMM) 77/2017, I.A. 1216/2017 (O 26 R 9), I.A. 1217/2017
(exemption), I.A. 1218/2017 (under Section 151 CPC)

JANUKI KUMARI J.B.RANA & ORS Plaintiffs

Through: Mr C.M. Lall, Mr Nancy Roy,
Mr Pranay Sarkar and Mr Jeetu Sharma,
Advs.

versus

ASHOK KUMAR AND ORS Defendants

Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

I.A. 1215/2017 (O 39 R 1 & 2)

1. The present suit has been filed by the plaintiffs claiming the following reliefs:-

a. A decree of permanent injunction be passed thereby directing that the Defendants, its proprietor, partners, employees, agents, distributors, franchisees, representatives and assigns be restrained from manufacturing or authorizing the manufacture, selling or offering for sale, marketing, advertising, promoting, displaying or in any other manner whatsoever any sports shoe or footwear and / or any other allied and cognate goods with

embossing on the heel of the sole of the shoe "MODEL IN NEPAL", "MADE IN NEPAL", "Design In Nepal", "Degn In Nepal", "MADE AS NEPAL" , "DESIGN AS NEPAL", "DESIGN FROM NEPAL" or any other line which are deceptively similar to the aforementioned to pass off the goods of the Defendant as that of the Plaintiff and/or using the Plaintiffs Registered Trade mark registered at 1369593, 1668434, 1673434 and 816260 or other deceptively similar trademarks like "GOLDSTAR"/ "GOODSTAR"/ "GQLDSTAR" "GOLBSTAR"/ "GLOBSTAR" / "GALDSTOR"/ "GOALSTOR"/ "GOLSTAR"/ "GLADSTAR" and getup and/or any other trade mark which is identical or deceptively or confusingly similar to any of the above listed trade/label mark and/or any other trade mark which are deceptively similar with the Plaintiffs trademarks and facilitate passing off the Defendant's product as that of the Plaintiff thereto.

b. An order for delivery up of all the goods, dyes, moulds, blocks, tags, labels, other printed matter and any other material whatsoever bearing the, trade mark/label mark and/or any other mark confusingly and deceptively similar to the trade mark/label mark, or bearing any mark "GOLDSTAR"/ "GOODSTAR"/ "GQLDSTAR" "GOLBSTAR"/ "GLOBSTAR" / "GALDSTOR"/ "GOALSTOR"/ "GOLSTAR"/ "GLADSTAR" and/or the Getup/shape of the Plaintiffs shoe and/or with embossing MODEL IN NEPAL", "MADE IN NEPAL", "Design In Nepal", "Degn In Nepal" , "MADE AS NEPAL" , "DESIGN AS NEPAL" , "DESIGN FROM NEPAL" or any similar connotation directed to pass off its products as that of the plaintiff, to the authorized representatives of the plaintiff for the purpose of destruction;

c. A decree of damages of Rs.1,00,00,000/- for illegal profits earned by the Defendant on account of their illegal activities and for the loss caused to the goodwill and reputation of the Plaintiff."

2. Vide this application plaintiffs have claimed *ex-parte* injunction against Ashok Kumar/John Doe and defendant no 2 allegedly doing its

business of manufacturing counterfeit products in Hapur Meerut at the address “Guru Kripa, Dheer Khera, Industrial Area, Merrut Road, Hapur 245101”.

3. The brief facts of the case as set out in the plaint are that the plaintiff firm M/s Kiran Shoes Manufacturers is the registered partnership firm registered with the Department of Industries, Nepal and other plaintiffs are the partners and Sh. Ghanshyam Bahety is the authorized representative of all the plaintiffs. It is submitted that the plaintiff firm is engaged in the business of manufacturing and marketing sports shoes and footwears under its registered trademark GOLDSTAR vide trademark bearing nos. 1668484, 1669858, 1673434 and 816260 and the manufacturing takes place in Nepal and they are exporting it to India since 1977/1998. The plaintiffs have various distributors in India including M/s Katyal Metal Agencies at New Delhi. It is submitted that plaintiffs have also opened a Liaison office at 181-B, 2nd floor near Sai Mandir, Khirki Village, Malviya Nagar, New Delhi-1100017 through which the Plaintiffs carrying on its business.

