

**In the court of Sh. Ashwani Kumar Sarpal, District Judge-
Commercial Court-05, Central District
Tis Hazari, Delhi**

M/s. V.K. Home Solutions Pvt. Ltd.

vs.

M/s. Serveshwar Food Products Pvt. Ltd.

[CS (Comm) - 510/2020]

**ORDER ON APPLICATION OF THE DEFENDANT U/S 151 CPC
FOR RELEASE OF GOODS SEIZED BY LOCAL COMMISSIONER**

9-7-2020

Present:- Sh. Amit Tomar advocate for the plaintiff

Sh. Shailen Bhatia counsel for defendant

The proceedings are conducted through video conferencing for about 45 minutes as courts are closed till 15-7-2020 due to Covid-19 pandemic.

By this order, an application of the defendant dated 26-6-2020 (received in the court on 29-9-2020) for release of the seized goods by local commissioner is being disposed off as it is stated that those goods are of perishable nature and its quality will deteriorate with the passage of time and the same is also being damaged by rodents and humidity. No reply of this application is filed by the counsel for the plaintiff but he strongly opposed the same. There is no dispute of the fact that seized items are eatable in nature and can perish or damage with passage of time naturally or by rats or insects etc.



Counsel for the defendant stated that his client is ready to give any undertaking as required by the court and also ready to furnish indemnity bond as directed by court by saying that value of seized goods is about 2-3 lakhs. During arguments, some discussions also arose for appointment of another LC to minutely check each and every seized item, but counsel for the plaintiff stated that entire costs should be incurred by the defendant and plaintiff will not pay anything. However counsel for the defendant stated that atleast half cost of LC should be borne by the plaintiff which is not acceptable to its counsel. I am of the view that during this lockdown period and keeping in view the corona virus pandemic, it is not proper to appoint another LC to go into minute details of the seized goods. Otherwise also, the premises of the defendant is situated in another state and LC may be required to undergo quarantine for some period while reaching in that state or after coming back to Delhi. Thus, the request of appointment of another LC is declined.

Vide order dated 20-2-2020, exparte stay was granted in favour of the plaintiff and local commissioner was appointed with directions to seize all the rice puffs having similar shape and design of human and animal which the plaintiff is authorized to use as well as the wrappers and packaging material having print of such designs. It is important to mention here that only rice puffs of particular designs were ordered to be seized and not other material prepared with wheat, cereal or even eatable material etc.

In compliance of this order, local commissioner visited the premises of the defendant company and seized and sealed various items as per his report and prepared inventory. I have gone through the report of the local commissioner. One envelope in which certain photographs are kept annexed with the report of LC is also opened. Paragraph no. 4 of the report of LC says that counsel for the plaintiff



had recognized the counterfeit goods and material which included raw material, ready to pack material, the material used in packing of the ready to pack material with trade mark and design of the plaintiff and inventory was prepared accordingly. It clearly means that whatever seizure of alleged counterfeit goods had taken place was done by the LC at the instance and identification of the counsel for the plaintiff only.

Report of LC point out that there were 1400 bags of raw material and 415 boxes/cartons (each box containing 144 packets) in the premises of the defendant which were seized besides 21 packing rolls. Admittedly he had not checked each and every such bag and boxes personally and seized the same at the instance of counsel for plaintiff. He entered into the premises of defendant at 2.05 p.m. and concluded the proceedings in less than 2 hours at about 4 p.m. From the report of LC it is also apparent that instead of opening each bag and box he presumed that the same are containing finally made out/prepared rice puffs of particular design or raw material to be used for purpose of manufacturing such rice puffs only as per recognition of the counsel for the plaintiff and then seized it. Due to big number of such bags and boxes/cartons, he might have not checked each and every item kept in the same by opening and seeing the same with his own eyes whether these were actually containing only rice puff or anything else but simply relied upon the advice or submission of the counsel for the plaintiff.

