

(2023) 02 DEL CK 0174

In the Delhi High Court

Case No : First Appeal From Order (COMM) No. 47 Of 2023, Civil Miscellaneous
No. 8893-8895 Of 2023

Talkaji Bhaguji Prajapati

APPELLANT

Vs

Rashik Soap Factory

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 4, Order 26 Rule 9

Citation : (2023) 02 DEL CK 0174

Hon'ble Judges : Manmohan, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Anirudh Bakhru, Rahul Vidhani, Etisha Sinha, Mokshita Gautam,
Ashish Singh, Sanjeev Singh, Sushma Kumari, Sanchit

Final Decision : Disposed Of

Judgement

1. Present appeal has been filed challenging the order dated 5th January, 2023 passed by the learned District Judge (Commercial Court), South District, Saket, Delhi in CS (COMM) NO. 11/2023, whereby the applications filed by the respondent/plaintiff under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ('CPC') for ex-parte interim relief and under Order XXVI Rule 9, CPC have been partially allowed at the ex parte stage. Appellant also seeks for de-sealing of the goods, packaging, bill books etc. seized by the Local Commissioner.

2. Learned counsel for the appellant/defendant states that the plaintiff/respondent had concealed and suppressed material facts and documents from the Trial Court in order to get an injunction in its favour. He states that the respondent had concealed from the Trial Court that the appellant had copyright registration dated 27th July, 2018 of the impugned artistic work under number A-126312/2018, which is four years prior to the copyright registration of the respondent. He further states that the respondent did not file the registration certificate of the appellant wherein it had been mentioned that the label was first

published in 2008. He contends that the respondent had filed the suit without disclosing the prior user and prior registration holder of the said label was the appellant. He contends that the respondent had also concealed that the respondent was well aware of the usage of the aforesaid label by the appellant, as it had filed an opposition to the trade mark number 5111783 on 16th November, 2021 wherein the appellant had claimed that he had been using the said label since 2008.

3. He also states that the respondent had not approached the Trial Court with clean hands as the respondent had falsely claimed before the Trial Court that it came to know about the appellant's trademark/label/copyright on 31st August, 2021- when the appellant's trade mark under number 5111783 was published in Journal. He states that the respondent had himself admitted in an interview to the local news channel that the appellant had been copying its label for the last ten years.

4. He lastly states that the Local Commissioner had seized goods which were not even similar to the respondent's mark/label.

5. Having heard learned counsel for the appellant, this Court is of the view that the appellant has an alternative effective remedy by filing an application under Order XXXIX Rule 4, CPC for vacation of ex parte adinterim injunction orders.

6. It is pertinent to mention that as per the learned counsel for appellant since passing of the interim order, the respondent is writing letter(s) to various dealers of the appellant, to which learned counsel for the respondent assures and undertakes to this Court that the respondent shall not write any letter(s) to the dealers of the appellant till the disposal of the injunction and the vacation applications.

7. However, keeping in view the fact that the appellant's business has come to a standstill, this Court directs that, in the event, the appellant file an application under Order XXXIX Rule 4, CPC on or before 27th February, 2023, the respondent shall file its reply affidavit on or before 02nd March, 2023 and the matter shall be listed before the Trial Court on 03rd March, 2023 for hearing and disposal of the pending injunction applications. This Court is confident that the Trial Court shall dispose of the matter as expeditiously as possible preferably on 03rd March, 2023 itself. With the aforesaid directions, present appeal along with pending applications stands disposed of.