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

*Date of Decision: 2<sup>nd</sup> July, 2026*

*Uploaded on: 8<sup>th</sup> July, 2026*

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**CS(COMM) 625/2018**

CROCS INC USA

.....Plaintiff

Through: Ms. Swathi Sukumar, Sr. Adv. with  
Mr. Gaurav Gogia, Ms. Shruti  
Manchanda, Ms. Rishika A., Advs.  
with Mr. Ricardo Facchin (Global IP  
Head, Crocs),

versus

M/S BATA INDIA LTD AND ORS.

.....Defendants

Through: Mr. Neeraj Grover & Mr. Tushar Kr.  
Ranaut, Adv. (M :9810376869)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**I.A.25948/2023 (seeking order for costs) in CS(COMM) 625/2018**

2. This is an application filed by the Defendant under Sections 35 and 35A read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter, 'CPC') seeking orders of costs against the Plaintiff towards contesting the suit proceedings.

3. The present suit was filed seeking permanent injunction restraining infringement of Design Registration no. 197685. The said design as per the Plaintiff was possessing novel shape, feature and configuration. It was the allegation of the Plaintiff that the Defendant had used a fraudulent and



obvious imitation of the Plaintiff’s design. Hence the Plaintiff had sought injunction and damages. The comparative chart of the competing designs is set out below:

A	B	C
Views	Plaintiff's Registered Design	Defendant's impugned adoption
Front perspective view		
Right side view		
Left side view		
Front view		
Rear view		
Top view		
Bottom view		



4. Along with the plaint, an application for interim injunction and an application for appointment for Local Commissioners was also filed by the Plaintiff.

5. The suit was initially filed before the Court of the Id. District Judge, Central District, Tis Hazari Courts, Delhi. *Vide* order dated 28<sup>th</sup> August, 2014 an *ex-parte* ad-interim order was granted by the Id. District Judge and Local Commissioners were also appointed to seize the infringing material from the premises of the Defendants. The Local Commissioners had also seized substantial number of infringing goods. The Local Commissioners who had been appointed submitted their reports.

6. Written statement was then filed by the Defendant and defense of invalidity of the design was also raised. The goods were, thereafter, de-sealed and the matter was listed before the High Court. An application under Order XXXIX Rule 4 of the CPC was also filed by the Defendant.

7. The said application was considered and *vide* order dated 8<sup>th</sup> February, 2018, the interim injunction applications were decided by a Id. Single Judge of this Court in this suit and in various other connected suits. The Id. Single Judge of this Court came to the conclusion that the design was not novel and the footwear over which the Plaintiff was claiming a design previously existed in public domain. The interim injunction applications were dismissed in seven suits and the applications under under Order XXXIX Rule 4 CPC was allowed. the Court also awarded actual costs incurred by the Defendants under Section 35 of the CPC as amended and applicable to commercial disputes,. Apart from actual legal costs a sum of Rs. 2 lakhs were also awarded in favour



of the Defendants. The appeals against the said order were also dismissed on 24<sup>th</sup> January, 2019. This judgement was challenged before the Supreme Court which vide order 23<sup>rd</sup> September, 2019 in *Petition for Special Leave to Appeal (C) No. 22395-22403/2019* titled ‘*M/s Crocs Inc. USA v. M/s Liberty Shoes Ltd. & Anr.*’ disposed of the SLP in the following terms:

*“While rejecting the request of the petitioner for grant of injunction, learned Single Judge of the Delhi High Court imposed costs which were directed to be paid within a period of four weeks. The said order relating the payment of costs was affirmed by the learned Division Bench in the impugned judgment.*

*Mr. Amit Sibal, learned senior counsel submits that the costs should be made subject to result of the final decision.*

*Mr. Neeraj Kishan Kaul, learned senior counsel submits that the costs are not paid till now though the time fixed by the learned Single Judge lapsed long time back.*

*The direction of payment of costs would be subject to the result of the suit subject to the petitioner paying the costs to the respondent within a period of four weeks from today.*

*The petitions stand disposed of accordingly. Pending application, if any stand disposed of”*

The order of the Supreme Court dated 23<sup>rd</sup> September, 2019 had directed that the award of costs at the interim stage would be subject to the final adjudication. Execution petition is stated to be pending for recovery of the costs.