4. It is submitted that defendants are manufacturing and selling counterfeit products embossing "GOLDSTAR"/"GOODSTAR"/"GQLDSTAR"/"GOLBSTAR"/"GLOBSTAR"/"GALDSTOR"/"GOALSTO

R"/"GOLSTAR"/"GLADSTAR"and/or MODEL IN NEPAL", "MADE IN NEPAL", "DESIGN IN NEPAL", "DEGN IN NEPAL", "MADE AS NEPAL", DESIGN AS NEPAL" , "DESIGN FROM NEPAL" on the sole of the shoes, like the embossing of "MADE IN NEPAL" on the heel of the sole of Plaintiffs' products, and these counterfeit shoes are manufactured at the addresses of the Defendants *as mentioned in the cause title of the Plaint* and that this action of the defendants amounts to infringement of registered trademarks and passing off.

5. The Court heard the arguments on two count i.e. maintainability of the suit in the present form and also grant of *ex-parte ad interim* injunction against unknown persons who are named as John Doe/Ashok Kumar and against defendant no. 2.

6. Learned counsel for the plaintiffs has submitted that the suit is maintainable because there is no provision in Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") which bars the suit in the present form. He has also relied on the provisions of order VII Rule 1(c) which required that the plaintiff has to furnish the name, description and place of residence of the defendant so far that can be ascertained and since the plaintiffs, at this moment, are not able to ascertain the defendants shown as John Doe or

Ashok Kumar but as soon as they would be able to ascertain these names it would be brought on record and that the defendant no. 2 is ascertainable and therefore the suit cannot be said to be not maintainable. He has also relied on Order 26 Rule 9 of CPC and argues that the Court is empowered to do the local investigation where it is so needed for the purpose of elucidating the matter in dispute and can issue commission for that purpose and argues that once an injunction is issued, court can appoint commissioners to identify the places where the counterfeit goods are being sold and persons selling it.

7. I have given thoughtful consideration to this part of the argument of learned counsel for the plaintiffs. The plaintiffs have not given any address of defendant no. 1 whom he described as John Does/Ashok Kumar. However, the plaintiffs have named one Guru Kirpa as defendant no. 2 who is stated to be carrying on the business in the industrial area, Meerut road, Hapur but neither the identity, whether he is an individual or a firm or a company, nor the complete address of defendant no. 2 is there on record. This court does not know who the defendant no. 1 is but defendant no. 2 definitely is not situated in Delhi and plaintiffs are also situated in Nepal where they are carrying on their business and exporting goods to India although they claim to have a Liaison office in India. Definitely, an issue

relating to territorial jurisdiction of this Court arises and this court feels that it would be proper if both the issues shall be taken up together.

8. Learned counsel for the plaintiffs has pressed for the grant of injunction against defendant no. 1, unknown persons, who according to him are selling their counterfeit products within Delhi and urged that they, be restrained from selling the counterfeit products and infringing the plaintiffs' trademark and causing irreparable loss and injury to the plaintiffs whom he could not identify despite their best efforts. It is also urged that the balance of convenience also lies in their favour. It is argued that the plaintiffs are ready and open to any restrictions placed by the Court on them while injunctioning the John Doe or Ashok Kumar from selling the counterfeit products and that there are precedents of this Court show that in similar circumstances courts had injunctioned John Doe /Ashok Kumar and that the courts are bound by precedents and in case it does not want to follow the precedents and wants to differ with the earlier orders of this Court passed by the Single Judges, this Court has to refer the matter to the Division Bench of two Judges and relied on the findings in para 27 of the Division Bench in the case **M/S RSPL Limited V. Mukesh Sharma & Anr** 2016(6) R.A.J. 606 (Del):-

“27. Judicial discipline and propriety requires that a Single Bench should follow the decision of a Division Bench without demur as the Single Bench is bound by it. It is all the more so when the Division Bench decision is of an appellate court and the Single Bench happens to be the trial court. It is a matter of judicial propriety that the hierarchical system is followed. A decision of an appellate court may in the view of the trial court be right or wrong, but the trial court has no option but to follow it. In fact, a Single Judge cannot even refer a matter for decision by a Bench comprising of more than two judges. Furthermore, the Single Judge can only refer a matter to be placed before a Division Bench of two judges if the Single Judge finds that there is a conflict of decisions of Single Benches. If there are conflicting decisions of Division Benches of co-equal strength, it is, of course, open to the Single Judge to follow the later decision. But, in such a situation, the learned Single Judge cannot seek a reference to a Full Bench of three or more Judges. That would fall within the domain of a Division Bench. The Supreme Court in Pradip Chandra Parija vs. Pramod Chandra Patnaik: (2002) 1 SCC 1 observed as under:-

