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

+ CM(M) 963/2016

M/S LAXMI PUBLICATION PVT LTD Petitioner
Through Ms.Neha Garg, Advocate.

versus

THE CANON INDIA PVT LTD Respondent
Through Ms.Shweta Bharti, Mr.Jyoti Kr.
Chaudhary and Mr.Anil Kr. Tiwari, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **27.09.2016**

1. By the present petition, the petitioner seeks to impugn the order dated 28.03.2016 by which the trial court held that an equally efficacious remedy in the form of consumer forum is available to the petitioner and hence, the relief of mandatory injunction as prayed for is barred under Section 41 (h) of the Specific Relief Act.

2. Learned counsel appearing for the petitioner has pointed out that as per averments in the plaint, the petitioner had purchased the goods in question for use as for commercial purposes. She points out that under Section 2(d) of the Consumer Protection Act, where the goods are bought for commercial purposes, the provisions of the said Act are not applicable. Hence, she submits that the finding recorded by the impugned order is erroneous. She further relies upon the judgment of the Division Bench of

this court in the case of *Hindustan Motors Limited vs. Amardeep Singh Wirk & Ors.*, 161 (2009) DLT 88 to contend that the availability of a remedy under the Consumer protection Act would not be a bar on the petitioner to pursue its remedy before this court.

3. Learned counsel appearing for the respondent has entered appearance on receipt of an advance copy. Learned counsel submits that through the summons have not been issued to them in the plaint, however, he submits that the suit for mandatory injunction would not be maintainable.

4. A perusal of the impugned order shows that it has been held that a decree of mandatory injunction cannot be sought by the petitioner in view of the fact that an efficacious remedy in the form of the consumer forum is available to the petitioner. The said finding recorded by the trial court is erroneous and contrary to Section 2(d) of the Consumer Protection Act and the judgment of the Division Bench in the case of *Hindustan Motors Limited vs. Amardeep Singh Wirk & Ors.*(supra).

5. In *Hindustan Motors Limited vs. Amardeep Singh Wirk & Ors.*(supra), this court had held as follows:-

“6. In that case, the appellant had filed a complaint before the District Consumer Disputes Redressal Forum, Ambala, alleging deficiency of service by use of sub-standard material by the respondent, with whom an order had been placed by him for fabricating of doors and windows. The appellant sought suitable compensation from the respondent. The complaint of the appellant was dismissed and the appellant took the matter in appeal to the State Consumer Forum. However, the State Consumer Forum, without going into the merits of the appeal, non-suited the appellant on the ground that the matter was subjudice before a Civil Court. As per the State Consumer Forum, the appellant would have an opportunity to file a counter-claim there and that as the matter would be decided on merits by

the Civil Court, there was no scope for any further action in the Consumer jurisdiction. The revision petition of the appellant before the National Consumer Disputes Redressal Commission was also dismissed holding that the appellant could raise all the points before the Civil Court in the pending suit. It was in this background that the appellant approached the Supreme Court by way of a Special Leave Petition, wherein the above observations and findings were given by the Supreme Court.”

6. Even otherwise the goods are used for commercial purpose and the Consumer Protection Act will not apply.
7. In the light of the above, the impugned order is set aside.
8. I may point out that I have not adjudicated upon the submission of the learned counsel for the respondent about maintainability of the relief claimed by the petitioner for mandatory injunction.
9. With the above observations, the petition stands disposed of.

JAYANT NATH, J

SEPTEMBER 27, 2016
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