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

+ **FAO 363/2015**

KASHUDHAN KUTIR UDYOG Appellant
Through: Mr. Suwarn Rajan and Mr. Sanchay
Mehrotra, Advocates

versus

HINDUSTAN UNILEVER LTD Respondent
Through

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **14.10.2015**

CM No.23322/2015 (Exemption)

1. Allowed subject to just exceptions.

FAO 363/2015 and CM No.23321/2015 (stay) and CM No.23320/2015 (condonation of delay of 193 days in filing the appeal)

2. There is a delay of 193 days in filing the appeal against the impugned order dated 01.12.2014, which has been passed by the trial court, in an application preferred by the respondent / plaintiff under Order 39 Rule 1 & 2 of the CPC, and on an application filed by the appellant / defendant under Order 39 Rule 4 of the CPC.

2.1 A bare perusal of the application would show that there is no explanation whatsoever for preferring the appeal after a delay of 193 days.

2.2 The only explanation proffered by the appellant / defendant is

that the previous counsel did not coordinate with the proprietor of the appellant / defendant, and that, he was informed about the position of the appeal only later.

2.3 The reason is as vague as it can be. The appeal, according to me, is liable to be dismissed on this short ground alone.

3. That apart, the learned counsel for the appellant /defendant says that while he does not dispute the fact that the trademark (word mark per se) of the parties is similar, his only submission before me, is that, the respondent / plaintiff is not an owner of the trademark.

3.1 To be noted, the trademark of the respondent / plaintiff is 'REX', whereas that of the appellant / defendant is 'RAX'. The trial court has noted that both manufacture the same product i.e. baking powder.

3.2 In so far as the assertion made by the counsel for the appellant / defendant is concerned that the respondent / plaintiff is not the owner of the trademark, the trial court has dealt with that submission in paragraph 8 of the impugned judgment. The relevant portion of the judgment is extracted hereinbelow for the sake of convenience :-

“..8.. The next argument of the defendant that plaintiff has failed to give any details of transferor i.e. relationship between Corn Product Company and Best Food Inc. The plaintiff has alleged that trademark REX was transferred to one Conopco Inc. USA with a request made on behalf of Conopco Inc., on form 24 dated 19.08.2002 in respect of around 52 registered trademarks including REX in various classes or in the name of Best Food Inc. The agreement dated 26.03.2013 very well provides that Conopco Inc. has granted a licence of Trademarks that it owns to Unilever PLC with a right to sub-licence such rights to the plaintiff

company. It is settled law that a mini trial is not to be conducted at the stage of granting of injunction. The argument raised by defendant can be if at all considered at later stage as it may require evidence to be led by parties to determine this contention. The court at the stage is required to see whether a prima facie case is made out to grant interim relief to the plaintiff at this stage..”

3.3 According to me, no interference is called for as the discretion employed by the trial court in granting the injunction is neither arbitrary nor perverse. The parameters for interference by the appellant court are set out in the judgment of the Supreme Court in the case of *Wander Ltd. and Anr. Vs. Antox India P. Ltd., (1990) Supp. SCC 727*. The observations contained in paragraph 14 at page 731-32 of the said judgment, being relevant, are extracted hereafter :

..14. ..The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not

justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle...”

(emphasis is mine)

3.4 Pertinently, there is nothing on record which would demonstrate that Conopco Inc. (which as per the agreement dated 26.03.2013, has granted a license qua subject trademark to Unilever PLC), has raised any objection. There appears to be a sub-license, in favour of the respondent / plaintiff. It is on one's case that Unilever has objected to the respondent / plaintiff using the trademark, “Rex”.

4. For the reasons given above, I do not deem it fit to interfere with the impugned order on the merits as well as for the reason that there is a substantial delay in approaching this court.

4.1 Needless to say, any observations made by the trial court or by this court will not effect the trial of the matter on merits.

5. The appeal and the pending application are accordingly, disposed of.

RAJIV SHAKDHER, J

OCTOBER 14, 2015

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