

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

% Judgment Delivered on: 19th September, 2016

+ **FAO(OS) 107/2016**

LEVI STRAUSS & COMPANY

..... Appellant

Versus

ANKIT SHARMA ANR

..... Respondents

Advocates who appeared in this case:

For the Appellants:

Mr Sudhir Chandra, Senior Advocate, Mr Sanjeev Sindhvani, Senior Advocate with Ms Gunjan Paharia, Mr N. Nawab & Mr Himanshu Deora, Advocates

For the Respondents:

Mr Sandeep Sethi, Senior Advocate with Mr S.K.Gandhi, Ms Manjula Gandhi, Mr Shivanshu Kumar, Mr Aditya Kapoor, Ms Nishtha Gupta & Ms Medha Tandon, Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellant/plaintiff has impugned order dated 25.02.2016 whereby the Suit has been adjourned by the learned single judge to 12.07.2016 as there was no time left to hear the arguments and the interim order passed by the Division Bench has been directed to continue till further orders.

2. The contention of the appellant is that the division bench had

disposed of the appeal (FAO (OS) 603/2015) directing the listing of the respondent/defendant's application under Order XXXIX Rule 4 of the Code of Civil Procedure (CPC for short) for hearing before the learned single judge on 19.11.2015 and directed that the interim order passed by the Division Bench would continue till 19.11.2015, on which date it was open to the learned single judge, after hearing parties, to pass appropriate orders. It is contended that the application was not taken up for hearing and the interim order passed by the Division Bench has been directed to continue till further orders.

3. The appellant/plaintiff has filed the suit for declaration, permanent injunction, restraining infringement of trademarks and passing off etc. The appellant/Plaintiff contends that the Plaintiff owns *inter alia* the Arcuate Stitching Design Trademark and the Tab Design Trademark, which are registered trademarks. The appellant/Plaintiff contends that the respondents/defendants have infringed their registered trademarks.

4. The learned single judge on 31.07.2015 granted an *ex – parte ad – interim* injunction restraining the Respondents/defendants from using the tab device trademark and the arcuate stitching design trademark.

5. The respondent filed an appeal (FAO (OS) 556/2015), which was withdrawn on 05.10.2015 with liberty to file an application under

Order XXXIX Rule 4 CPC within a week.

6. Application (I.A. 21510 of 2015) under Order XXXIX Rule 4 CPC was filed on 09.10.2015 and was adjourned to 19.01.2016 without the interim order dated 31.07.2015 being modified.

7. The Respondent thereafter filed another appeal (FAO (OS) 603/2015) on the ground that the said application was not disposed of.

8. The Division Bench by an ad-interim order dated 06.11.2015 stayed the operation of the *ex-parte* ad-interim order dated 31.07.2015.

9. On 17.11.2015, the Division Bench passed the following order:

The appeal is disposed of by directing that the application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 being IA No.21510/2015 be placed before the learned Single Judge for hearing on 19.11.2015 instead of 19.01.2016. The interim order passed by us shall continue till the next date of hearing, i.e., 19.11.2015, on which date it shall be open to the learned Single Judge, after hearing counsel for the parties, to pass appropriate orders.

We are making it clear that we have not expressed any opinion on the merits of the matter.

10. On 19.11.2015, when the suit was placed before the learned single judge in terms of our order dated 17.11.2015, the single judge passed the following order:

1. The present suit has been placed before the Court in terms of the order dated 17.11.2015 passed by the Division

Bench, where under the appeal preferred by the defendants against order dated 31.07.2015 was disposed of with a request made to this Court to hear I.A. 21510/2015 on 19.11.2015, instead of 19.01.2016.

2. *The Board of this Court is very heavy today with 53 matters listed and it is not in a position to hear arguments in the application today itself.*

3. *List on 7th December, 2015.*

4. *Mr. Sandeep Sethi, learned Senior Advocate appearing for the defendants states that in view of the above, the interim order dated 06.11.2015 passed by the Division Bench may be continued till the next date of hearing.*

5. *Ordered accordingly. The interim order dated 06.11.2015 passed in FAO(OS) 603/2015 shall continue till the next date.*

11. The suit was thereafter adjourned to 16.12.2015 and thereafter to 23.12.2015 on which date the parties wanted to explore the possibility of settlement through mediation. On 28.01.2016 the suit was adjourned to 25.02.2016.

12. On 02.02.2016, the Appellant/Plaintiff filed an application for early hearing, however the same was dismissed on 04.02.2016. On 25.02.2016 (order impugned herein), the learned single judge passed the following order:

No time left to hear the arguments today.

List on 12.07.2016. Interim order passed by the Division Bench to continue to operate till further orders.

13. Perusal of the various order passed by us in the two appeals filed by the Respondents/Defendants clearly show that we had intended that the application of the appellant/plaintiff under order XXXIX Rules 1 & 2 and the application of the Respondent/Defendant under order XXXIX Rule 4 be disposed of expeditiously. We had on 17.11.2015 remitted the matter to the learned single judge to expeditiously dispose of the said application and had only continued the interim order granted by us till 19.11.2015, on which date, it was open to the learned single judge, after hearing counsel for the parties, to pass appropriate orders.

14. Our order dated 17.11.2015 was clear that the interim order granted by us was to continue till 19.11.2015 and if the interim order was to be continued, the same could be continued after hearing the parties. On 19.11.2015, no hearing took place, the interim order was continued. On 25.02.2016, the interim order passed by us has been continued by the learned single judge till further orders, without a hearing. The suit was adjourned to 12.07.2016. The records of the suit reveal that the suit also has been further adjourned on 12.07.2016 to 18.10.2016 on the ground “no time left”.

15. Though before us the parties had also addressed on the merits of the matter, since we had in the earlier two rounds of appeals made it clear that the learned single judge in the first instance should hear and dispose of the application of the appellant/plaintiff under order

XXXIX Rules 1 & 2 and the application of the Respondent/Defendant under order XXXIX Rule 4, we deem it appropriate not to deal with the contention of the parties on merits and to remit the matter to the learned single judge to dispose of the applications on an early date.

16. The interim order granted by us was to continue till the date fixed by us before the learned single judge. The matter has not been taken up because of exigencies of the heavy board of the learned single judge and the interim order has been extended without a hearing.

17. We accordingly dispose of this appeal by directing that the application of the appellant/plaintiff under order XXXIX Rules 1 & 2 and the application of the Respondent/Defendant under order XXXIX Rule 4 be listed before the learned single judge in the first instance for directions on 22.09.2016. The learned single judge is requested to dispose of the applications by 30.11.2016. In case the applications are not disposed of by 30.11.2016, the interim order dated 06.11.2015 granted by us in FAO (OS) 603/2015 shall stand vacated.

18. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

SEPTEMBER 19, 2016
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BADAR DURREZ AHMED, J.