

OMP (I) (COMM.) No. 62/2020

M/s. SMC GLOBAL SECURITIES LTD.

vs.

DAYA RAM HUF

31-07-2020

Present:- Sh. Shreyas Jain, Counsel for the petitioner.

This is a new petition under Section 9 of the Arbitration and Conciliation Act received online yesterday and was ordered to be taken up today. The proceedings conducted through video conferencing today as courts are closed till 14-8-2020 due to Covid-19 Pandemic as per directions of Hon'ble High Court.

The respondent no. 1 HUF and respondent no. 2 Karta of respondent no. 2 are not clearing the outstanding amount of Rs. 3,52,681/- despite various requests of the petitioner which had accrued due to trading business between the parties and petitioner had discharged the liability of the respondents. Parties are to obey terms and conditions of MCX (Multi Commodity Exchange of India Ltd.) which also contains an arbitration clause for settlement of the disputes. According to the counsel for the petitioner, the matter has already been referred to the arbitration tribunal of MCX on 14-7-2020 by moving online application for decision.

According to the counsel, upon the principal amount further interest of Rs. 2,319/- has accrued and thus the total liability of the respondents comes to Rs. 3,55,000/- as on date. Petitioner has apprehension that respondents may leave without payment of his dues and even may dispose off their assets which will cause loss to the petitioner. So the present petition has been filed for seeking interim directions against the respondents for the time being till the matter is decided by arbitration tribunal.

The respondents are having bank accounts in IDFC First Bank Ltd., Rohini, Delhi bearing no. 10051506126 and in AU Small Finance Bank, Rohini, Delhi bearing No. 1711210212464303. Keeping in view the averments made in the petition, it is directed to the Manager of concerned Banks to freeze the above mentioned bank accounts belonging to the respondent Sh. Daya Ram to an extent of Rs. 3,55,000/- and the



report be submitted to the court directly in this regard on or before next date on the designated official e-mail of this court i.e. djcc5central@gmail.com. Bank Manager of concerned banks are also directed to send the statement of bank account of the respondent from 1st January 2020 till today to the court alongwith his report. The request of the petitioner for calling the freezed amount to the court or giving directions to the respondent to file his affidavit of his assets and properties is declined for the time being. It is further directed that in case the amount of Rs. 3,55,000/- is freezed in one account of the respondent, then there will be no freezing of the second bank account but in case the amount less than Rs. 3,55,000/- is found in one account, then the balance left over amount shall be freezed from the second account.

Issue notice of the petition to the respondent for 21-8-2020 with direction to file reply of the same, if any. The matter will be taken up through video conferencing on that day at 11.15 a.m. in case, courts continued to be closed due to COVID-19 pandemic.

Petitioner is directed to serve the respondent by taking dasti notice through E-mail, Whatsapp as well as through speed post at its own but one copy of the notice shall also go through official E-mail of process serving agency of this court. One copy of this order be given dasti to the petitioner for its service upon the concerned Banks through Email, speed post and if possible, personally also. Petitioner is also directed to inform at what stage, the arbitration proceedings has reached.

Reader is directed to upload this order on the website of the court today itself and one copy of the order be given dasti to the counsel for the petitioner and for next date and time fixed above make prior arrangements for facilitation of the video conferencing, if the courts remain closed.



(Ashwani Kumar Sarpal)

District Judge-Commercial Court-05 (Central)

31-07-2020

OMP (I) (COMM.) No. 63/2020
M/s. SMC Global Securities Ltd.
vs.
Atul Singh

31-07-2020

Present:- Sh. Shreyas Jain, Counsel for the petitioner.

This is a new petition under Section 9 of the Arbitration and Conciliation Act received online yesterday and was ordered to be taken up today. The proceedings conducted through video conferencing today as courts are still closed till 14-8-2020 due to Covid-19 Pandemic as per directions of Hon'ble High Court.

The respondent is not clearing the outstanding amount of Rs. 1,75,461/- despite various requests of the petitioner which had accrued due to trading business between the parties and petitioner had discharged the liability of the respondent. Parties are to obey terms and conditions of MCX (Multi Commodity Exchange of India Ltd.) which also contains an arbitration clause for settlement of the disputes. According to the counsel for the petitioner, the matter has already been referred to the arbitration tribunal of MCX on 29-7-2020 by moving online application for decision.

According to the counsel, upon the principal amount further interest of Rs. 3,230/- has accrued and thus the total liability of the respondent comes to Rs. 1,78,691/- as on date. Petitioner has apprehension that respondent may leave without payment of his dues and even may dispose off his assets which will cause loss to the petitioner. So the present petition has been filed for seeking interim directions against the respondent for the time being till the matter is decided by arbitration tribunal.

