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

% **DECIDED ON: 05.09.2016**

+ **FAO (OS) (COMM) 56/2016, CAV669/2016, CM APPL.27581-27582/2016**

VIJAY SOLVEX LTD. & ANR. Appellants

Through: Dr. A.M. Singhvi, Sr. Advocate with Mr. Narendra M. Sharma, Mr. Ankur Sood, Ms. Prachi Johri, Ms. Prachi Gupta and Mr. Abhishek Sharma, Advocates.

Versus

SAURABH AGROTECH PVT. LTD. & ANR. Respondents

Through: Mr. Rajiv Nayar, Sr. Advocate with Mr. Harshit Tolia, Mr. R.H. Bhansali, Mr. Shiv Mangal Sharma and Mr. Sitesh Narayan Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. The present appeal by the defendant in a pending commercial suit, impugns an *ad-interim* temporary injunction order restraining it from using the trademark ASHOKA in relation to edible oil, oil cakes, ghee, and related goods. The plaintiff (hereafter called Saurabh) had sued it (i.e. the second defendant/appellant, hereafter called “Vijay Solvex”) for infringement and sought permanent injunction as well as damages.

2. Saurabh was incorporated in August, 1994. It manufactures, sells and distributes –through its dealers, edible oil, oil cakes, vegetable ghee and allied goods. In 1975, one M/s Rohtash Industries Limited, Times House, New Delhi-

110002 adopted and started using the trademark ASHOKA in relation to goods in question viz. edible oil, oil cakes, vegetable ghee, and allied goods as well as business of manufacturing and marketing edible oils. ASHOKA was registered (Registration No.354173) as of 05.10.1979 in Class 29. Rohtash Industries sold its entire business of edible oil as a going concern including the trademark ASHOKA to Raghuvar (the third defendant) by agreement dated 03.07.1984. The application on Form TM-24 for change of entry (ownership) was filed on 23.03.1988 in the Trade Mark Registry by the said Raghuvar for entering itself as assignee, and was allowed on 05.05.1988. A consequential entry was made in the register of trademarks. It was alleged that due to communication gap between earlier proprietor of the mark and their attorney, the above registration of the trademark vide No.354173 in Class 29 had lapsed as renewal application was not filed in time in the Trademark Registry by its attorney. But the fact remains that trademark rights were assigned-a fact not disputed by the assignor or assignee. Later on 07.04.2008 trademark proprietorship rights were acquired by the plaintiff by and through assignment from M/s.Raghuvar (India) Ltd. After having acquired rights, Saurabh applied for change of ownership in the trademark registry in respect of the mark, ASHOKA, in Form TM-16. Vijay Solvex after about two years filed the objection to the application for registering the assignment. However Saurabh's application was allowed. The mark was duly registered. After passing the order dated 13.05.2010 by the Trade Marks office favouring Saurabh, it became proprietor of the trademark, (No. 1324290 in Class-29) in respect of the said goods applied for. Claiming use since the year 1975, the plaintiff approached this court, expressing apprehension that the defendants were likely to start or had started infringing the registered trademark ASHOKA by using a similar label along with the device of a lion and a wheel within the territorial jurisdiction of this Court.

3. Saurabh's suit alleged that Vijay Solvex was trying to infringe the plaintiff's trademark and pass off its goods as those belonging to the plaintiff as it was claimed by it (Vijay Solvex) in the market that it was the permitted user of Raghuvar. Radhey Shyam Agencies (hereafter "Radhey Shyam", the first Defendant and agent of Vijay Solvex) was selling the products of Vijay Solvex as those of Raghuvar in Delhi. It was alleged that the active directors of the second and third defendants (Vijay Solvex and Raghuvar) were common. As assignee of the mark Raghuvar was now trying to use the trademark of the plaintiff through Vijay Solvex in an illegal manner. Saurabh alleged that the trademark ASHOKA was continuously used by it either directly or through its predecessor-in-title or licensee, extensively, uninterruptedly, commercially and continuously since 1975. It has tremendous reputation in the market. Saurabh claimed that its mark ASHOKA has gained all round popularity and is a well-known mark in India. That trademark ASHOKA is exclusively associated with Saurabh's goods. The suit alleges that all essential features of the trademark, i.e. its style, get up, presentation, etc. have been substantially if not wholly copied by the defendants who have reproduced the artwork of the label used by the plaintiff. This according to Saurabh resulted in confusion and deception. Saurabh sells its goods in many parts of India. Their goods are also available in the local markets of Delhi. The plaint further alleged that the defendants were trying to enter the markets of New Delhi with the same trademark and in respect of the same goods.