5. The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges -- a proposition that learned counsel for the appellants did not dispute. The learned Attorney-General drew our attention to the judgment of a Constitution Bench in Sub-Committee of Judicial Accountability vs. Union of India (1992) 4 SCC 97] where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in Nityananda Kar 1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177 : (1992) 19 ATC 236: 1990 Supp (2) SCR 644] was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of

three learned Judges, if it also took the same view of Nityananda Kar [1991 Supp (2) SCC 516: 1992 SCC (L&S) 177: (1992) 19 ATC 236: 1990 Supp (2) SCR 644], could have referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."

9. Learned counsel has cited following cases as precedents-

S.No	Citation	Case Title	Date of Decision
1.	2016(6) R.A.J. 606 (Del.)	M/s. RSPL Limited v. Mukesh Sharma & Anr.	03.08.2016
2.	CS(OS) 3205/2014	M/s. Sandisk Coraporation v. John Does	17.10.2014
3.	CS(OS) 2629/2014	Societe Des Produits Nestle, S. Av. Mohd. Zahid And Sons	28.11.2014
4.	CS(COMM) 1567/2016	C&S Electric Limited v. Mrn Ashok Kumar	28.11.2016

		Trading	
5.	CS(OS) 872/2015	Samsung Electronics Co. Limited v. A. Shajahan	27.03.2015
6.	CS(OS) 873/2015	Samsung Electronics Company v. Mohd. Zaheer Trading	27.03.2015
7.	CS(OS) 874/2015	Samsung Electronics Company v. Dinesh Prajapati	27.03.2015
8.	CS(OS) 453/2015	Samsung Electronics Company v. D R Radio Corporation & Ors.	20.02.2015
9.	CS(OS) 2011/2010	Msm Satellite Singapore Pte LTD v. Star Cable Network And Ors.	01.04.2010
10.	CS(OS) 384/2011	ESPN Software India Private Ltd. v. M/S Tudu Enterprise And Ors.	18.02.2011
11.	CS(OS) 785/2012	Viacom 18 Motion Pictures v. Jyoti Cable Networks	26.03.2012
12.	CS(OS) 3207/2011	Reliance Big Entertainment v. Multivision Network And Ors.	19.12.2011
13.	CS(OS) 141/2004	Ardath Tobacco Company Ltd. v. Munna Bhai & Ors.	09.01.2009
14	CS(OS) 1724/2011	Reliance Big Entertainment Private Ltd. v. Jyoti	20.07.2011

		Cable Network	
15.	CS(OS) 1471/2014	Tata Sky Ltd. v. Nimble Tv Inc. & Ors.	04.04.2016
16.	CS(OS) 2243/2014	Star India Pvt. Ltd. v. Haneeth Ujwal	28.07.2014
17.	CS(OS) 1299/2015	Fox Star Studios India Ltd. & Ors. V. Macpuler Willam & Ors.	14.05.2015

10. John Doe orders is nothing but an injunction sought against the person or persons whose identity is not known at the time of issuance of the order. John Doe has its origin under reign of England's King Edward III when the orders were used to refer to unidentifiable defendants.

11. Such orders are popular in the cases of intellectual property rights and enables an intellectual property rights owner (the plaintiff) to serve notice and take action against anyone, whose identity is unknown and found infringing the IP rights of the plaintiff. Such orders do not specify any one defendant in particular and allow the owner of the intellectual property to search the premises and recover evidences on infringement of its rights by unknown defendant (John Does). These orders are descendants of the Anton Pillar injunctions which originated in the England Court of Appeal in *Anton Pillar K.G vs. Manufacturing Processes Ltd (1976) 1 All ER 779*

commonly known as Anton Pillar orders with the difference however that the Anton Pillar orders are defendants specific. The Anton Pillar are *ex-parte* orders which would allow the plaintiff to enter the premises of the defendants for inspection or removal of critical evidence which could otherwise be destroyed by the defendant if it had forewarning of a legal action.

