

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL SUITS NO. 5 of 2021**

=====

SYMPHONY LIMITED
Versus
RAJ COOLING SYSTEM PRIVATE LIMITED

=====

Appearance:

MR HARSHIT TOLIA for the Defendant(s) No. 2
NOTICE NOT RECD BACK for the Defendant(s) No. 1
MR ANUJ K TRIVEDI(6251) for the Plaintiff(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 04/05/2022****ORAL ORDER**

1. Heard learned advocate Mr.Anuj K. Trivedi for plaintiff and learned advocate Mr. Harshit Tolia for the defendant No.2.
2. The present suit has been filed by the Plaintiff seeking following prayers :

“(A) This Hon'ble Court may be pleased to pass an order of permanent injunction against the defendants restraining the Defendants, their directors, partners, proprietors, officers, servants, agents, dealers, stockiest, distributors, other business concerns, employees, contractors, consultants, licensee, permitted user, Companies, partnership firm, proprietary concern, etc., from manufacturing, marketing, selling, advertising, and directly or indirectly dealing in air coolers with design, shape, configuration, pattern and/or any other design which may be identical to and/or imitation or piracy of plaintiffs' registered design/s and thereby restrain defendants from committing an act of infringement of registered design bearing No. 288184 w.e.f. 25.10.2016 (for the

products of air cooler in class 23-04) of the plaintiff and further, the defendants may be restrained from selling their present product of air cooler having Model Name "Allwyn AC201" and "Allwyn AC203", as the same is infringing the registered design of plaintiff stated above or from selling any other product with any different name which may amount to infringement of registered design of the plaintiffs vide design registration no.288184 w.e.f. 25.10.2016 (for the products of air cooler in class 23-04), in the interest of justice;

(B) The Hon'ble Court be pleased to direct the defendants to furnish the details of true and correct accounts in respect of the products sold in the market which is the infringing copy/piracy of the registered design of the plaintiff under registration No. 288184 w.e.f. 25.10.2016 (in Class 23-04) and after verifying the said account and deriving the amount of profit earned by them, order the defendants to pay the said amount of profit earned to the plaintiffs with 18% interest from the date of the suit, till realization, in the interest of justice;

(C) This Hon'ble Court may be pleased to pass an order to deliver up of all infringing/ pirated products and further to deliver up dyes, mould, injection mould, machine, or such other materials used for manufacturing the air coolers which are amounting to the infringement of the registered design of the plaintiff vide registration No. 288184 w.e.f. 25.10.2016 (in Class 23-04) as stated in the plaint, and all other such materials that may amount to or causes infringement of the copyright in the registered design of the plaintiffs' registered design under No. 288184 including but not limited to coolers frames, bodies, manufacturing moulds and dies and related apparatus used to manufacture the infringing

products, for destruction in the interest of justice;

(D) This Hon'ble Court may be pleased to pass a decree directing to seal and/or confiscate and/or to destroy the dye and/or injection mould/ mound and any such other machine or apparatus etc., being used by the defendants to manufacture the air coolers, disputed in the present suit and which is amounting to the piracy and/or imitation of the registered design of plaintiff bearing registration No. 288184 w.e.f. 25.10.2016 (in Class 23-04), in the interest of justice.

(E) An order for tendering an affidavit to the Plaintiff's representative by the Defendant No. 1, inventory of all the goods, labels, blocks, dyes, stencils, stationery material, printing materials, advertising materials, packing materials etc. containing and/or consisting of registered design of the plaintiff, as stated in this plaint and/or any other such mark, which may be identical with and/or deceptively similar and/or substantial and/or similar to the products of air cooler of the plaintiff sold under registered design of the plaintiff for destruction.

(F) The Hon'ble Court may be pleased to pass an order for costs in the proceedings, in the "AZ interest of justice; and

(G) Any other order that this Hon'ble Court may deem appropriate in the facts and circumstances of the present case, in the interest of justice."

3. During the pendency of the suit, the plaintiff and the defendants have arrived at a settlement. Pursuant thereto, the plaintiff has filed an Application under Order 23 Rule 3 of the Code of

Civil Procedure, 1908, whereby the plaintiff has placed on record the following documents:

"(i) Consent Terms dated 25th November, 2021, entered into between the Plaintiff and the Defendant No.2; (ii) The Affidavit of the Defendant No.1;

(iii) The letter dated 3rd March, 2022, of the Defendant No.1;

(iv) The Order of the Deputy Controller of Patents & Designs dated 28th March, 2022."

4. The said application and the documents are taken on record. The Consent Terms read as follows:

"CONSENT TERMS

1. The plaintiff has instituted the above-mentioned suit before Hon'ble High Court for Permanent Injunction and restraining Defendant no. 2 from infringement of its registered des bearing number 288184 w.e.f 25.10.2016 in class 23-04 for product of air cooler under the provisions of Designs Act, 2000.

