

2022 LiveLaw (Del) 219

IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: JUSTICE PRATHIBA M. SINGH

CS (COMM) 133/2022; 04.03.2022

KHADI & VILLAGE INDUSTRIES COMMISSION versus RAMAN GUPTA AND OTHERS

Plaintiff Through: Ms. Shwetasree Majumder, Advocate with Ms. Archita Nigam & Ms. Devyani Nath, Advocates.

ORDER

1. This hearing has been done through hybrid mode.

I.A. 3301/2022 (for exemption)

2. This is an application seeking exemption from filing original and clear copies of documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed.

3. Application is disposed of.

I.A. 3302/2022 (u/S 12A)

4. This is an application seeking exemption instituting pre-litigation mediation. In view of the orders passed in CS (COMM) 132/2022 titled ***Upgrad Education v. Intellipaat Software***, the application is allowed and disposed of.

I.A. 3303/2022 (exemption from advance service to the Defendants)

5. In view of the fact that the Plaintiff has sought ex parte ad-interim injunction, exemption from advance service to the Defendants is granted.

6. Application is disposed of.

I.A. 3300/2022 (for leave to file additional affidavit)

7. This is an application seeking leave to file additional documents. The additional documents, if any, shall be filed strictly in accordance with the Commercial Courts Act, 2015.

8. The application is disposed of.

CS (COMM) 133/2022

9. Let the plaint be registered as a suit.

10. Issue summons to the Defendants through all modes upon filing of Process Fee.

11. The summons to the Defendants shall indicate that a written statement to the plaintiff shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

12. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of

the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 11th April, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

14. List before Court on 20th May, 2022.

I.A. 3566/2022 (u/O VI Rule 17 read with Order I Rule 10 read with Section 151 of CPC)

15. This is an application on behalf of the Plaintiff under Order VI Rule 17 read with Order I Rule 10 read with Section 151 of CPC. By way of the present application, the Plaintiff seeks to implead M/s Khadi by Heritage Pvt. Ltd., which is a company incorporated on 3rd June, 2020, as Defendant No. 5.

16. The suit is at the stage of inception. One of the Defendants in the main suit, i.e., Defendant No. 2, is a director in the company which is now sought to be impleaded. The trade mark used by the said entity is also the same as the other Defendants and the partnership firm, i.e., 'KHADI BY HERITAGE'. Since the suit itself is yet to be registered, the application is allowed. The amended plaint and memo of parties filed with the application is taken on record. Let the amended plaint be moved to the 'Pleadings' folder and the old plaint be moved into a 'Miscellaneous' folder.

17. Accordingly, the application is disposed of.

I.A. 3299/2022 (u/O XXXIX Rule 1&2)

18. The Plaintiff- Khadi & Village Industries Commission is a body established by a statute, i.e., Khadi and Village Industries Commission Act of 1956. It is the registered proprietor of various word marks and device marks bearing word 'KHADI' in Hindi and English, both in artistic form as also in logo form along with the 'Charkha Logos'.

19. The grievance of the Plaintiff in the present case is that the Defendants are using the trading style 'KHADI BY HERITAGE', the corporate name KHADI BY HERITAGE as also the mark 'KHADI BY HERITAGE' and the 'Charkha Logo' in various forms.

20. Ms. Majumder, Id. Counsel for the Plaintiff submits that the Defendants also operate a website by the name <https://khadi-byheritage.business.site/>, in which they use 'Charkha Logos' and the trademark 'KHADI BY HERITAGE'. On the website they promote and sell various products, especially medical products such as PPE Kits, hand sanitizers and fireballs. It is submitted by the Id. Counsel that the use of the trademark KHADI in this manner, especially, in relation to the medical products raises enormous concerns in respect of the quality of these products apart from constituting violation of various statutory and common law rights of the Plaintiff.

21. It is clear from a perusal of the plaint that the word 'KHADI' is a registered trademark along with logos and various device marks. 'KHADI' as a trade mark is promoted by the Plaintiff through a statutory corporation and in recent times enormous emphasis has been given globally also to promote Khadi products. Moreover, during the recent pandemic, the Plaintiff has also manufactured and sold various medical products such as hand sanitizers, etc. which are also used extensively by the consuming public.

22. Under such circumstances, use of the word 'KHADI' which is a registered trademark, especially, for medical products such as PPE kits, hand sanitizers and fireballs without any quality control is not only violative of the rights of the Plaintiff but also of concern to the interest of the general public as there is no quality supervision. Moreover, the use of the mark 'KHADI BY HERITAGE' along with 'Charkha logo' on the website could also lead the consumers to believe that the Defendants are related or associated with/sponsored by the Plaintiff. The use of the word 'KHADI' as mark or as logo/device as also in trading style and as corporate name is illegal and unlawful. The Plaintiff has made out a prima facie case for grant of interim injunction in its favour. Non-grant of the ex parte could cause enormous damage to the consuming public on a day-to-day basis.

23. Accordingly, the Defendants, their partners, directors, distributors and all the others acting on their behalf are restrained from manufacturing, selling, offering for sale any products including the PPE kits, masks, hand sanitizers, fireballs or any other products bearing the trademark 'KHADI BY HERITAGE' or any of the artistic works/wordmarks/logos used by the Plaintiff.

24. The Defendants are also restrained from using the trade mark KHADI either on a stand-alone basis or in a logo form, the CHARKHA logo with the mark KHADI as also the domain names and the corresponding websites <https://khadi-by-heritage.business.site/>, www.KhadiByHeritage.com and www.KhadiByHeritage.org. Registrars of these domain names upon the receipt of this order shall suspend the use of the domain names. Status quo shall be maintained and no third-party interest shall be created in the said domain names till further orders. The Defendants are also restrained from even using the trading style of 'Khadi by Heritage' for the partnership firm and the company which is incorporated by the name 'Khadi by Heritage Pvt. Ltd'.

25. Compliance of Order XXXIX Rule 3 CPC be effected within one week.

26. Reply to the application be filed within four weeks from the service of the present order, along with the paper-book.

27. List the application before the Court on 20th May, 2022. *Dasti*.