8. The Plaintiff had, along with the design infringement suits also filed suits seeking protection of the shape, trademark and for passing off. In respect thereof, the Division Bench *vide* order dated 24<sup>th</sup> January, 2019 observed as under:

*“53. For the above reasons, this court holds that the*



*appeals have to fail. However, the single judge shall ensure that all suits hitherto listed together, shall now be listed together for further proceedings. The defendants' contentions in respect of the ad-interim injunctions - and whether they are to be confirmed during pendency of shape trademark/passing off suits of the plaintiff as well as plaintiff's arguments for interim injunction in the passing off claim (in the composite suits) shall be taken up together and decided, by the Single Judge. The rights of parties are kept open with regard to respective contentions in that regard. The appeals are accordingly dismissed, without order on costs."*

9. *Vide* order dated 12<sup>th</sup> July, 2023, the Court noted that the term of the design has itself come to an end. The Court was also informed that the Deputy Controller of Patents & Designs had *vide* order dated 9<sup>th</sup> May, 2019 cancelled the design. Considering the fact that the design had been cancelled, the Court had observed that the suit could no longer continue. The said order is relevant and is extracted below:

*"1. This hearing has been done through hybrid mode.*

*2. The present suit has been filed by the Plaintiff - Crocs Inc USA seeking permanent injunction restraining the infringement of the Plaintiff's registered design under the Designs Act, 2000 and passing off, delivery up. etc. The Plaintiff has filed the present suit of infringement in respect of registered design no. 197685 against the Defendant No.1 - M/s Bata India Ltd.*

*3. Mr. Grover, ld. Counsel for the Defendants submits that as of 2019 the term of the design has come to an end. **In addition, ld. Counsel has placed on record the order dated 9th May, 2019 passed by***



**the Dy. Controller of Patents & Designs by which the Plaintiff's registered design no. 197685 which is subject matter of this suit has been cancelled. The operative portion of the Controller's order reads as under:**

*“14. A design, which is published prior to the date of registration or where applicable the priority date of the application for registration, cannot be considered as new. The features stated to be added by the respondent in the impugned design are not sufficient to alter the character or the identity of the design previously published and known to art. As per Section 2(g) of the Designs Act 2000, "Original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application'. Here the application of prior published designs is in reference to same article. Hence the respondent's design cannot be held as new or original.*

*15. In view of preceding analysis, the present petition filed by M/s Brainbees Solutions Pvt. Ltd. for cancellation of registered design no. 197685 dated 28th May, 2004 in respect of 'Footwear under Class 02-04 is allowed and it is ordered to cancel the said design in the Register of Designs.”*

*4. The existence of this order is not disputed by the Mr. Bansal, ld. Counsel for the Plaintiff. It is submitted by ld. Counsel that the Plaintiff has filed an appeal challenging the said order of the Dy. Controller of Patents & Designs. He submits that there is another proceeding that has been initiated by the Plaintiff against the Defendants in respect of the shape mark relating to the registered*



*design, in which the suit was dismissed but an appeal is pending before the Division Bench of this Court.*

**5. In view of the fact that the design has been cancelled, that too on the ground of lack of novelty and prior publication, the suit can no longer continue. If, however, any order is passed in the appeal in favour of the Plaintiff restoring the registered design, then the remedies of the Plaintiff are left open, to be availed of, in accordance with law.**

*6. The Local Commissioner who was appointed for recording of evidence is discharged.*

*7. The present suit along with all pending applications is disposed of.”*

10. Thereafter, the present application was filed seeking costs under Section 35 and 35A of the CPC. This application was heard on 7<sup>th</sup> February, 2026 by this Court. The Court had observed that the design having been cancelled the substratum of the design had become non-existent. The question, therefore, came as to the award of costs in respect of which Id. Counsel for the Plaintiff has opposed the matter. On the basis of the submissions, it was recorded as under:

*“8. The Court has considered the matter. A perusal of the order dated 12<sup>th</sup> July, 2023 would reveal that the said order, though, disposing of the suit had left a window for the Plaintiff to avail of the remedies in accordance with law in respect of the design cancellation before the Calcutta High Court. Though it was a final disposal of the suit, it had not become final until the appeal before the High Court of Calcutta was withdrawn. In case the High Court had reversed the order of the Controller of Patents and had re-instated the Design of the Plaintiff, the suit restoration of the suit could have been sought by the Plaintiff.*

*9. Be that as it may, in commercial matters, the*



*decision of the Supreme Court in **Uflex Ltd. v. Government of Tamil Nadu & Ors., 2021 INSC 492** is clear to the effect that the costs ought to be awarded and this is the principle based on which Section 35 and Section 35A of the Code of Civil Procedure, 1908 have also been enacted.*

10. *In fact, the Delhi High Court Original Side Rules, 2018 also capture the issue relating to award of costs i.e., that in addition to costs under Rule 1 in Chapter 23 actual costs under Rule 2 can also be awarded.*

