Neutral Citation Number: 2023/DHC/000810

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: February 3, 2023
Pronounced on: February 6, 2023

\+ CS(COMM) 469/2021 & LA. 15066/2022

LOUIS VUITTON MALLETIER ..... Plaintiff
Through: Mr. Pravin Anand, Mr. Dhruv Anand and Ms. Nimrat Singh, Advs

versus

CAPITAL GENERAL STORE & ORS. .... Defendants
Through: Mr. Kailash Sharma and Ms. Nishi Jain, Advs. for D-1
Mr. Birender Bhatt and Mr. Rakesh Kumar, Advs. for D-2 & 6

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 06.02.2023

I.A. 15066/2022 (*under Order XXXIX Rule 2A of the CPC*) in CS(COMM) 469/2021

1. Interlocutory orders of injunction are passed by this Court, on a daily basis, in intellectual property matters. The Court finds itself faced, in several such cases, with applications under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC), by plaintiffs complaining that the defendants have violated the interim order of injunction. In many such cases – as in the present – the allegation is found to be true. The violation, however, generally stops on or before the date when the court issues notice on the application under Order XXXIX Rule 2A. The plaintiff, however, insists, and not without justification, that the defendant cannot be let off. A violator, asserts

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the plaintiff, is a violator, and deserves to be punished. The Supreme Court echoes this sentiment, in para 54 of ***Surya Vadanan v. State of Tamil Nadu***[1]:

> "54. As has been held in ***Arathi Bandi v. Bandi Jagadrakshaka Rao***[2], a violation of an interim or an interlocutory order passed by a court of competent jurisdiction ought to be viewed strictly if the rule of law is to be maintained. No litigant can be permitted to defy or decline adherence to an interim or an interlocutory order of a court merely because he or she is of the opinion that that order is incorrect—that has to be judged by a superior court or by another court having jurisdiction to do so. It is in this context that the observations of this Court in ***Sarita Sharma v. Sushil Sharma***[3], and ***Ruchi Majoo v. Sanjeev Majoo***[4], have to be appreciated. If as a general principle, the violation of an interim or an interlocutory order is not viewed seriously, it will have widespread deleterious effects on the authority of courts to implement their interim or interlocutory orders or compel their adherence."

Order XXXIX Rule 2A *vis-à-vis* contempt of court

2. There is a divergence of opinion, in judgments of the Supreme Court, on whether Order XXXIX Rule 2A confers, or does not confer, a power of contempt, and also, therefore, whether the disobedience which would invite punitive action under the said provision has necessarily to be willful. ***Food Corporation of India v. Sukh Deo Prasad***[5] and ***U.C. Surendranath v. Mambally's Bakery***[6] hold in the affirmative, thus:

> ***Food Corporation of India***[5]***:***
>
> "**38.** The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an

[1] **(2015) 5 SCC 450**
[2] **(2013) 15 SCC 790**
[3] **(2000) 3 SCC 14**
[4] **(2011) 6 SCC 479**
[5] **(2009) 5 SCC 665**
[6] **(2019) 20 SCC 666**

application under Order 39 Rule 2-A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the "order", on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility."

U.C. Surendranath[6]:

"**7.** For finding a person guilty of wilful disobedience of the order under Order 39 Rule 2-A CPC there has to be not mere "disobedience" but it should be a "wilful disobedience". The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "wilful disobedience". As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the Commissioner has noted is that "non-removal of the hoarding" displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one."

3. ***Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.***[7] however, struck a dissenting note:

"61. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not "mere disobedience" but "wilful disobedience". *We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench.* Suffice it to say that there is a vast difference between enforcement of orders passed under Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature. When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. This also shows the object of Order 39 Rule 2-A is primarily to enforce orders of interim injunction. Orders passed

[7] **(2022) 1 SCC 209**

> under Section 17(2) of the Arbitration Act, using the power contained in Order 39 Rule 2-A are, therefore, properly referable only to the Arbitration Act. Neither of the aforesaid judgments are an authority for any proposition of law to the contrary."
>
> (Emphasis supplied)

4. According to the afore-extracted passage from ***Amazon***[7], unlike provisions dealing with contempt of court, which are intended to be fundamentally punitive, Order XXXIX Rule 2A is intended to compel and enforce obedience of the order of interim injunction.