The respondent is having bank account in Axix Bank, Yamuna Vihar, New Delhi bearing no. 913010034725047. Keeping in view the averments made in the petition, it is directed to the Manager of concerned Bank to freeze the above mentioned bank account belonging to the respondent Sh. Atul Singh to an extent of Rs. 1,78,691/- and the report be submitted to the court directly in this regard on or before next date on the designated official e-mail of this court i.e.



djcc5central@gmail.com. Bank Manager of concerned bank is also directed to send the statement of bank account of the respondent from 1st January 2020 till today to the court alongwith his report. The request of the petitioner for calling the freezed amount to the court or giving directions to the respondent to file his affidavit of his assets and properties is declined for the time being.

Issue notice of the petition to the respondent for 21-8-2020 with direction to file reply of the same, if any. The matter will be taken up through video conferencing on that day at about 11 a.m. in case, courts continued to be closed due to COVID-19 pandemic.

Petitioner is directed to serve the respondent by taking dasti notice through E-mail, Whatsapp as well as through speed post at its own but one copy of the notice shall also go through official E-mail of process serving agency of this court. One copy of this order be given dasti to the petitioner for its service upon the concerned Bank through Email, speed post and if possible, personally also. Petitioner is also directed to inform at what stage, the arbitration proceedings has reached.

Reader is directed to upload this order on the website of the court today itself and one copy of the order be given dasti to the counsel for the petitioner and for next date and time fixed above make prior arrangements for facilitation of the video conferencing, if the courts remain closed.



(Ashwani Kumar Sarpal)

District Judge-Commercial Court-05 (Central)

31-07-2020

CS (Comm) No. 1076/2020
Nike Innovate C.V. vs. Ashok Kumar & Others

ASHWANI KUMAR SARPAL
District Judge
Commercial Court-05 (Central)
Room No. 22
Tis Hazari Court, Delhi

31-7-2020

Present:- Ms. Aastha Sharma, advocate for plaintiff.

This case was received yesterday online as the courts are closed till 14-8-2020 due to Covid-19 Pandemic. The proceedings are conducted through video conferencing today. I have heard counsel for the plaintiff and gone through the record received on designated e-mail of this court in PDF form. Photograph at page no. 24 of paperbook is showing the original genuine product of the plaintiff company i.e. socks, whereas photographs at pages no. 25 to 27 are the duplicate/infringed goods manufactured/stocked/sold etc. by respondents.

It is informed that Sh. Rohit Kumar, who filed his affidavit and allegedly had purchased the pair of socks with the infringed trademark from respondents, had purchased it only few days back in the second week of the July 2020, though no specific date is mentioned in his affidavit. No bill or receipt was issued to him by the defendants while selling the duplicate socks.

Counsel for plaintiff pressed for exparte injunction and for appointment of the local commissioner in this suit for injunction, infringement of trademark and copy right, rendition of accounts etc. Defendants are unknown persons but plaintiff relied upon the affidavit of surveyor/investigator Sh. Rohit Kumar which is at page no. 22 of the paperbook and it shows that the fake and infringed material i.e. socks are stored, sold, distributed and manufactured etc. from different premises of the unknown respondents situated at places as mentioned in the memo of parties of the plaint. The photographs annexed with the plaint clearly showed the description, label, design, marks put on the original socks manufactured by the plaintiff company and the fake socks bearing similar and deceptive marks of the Nike etc. Moreover in para no. 24 of the plaint, the differences between the original and fake product is mentioned in details.

Delhi High Court in case **HCL Technologies Ltd. vs Ajay Kumar** CS (Com) No.466/2017 decided on 18.07.2017 had granted even exparte stay against the unknown person.



According to plaintiff company, it is dealing with the manufacturing and marketing of socks with trademark "Nike" with specified type of logo and in this regard the registration certificates/LPC are placed on record. According to the plaintiff, the label bearing the trademark "Nike" and its specified logo which is of the shape of tick mark (✓) and commonly known as Swoosh logo is embossed/printed/written on its product which is very prominent in its trade and attaches the impression of its excellent quality and good standard of manufacturing. It is further stated that some unknown defendants are selling, trading, manufacturing the inferior quality of socks with fake trademarks of the plaintiff company from different premises and in this regard its surveyor has also purchased the infringed material from those premises but no bill was issued to him. Surveyor even could not ascertain the names and other details of those persons. The fake products with infringed trademark on the socks being manufactured, sold and stocked by the unknown defendants is not only causing loss to the plaintiff company financially but also the general public is being cheated.