12. In India, John Doe or Ashok Kumar orders was first passed by Delhi High Court in the case of *Taj Television Limited vs. Rajan Mandal, 2003 FSR 22.*

The Court in that case noted-

“16. Mr. Anand, learned counsel for the plaintiffs, has made references to a large number of Canadian, Australian, English and American cases but I would not like to burden this order with all the judgments on which reliance has been placed at this stage. Since “John Doe” orders are passed in the Court of Canada, America, England, Australia and in some other countries. The judicial systems of all these countries have basic similarity with our judicial system. Therefore, **looking to the extra ordinary facts and circumstances of the case, in the interest of justice the courts in India would also be justified in passing “John Doe “orders.”**

13. It is noteworthy here that the Court in *Taj Television (supra)* had invoked its jurisdiction under Section 151 of CPC reproduced as under:-

“14. Mr. Anand placed reliance on the judgment of the Supreme Court in *Manohar Lal Chopra v Rai Bahadur Rao*

Raja Seth Hiralal, AIR 1962 SC 527. The court held that the inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.”

14. With all the humility this Court wants to clarify that it is not entering into the debate whether passing of John Doe orders in exercise of discretionary powers under Section 151 of CPC is right or wrong, what this Court is considering is whether, is it proper for this Court to exercise its inherent powers under Section 151 of CPC in favour of the plaintiffs, in the facts and circumstances of this case and pass a John Doe/Ashok Kumar Order when defendant no. 2 who is allegedly infringing trade mark by manufacturing counterfeit goods is not doing so within the territorial jurisdiction of this court and plaintiffs are also not carrying on their business in India rather they are the exporters. There are no questions of law involved rather it is the application of law on the given facts which the plaintiffs want the Court to apply on the facts of their case. In none of the cited cases, facts are similar to this case. The law laid down in *RSPL (supra)* is not applicable.

15. In *Reliance Big Entertainment (supra)* also known as the Singham Case, John Doe order was passed by the Delhi High Court on the anticipation of violation of the right of the plaintiff, without any cogent evidence to that effect and merely relying on similar instances that had happened in the past. The Court noted “*Past practice of unauthorized persons indulging in such illegal activities of copying the film on CDs/DVDs/Blue-ray disc and distributing the same has also been recognized in the judgment relied upon by the plaintiff. In the facts of this case, as detailed above, in my view plaintiff has succeeded in making a prima facie case in its favour. Plaintiff has exclusive copy right over the film Singham which is yet to be released. In case, CD, DVD, Blue-ray, VCD are made by unidentified persons and distributed and shown on cable TV, DTH, Internet, MMS, Tapes and CAS, plaintiff will indubitably suffer irreparable loss and injury. For the forgoing reasons, defendants and other unnamed and undisclosed persons, are restrained from communicating or making available or distributing, or duplicating, or displaying, or releasing, or showing, or uploading, or downloading, or exhibiting, or playing, and/or defraying the movie Singham in any manner without proper license from the plaintiff or in any other manner which would violate/infringe the plaintiff’s*”

copyright in the said cinematograph film Singham through different mediums like CD, DVD, Blue-ray, VCD, Cable TV, DTH, Internet, MMS, Tapes, Conditional Access System or in any other like manner”. Singham order and other similar orders in *Reliance Big Entertainment (supra)*, *Viacom 18 Motion Pictures (supra)* have been passed in the matters where the term “Internet” has been used while granting the anticipatory injunction and this has resulted in shutting down websites precluding, uploading of the infringing materials. It is noteworthy that all the cases on which the plaintiffs have relied as precedents had definite defendants towards whom the plaintiffs of those cases had raised a pointing finger and the courts while exercising its discretion *qua* the identified defendants under Order 39 Rule 1 and 2 CPC also on the facts and circumstances of each case exercised its jurisdiction under Section 151 of CPC against John Doe or Ashok Kumar.

16. This is true for all cited cases except *M/s. Sandisk Coraporation (supra)* case. The court exercised its inherent jurisdiction on the facts and circumstances of that case and therefore the fact that the court on the facts and circumstances of *Sandisk (supra)* case choose to exercise jurisdiction in a particular way, it cannot be said that it forms precedent of binding nature

when the facts and circumstances of this case are entirely different. The exercise of discretion depends on the facts and circumstances of each case.

17. The Courts in India for the first time recognized the concept of John Doe (or Ashok Kumar) in *Taj Television case (supra)* and while exercising its inherent jurisdiction under Section 151 of CPC relied on the findings of the Supreme Court in *Mohan Lal Chopra Case (supra)* and issued injunction against John Doe. It is to be noted that *Padam Sen (supra)* was relied upon in *Manohar Lal Chopra case (supra)*, the Apex Court in ***Padam Sen vs. The State of Uttar Pradesh, AIR 1961 SC 218*** has held as under:-

“9. The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in S. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.”