5. What happens, then, where the disobedience had taken place but has come to an end?

6. It cannot, quite obviously, be said that Order XXXIX Rule 2A becomes inapplicable once the disobedience has ceased. In such a case, possibly, the gap between the exercise of power under Order XXXIX Rule 2A and exercise of power of contempt of Court might stand narrowed considerably as, once the disobedience has ceased, there can be no question of "enforcement" of the interim injunction, and all that remains is punishment for having committed the breach.

7. Even in such a situation, the court is often concerned with the appropriate order to pass. Take the present case. The plaintiff Louis Vuitton Malletier is corporation headquartered in France. It is a matter of common knowledge that articles bearing the Louis Vuitton (LV) brand or mark are niche articles catering only to the most affluent of society, who can partake of such luxury. They, therefore, command a high price, often prohibitively out of the reach even of the upper-middle class of the society. As in the case of many other such luxury brands, however, the craze for owning an article bearing the brand spews imitators, who make imitation items with the mark of the

luxury brand duplicated. Thus, it is possible, in several parts of the city, to secure for oneself imitation LV, Gucci, Dolce & Gabbana (D&G) and Prada hand-bags, wallets, belts and the like.

8. CS (Comm) 469/2021 has been instituted by Louis Vuitton Malletier (the proprietor of the LV brand) against several small entities who are alleged to be manufacturing and marketing articles bearing counterfeit LV marks. The suit is presently pending adjudication.

9. I.A. 12436/2021 was filed with the suit, seeking interlocutory relief under Order XXXIX Rules 1 and 2 of the CPC. While issuing summons in the suit, this Court, on 23rd September 2021, found *prima facie* merit in the allegations of the plaintiff and, accordingly, passed the following interlocutory order of restraint:

> **"**23. Accordingly, till further orders, the defendants and their partners, officers, servants, distributors, stockists and agents are restrained from importing, manufacturing, warehousing, selling and/or offering for sale, advertising, directly or indirectly dealing in, in any manner bearing the registered trademarks "LOUIS VUITTON", "LV" logo, Toile monogram pattern, Damier pattern and/or LV Flower pattern or any similar trademark amounting to an infringement of plaintiff's registered trademarks, as also passing off of their goods as emanating from the plaintiff."

10. The present I.A. 15066/2022, filed by the plaintiff under Order XXXIX Rule 2A of the CPC, alleges violation, by Defendants 2 and 3, of the interim order dated 23rd September 2021, passed by this Court, as confirmed on 28th March 2022. It is alleged that, even after passing the order of injunction on 23rd September 2021, goods bearing fake logos of the LV brand as well as other luxury brands were being sold by Defendants 2 and 3. Accordingly, the application prays that Defendants 2 and 3 be punished for having committed contempt of

this Court within the meaning of Order XXXIX Rule 2A of the CPC. Mr. Pravin Anand, learned Counsel for the plaintiff, submits that Defendant 2 had continued to sell belts bearing the LV brand at least till September 2022.

11. Mr. Birender Bhatt, learned Counsel who appears for Defendant 2, frankly acknowledged the fact that, in fact, his client had been selling LV branded belts even after passing of the order dated 23rd September 2021. He, however, submits that his client is a paltry businessman, who runs his establishment in a small shop which has been taken on rent. While apologizing for having breached the injunction order dated 23rd September 2021 passed by this Court, Mr. Birender Bhatt prays that a lenient view may be taken in the matter.

12. Mr. Anand, however, strenuously opposes the request. He submits that counterfeiting has become a rampant social evil and that, if the court does not come down heavily on such counterfeiters, brand value acquired over years would stand progressively eroded. He has, therefore, opposed the request of Mr. Birender Bhatt for any leniency being shown by the court in the present case. Any leniency in a case such as this, he submits, would encourage similar such counterfeiters to make imitation goods and, thereby, not only dilute the brand value of well-known brands, but also dupe customers in the bargain.

13. That Defendant 2 has disobeyed the order dated 23rd September 2021 passed by this Court under Order XXXIX Rules 1 and 2 of CPC is admitted. The sequitur is inexorable and obvious. Defendant 2 is necessarily to be punished for having breached the injunction order passed by this Court, following the principle enunciated in ***Surya Vadanan***[1]. Mr. Anand is correct in his submission that unwonted

leniency in a case such as this would encourage others to commit similar breaches, in the hope of getting away easy.

