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Analysing developments impacting business

CONTEMPT IN AN INTELLECTUAL PROPERTY DISPUTE CAN LAND ONE IN PRISON

31 May 2019

In *Cargil India Private Limited v M/s. M.M. Oil Enterprises* (Notice of Motion No 1107 of 2019 in COMIP No. 425 of 2017), the Bombay High Court (Court) has once again passed a notable order whereby the Court imposed a sentence of 8 weeks simple civil imprisonment upon the proprietor of M/s. M.M. Oil Enterprises (Defendant) who was found in contempt of the orders passed by the Court.

Background

In March 2017, Cargil India Private Limited (Plaintiff) filed a suit along with a Notice of Motion against the Defendant who was infringing the Plaintiff's copyright subsisting in the label mark/trade dress 'GEMINI-Refined Sunflower Oil'. The Plaintiff also alleged that the Defendant had committed an act of 'passing off' by adopting a deceptively similar impugned mark/packaging material 'GENUINE-Refined Sunflower Oil' as against the Plaintiff's label mark/trade dress 'GEMINI-Refined Sunflower Oil'.

By an *ex parte* order dated 23 March 2017, the Court restrained the Defendant from infringing the Plaintiff's copyright subsisting in its label mark/trade dress and from 'passing off'. The Court also appointed a Court Receiver to search and seize the impugned goods/packaging materials bearing the impugned mark. Accordingly, on 6 April 2017, the Court Receiver seized and sealed the impugned goods/packaging materials of the Defendant. At this time, the Defendant had executed an Undertaking/Indemnity Bond to preserve the material sealed by the Court Receiver. Later, as the Defendant failed to appear before the Court the Notice of Motion was made absolute vide order dated 12 April 2017. Resultantly, the receivership of the sealed goods was to continue till the disposal of the suit.

In January 2019, the Plaintiff learnt that the Defendant, in contravention of the Court's earlier order dated 12 April 2017, had recommenced manufacturing, packaging and selling of the impugned goods bearing the impugned mark/packaging. Hence, the Plaintiff filed another application under Order 39, Rule 2 A of the Code of Civil Procedure, 1908 (CPC) seeking various reliefs including search and seizure of the impugned goods/packaging materials, punishment and detention of the Defendant in civil prison, attachment of the Defendant's machinery, plants, fixtures, etc. Upon being *prima facie* satisfied of the contemptuous act of the Defendant, the Court passed an order dated 1 April 2019 whereby a Court Receiver was once again appointed for search and seizure of the impugned goods/packaging materials of the Defendant.

Interestingly, when the Court Receiver was executing the order dated 1 April 2019 and making an inventory of the impugned goods, the Defendant interfered with the

execution and despite being warned went ahead and emptied the goods (oil) contained in the impugned packaging which were inventoried by the Court Receiver. Post the execution of the order dated 1 April 2019, the Court Receiver also took inspection of the previous inventory seized pursuant to the earlier order dated 12 April 2017. Surprisingly, the previous inventory was not found at the same location and this was duly recorded by the Court Receiver in its report.

During the course of the hearing, the Defendant made a host of false statements such as falsely claiming that the sealed impugned goods were destroyed/eaten away by rats, blaming the Defendant's erstwhile lawyer that he had not kept track of the matter, that pursuant to the earlier order, the Defendant had stopped manufacturing and selling the impugned goods since 2017. Upon interrogation by the Court all these claims were found to be false. Towards the end of the proceeding, the Defendant accepted his contemptuous act and tendered an unconditional apology for breaching the aforesaid orders of the Court. The Court relied on *Mulk Raj v State of Punjab* (1972 3 SCC 839) and *T.N. Godavarman Thirumulpad through the Amicus Curiae v Ashok Khot and Another* (AIR 2006 SC 2007) and rejected the unconditional apology as the same was lacking contrition and thus, failed to meet the requirement of law.

Decision

The Court held the Defendant guilty of disobedience on two counts, viz: (i) the Defendant has admittedly sold goods under the impugned mark/trade dress even after the Court's earlier order dated 12 April 2017; (ii) the Defendant had disposed the impugned goods that were sealed by the Court Receiver on 6 April 2017, which were in custodia legis.

The Court observed that Defendant who is guilty of blatant disobedience of the orders of the Court cannot be left scot-free or shown any leniency in sentencing. The lenient sentence in this case would mean and send a message to society at large that the Court itself is not outraged by the flagrant disregard shown by the Defendant and that the Court is adopting 'forgive and forget' policy.

Thus, relying on the jurisdiction conferred upon the Court under Section 94 (c) read with Order 39, Rule 2 A of CPC, the Court sentenced the Defendant to eight weeks simple imprisonment in a civil prison.

Comment

This is one of the rare orders passed by the Court. Such orders will certainly serve as a deterrence to the parties who brazenly defy Court's orders. This decision also sets a valuable precedent for the plaintiffs seeking effective relief against offenders who habitually violate their intellectual property rights.

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