4. The defendants Vijay Solvex and Raghuvar India filed a common written statement. They claimed to be the real owners of the trademark and alleged that the assignment claimed by Saurabh was incomplete and consequently the assignment was terminated as it was without consideration;

Raghuvar did not receive any amount, as stated in the Assignment Deed. Raghuvar said that it filed Civil Suit No. 19/2011 before the Court of Additional District and Sessions Judge No.1, Jaipur City, Jaipur challenging the Deed of Assignment by seeking interim orders restraining Saurabh from using the suit trademark. The defendants (Vijay Solvex and Raghuvar India) asserted that they had been using the subject trademark continuously and openly for the last many years within Saurabh's knowledge. Thus, the relief claimed is barred by the principles of acquiescence. Even this Court has no territorial jurisdiction to entertain the suit as the plaintiff has its registered office at Rajasthan. Similarly the said second and third defendants have their registered office at Rajasthan. Only the Courts at Rajasthan may have natural jurisdiction in respect of the subject matter of this suit, if the same is maintainable. The first defendant Radhey Shyam is not an exclusive agent or dealer of the second and third defendants, Vijay Solvex and Raghuvar as alleged. The plaintiff in order to invoke the territorial jurisdiction of this Court has produced only one invoice. As the other proceedings are pending in courts at Jaipur, where issues relating to the suit trademark are under consideration, those would be the competent courts, and not this court.

5. The written statement further alleged that the present suit was an instance of forum shopping and the interim relief sought in the present application was earlier sought by the plaintiff in a civil suit bearing No.28/2010 before the District and Sessions Judge, Jaipur. The relief sought was considered by the Trial Court in order dated 10.02.2011, the prayer was partly granted only in respect of assets mentioned in the schedule to the plaint and the companies/partnership firms' account statements and the other prayers made by both the parties were rejected. Both sides filed cross-appeals against

the said order before the Rajasthan High Court. Those were disposed of by the Rajasthan High Court's order dated 06.04.2015 and there was no interference in the order of the trial Court. The written statement alleged that Saurabh falsely mentioned that the partition suit filed by it (being Civil Case No.28/2010 before the District and Sessions Judge, Jaipur) was only for partition of "tangible" property.

6. The written statement also alleged that the plaintiff's pleadings were diametrically opposite's to its stand in CS No. 19/2011 before the additional District and Sessions courts Jaipur. Saurabh had in its written statement urged that the trademark was given to the Baburao Data Group and was transferred in a family settlement whereas in this suit it is alleged that the deed of assignment was an independent transaction. Vijay Solvex argues that in fact the deed of assignment was part of a larger family settlement. The admission by Saurabh is however absent in the present suit. The question of the family settlement and its effect is directly in issue in the civil suit filed in 2010. That suit had excluded the questions which are sought to be urged by the plaintiff in the present suit to take advantage in separate proceedings. Vijay Solvex also argues that the suit misrepresents that the plaintiff recently learnt about the trademark usage by it (the appellant). It is urged that in fact Saurabh was fully aware of such use, which constitutes continuous and uninterrupted use of the trademark for a long time. The directors of the plaintiff and defendant companies are related and are family members. The trade channels of both parties' businesses are common. They operate their businesses from Alwar, Rajasthan. The two branches are embroiled in litigation since 2010. It is further argued that the real owners of the trademark are the defendants and not the plaintiff. In this regard it is stated that the assignment was in fact terminated. Reliance is placed upon a note