14. On that point, the court finds itself *ad idem* with Mr. Anand. Where, however, the court feels it necessary to deliberate is on the further submission, of Mr. Anand, that in evaluating the degree of culpability of Defendant 2, the court must also take into account the fact that Defendant 2 also imitates other reputed brands. In other words, Mr. Anand's contention is that, the court ought not, while considering the sentence to be imposed on Defendant 2, view the matter solely from the strict perspective of breach, by Defendant 2, of the order dated 23rd September 2021, by selling LV branded belts even after the order was passed. The court must also take into consideration the fact that Defendant 2 was selling imitation luxury belts with other brands such as Gucci and D&G.

15. It is on this point that I required Mr. Anand to address arguments. He has done so, and at some length.

16. Mr. Anand commences his submissions by contending that sentence being a punishment for a wrong that has been committed, the punishment should be proportionate to the wrong. When, as in a case such as the present, the contemnor is a counterfeiter, he submits that the treatment meted out to a casual and first time counterfeiter has necessarily to be different from that which would visit a habitual counterfeiter. A counterfeiter who counterfeits various well-known marks, he submits, has made counterfeiting his business model. Such a counterfeiter has necessarily to invite a more deterrent sentence. Mr. Anand also handed over, in this context, a recommendatory report of the Civil Justice Council, which was established in the UK under

the UK Civil Procedure Act 1997, titled "Anti-social behavior and the Civil Code". He has invited particular attention to a section of the report titled "stepped approach", in which the report advocates the necessity of a stepped approach to arrive at an appropriate penalty for contempt. Without referring, in detail, to the specifics of the report, it is sufficient to note that the report envisages

(i) as Step 1, determination of the relevant categories of culpability and harm;

(ii) as Step 2, arriving at a preliminary penalty based on recommended starting points, depending on the category of approach;

(iii) as Step 3, reduction in the penalty for any admission made;

(iv) as Step 4, where the penalties are being imposed for more than one breach, consideration of the proportionality of the total penalty to the breaches;

(v) as Step 5, consideration of whether the penalty, if a custodial term, should be suspended;

(vi) as Step 6, adjusting an immediate custodial term for time spent on remand;

(vii) as Step 7, the necessity of giving reasons for the penalty imposed in plain language and

(viii) as Step 8, where the order is varied, ordering a review after a suitable period to asses compliance.

Of these, Mr. Anand has emphasized Steps 1 to 6, which read thus:

"**Step one**

Determining the relevant categories of culpability and harm.

Culpability:

There are three levels:

A High culpability; very serious breach or persistent serious breaches
B Deliberate breach falling between A and C.
C Lower culpability; Minor breach/es

Examples of category A may include, but are not limited to:

Violence or threat of serious violence
Significant degree of premeditation
Intention to engage in more serious behaviour than actually achieved (e.g. where the respondent was arrested or disturbed before able to complete intended behaviour)

Examples of category C may include, but are not limited to:

No intention to cause harm or distress and no harm or distress reasonably foreseeable from the breach
Breach is incidental to some other lawful activity (e.g. entering a prohibited area to use a shortcut)
Lack of premeditation or inadvertent breach

Harm:

The level of harm is determined by weighing up all the factors of the case to determine the harm that was caused or was at risk of being caused by the breach/es.

In assessing any risk of harm posed by the breach/es, consideration should be given to the facts or activity which led to the order being made.

Category 1 Breach causes very serious harm/distress
Category 2 Cases falling between categories 1 and 3
Category 3 Breach causes little or no harm/distress

Examples of category 1 may include, but are not limited to:

Injury or threat of serious injury
Significant damage to property
Elderly or vulnerable person affected by breach/es
Causes a resident to move home

Examples of category 3 may include, but are not limited to:

No person(s) actually inconvenienced
Breach comprises mere presence in unauthorised location other than in circumstances comprising greater harm

Step two

Having determined the categories at step one, the court should use the corresponding starting point to reach a preliminary penalty.

