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

+ **FAO(OS) 282-283/2011**

EVEREADY INDUSTRIES INDIA LTD Appellant

Through: Mr Sandeep Sethi, Sr. Adv. with Mr
Ankur Sangal, Adv.

versus

SANJAY CHADHA & ANR Respondents

Through: Mr S.K. Bansal, Mr Pankaj Kumar & Mr
Vikas Khera, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **28.11.2011**

FAO(OS) 282-283/2011 & CM No. 10573/2011 (Stay) & CM No. 21445/2011 (Condonation of delay of 80 days)

The appellant, M/s Eveready Industries India Ltd., filed a suit for permanent injunction, grant of damages and delivery of infringement material in respect of its trademark "EVEREADY" alongwith the device EVEREADY. The suit was registered as CS(OS) No. 1422/2009. The suit was accompanied by an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said 'Code'), and ad interim ex-parte order was granted on 24.08.2009. The respondents filed an application for vacation of injunction under Order 39 Rule 4 of the Code and both the applications have been disposed of by the impugned order dated 22.12.2010 by the learned Single Judge.

In terms of the impugned order the ad interim ex-parte injunction has been partly modified. The learned Single Judge has concluded that the appellant is not entitled to grant of injunction against the use of the word/mark "EVEREADY" in respect of screw drivers and pliers. For other business of the respondent, the restraint is to continue with the condition that

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Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

the registration granted in favour of the respondents, which they have obtained (which forms the basis of the modification of the interim order), if cancelled; they will forthwith stop the use of the word "EVEREADY" even in respect of screw drivers and pliers.

The appeal thereafter has been filed with the delay of 80 days. This delay is sought to be explained in the present application.

It is stated that after passing of the order dated 22.12.2010 the counsel applied for a certified copy of the order, which was received on 13.01.2011, which was sent to the appellant. The delay is sought to be explained again on account of the resignation of one Ms Pragya Chakraborty, legal representative of the appellant. The instructions to file the appeal are stated to have been given on 01.03.2011 and the draft was ready on 21.03.2011, i.e., after 20 days, which was sent thereafter to the appellant. The preliminary draft was sent back only on 11.04.2011 and a second draft was thereafter prepared on 18.04.2011. The appeal has been filed only on 04.05.2011.

We find that the approach of the appellant in filing the appeal completely casual and negligent. The appellant is a limited company stated to be having established business over a number of years. It is not the case of the appellant that their legal department consists of only one person. The factum of one person resigning cannot make the department non-functional. Not only that if the dates, mentioned aforesaid, are taken, keeping in mind that the period of limitation for filing the appeal is of 30 days, the appellant has taken its own sweet time in deciding whether or not an appeal ought to be filed. Nothing prevented the legal representative of the appellant to come to Delhi to discuss the matter with the counsel and forthwith file the appeal especially when the appellant was aggrieved with the modification of the interim order.

We thus find that there is no cogent explanation for the delay in filing

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the appeal.

We may also notice another aspect of the matter, that is, that even the suit has been prosecuted, after disposal of the interim applications, in an extremely casual manner. We had called for the original records which show that even admission/ denial of documents has not been carried out though the date fixed for the same before the Joint Registrar was 14.02.2011. The Joint Registrar has repeatedly granted time to both the parties to file the original documents and thereafter the appellant still failed to file its documents. Even costs were imposed for not filing of documents. On 04.08.2011, counsel for the appellant pleaded before the Joint Registrar that certain documents had escaped the attention of the appellant, which were relevant and vital for proper adjudication of the matter and that he would file an application to place on record the original documents. This was strongly opposed by the respondent. However, the Joint Registrar granted two weeks time to place on record the original documents subject to payment of Rs 5000/- as costs to the defendant. On the next date i.e., 08.11.2011 again it was found that additional documents had not been filed by the appellant. Once again last opportunity has been granted. The case was renotified for 15.12.2011. It is not in dispute that even till today no additional documents have been filed.

The reason we have noticed the aforesaid facts, is to emphasise that in matters of such nature the interest of a plaintiff cannot lie only in prosecuting the interlocutory application and the appeal against the interlocutory application(s), without due care being taken to prosecute the suit. We find such a practice prevalent in large number of cases; a practice which deserves to be deprecated. The purpose of an interlocutory application is to arrive at an interim arrangement pending trial of the suit and not that the trial of the suit is displaced. It is the plaintiff who must be interested in expeditious disposal of the suit but, in the present case, we find that it is the appellant, as

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plaintiff, who has been negligent in prosecuting the suit.

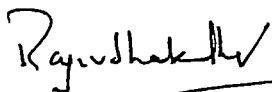
We may also notice the observations of the Supreme Court in *Wander Ltd. & Anr. Vs Antox India P. Ltd. 1990 (Supp) SCC 727* setting forth the scope of interference of the appellate court in the exercise of discretion by the court of first instance in such like matters.

The learned Single Judge by a detailed judgment has examined the controversy while coming to the conclusion qua the issue of interim arrangement to be arrived at. Injunction granted in favour of the appellant by IPAB has not been disturbed. Respondent, however, has been permitted to carry on business in respect of two items, that is, screw drivers and pliers, where they have a registered trade mark. Due care has also been taken that in case the registration is cancelled the injunction would operate even qua these two products.

In the end we may add that the respondents have also filed an appeal against the impugned order being FAO(OS) No. 249/2011, but learned counsel has chosen not to press the appeal in view of the orders which we have passed on the present application.

We thus find no sufficient cause being shown or good grounds for condonation of delay. The application for condonation of delay is dismissed and thus the same fate must follow in the appeal and the stay application.

Dismissed.


SANJAY KISHAN KAUL, J

RAJIV SHAKDHER, J

NOVEMBER 28, 2011/kk