issued to the plaintiff Saurabh stating that consideration for the assignment was never paid. This led to the filing of Suit No. 19/ 2011 before the Additional District and Sessions Judge No.1 Jaipur, challenging the deed and seeking restraining orders. The issues which arise for consideration in that suit are identical with those in the present case. In fact even the entry made ostensibly recording the trademark assignment is without authority of law and therefore unenforceable. The defendants in the written statement also claimed that they have been in fact using the trademark since inception, i.e., 1975. The benefit of use and goodwill attached to the mark's predecessor in title wholly flows to the defendant.

Impugned order

7. The single judge first dealt with the issue of assignment of the trademark. He examined the scope of the assignment deed of 07.04.2008 and extracted it. On the face of it the deed records that the assignment was for a consideration of ₹1,00,000/-. It was further noticed that on 13.05.2010 the Trademark office allowed the relevant application and changed the trademark registration in favour of Saurabh. That was not challenged by the defendants including Vijay Solvex. The Single Judge also noticed significantly that no remedy by way rectification was sought in the trademark registry by either of the defendants. The Single Judge examined the deed and held that it shows admissions of acknowledgment and of the consideration. He then noticed that on 08.04.2010, Raghuvar India issued notice to Saurabh admitting that the trademark was assigned by the deed of assignment of 07.04.2008. He specifically highlighted the fact that in the notice issued to the plaintiff soon after the assignment was executed conceded that the defendant would not infringe the trademark by using any identical mark or any mark resembling it

so as to result in deception or confusion. In the light of these details it was held that without the removal of the trademark registration entry from the trademark register, the question of its ownership could not be gone in to in the manner urged by Vijay Solvex and the third defendant. He also noticed significantly that Vijay industries (the apparent concern of the plaintiff Saurabh) had filed an infringement suit seeking permanent injunction and alleging that the mark SCOOTER had been infringed. Vijay filed an application seeking vacation of *ex parte* injunction. In that Vijay Solvex specifically urged that the plaintiff undertakes its business under one brand, ASHOKA and its brand is different and distinct brand, i.e., SCOOTER. On the bases of all these elements the judge held that taking into consideration the totality of circumstances *prima facie* the ownership of the registered trademark vested with Saurabh. He also noticed the relevant provisions of the Trademarks Act such as section 57 and Section 31.

8. The Single Judge next noticed that CS 19/ 2011 was filed by Raghuvar for a declaration of an injunction against Saurabh and that this challenged the assignment. Even though a claim for interim injunction was made, no such order was given. The single judge also noticed that there was no stay of operation of the assignment deed or stay of order of the Trademark office. In the circumstances it was held that at this stage in the present suit where the trial was yet to commence, the defendants could not be allowed to say that the assignment was an invalid or ineffective document.

9. As far as the earlier litigation is concerned, the Single Judge noticed that in May 2010 the suit for partition was filed. The suit specifically concerned itself with 5 reliefs; the first four reliefs related to specific items of property whereas the 5th relief sought permanent injunction restraining the defendants from selling any part of the undivided property mentioned in the suit schedule.