After considering the documents placed on record and seeing the photographs of original and fake socks as well as deceptive nature of the trademark and logo affixed on the fake socks which apparently can create confusion easily in the minds of innocent buyers, I am of the opinion that in order to protect the plaintiff company through misuse of its trade mark as well as to save the innocent general public, *exparte* injunction is required to be given in favour of the plaintiff and against the defendants being unknown person.

Accordingly, the unknown defendants working and doing business from the addresses mentioned in the memo of parties are restrained from manufacturing, storing, trading and selling the socks by using the infringed trademark of the plaintiff company bearing impression "Nike" and its logo which is similar to the registered trademark of the plaintiff company and creating confusion and deceptive in nature and violating the trademark and copyright of the plaintiff.

Plaintiff has also moved an application under Order 26 Rule 9 CPC for appointment of the local commissioners. Counsel requested that three different local commissioners be appointed to inspect premises of each of three defendants separately. Plaintiff has apprehension that one or two defendants may conceal or remove the infringed products from their respective premises after coming to know about the surprise



inspection done at one premises. According to plaintiff, infringed material is kept at three different places belonging to three different defendants so there is a requirement of surprise inspection at same time in all the premises so that there remains no chance to remove the infringed material from other places. This application is allowed and Ms. Karuna Bala, advocate, chamber No. V-31, Tehsil Road, Tis Hazari Courts, Mobile No. 917682878, 836821055 is appointed as local commissioner who is directed to visit the premises of defendant no. 1 situated at M-108, M-109, M-110-111, Shashtri Nagar, Delhi-52.

Sh. Shreyas Jain, advocate, chamber no. 334, Western Wing, Tis Hazari, Mobile no. 9899999672 is appointed as local commissioner who is directed to visit the premises of defendant no. 2 situated at O-76, Sector-2, Bawana Industrial Area, Delhi-39. Ms. Gurpreet Kaur, advocate, chamber no. 77-78, Western Wing, Tis Hazari, Mob. No. 9871203770 is appointed as local commissioner to visit the premises of defendant no. 3 situated at L-143, Bawana Industrial Area, Delhi-39.

All the three local commissioners are directed to coordinate with each other and AR of the plaintiff and visit their respective assigned addresses with the counsel/authorized representative of the plaintiff within 5 days from today and it is expected that the inspection should take place simultaneously at all the addresses of three defendants so that there remain no chance of removal or destruction of infringed material from the other premises by remaining defendants. The Local Commissioners shall take in their custody all the packaging material, labels and stickers bearing the trade mark and logo of the plaintiff company which is not genuine besides all infringed finished and semi finished products i.e. socks.

The Local Commissioners shall prepare inventory, shall take the photographs of those seized material and hand over the same on superdari to the representative of plaintiff after sealing the same who shall gave an undertaking to produce the sealed material as and when directed by the court. The plaintiff will arrange all the sealing material including jute bags and cardboard boxes etc. in which the seized infringed products and packaging material can be kept.

The SHO of the area shall render all assistance to the Local Commissioners as may be required by them in the discharge of the aforesaid commission. It is the duty of the plaintiff to coordinate with the area SHO and to ensure that the police aid is available to the local



commissioners as and when required. LCs can break open the locks, if required for taking possession of the fake socks with registered trademark of the plaintiff in presence of police & respectable people of locality.

The fee of each of the three Local Commissioners is fixed at Rs. 60,000/- (Rupees Sixty Thousand only) payable by the plaintiff in advance. The travelling and other expenses of the local commissioners shall also be borne by the plaintiff. Plaintiff shall also provide the facility of the photographer at the spot. Plaintiff shall supply copy of petition and photographs of the genuine and infringed products to all the LC for their convenience and to identify the genuine and fake goods.

The Local Commissioners shall file their reports before this Court within one week after execution of the commission.

Provisions of Order 39 Rule 3 CPC be complied with within 7 days from today by the plaintiff and put up this matter on 28-8-2020.

As regards, the main suit and the stay application, summons of the suit and notice of the application filed along with the plaint be served upon the unknown defendants on PF through registered cover, Speed Post at the above mentioned addresses upon the occupier or owner or the person managing the premises or having concern with the activities carried out in the said premises.

One copy of the notice be given dasti to the AR of the plaintiff for service upon the defendants as well as to the respective LCs. One copy of this order be given to the counsel for plaintiff. Reader is directed to send this order on whatsapp number of all the three LC for expeditious compliance.

Sd/-

(Ashwani Kumar Sarpal)
District Judge- Commercial Court-05 (Central)
31-7-2020

District Judge
Commercial Court-05 (Central)
Tis Hazari Courts, Delhi



Attested
True copy