

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

Date of decision: 5th October, 2012

+ **LPA No.637/2012**

% **THREE-N-PRODUCTS PRIVATE LIMITED Appellant**

Through: Mr. Sudhir Chandra Agarwal, Sr.
Adv. with Mr. Aayushmaan Gauba,
Ms. Sonal Madan & Ms. Simrat
Kaur, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Saif Khan & Mr. Ajay Rao,
Advs. for R-5/HUL.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 23rd July, 2012 of the learned Single Judge disposing the application of the appellant for interim relief, during the pendency of W.P.(C) No.4321/2012 preferred by the appellant in the following manner:-

“Any steps taken pursuant to the impugned decision will be subject to the final outcome in the writ petition. Accordingly, CM No.8969/2012 stands disposed of.”

2. The aforesaid writ petition has been preferred by the appellant impugning the order dated 18th May, 2012 of the Intellectual Property Appellate Board (IPAB) allowing applications preferred by the respondent no.5 herein namely Hindustan Unilever Limited (HUL) for removal of the trademarks registered by the appellant. The IPAB accordingly has directed removal of the marks of the appellant from the Register of Trademarks.

3. Notice of this appeal was issued and the senior counsel for the appellant and the senior counsel for the respondent no.5 HUL have been heard.

4. The senior counsel for the appellant, on instructions, has confined the relief claimed in this appeal to the restraint of removal of the trademark of the appellant from the Register of Trademarks in compliance of the order dated 18th May, 2012 of the IPAB, till the decision of the writ petition. He has further stated that the appellant, till the decision of the writ petition shall not take advantage of the registration which has been directed by the IPAB to be removed, vis-à-vis the respondent no.5 HUL. He has argued that the marks of the appellants were registered and remained registered for a period of nearly 30 years; that the appellant has instituted various proceedings

against others for infringement of the said mark and which proceedings would be adversely affected unless the removal of the mark pursuant to the order of the IPAB is stayed and in the absence thereof the appellant shall suffer irreparably even if the writ petition is to ultimately succeed and the order of the IPAB set aside. It is urged that on the contrary, in view of the statement given by the appellant, the respondent no.5 HUL will not be affected if the removal from the Register is so restrained during the pendency of the writ petition. The senior counsel for the appellant has also contended and sought to argue that the appellant has a *prima facie* case in the writ petition and good chances of succeeding in the writ petition.

5. The senior counsel for the respondent no.5 HUL has contended that besides the applications decided by the IPAB, several other applications filed by the respondent no.5 HUL as well as by other parties for removal of the other similar marks got registered by the appellant, on similar grounds, are pending consideration before the IPAB; however the IPAB has adjourned the said proceedings awaiting the decision in the writ petition. It is thus urged that the interim arrangement aforesaid already granted by the learned Single Judge sufficiently protects the interest of the appellant. Of course, it is also contended that the order of the IPAB is correct and there

are no merits in the writ petition preferred by the appellant. It is further argued that the appellant took its own sweet time of slightly over two months in preferring the writ petition aforesaid against the order of the IPAB and a further time of nearly two months in preferring this appeal; rather the appeal is delayed and accompanied with an application for condonation of delay of 19 days. It is thus contended that the appellant has not shown any hurry in having the order of the IPAB stayed and is not entitled to the relief sought on this ground alone.

6. The application decided by the IPAB was of the respondent no.5 HUL alone. There is no other opposition at present and the other oppositions if any to registration are pending consideration before the IPAB. We are of the opinion that considering the long period of 30 years for which the appellant enjoyed the registration and further considering the statement on behalf of the appellant to not use continuance of the marks on the Register in pursuance to the interim order vis-à-vis respondent no.5 HUL and which sufficiently protects the interest of the respondent no.5 HUL, and without expressing any opinion on the merits (and which may affect the decision in the writ petition), the appellant is entitled to the interim relief of restraining the removal of the marks in pursuance to the order of the IPAB from the

Register till the decision of the writ petition.

7. We accordingly, for the reasons stated, condone the delay in filing the appeal, allow this appeal by modifying the interim order already granted by the learned Single Judge by directing that the marks ordered to be removed under the order aforesaid of the IPAB, be not removed from the Register till the decision of the writ petition. This is however subject to the statement given by the appellant and which is accepted and by which the appellant is ordered to be bound.

8. We reiterate that nothing contained herein shall be deemed to be an expression of opinion on the merits of the case and aforesaid order is merely for the reason of the long period of 30 years for which the registration had continued and for the reason of the statement made by the appellant vis-à-vis the respondent no.5 HUL.

The appeal is disposed of. No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 5, 2012

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