It was held by the Single Judge that if the entire suit was read in a meaningful manner what emerged was that the plaintiff sought reliefs to restrain defendants not to disturb the continuing business in view of the assignment deed. However there was no claim to restrain the defendants on the ground that they were infringing the mark nor did the plaintiff admit that after execution of the assignment the defendants were using that mark. On the basis of these materials the Single Judge concluded that the first suit was for partition and did not relate to any trademark dispute. The Single Judge further noticed that the plaintiff had mentioned about the assignment of the trademark by the defendants and Raghuvar and for the first time disputed the assignment saying that consideration was not received and that the director signing the assignment was not authorized to do so. Yet no counter claim was sought in that regard nor was an application for temporary injunction filed. The District Court of Jaipur on 10.02.2011 passed an order that the defendants in the suit would not sell or transfer the movable properties in certain schedules to the suit and that the companies and partnership firms controlled by the parties of which details were given in the schedule had to be presented before the court. The defendants filed an appeal seeking the vacation of the interim order of the district judge. The plaintiffs preferred an appeal seeking limited claim for *status quo* with respect to the properties in the schedules. The plaintiff's appeal was dismissed and the defendant's appeals were allowed. This order of the Rajasthan High Court was, however, set aside by the Supreme Court on 04.08.2014 and the matter was remitted for a fresh hearing. On the bases of all these materials the Single Judge concluded that the essential dispute in the partition suit related to immovable properties and the control of assets and concerns which were listed in the schedules to the suit. No specific claim of trademark infringement or for enforcement of permanent injunction in respect of the trademark was sought.

10. The Single Judge next examined the question of long and continuous use claim by Vijay Solvex and Raghuvar. On an overview of the material he was of the opinion that there was no cogent and clear evidence to establish that the trademark had been used by the defendants. In this regard the Single Judge was also influenced by the fact that in an earlier suit which Vijay Solvex had filed, i.e., in 2013 before the District Judge, Jaipur against the parent concern of Saurabh, a restraint order was sought in respect of the trademark SCOOTER. The Single Judge was of the opinion that taking into consideration the summary of the sales and production figures and on its comparison with the annual report of Vijay Solvex, it was clear that whatever was produced was sold under only one trademark, i.e., SCOOTER. Consequently there was no question of any quantity being left over for sale under the other trademark. Furthermore the Single Judge noticed that Vijay Solvex's website lists various products and brands sold by it, but does not mention ASHOKA. Likewise he took note of the advertisement published in the local newspaper on the 11.11.2015. Advertisements of both Saurabh and Vijay Solvex had appeared in that. Whereas Saurabh, the plaintiff's group, showed the trademark in question i.e., ASHOKA the defendant group in its advertisement did not disclose ASHOKA, as a listed trademark.

11. The Single Judge lastly considered the issue of whether the plaintiffs had approached the Court after delay and held that there was no delay having regard to the materials and that even otherwise in law since the issue of infringement arose, the plaintiff could file the suit having regard to the volume of infringed sales. This was particularly more relevant having regard to the absence of any prior use. Thereafter the single judge compared the two marks and then went on to discuss various decisions and held that the plaintiff had

showed a stronger *prima facie* case for grant of the interim order. Its registered proprietorship of the trademark had not been questioned. In several documents and pleadings the defendants had admitted to the ownership of the mark by the plaintiff. That the plaintiff had not been granted injunction in earlier proceedings was not a merited argument. Furthermore there was no delay. On these considerations the learned Single Judge proceeded to issue the temporary injunction sought by Saurabh.

Contentions of the parties

12. The appellants contend and their counsel Dr. Abhishek Manu Singhvi argues that the Assignment deed of 07.04.2008 was an invalid document for two good reasons, i.e., that the so-called director who had signed it, on behalf of Vijay Solvex and Raghuvar was not authorized to do so and secondly that having regard to the sales turnover and the volume of business generated by the entire group, the consideration stated i.e., ₹1 lakh was a sham and that even otherwise that amount was not paid. It was highlighted that the defendants had objected to the registration as soon as they became aware. Learned counsel submitted that the question of validity of the assignment deed itself is an issue in the Jaipur suit filed by Raghuvar. These were strong grounds which should have persuaded the Single Judge to stay his hands and exercise caution.

13. Learned senior counsel argued that the history of previous litigation clearly revealed that the plaintiff had forum shopped. It was argued in this regard that the first suit filed by the plaintiff included all manner of reliefs - contrary to the Single Judge's surmise. The relief claimed included the assertion of propriety right over the trademark ASHOKA. The plaintiff i.e. Saurabh was unable to secure interim relief. What little relief it secured was set

aside by the High Court. In the circumstances Saurabh could not have sought equitable discretionary relief by suppressing these vital and material facts from the court when it did approach under the present suit.