Harm	**Culpability**		
	A	**B**	**C**
Category 1	Starting point: 6 months Category range: 8 weeks to 18 months	Starting point: 3 months Category range: Adjourned consideration to 6 months	Starting point: 1 month Category range: adjourned consideration to 3 months
Category 2	Starting point: 3 months Category range: adjourned consideration to 6 months	Starting point: 1 month Category range: adjourned consideration to 3 months	Starting point: adjourned consideration Category range: adjourned consideration to 1month
Category 3	Starting point: 1 month Category range: adjourned consideration to 3 months	Starting point: adjourned consideration Category range: adjourned consideration to 1 month	Starting point: adjourned consideration Category range: No order/fine to two weeks

The preliminary penalty may then be adjusted to take account of any additional factual elements providing the context of the breach/es and factors relating to the respondent.

A non-exhaustive list of additional factual elements is set out below. Consideration must be given to whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. Care must be taken not to "double count" factors i.e. factors should be ignored if already taken into account in arriving at the preliminary penalty. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Examples of factors reducing seriousness or reflecting personal mitigation:

- breach committed after long period of compliance
- genuine remorse
- age and/or lack of maturity where it affects the responsibility of the respondent
- ill health, mental disorder or learning disability
- sole or primary carer for dependent relatives.

Step three

Reduction in the penalty for any admissions made. The court should take account of any reduction for admitting the breach/es in

accordance with the *Reduction in Sentence for a Guilty Plea: Definitive Guideline.*

Step four

If penalties are being imposed for more than one breach, or where the respondent is in breach of a suspended committal order, consideration must be given to whether the total penalty is just and proportionate to the breach/es in accordance with the *Offences Taken Into Consideration and Totality: Definitive Guideline.*

Step five

If the penalty is a custodial term, consideration must be given to whether it should be suspended.

The following factors should be weighed in considering whether it is possible to suspend the committal order;

(a) Factors indicating that it would not be appropriate to suspend a custodial order:

- The respondent presents a risk/danger to others.
- Appropriate punishment can only be achieved by immediate custody.
- History of poor compliance with court orders.

(b) Factors indicating that it **may** be appropriate to suspend the committal order:

- Realistic prospect of rehabilitation/addressing the underlying causes of anti-social behaviour.
- Strong personal mitigation.
- immediate custody will result in significant harmful impact upon others.

The period of suspension (the operational period) must not be disproportionate to the custodial term or to the gravity of the conduct. It should ordinarily be for a fixed period (or until the expiry of the injunction if that is earlier than the period that would otherwise have been imposed).

Steps/further steps to address underlying causes of the anti-social behaviour can be effected by changing/adding to the terms of the underlying injunction (including through adding a positive requirement)."

17. Thereafter, Mr. Anand has taken me through various judicial authorities which, in his submissions, are relevant. These are the judgments of learned Single Judges of this Court in ***Koninlijke Philips***

N.V. v. Amazestore[8] and ***Tata Sons Ltd. v Prakash Yadav***[9]**,** the judgment of a learned Single Judge of the High Court of Bombay in ***Glenmark Pharmaceuticals Ltd. v. Curetech Skincare***[10] and decisions of the Federal Court of Singapore in ***Louis Vuitton Malletier S.A. v. Singga Enterprises***[11] and ***Louis Vuitton Malletier S.A. v. Lin Pi-Chu Yang***[12]**.**

18. Mr. Anand has also relied on Section 105[13] of the Trade Marks Act. He has requested the court to analogize cases such as the defendant with rogue websites. Just as, even where a rogue website breaches the copyright of one plaintiff, the court shuts the website down, Mr. Anand submits that, even if the breach that forms subject matter of Order XXXIX Rule 2A application, is, *stricto sensu*, only with respect to the mark of the plaintiff, the court should, in punishing the defendant for breach, also take into consideration counterfeiting, by the defendant, of other reputed brands. Only then, submits Mr. Anand, would a proper message of deterrence be conveyed.

19. Mr. Anand has also handed over an article on the various types of counterfeiters, titled "Defining the types of counterfeiters, counterfeiting, and offender organizations" by John Spink, Douglas C Moyar, Hyeonho Park and Justin A Heinonen.

