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

+ **FAO 377/2015**

M/S INTER IKEA SYSTEMS B V Appellant

Through: Mr. Sai Krishna, Ms. Shwetasree
Majumder, Mr. Prithvi Singh and Mr. Tanya
Varma, Advcoates

versus

QUESS CORP LIMITED Respondent

Through: Mr. Dinesh Agnani, Sr. Advocate with
Mr. Manu Seshadri and Ms. Sahiba Ahluwalia,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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04.11.2015

CAV 1156/2015

1. Since, the learned counsel for the respondent / defendant has entered appearance, the caveat stands discharged.

CM No.25764/2015 (Exemption)

2. Allowed subject to just exceptions.

FAO 377/2015 and CM No.25763/2015 (stay)

3. Mr. Krishna, the learned counsel for the appellant / plaintiff says that there are two fundamental errors in the impugned order. For this purpose, my attention has been drawn to paragraph 8.2 of the impugned order.

3.1 Mr. Krishna says that, admittedly, the respondent / defendant

does own a registered trademark. The learned ADJ has, however, in the impugned order indicated to the contrary; a fact which is not borne out from the record.

3.2 Second, that a trade mark cannot have a trans-border reputation unless it is used in a given geographical area.

3.3 Mr. Agnani, the learned senior counsel for the respondent/defendant says that in so far as the first aspect is concerned, an application has been moved before the trial court for correction of the error, which has crept; in the impugned order. Mr. Krishna, however, states that the application moved by the respondent / defendant only seeks correction of typographical errors and hence, has been filed under Section 152 of the CPC.

3.4 Mr. Agnani also says that a perusal of the paragraph 7.1 would show that the appellant / plaintiff has displayed tardiness in approaching the court for grant of injunction.

3.5 That apart, Mr. Agnani says that the respondent's / defendant's mark is differently sourced and consequently does not have its genesis in the mark of the appellant / plaintiff, as alleged, at all.

3.6 It is also, inter alia, contended by Mr. Agnani that the respondent/ defendant is in the business of providing human resource solutions.

3.7 Mr. Agnani, however, concedes that in so far as the first aspect is concerned, there is certainly an error, as only the logo is registered.

3.8 It is, in these circumstances, that Mr. Agnani says that he would concede that, the application for injunction, as also the respondent's/ defendant's application for vacation of injunction, needs to be reheard

by the trial judge.

4. Accordingly, the impugned order is set aside. The trial court is directed to rehear the parties. Pending the hearing, the interim order dated 11.01.2013 passed by the trial court will continue to operate.

4.1 The trial court is requested to conclude the hearing in the matter as expeditiously as possible though not later than three weeks from today.

4.2 Any observations made herein will not come in the way of the trial court expressing its view finally on the application for injunction and that filed by the respondent/defendant for vacation of the interim order dated 11.01.2013.

5. Mr. Krishna says that there is also an application under Order 39 Rule 2 A of the CPC filed by the appellant / plaintiff, which is pending adjudication and that the appellant / plaintiff would want to press the said application, as well. The trial court is free to take a decision in the matter with regard to that application. Mr. Agnani informs me that the trial court has already indicated that it will take up the said application for hearing.

6. For the aforesaid purpose, parties and their respective counsels shall appear before the trial court, on the date already fixed, i.e. 07.11.2015.

7. With the aforesaid observation in place, the captioned appeal and the pending application are disposed of.

8. Dasti to parties.

R AJIV SHAKDHER, J

NOVEMBER 04, 2015/yg