Local commissioner was directed to seize and seal particular designed rice puffs but as per defendant he also seized bags containing uncooked/raw/unbaked rice, wheat, dal etc. Mere fact that some of these raw items could be used to prepare ultimately rice puffs itself was not a ground to seize the same. The order of the court was to seize and seal only the rice puffs of a particular design (which can be



held as final product) and not the raw material by which it could be prepared. Accordingly, the application of the defendant company to release all the 1400 bags full of raw material such as rice, cereal, wheat etc. are ordered to be released to it.

Photographs of some bags/boxes annexed with the report of LC shows that it were even containing Papad and Popcorn. Counsel for the defendant stated that the seized material kept in some boxes in packed condition even included Chips, Katori, Pasta and Samosa etc. The ingredient used to prepare such items is shown by counsel for the defendant and rice is not the part of the same. These items do not fall within the category of the rice puffs which is only prepared from rice so the same could not have been seized by the LC in any situation. The report of LC is even silent regarding opening of any wrapped/packed material lying in any box to find out what contents are lying in the same. He even not checked the ingredients of any packed material mentioned on the same to ascertain whether rice is one of the ingredients of the same or not. Hence, such seizure done by the LC which is not in conformity of the order of the court has to be released to the defendant because he simply seized goods at the identification of the counsel of the defendant and has not checked anything personally. Apparently, these items prepared from material other than rice were also simply seized as on the boxes/cartons picture of registered design of the plaintiff was found printed. Hence, all these boxes/cartons with its contents are also directed to be released to the defendant. Certainly, it will now be not feasible for the defendant to open each and every packet which are numbering 59760 as per report kept in the boxes and to segregate rice puff of a particular design and then to seal the remaining contents as it would cause huge loss to the defendant and packed material may become useless in this process that is why permission is granted for release of all 415 boxes/cartons



in favour of the defendant whether packet kept in the same is bearing any print of the authorized design of the plaintiff or not. Plaintiff can be protected in this process by taking some guarantee from the defendant.

Some photographs submitted by LC also point out that big quantity of small size rice puffs of different designs were also found at the spot in open which were yet to be packed in wrappers/packaging material etc. Though it might not have been very easy and comfortable for the LC to separate rice puff of only particular design as registered in the name of the plaintiff from this huge heap but certainly seizure of all different designed rice puff was not warranted as plaintiff had no concern with the same. Thus, the entire unpacked rice puffs are also ordered to be released to the defendant but defendant is directed to separate the similarly designed rice puffs which are registered in the name of the plaintiff from that heap before packing the same and segregated rice puffs should be kept in some other box/bag.

So far the wrapper and packing material consisting of 21 rolls is concerned which is not used so far but is having picture/print of the registered design of the plaintiff cannot be released for the time being.

Accordingly, application of the defendant company is disposed off. Defendant is permitted to sell or dispose off the released items. However, defendant has to furnish indemnity bond of Rs. 3 lakh to the court valid till the final disposal of the case or as per directions of the court. Since, on bags/boxes as shown in photographs, the designed print of plaintiff is also visible so it is directed that such designs which are registered in the name of the plaintiff should be concealed/erased/removed from the boxes/bags before using the said bags/boxes in the market etc. Defendant shall also maintain proper account of the use/disposal of all the released goods. Defendant shall continue to



obey the injunction directions given in the order 20-2-2020 till next date.

Plaintiff has not filed reply of pending applications of the defendant as per last order dated 2-7-2020 nor submitted proof of its office address. Counsel for plaintiff wants 10 days more time. Let plaintiff to file reply of all other pending applications with proof of its address within 10 days as well as supply copy of the same to the counsel for the defendant on his mail with one copy to the court. Put up this matter on 25-8-2020 for consideration on pending applications which are not so urgent in nature after physical reopening of the court as per order dated 2-7-2020.



(Ashwani Kumar Sarpal)

Dt. 9-7-2020

District Judge-Commercial-5

Central District, Delhi