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

+ **FAO (OS) 509/2014 & CM 20301/2014**

KHODAY BREWERIES LTD & ORS

..... Appellants

Through : Mr Gopal Jain, Sr Advocate with Ms Padma
Priya, Mr Chinmayee Chandra and
Mr Vaibhav Choudhry

versus

DIAGEO BRANS B V & ORS

..... Respondents

Through : Mr C. M. Lall with Ms Nancy Roy,
Mr Subhash Bhutoria and Mr Anuj Nair

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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16.01.2015

We have heard the learned counsel for the appellants as well as the learned counsel for the respondents / caveators. The learned Single Judge has come to the conclusion that the marks, sought to be employed by the appellants, are similar / deceptively similar to the registered/ unregistered marks of the respondents. Details of the same have been set out in the impugned order, to which, we need not add anything further. The learned Single Judge has merely prevented the appellants from using the marks and/ or from passing off the appellants' goods as those of the respondents.

It is an admitted position that the marks in question have not been used by the appellants. This is a very important and significant circumstance inasmuch as no financial loss would be caused to the appellants by virtue of the impugned order,

which has only directed the appellants not to use the said marks, which they, in any event, have not been using.

In these circumstances, once the learned Single Judge has found that there is a *prima facie* case, the balance of convenience and the question of irreparable loss clearly lean in favour of the respondents.

No interference with the impugned order is called for. The appeal is dismissed.

BADAR DURREZ AHMED, J

**JANUARY 16, 2015
SR**

SANJEEV SACHDEVA, J