14. Learned counsel relied upon the pleadings in the earlier suits and argued that they may or may not be the basis for concluding that the brand ASHOKA in the mark belongs to the plaintiff; however the defendants had an independent right to be considered as prior users and in any event concurrent users of the mark in daily. Here it was argued that the plaintiff sought had exercised a stratagem of impleading its own dealer as the first defendant and seeking injunction. Learned counsel relied upon the documents furnished and submitted that each one of them established long continuous and prior use of the trademark ASHOKA, in Delhi. It was submitted that the mere circumstance that the defendant's goods were sold in Delhi did not afford a cause of action for the filing of the suit. The defendant did not have any dealer in Delhi nor was there any evidence to that effect. Learned counsel argued that there are several invoices which clearly showed that the defendant's always traded under the mark ASHOKA, and that such goods are well known.

15. Counsel for Saurabh argued on the other hand that the Single Judge has taken considerable pains in analyzing each contention of the parties. Stressing that in an interlocutory application the court is not expected to undertake an elaborate analysis of the facts and the law, the learned counsel emphasized that this court should desist from interfering with the impugned order. It was submitted that so far as earlier litigation is concerned there was no cause for the plaintiff to approach this court because in its knowledge the defendant was not using the mark ASHOKA. On the contrary the Single Judge had correctly held that the issuance of 08.04.2008 letter and the assignment deed itself formed an

acknowledgment - irrevocable in terms by the defendants which bind them. The effect of those documents is such that the plaintiffs' property right over ASHOKA and the continuous use attached to it since 1975 remains unquestioned. That the assignment deed itself was challenged is another thing however, until the suit challenging that succeeds, and in the absence of an interim order, the consequences which follow as a result of the document remain.

16. Furthermore, submitted counsel, the defendants' pleadings as indeed the party's pleadings in the first suit filed by Saurabh and other members of its group clearly revealed that the center of controversy was the issue of sharing of immovable properties and businesses, not trademark. The question of ownership of the trademark stood settled by the assignment deed and even the letter which acknowledged the exclusive rights of the plaintiffs thereto. In these circumstances the plaintiff could not be accused of duplicity or suppression of material facts.

17. As far as the prior user of the mark is concerned it was urged that in none of the suits filed by either the plaintiff or the defendant was the question of ASHOKA urged. In any event suit filed by the defendant in 2011 sought various reliefs however, it never establish or successfully pleaded that ASHOKA was used by the defendants. In any case they did not obtain any interim order. Likewise, the declared admission by the defendant in that suit, that the SCOOTER brand belonged to it whereas the plaintiffs were owners of the ASHOKA brand, precludes them and estops them from asserting ownership rights or even usage in relation to that mark.

18. The learned counsel urged that the *prima facie* findings of the Single Judge with respect to delay not being an inhibiting factor and that the defendants were guilty, *prima facie* of passing off the plaintiff's mark, is also sound. It is submitted that having regard to settled law that in such cases injunction must follow as a matter of course, this court should not interfere with the findings of the Single Judge based upon the materials on the record.

Analysis and Findings

19. It is evident from the above narrative that two warring family groups seek exclusive use of ASHOKA in respect of edible oils, oil cakes and allied products. That the mark was registered and used since 1975 in respect of these goods, that it was coined originally for these goods by another concern, from whom it was acquired and later used by Raghuvar is not in dispute. Apparently, the (now) two rival parties divided their businesses; an assignment deed was signed by Raghuvar assigning ASHOKA to Saurabh. The latter was party to a suit, i.e., for partition. The appellants have urged that this suit claimed injunction which was refused; the second suit between the parties is the one filed by Raghuvar; it seeks cancellation of the assignment deed. A third suit was filed, in Dimapur; in the course of those proceedings, it was acknowledged by the defendants that the plaintiff owned ASHOKA.