10. The question for determination is whether the impugned order of the Additional Munsif appointing Sri Raghbir Pershad Commissioner for seizing the plaintiff books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the

Courts for passing such orders which would affect such rights of a party. Such powers cannot, come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure. A party has full rights over its books of account. The Court has no inherent power forcibly to seize its property. If it does so, it invades the private rights of the party. Specific procedure is laid down in the Code for getting the relevant documents or books in Court for the purpose of using them as evidence. A party can ask the help of the Court to have produced in Court by the other party such documents as it would like to be used in evidence and are admitted by that party to be in its possession. If a party does not produce the documents it is lawfully called upon to produce, the Court has the further power to draw any presumption against such a party who does not produce the relevant document in its possession, especially after it has been summoned from it. Even in such cases where the Court summons a document from a party, the Court has not been given any power to get hold of the document forcibly from the possession of the defaulting party.”

18. In CPC, there is no provision to issue injunctions against unknown persons. It is pertinent to note here that in most other jurisdictions such as UK and Australia, there exists sufficient statutory backing for the Courts to pass such orders. For instance, in UK, this type of an order finds formal recognition in Civil Procedure Act of 1997.

19. The next question is whether it is a fit case to exercise its inherent powers under Section 151 of CPC to issue injunctions. Order 39 of CPC confers powers to the courts to issue injunctions only against “the

defendants” and not against **“a defendant”**. It is a settled proposition of law that the inherent powers of the Court is in addition to and complimentary to the powers expressly conferred upon the Court. Such powers can be exercised to serve the ends of justice but as discussed in *Padam Sen (supra)*, not to be exercised in derogation of the express provisions of the law.

20. This Court has in a previous decision in *The Indian Performing Right Society Ltd vs. Mr. Badal Dhar Chowdhry and Ors, 2010 (43) PTC 332 (Del)*, noted that injunction must necessarily be specific in character and cannot be indeterminate. The Court has noted as under:-

7. The court ought not issue an injunction which is vague or indefinite. Breach of injunction has serious consequences for the violator. However, before the Defendant can be so enjoined, the Defendant ought to be made aware of the precise act which he is prohibited from doing. A vague injunction can be an abuse of the process of the court and such a vague and general injunction of anticipatory nature can never be granted. Lord Upjohn in Redland Brick Ltd. v. Moeris (1970) A.C. 652 observed that a defendant is entitled to know what he is required to do or to abstain from and this means not as a matter of law but as a matter of fact. The Division Bench of this Court also in Time Warner Entertainment Co. L.P. v. R.P.G. Netcom; AIR 2007 Delhi 226 has held that a vague order of injunction which is uncertain in its application and likely to cause confusion should not be passed; it will be impossible for the courts to ensure implementation and compliance without the Defendant or the court knowing as to which works the injunction applies.”

21. In another case, **Adarsh Tobacco vs. Mr. Munna Bhai and Ors, 2009 (39) PTC 208 (Del)**, although this Court while granting injunction against identified defendants, also granted *ex-parte* injunction against the John Doe defendants, however while finally disposing of the matter, Court noted as under:-

“9. Though in the plaint reliance was also placed on ‘John Doe’ order as aforesaid and in pursuance where to the premises of others besides the defendants 1, 2 and 3 were also raided and infringed goods found there from also seized, the plaintiff having not brought any other person against whom the order may be extended, till the disposal of the suit, the suit is decreed against the defendants 1,2 and 3 only for the relief of permanent injunction in terms of para 24 (i) (ii) and (iii) of the plaint and a decree for recovery of damages in the sum of Rs. 25,000/- from each of the defendants 1 to 3 is also passed in favour of the plaintiff. The plaintiff shall also be entitled to proportionate costs of the suit from the defendants 1 to 3.”

22. This Court has thus passed the permanent injunction decree only against the definite defendant nos. 1, 2 and 3 and no permanent injunction was granted against John Doe/Ashok Kumar.