2. As per the contentions and prayers of the above mentioned the plaintiff hereby submits the Consent Terms to settle matter amicably.

a. That the Defendant no. 2 hereby acknowledges that Plaintiff is the registered proprietor of the design 288184 and the Defendant no. 2's article/product, if an air cooler under the name ALLWYN AC201, and ALLY AC203 is piracy and fraudulent and obvious imitation of plaintiff's registered design.

b. The defendant no. 2 acknowledge that it was not in the business of manufacturing and selling of Air Coolers. The Defendant no. 2 shall forthwith cease and desist from selling their product of air cooler having model name ALLWYN AC201 and ALLWYN AC203 and/or any other product with any different name which may amount to infringement of registered design of the plaintiff's vide design registration no. 288184.

c. The Defendant no. 2 shall not make any application for registration of design which is similar or which may be piracy or fraudulent or obvious imitation of the plaintiff's registered design and in the event of any such application is made and/or pending, it shall be withdrawn with immediate effect.

d. The Defendant no. 2 shall immediately withdraw or surrender grants/licenses/permissions given by any Government Authority in relation to its product of the air cooler under the name ALLWYN AC201 and ALLWYN AC203 and/or any other product with any different name which may amount to infringement of registered design of the plaintiff's vide design registration no. 288184.

e. The Defendant no. 2 shall forthwith within 15 days of signing this Consent Terms agreement shall surrender all infringing/pirated products, dyes, mould, machine, or such other materials used for manufacturing the air coolers which are amounting to Infringement of the registered deign of the plaintiff bearing number 288184 w.e.f. 25.10.2016 in class 23-04 for the product of air cooler under the provisions of Designs Act, 2000 and all other such materials which may amount to or causes infringement of the copyright in the registered design of the plaintiff's..

f. The Defendant no. 2 shall henceforth undertake to refrain from using an identical or may amount to piracy or fraudulent and/or

obvious imitation of the air coolers of the Plaintiff's sold under registered design of the plaintiff's or any other such design which is identical and lead to fraudulent and obvious imitation of the plaintiff's design for the business of Air Coolers.

g. The Defendant no. 2 shall be refrained in the future from using any identical and deceptively/confusingly similar design which leads to fraudulent and obvious imitation of the registered/unregistered design of the Plaintiff.

h. The Defendant no. 2 shall indemnify and keep us (the Plaintiff), Our Successor, affiliates and assigns indemnified against all costs, charges, damages, claims, suits, proceedings, and expenses against the use of identical and deceptively similar registered design of the plaintiff. Moreover, the Defendant no, 2 shall not be using any design identical to and deceptively similar with registered design of the plaintiff.

i. The Defendant no. 2 shall hand over or destroy the dyes, mould, drawings or any such other material containing impugned design of plaintiff forth with.

3. The defendant no. 2 confirm that he has no connection with defendant no. 1 and therefore plaintiff accept the same, without admitting anything.

4. The plaintiff hereby agrees not to claim any Damages, Loss of Profit or cost of the present suit from the Defendant no. 2 in consideration of above recorded settlement terms.

5. The Defendant no. 2 also hereby accepts and agrees that design bearing number 288184 w.e.f. 25.10.2016 in class 23-04 for the product of air cooler under the provisions of Designs Act, 2000 is Registered design of the plaintiff.

6. The Defendant no. 2 consent the grant of prayer made in Para 73 (A), (C), (D) and (E) of the suit.

7. The parties to the suit will bear their own cost and expenses related to the suit.

8. The parties will jointly request the Hon'ble Court to record the settlement and decree the suit in terms of the above understanding."

5. By way of the affidavit dated 8th January,

2022, the Defendant No.1 has stated on oath that neither dealer or the distributor of the Defendant No.2 or Defendant No.1 has manufactured, marketed or sold any impugned registered design at any point of time. Furthermore, the Defendant No.1 has declared that it has never used the impugned registered design in the past nor intends to use the same and shall not use the registered design of the plaintiff in the future.

6. The Plaintiff has also placed on record the letter dated 3rd March, 2022, whereby the Defendant No.1 has sought withdrawal of the proceedings being Cancellation Petition No.CAN/105/2021-28184. By way of the said proceedings, the Defendant No.1 had sought cancellation of the design registration of the plaintiff bearing Registered Design No.288184 in Class 23-04. The said proceedings, which were pending before the Controller of Design, Kolkata, came to be withdrawn vide order dated 28 March, 2022, which is also placed on record. Consequently, the Defendant No.1 is no longer challenging the Plaintiff's Registered Design bearing No.288184 and will not challenge the same in the future.

7. In view of the above-mentioned Consent Terms

between the plaintiff and the Defendant No.2 and the affidavit of the Defendant No.1, its withdrawal letter and withdrawal Order, the dispute between the parties stand settled. The Parties are directed to abide by the Consent Terms, Affidavit and Withdrawal of the proceedings, in letter and spirit.

8. The suit stands disposed of in terms of the above-mentioned Consent Terms of the Plaintiff and the Defendant No.2 and the Affidavit of the Defendant No.1.

9. Decree is to be drawn accordingly. The parties shall bear their own costs.

ALI

सत्यमेव जयते (BHARGAV D. KARIA, J)

THE HIGH COURT
OF GUJARAT

WEB COPY