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[8] **(2019) 78 PTC 618**
[9] **(2019) 80 PTC 213**
[10] **2018 SCC OnLine Bom 11559**
[11] **2011 FC 776**
[12] **2007 FC 1779**
[13] **105. Enhanced penalty on second or subsequent conviction**. – Whoever having already been convicted of an offence under Section 103 or Section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Analysis

20. Frankly, and with all due respect, I am not inclined to accord much importance to the recommendations of the Civil Justice Council in UK, the decisions by the Federal Court of Singapore in ***Louis Vuitton Malletier S.A. v. Singga Enterprises***[11] and ***Louis Vuitton Malletier S.A. v. Lin Pi-Chu Yang***[12] or the article on determining the types of counterfeiters. We are concerned with Order XXXIX Rule 2A of the CPC. Order XXXIX Rule 2A is in the nature of a self-contained Code. I do not deem it either necessary or even appropriate to rely on sentencing practices in foreign jurisdictions while deciding on the approach to be taken on an application under Order XXXIX Rule 2A. The Court has not been made aware of the provisions which apply in such cases in the UK or in Singapore. There is no reason, therefore, for this Court to seek sustenance, or even support, from practices which have developed in foreign jurisdictions such as UK and Singapore while deciding on the appropriate sentence to be awarded in Order XXXIX Rule 2A of CPC. Mr Anand, too, has not cited any decision in which this Court, or any other Court in India, has relied on the said practices.

21. In fact, the approach recommended by the Civil Justice Council in its recommendations cited hereinbefore appears to be in the teeth of Order XXXIX Rule 2A. Order XXXIX Rule 2A contemplates punitive action only in the case of disobedience "of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made". The action taken under Order XXXIX Rule 2A has, therefore, to be limited to the injunction which was granted by the court, and which has been breached by the defendant. If the injunction is only with respect to one

brand, the court cannot, in proceeding under Order XXXIX Rule 2A, take into account other brands which may also have been counterfeited by the defendant.

22. This is for a variety of reasons, which may be best understood, if one refers to the facts of the present case itself.

22.1 In the first place, the injunction granted, *vide* order dated 23rd September 2021, was with respect to manufacture and marketing of goods bearing the LV brand. There is no injunction regarding manufacture and marketing of any other brand. The manufacture or marketing of any other brand by the defendant cannot, therefore, statutorily constitute a relevant consideration under Order XXXIX Rule 2A, as the provision is clearly restricted to the injunction granted, and nothing more.

22.2 The injunction that has been granted is consequent on a *prima facie* determination that the defendant is in fact guilty of having counterfeited the LV brand. There is not even a consideration, much less a *prima facie* finding, regarding counterfeiting, by the defendant, of any other brand. The court cannot, therefore, while exercising jurisdiction under Order XXXIX Rule 2A, return a finding that the defendant is also guilty of counterfeiting other brands. No such presumption can, in law, be drawn. For all one knows, the other brands in which the defendant is dealing may be genuine. Mr. Anand has not cited a single instance where the defendant has actually been found guilty of counterfeiting any reputed brand, except for the *prima facie* observations contained in the order dated 23rd September 2021 passed in the present case.

22.3 For that reason, Section 105 of the Trade Marks Act would also not apply. I, for that matter, am unconvinced regarding the applicability, at all, of Section 105 to Order XXXIX Rule 2A. Section 105 is contained in Chapter XII of the Trade Marks Act, which is titled "Offences, Penalties and Procedure". It deals with "enhanced penalty on second or subsequent conviction", and envisages extended periods of incarceration for persons who, once having been convicted under Sections 103 or 104, repeats the offence. Section 105 has nothing, whatsoever, to do with Order XXXIX Rule 2A, and it is no part of the function of a Court to propel, or even project, by judicial fiat, one statutory provision into another, or to intermix different statutory provisions, where the legislature has not deemed it appropriate to do so. Leaving Section 105 of the Trade Marks Act to deal with the situations which it envisages, we would do better to examine the present case by staying within the confines of Order XXXIX Rule 2A.

22.4 Even if it were to be presumed that the defendant was counterfeiting other brands, to punish the defendant therefor under Order XXXIX Rule 2A, would require the court to rewrite the order dated 29th September 2021 passed under Order XXXIX Rules 1 and 2 as injuncting the defendant not only from manufacturing goods bearing the LV brand, but also from manufacturing goods bearing other brands. An Order XXXIX Rule 2A court cannot rewrite the order of which breach is alleged. That would lie completely outside the province of its jurisdiction.

