

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.12.2015

+ **FAO(OS) 660/2015**

ANIL GUPTA & ANR

... Appellants

versus

KEWAL SEHGAL & ORS

... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Sudhir Nandrajog, Sr Advocate with Mr Aman Vachher, Mr Saket Sikri, Mr Ashutosh Dubey, Mr Abhishek Chauhan and Mr Sagar Mehra

For the Respondents : Mr Parag P. Tripathi, Sr Advocate with Mr Rajiv Singh, Mr Tarjit and Mr Ashim Shridhar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 28762/2015

Allowed subject to all just exceptions.

CAVEAT 1229/2015

The learned counsel for the respondents/ caveators is present.

The caveat stands discharged.

FAO(OS) 660/2015 & CM 28760/2015

1. This appeal is directed against the judgment dated 29.10.2015 passed by a learned Single Judge of this Court in IA Nos. 19996/2015 and 21152/2015. The said applications were filed by the plaintiffs/ appellants in

the suit, being CS(OS) 2892/2015, seeking declaration and permanent injunction. The appellants/plaintiffs sought interim orders restraining the defendants and their servants from using the business of Technical Agrochemicals like 2:4D series, clodino etc.. The basis of this prayer was the alleged MOU dated 01.04.2012.

2. Initially, the learned Single Judge, based on the averments made in the plaint and the submissions made by the learned counsel for the plaintiffs/appellants, granted an *ex parte* ad interim injunction. However, after notice, the respondents/ defendants filed an application under Order 39 Rule 4 CPC for vacation of the said injunction. The learned Single Judge, by virtue of the impugned judgment, had allowed the application under Order 39 Rule 4 and vacated the *ex parte* injunction earlier granted in favour of the appellants/plaintiffs.

3. The entire case of the appellants/ plaintiffs hinges upon the alleged MOU between the appellant No.1 and the respondent No.1 said to have been executed on 01.04.2012. That document is disputed by the respondents to the extent of stating that the signatures of the respondent No.1 have been forged. Both the parties have produced reports of handwriting experts. The

handwriting expert produced on behalf of the appellants/ plaintiffs was of the view that the signatures of the respondent No.1, as appearing in the said document, was that of the respondent No.1 compared with his admitted signatures. But, we find from the report of the experts (Syed Faisal Huda and Syed Faizal Huda) that the said experts only compared photocopies of documents. *Prima facie*, that would not be of any evidentiary value. The expert evidence produced on behalf of the respondents supported their contention that the purported signatures of respondent No.1, said to have been placed on the said MOU, were not the signatures of the respondent No.1. This report also relies on comparison of photocopies, which would also not have, *prima facie*, any evidentiary value.

4. Apart from all this, we find that, although the alleged MOU is dated 01.04.2012, there is a deed of dissolution of the partnership which was hitherto carried out in the name and style of 'Ambey Laboratories'. That deed of dissolution has admittedly been signed and executed by the appellant No.1 and the respondent No.1 and is dated 30.09.2012. That deed of dissolution does not make any mention of the alleged MOU dated 01.04.2012. It is, of course, the contention of the learned counsel for the appellants that the MOU pertained not only to the partnership concern, but

also to the company, which is the appellant No. 2 herein. Be that as it may, there is no mention of the MOU in the dissolution deed even with regard to the business separation insofar as the partnership firm is concerned.

5. The learned Single Judge has also raised issues with regard to the use of the letter-head of Ambey Laboratories insofar as the alleged MOU is concerned. He has raised several doubts about the same, which is evident from paragraph 12 of the impugned judgment. The learned Single Judge has also noticed that the scanned copy as also the so-called original MOU contained the signatures of the witnesses, whereas the photocopy of the alleged MOU, which was filed along with the plaint, did not have the details or signatures of the witnesses.

6. In these circumstances, several doubts have arisen, *prima facie*, with regard to the alleged MOU dated 01.04.2012, on which, the entire case of the appellants has been founded. It is for these reasons that the learned Single Judge felt it prudent to vacate the interim order and to subject the parties to trial. Of course, the learned Single Judge has been careful in directing that the respondents/ defendants shall maintain true and correct accounts of the sale of the impugned goods and shall file statements every quarter. The first

statement of sale was to be filed by 15.11.2015 which, according to the learned counsel for the respondents, has already been filed and he undertakes to abide by the directions given by the learned Single Judge and file the statements quarterly till the decision in the suit.

7. In view of the foregoing circumstances, we are not inclined to interfere with the impugned judgment. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

DECEMBER 08, 2015
SR

SANJEEV SACHDEVA, J