20. As to the question of whether the assignment was valid or not, in this court's opinion, there cannot be two views. There is no denial that an assignment deed was signed by Raghuvar's director, on 07.03.2008; in terms it categorically transfers and assigns the ASHOKA mark to Saurabh. No doubt, the consideration appears to be inadequate or nominal, given the group turnover. Since the family entered into a settlement, there is some merit in the

submission that the assignment was part of the understanding and it helped divide the business. It is not uncommon in such circumstances, for families to create rights through separate documents, though they are motivated by a common objective. This conclusion gets strengthened by the circumstance that the day after the assignment deed was executed, Raghuvar, the owner of the trademark, acknowledged Saurabh's exclusive proprietary rights over that property. Till date there is no order vacating or rectifying the registration of the mark in favour of Saurabh, which took place on 13.05.2010. Its contentions as to the validity of the assignment or inoperability of the trademark registration are to be seen in the context of the fact that civil courts are barred from pronouncing on such matters; for that kind of relief, the party aggrieved has to approach the Intellectual Property Appellate Board. Likewise, the defendants could not persuade the Jaipur civil court to restrain Saurabh from using the ASHOKA mark for the same reasons they urge here, i.e., nullity of the assignment deed. The findings and observations of the Single Judge on this score are unflawed.

21. The next question is whether there was suppression of material facts by the plaintiff, Saurabh, in regard to non-disclosure of the previous suit. A look at the previous suit would show that essentially it sought partition of several properties and declaration that some other properties belonged to the plaintiffs, in view of the family arrangement. The suit never specifically alleged trademark violation nor was any material placed on the record, suggestive of infringement of the plaintiff's trademark ASHOKA. Likewise, Vijay Solvex's argument that the suit filed by Raghuvar should have been disclosed, is insubstantial, given that the plaintiffs sought a declaration that the assignment deed was invalid for certain reasons. The suit, in a sense, is acknowledgement

that trademark rights were transferred to Saurabh; that property rights flow from such transfer and that the plaintiff (Raghuvar) contended that the assignment was invalid. However, till a declaration is issued, the title to the trademark vests with the assignee, i.e., Saurabh. Concededly, there is no interim order governing the subject matter, which binds the parties. There is no universal rule as to denial of relief when a fact is suppressed; much depends on what fact is not disclosed and how it is material to the nature of relief sought. This was emphasized by the Supreme Court in *SJS Business Enterprises v State of Bihar* 2004 (7) SCC 166 as follows:

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But 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. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken. Thus when the liability to Income Tax was questioned by an applicant on the ground of her non- residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact the suppression of which disentitled her from the relief claimed. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that

the impugned order had been replaced by another order. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226.."

In the circumstances of this case, it is held that the non-disclosure of the defendant's suit by the plaintiff, does not amount to suppression of a material fact, the result of which would lead to a denial of interim relief to the plaintiff in this suit.

22. As regards sales of products under the ASHOKA brand, we notice that most of the invoices placed on record by Vijay Solvex relate to the year 2015. There are of course stray invoices for the years 2012-2013. These, *per se* cannot establish that the defendants transact widely or extensively in that brand. If it is kept in mind that the defendants are dealers who sell goods, which may not be their own products, the invoices, *prima facie*, do not establish their submissions.

23. Long ago, the Supreme Court enunciated a sound principle in *Wander limited v. Antox India (Pvt.) Limited*, (1990) Suppl. SCC 727 which was that the exercise of discretion by a court of first instance, which takes into account all relevant materials and pleadings, should not ordinarily and if at all rarely be disturbed in appeal:

"... 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 that 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."

In the present case, the impugned order does not suffer from any infirmity; the exercise of discretion by the learned Single Judge is based on factual appraisal and application of sound principles of law. The interlocutory appellate court cannot therefore substitute its views, even if plausible, given that the issues await trial. The appeal consequently fails and is dismissed without order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 05, 2016