22.5 Applying the ratio of ***Amazon***[7], proceedings under Order XXXIX Rule 2A are intended to enforce the order of interlocutory injunction and to ensure its compliance. There cannot be compliance

with the order beyond the terms of the order itself. Compliance with the order has strictly to be in the terms in which the order is passed. Where, therefore, the order injuncts the defendant from manufacturing or marketing the goods bearing the LV brand, the Order XXXIX Rule 2A court, which is concerned with ensuring with compliance of the order, cannot take into consideration alleged counterfeiting of other brands. That would go against the very ethos of Order XXXIX Rule 2A, as identified and understood by the Supreme Court in ***Amazon***[7].

23. The judicial authorities on which Mr. Anand placed reliance do not really further the case that he seeks to plead. ***Koninlijke Philips***[8]**,** ***Tata Sons Ltd***[9] and ***Glenmark Pharmaceuticals***[10] are all cases which dealt with damages to be awarded when the suit was being decreed. They have no relevance, whatsoever, to the aspect of sentence to be awarded to a defendant found guilty under Order XXXIX Rule 2A.

24. The present suit is still pending before this Court. It may be possible for Mr. Pravin Anand to rely on the aforesaid decisions at the time when the suit is finally being decided. They can, however, be of no value while assessing the sentence to be awarded under Order XXXIX Rule 2A of the CPC.

25. Having said that, the Court has necessarily to take into account the nature and seriousness of breach or disobedience while dealing with an application under Order XXXIX Rule 2A, even as per the decisions in ***U.C. Surendranath***[6] and ***Food Corporation of India***[5].

26. Counterfeiting is an extremely serious matter, the ramifications of which extend far beyond the confines of the small shop of the petty counterfeiter. It is a commercial evil, which erodes brand value,

amounts to duplicity with the trusting consumer, and, in the long run, has serious repercussions on the fabric of the national economy. A counterfeiter abandons, completely, any right to equitable consideration by a Court functioning within the confines of the rule of law. He is entitled to no sympathy, as he practices, knowingly and with complete impunity, falsehood and deception. Even while remaining within the confines of the provision with which it is seized – in this case, Order XXXIX Rule 2A – the Court is, therefore, required to be economically and socially sensitized, and to send a deterrent message to others who indulge, or propose to indulge, in the practice of counterfeiting.

27. That the defendant chose to continue with his business of selling counterfeited LV branded goods, even after having been injuncted from doing so, augments his culpability. Apologies and entreaties to the Court, after having so acted, can hardly mitigate the misdemeanor.

Order

28. That, then, leaves the question of the appropriate sentence to be awarded in the present case. Order XXXIX Rule 2A, if it is read strictly, does not provide much latitude to the court in such cases. It empowers the court, consequent on finding the injunction having been breached, to attach the property of the person guilty of the breach and also to order detention of such person in civil prison for a term not in excess of three months. At the same time, the Supreme Court has, in ***Samee Khan v. Bindu Khan***[14], held that, where properties of the alleged violator are attached, the attachment has to cease with the

[14] **(1998) 7 SCC 59**

cessation of act of disobedience. In a situation such as the present, where the breach already stands committed, but is no longer continuing, the court does not have, with it, the option of attaching the defendant's property.

29. If Order XXXIX Rule 2A were to be strictly read, the only option with the court, in a case such as the present, would be to detain the defendant in civil prison, for a term not exceeding three months. At the same time, the court cannot be unmindful of the fact that detention in prison is an extreme step, which irreparably prejudices the liberty of the individual. Keeping this factor in mind, the Supreme Court has in ***U.C. Surendranath***[6] and ***Food Corporation of India***[5], held that the power under Order XXXIX Rule 2A has to be sparingly exercised, with great care and caution.

30. Keeping in mind the power vested in the Court to mould the order to ensure substantial justice, I am of the opinion that the interests of justice would best be subserved if, in the present case, the defendant is directed to pay, to the plaintiff, ₹ 5 lakhs within a period of four weeks from today, failing which Mr. Javed Ansari, the proprietor of Defendant 2, shall suffer incarceration in civil prison in Tihar Jail for a period of one week.

31. The application stands disposed of accordingly.

C. HARI SHANKAR, J.

FEBRUARY 06, 2023
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