11. *In the opinion of this Court, mere non-mention of the costs in the order dated 12<sup>th</sup> July, 2023 cannot prima facie amount to waiver.*

12. *Be that as it may, let the Registry put a note as to the manner in which costs are calculated in such matters.”*

11. Today, Mr. Riccardo Facchin, who is the global IP head for the Plaintiff has joined the proceedings from Amsterdam and he submits that for administrative and procedural convenience, whichever individual is suggested by the Plaintiff’s law firm is appointed as a Constituted Attorney to sign pleadings and this is a practice followed by the Plaintiff company in several jurisdictions.

12. Insofar as the issue of costs is concerned, Ms. Swathi Sukumar, Id. Sr. Counsel appearing for the Plaintiff submits that the Court may determine the costs without prejudice to the pending suit where injunction is being sought on the ground of passing off.

13. Mr. Grover, Id. Counsel for the Defendant submits that the total bill of costs is to the tune of Rs. 24,63,400/- which includes the costs which was earlier determined to be paid *vide* order dated 8<sup>th</sup> January, 2018 passed by the



ld. Single Judge of this Court who had dismissed the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. The said costs were supported with documents filed along with an affidavit.

14. The Registry has also put up a note as to the manner in which the bill of costs is calculated. The said note reads as under:

*“Vide order dated 07.02.2026, the Hon'ble Court directed the Registry as under:*

*"Be that as it may, let the Registry put a note as to the manner in which costs are calculated in such matters."*

*In this connection, it is submitted that the statement/Bill of cost is filed by the concerned parties in accordance with **Chapter XXIII Rule 5 of the Delhi High Court Original Side Rules 2018**, which provides as under: 5. Contents of the Bill of costs.—The Bill of costs shall, inter-alia, set out:— (a) court fee*

*(b) process fee spent;*

*(c) expenses of witnesses, including the actual reasonable expenses incurred on travel, boarding and lodging, if any, and other incidental expenses;*

*(d) Advocate's fee including the fee of a Senior Advocate, if any;*

*(e) expenses of typing, photocopying and expenses incurred for sending summons by Registered post, speed post, courier, fax, electronic mail service and by such other modes as may have been directed by Court.*

*(f) such other amounts as may be allowable under these Rules or as may be ordered by the Court as costs taking into account:—*

*(i) judicial time consumed in litigation;*

*(ii) delay in service of summons or efforts made in serving summons on the defendant, as the case may be;*

*(iii) delay caused by any of the parties by raising frivolous issues or unnecessary objections during the proceedings or during recording of evidence;*

*(iv) failure of a party to effect discovery of documents or its refusal to answer interrogatories;*



(v) *incorrect denial of facts/ documents, thus, protracting trial;*  
(vi) *monetary and other stakes involved in the proceedings;*  
(vii) *costs incurred on execution of commission; and*  
(viii) *any other cost which Court may deem fit and proper.*

*It is further submitted that upon filing of the Bill of cost, the matter is listed before the Taxing Officer for Computation of costs.  
Submitted for kind perusal.”*

15. A perusal of the above chronology of events would show that the suit was initially instituted in the year 2014 and an *ex-parte* ad-interim injunction was granted by which the business activities of the Defendants would have been obviously adversely affected. Local Commissioners had also been appointed to effect seizure of goods. The said interim injunction was, thereafter, vacated on 8th February, 2018 and costs were awarded. This order of the Id. Single Judge was upheld by the Division Bench and, thereafter, also by the Supreme Court.

16. The matter has been litigated by the Defendants before the District Court, before this Court, before the Division Bench of this Court as also before the Supreme Court and, thereafter the trial had also commenced in this matter. In the meantime, the design itself has been cancelled.

17. On merits, repeatedly the Courts have held that the design is not a novel design. Insofar as the costs which was awarded at the interim stage is concerned, the Defendant has filed an execution petition which is also pending.

