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

\+ FAO (COMM) 125/2025 and CM APPL. 29277/2025

MS LALITA GOYAL PROPRIETOR OF MS BABY WHEELS INDIA .....Appellant

Through: Mr. Nishant Mahtta, Mr. Junaid Alam and Mr. S. Nithin, Advocates

versus

SUMIT GARG .....Respondent

Through: Mr. Shivam Jangra, Advocate

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 24.07.2025

C. HARI SHANKAR, J.

1. This appeal assails order dated 16 April 2025 passed by the learned District Judge (Commercial Court), North District, Delhi[1], allowing an application filed by the respondent, as the plaintiff in the said suit, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 in CS (Comm) 6742/2024[2] and restraining the appellant, who was the defendant before the learned Commercial Court, from using the design  which stands registered in favour of the respondent under the Designs Act, 2000.

[1] "the learned Commercial Court" hereinafter
[2] **Sumit Garg v Baby Wheels India**

2. Before the learned Commercial Court, the appellant, in his written statement, pleaded invalidity of the respondent's design registration and liability of the registration to be cancelled as a defence to the prayer for injunction. The appellant also pointed out to the learned Commercial Court that as he had challenged the validity of the registration of the respondent's design, the suit was required to be transferred to the High Court in view of Section 22(4)[3] of the Designs Act.

3. The learned Commercial Court has noted the said argument, but has proceeded to decide the respondent's application on the ground that the challenge to the validity of the registration of the respondent design was vague.

4. In our considered opinion, the learned Commercial Court could not have declined to transfer the suit to this Court once the appellant had raised a challenge to the validity of the respondent's design registration. Section 22(4) is absolute in terms. It clearly states that "where any ground or which the registration of a design may be cancelled under Section 19 has been availed of as a ground of defence under sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision".

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[3] **22. Piracy of registered design.—**

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(4) Notwithstanding anything contained in the second proviso to sub-section (2), where any ground or which the registration of a design may be cancelled under section 19 has been availed of as a ground of 9 defence under sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision.

5. The mandate of Section 22(4) could not, therefore, have been avoided by the learned Commercial Court by regarding the defence taken as vague or insubstantial.

6. Mr. Shivam Jangra, learned counsel for the respondent, has no objection to the impugned order being set aside and the suit CS (Comm) 6742/2024 being transferred to the Intellectual Property Division of this Court so that the application under Order XXXIX Rules 1 and 2 of the CPC preferred by the respondent could be considered and decided afresh.

7. In that view of the matter, the present appeal is disposed of in the following terms:

(i) The impugned order dated 16 April 2025 passed by the learned Commercial Court is quashed and set aside.

(ii) CS (Comm) 6742/2024 is transferred to the Intellectual Property Division of this Court. The Registry is directed to register the suit by according a suitable registration number which would be communicated to learned counsel appearing for both sides, as well as to the parties.

(iii) The applications pending in the said suit, including the application of the respondent under Order XXXIX Rules 1 and 2 of the CPC, would be duly registered giving appropriate IA numbers, which would also be intimated to learned counsel for the parties.

(iv) The suit, along with the application of the respondent under Order XXXIX Rules 1 and 2 of the CPC, are directed to be listed before the Intellectual Property Division of this Court on 8 August 2025.

(v) We direct the Registry of the Rohini District Court to ensure that the entire record of the suit is transmitted to this Court in electronic form, within a week from today. The Registry of this Court would also make efforts to obtain the record. Learned counsel for the parties are also at liberty to obtain electronic copies of the said record from the Registry of this Court on providing pen drives for the said purpose.

(vi) The application of the respondent under Order XXXIX Rules 1 and 2 of the CPC would be considered afresh by the learned Single Judge in the IPD, uninfluenced in any manner by the impugned order passed by the learned Commercial Court.

8. Learned counsel for the parties undertake that they will appear before the learned Single Judge on 8 August 2025, and would not seek any adjournment.

9. The appeal is allowed in the aforesaid extent.

C.HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 24, 2025/yg