

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

% Judgment delivered on: 18.11.2016

+ FAO(OS) 177/2016

AURA SYNERGY INDIA PVT LTD & ORS ... Appellants

versus

**M/S NEW AGE FALSE CEILING
CO PVT LTD & ORS ... Respondents**

Advocates who appeared in this case:

For the Appellants : Mr Sanjeev Sindhvani, Senior Advocate with
Mr Harsh Kaushik, Mr Abhay Chattopadhyay and
Gaurav Sharma

For the Respondents : Mr Saif Khan with Mr Manish Biala

**CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE JAYANT NATH**

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 22329/2016(condonation of delay)

The delay in filing the appeal is condoned.

The application stands disposed of.

FAO(OS) 177/2016 & CM 22330/2016 & CM 22331/2016

1. This appeal has been preferred against the judgment and/or order dated 10.02.2016 passed by a learned Single Judge of this Court, whereby he has dismissed IA 23095/2015, being an application under Order 39 Rules 1 and 2 CPC, filed by the appellants/plaintiffs and allowed

IA 26213/2015 (under Order 39 Rule 4 CPC) which had been filed by the respondents/defendants.

2. The entire battle is with regard to the trade mark 'AURA'. The plaintiffs claimed exclusivity over the said trade mark in respect of metallic false ceilings. The suit that has been filed is one of passing off in which the plaintiffs claimed that the defendants were passing off their products as those of the plaintiffs/appellants by using the mark 'AURA'.

3. Initially, the learned Single Judge had granted an *ex parte* ad interim injunction restraining the defendants from using the mark 'AURA' in respect of metallic false ceilings. As mentioned above, the respondents/defendants filed the application under Order 39 Rule 4 for vacation of the *ex parte* ad interim injunction that had been granted. One of the main grounds raised in the application for vacation of the injunction was that the plaintiffs/appellants had not come to Court with clean hands and, therefore, had disentitled themselves for the relief of injunction being an equitable relief. In the first instance, it was contended that the plaintiffs had not disclosed the earlier relationship between the plaintiffs/appellants on the one hand and the defendants/respondents on the other, whereby the plaintiffs/appellants, under an agreement dated 20.04.2012, functioned as

an agent of the defendants/respondents in respect of metallic false ceilings. The plaintiffs/appellants have clearly marketed metallic false ceilings manufactured by the defendants during the subsistence of the said agreement dated 20.04.2012.

4. The learned Single Judge has examined the matter in great detail and particularly on the allegation that the plaintiffs/appellants had suppressed and/ or concealed material facts and based on such suppression and concealment, the plaintiffs/appellants had approached this Court for the *ex parte* ad interim injunction which it did get.

5. We have also heard the learned counsel for the parties at length and have examined the papers before us. We are in full agreement with the conclusions arrived at by the learned Single Judge with regard to suppression and concealment. Insofar as the merits of the matter are concerned, any findings in the impugned order are obviously only of a *prima facie* nature and would be subject to the conclusions in the trial after evidence is led.

6. Insofar as the present appeal is concerned, we have only to focus on the issue of suppression and concealment. The learned counsel for the appellants has placed before us two decisions of the Supreme Court :-

- (i) **S.J.S. Business Enterprises (P) Limited v. State Bank of Bihar and Others: (2004) 7 SCC 166;** and
- (ii) **Mayar (H.K.) Limited and Others v. Owners and Parties, Vessel M.V. Fortune Express and Others: (2006) 3 SCC 100**

7. In *S.J.S. Business Enterprises (supra)*, the Supreme Court had observed that as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. It was also observed that the said rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. However, the Court also noted that the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. The learned counsel for the appellants relies on this latter observation of the Supreme Court to submit that the fact that the agreement and the earlier relationship between the appellants and the respondents was not mentioned, was not a material one and, therefore, this could not have been regarded as a case of suppression/concealment.

8. The learned counsel for the appellants, as noted above, had also placed reliance on *Mayar (H.K.) Limited (supra)*, where, once again, the Supreme Court noticed the provisions of Order 6 Rule 2 of the Code of Civil Procedure and observed that the expression ‘material facts’ though

not defined anywhere would mean those facts upon which a party relies for his claim or defence. The Supreme Court also observed that which particular fact would be a material fact that was required to be pleaded by a party would obviously depend on the facts and circumstances of each case. The Supreme Court in *Mayar (H.K.) Limited (supra)* also placed reliance on its observations in *S.J.S. Business Enterprises (supra)*, to which we have already alluded above.

9. On going through the impugned judgment and/or order, it is evident that the learned Single Judge felt that the suppression/non-disclosure of the agreement and the earlier relationship between the appellants as agents of the respondents would amount to a 'material fact' and would impinge on the merits of the case. We agree with this conclusion of the learned Single Judge. Had the appellants/plaintiffs mentioned the earlier relationship between the parties, the *ex parte* ad interim order may have been entirely different. We also note that the learned Single Judge has examined other materials also which were not placed before the Court in the first instance and after considering the entire documents and material which were brought to the notice of the Court by the defendants/respondents, the learned Single Judge, in his wisdom, has arrived at the conclusion that the plaintiffs/appellants were guilty of

suppression and/or concealment of material facts. This by itself would disentitle the appellants from any equitable relief including that of an interim injunction.

10. In view of the foregoing discussion, we are not inclined to interfere with the impugned judgment. The respondents/defendants shall be permitted to withdraw the amount of Rs 2 lacs deposited with the Registrar General of this Court pursuant to the order dated 02.06.2016.

11. We are making it clear, once again, that any observations or findings contained in the impugned judgment and our order are only *prima facie* in nature and are subject to the final conclusions that may be arrived in the suit after trial.

The appeal is dismissed.

BADAR DURREZ AHMED, J

JAYANT NATH, J

**NOVEMBER 18, 2016
SR**