23. Similarly, the Supreme Court also in the case of **Laxmishankar Harishankar Bhatt V. Yashram Vasta(dead) by L.Rs, 1993 (3) SCC 49** has held that the relief cannot be granted to the plaintiff when there are no clear

averments in the plaint as to whom the relief is being claimed against. The Court had noted “a careful reading of above clearly discloses that there is no clear averment as to who the co-owners are and what exactly is the nature of right claimed by them. A vague statement of this character, in our considered opinion, could hardly be sufficient to non-suit the appellant on the grant of non-joinder of parties. Order 39 Rule 1 and 2 of the CPC confers jurisdiction to the Courts to grant temporary injunction and the Court has to satisfy itself (i) that the plaintiff has a *prima facie* case, (ii) that the balance of convenience is in favour of the plaintiff, and (iii) that the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed and yet these tests are subject to the exercise of discretion to meet the ends of justice as was held in **Dalpat Kumar And Anr. vs Prahlad Singh And Ors. (1992) 1 SCC 719.** Moreover, no injunction can be granted under these rules against the party who is not a party to the suit as was highlighted in **L.D. Meston School Society vs Kashi Nath Misra, AIR 1951 All 558.** It was noted that the persons who were not the defendants in the suit in which injunction was granted nor were named in the order cannot be proceeded against any contempt for disobeying the injunction order. The

Apex Court in para 22 of M/s H.M. Kamaluddin Ansari and Co. vs. Union of India and Ors, (1983) 4 SCC 417 has observed as under:-

“22. In any case if the injunction order is one which a party was not bound to comply with, the court would be loath and reluctant to pass such an ineffective injunction order. The court never passes an order for the fun of passing it. It is passed only for the purpose of being carried out.”

24. Order 39 Rule 3 of CPC noted as under:-

“3. Before granting injunction, court to direct notice to opposite party.- *The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:*

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or Sent.”

25. This court in para 34 of **S.B.L. Ltd. Vs. Himalayan Drug Co.,**

AIR 1998 Delhi 126, observed as under:-

“34. Looking to the scheme of Order 39, CPC it is clear that ordinarily an order of injunction may not be granted *ex parte*. The opposite party must be noticed and heard before an injunction may be granted. Rule 3 carves out an exception in favour of granting an injunction without notice to the opposite party where it appears that the object of granting injunction would be defeated by the delay. Conferment of this privilege on the party seeking an injunction is accompanied by an obligation cast on the court to record reasons for its opinion and an obligation cast on the applicant to comply with the requirements of Clauses (a) and (b) of the proviso. Both the provisions are mandatory. The applicant gets an injunction without notice but subject to the condition of complying with Clauses (a) and (b) above said.”

26. The Court has to ensure that the obligations imposed upon it by this provision of law are complied with. In a case where the *ex-parte ad interim* injunction is granted, the opposite party against whom an order of injunction is passed is required to be served with the copy of the order along with the other relevant documents on same day or next day and the plaintiff has to file such an affidavit of compliance in the Court. On an *ex-parte ad interim* injunction being granted against John Doe or Ashok Kumar i.e. unknown defendant, this Court wonders how the applicant would fulfill the conditions

of this provision of law and if this Court cannot ensure the compliance it would be failing in its obligations conferred under the provisions of law. In the case *H.H. Kamaluddin (supra)*, the Supreme Court has cautioned that an ineffective injunction should not be granted and the Court shall never pass an order for the “*fun of passing it*”. Learned counsel for plaintiffs has failed to point out any manner in which the *ex-parte* injunction order against the unknown defendants be made known to them or the way in which the compliance of Order 39 Rule 3 of CPC can be done. Grant of *ex-parte* injunction in this case, court feels like issuing a blank civil search warrant against unknown/unnamed infringers and thereby allowing the plaintiffs to enter any premises, any shop in search of the counterfeit articles, either personally or through court commissioners under Order 26 Rule 9 of CPC. The court wonders if this is the object of this provision. It is not that the plaintiffs are remediless against unknown persons i.e. the infringers in case of mass infringement of trademark. When wide scale of violation or infringement of trademarks are found, the remedy is available in the Trademark Act itself by way of criminal complaint against those unknown infringers of the trademark and the offences are cognizable offences under Section 115 of the Trademark Act .

27. For the foregoing reasons, I do not find it a fit case where the discretion of grant of *ex-parte ad interim* injunction should be exercised in favour of the plaintiffs.

**DEEPA SHARMA
(JUDGE)**

CS(COMM) 77/2017

List the matter for arguments on jurisdiction of the Court on 17.07.2017.

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 28, 2017

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