18. In *Uflex Ltd. v. Government of Tamil Nadu & Ors., 2021 INSC 492,*



the Supreme Court clearly observed that in such commercial cases actual costs ought to be awarded. The relevant portion of the judgment is set out below:

*“51. The costs following cause is a principle which is followed in most countries. There seems to be often a hesitancy in our judicial system to impose costs, presuming as if it is a reflection on the counsel. This is not the correct approach. In a tussle for enforcement of rights against a State different principle apply but in commercial matters costs must follow the cause.*

*52. The aspect of awarding the costs has received consideration of the Law Commission of India in its Report No.240, specifically in relation to civil litigation. The trigger for this were the observations of the Supreme Court in **Ashok Kumar Mittal v. Ram Kumar Gupta** and **Vinod Seth v. Devinder Bajaj**. The judicial pronouncements took note of the levying meager costs in civil matters which did not act as a deterrent to vexatious or luxury litigation borne out of ego or greed or resorted to as a ‘buying time’ tactic. These two judicial pronouncements were followed in **Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust**. In the said proceeding the Law Commission also presented its views. It is in that context that this Court observed that appropriate changes in the provisions relating to costs contained in the report of the Law Commission of India should be followed up by the Parliament and the respective High Courts.*

*53. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation.*

*54. We may note that this endeavour in India is not unique to our country and in a way adopts the principle prevalent in England of costs following the event. The*



*position may be somewhat different in the United States but then there are different principles applicable where champerty is prevalent. No doubt in most of the countries like India the discretion is with the Court. There has to be a proportionality to the costs and if they are unreasonable, the doubt would be resolved in favour of the paying party. As per Halsbury's Laws of England, the discretion to award costs must be exercised judicially and in accordance with reason and justice. The following principles have been set out therein:*

*"In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including:*

- (i) The conduct of all the parties;*
- (ii) Whether a party has succeeded on part of his case, even if he has not been wholly successful; and*
- (iii) Any payment into court or admissible offer to settle made by a party which is drawn to the court's attention.*

*The conduct of the parties includes:*

- a. Conduct before, as well as during, the proceedings and in particular the extent to which the parties followed any relevant pre-action protocol;*
- b. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;*
- c. The manner in which a party has pursued or defended his case or a particular allegation or issue; and*
- d. Whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim."*

*55. We may add that similar principles are followed in Australia, Hong Kong and Canada largely based on the Common Law principle. In fact in Canada, the Manitoba Law Commission Report analysed the 'Costs Awards in Civil Litigation' and referred to six broad*



*goals as under:*

- a. indemnification – successful litigants ought to at least be partially indemnified against their legal costs;*
- b. deterrence – potential litigants should carefully assess the merits of the claim and should refrain from taking any unnecessary legal actions;*
- c. rules should be made decipherable and simple to understand;*
- d. early settlement of disputes should be encouraged;*
- e. the costs regime should facilitate access to justice; and f. there should be flexibility in rules to ensure that justice can be done.*

*56. We have set forth the aforesaid so that there is appreciation of the principles that in carrying on commercial litigation, parties must weigh the commercial interests, which would include the consequences of the matter not receiving favourable consideration by the courts. Mindless appeals should not be the rule. We are conscious that in the given facts of the case the respondents have succeeded before the Division Bench though they failed before the learned single Judge. Suffice to say that all the parties before us are financially strong and took a commercial decision to carry this legal battle right up to this Court. They must, thus, face the consequences and costs of success or failure in the present proceedings.*

*57. The best reflection of what costs have been incurred is what the parties have paid towards the counsel fee and out of pocket expenses. The present proceedings do arise from a writ proceeding under Article 226 of the Constitution but it is really a commercial dispute. Thus, the failing party cannot hide behind the veneer of the present dispute being in the nature of a writ proceeding. The tender jurisdiction was created for scrutiny of commercial matters and, thus, where continuously parties seek to challenge award of tenders, we are of the*



*view that the succeeding party must get costs and the party which loses must pay costs. This was really a battle between two commercial entities on one side seeking to get set aside an award of a tender to two other entities. What else would be commercial interest!*

*58. It is with the aforesaid objective that we had asked the parties to file their bill of costs vide order dated 17.08.2021. The objective was to bring forth this principle into force by quantifying actual costs for the succeeding party”*

19. In view of the above, the Court had queried the Defendant as to what is their actual costs in response to which a chart showing costs of Rs. 24,63,400/- has been handed over. The said amount is not disputed by the Plaintiff.

20. Accordingly, following the principles in *Uflex Ltd.(Supra)* and bearing in mind the Section 35 and 35A of the CPC, Commercial Courts Act, 2015 as also Chapter 23 Rule 5 of the Delhi High Court (Original Side) Rules, 2018, the Plaintiff is directed to pay to the Defendant a sum of Rs. 24,63,400/- within a period of three months.

21. In view of the costs having been awarded and upon the said amount being paid to the Defendant, *Ex. P. 64/2022 titled ‘ M/s Bata India Ltd. v. M/s Crocs Inc USA*, shall also stands disposed of.

22. Application is disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**JULY 2, 2026**

*dj/ck*