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

+ **FAO(OS) 330/2015**

M/S ZIHWA FOOD PVT LTD Appellant

Represented by: **Mr.Ashutosh Dubey, Advocate**

versus

M/S G D FOODS MANUFACTURING Respondent

Represented by: **Mr.Mohan Vidhani, Advocate with
Mr.Ashish Singh, Advocate**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **22.01.2016**

CM No.11329/2015

For the reasons stated in the application delay of 31 days in filing the appeal is condoned.

The application is disposed of.

FAO (OS) No.330/2015

1. Order dated September 10, 2014 disposes of an applications filed by the plaintiff seeking interim injunction pending disposal of the suit as also by the defendant seeking vacation of the ex-parte ad-interim injunction granted. The order records that the applications were disposed of with consent given.

2. IA No.1770/2015 was thereafter filed by the appellant, which we notice was labelled as one seeking clarification of the order dated September 10, 2014. The same has been dismissed by the learned Single Judge vide order dated March 13, 2015 observing that the order dated May 10, 2014 was passed with consent.

3. As per the appellant, though in its caption IA No.1770/2014 stated that clarification of the order dated September 10, 2014 was prayed for, but as a matter of fact it was brought to the notice of the Court that so called consent given was never given.

4. We have perused IA No.1770/2014. It does not categorically plead anywhere that the counsel never gave the consent as recorded in the earlier order. In paragraph 1 of the application it is pleaded that the plaintiff had filed the suit seeking injunction concerning a trademark and had sought ad-interim injunction. In paragraph 2 it is pleaded that on May 22, 2013 while issuing summons ad-interim injunction had been granted. In paragraph 3 it is pleaded that the plaintiff has no cause of action and the suit is frivolous. In paragraph 4 it is pleaded that as a matter of fact it is the plaintiff company which has infringed the trademark of the defendant. In paragraph 5 of the application it is pleaded that the plaintiff has suppressed vital documents. In paragraph 6 it is pleaded that the plaintiff has made certain admissions before statutory authorities. In paragraph 7 it is pleaded that the plaintiff has filed documents selectively. In paragraph 8 it is pleaded that the defendants filed an application for vacation of the ex-parte seizure order. In next paragraphs it is pleaded that the notice of said applications was issued. In paragraph 10 it is pleaded that after hearing arguments the Court was pleased to reserve and pass the order dated September 10, 2014. In

paragraph 11 a reference is made to the contents of the order dated September 10, 2014. In paragraphs 12, 13 and 14 it is pleaded that there was no occasion for the defendant to agree to such conditions.

5. There is no positive averment that the consent as recorded was as a matter of fact not given.

6. The order dated September 10, 2014 has been dictated in the Court. It records the presence of the counsel for the parties.

7. Today the argument is that the counsel did not understand the contents of the consent recorded when the same were dictated in Court. If this be so, we would have expected the appellant to have pleaded as to what was the consent purportedly given by the counsel for the appellant and in what manner the counsel got confused with the order when terms of the consent were being dictated in the Court.

8. While dismissing the appeal we note with anguish that in one out of ten appeals filed before us, we are noting consent given before the learned Single Judge and thereafter attempt made to renege there from without any valid explanation. It is difficult for the appellate court to fathom as to why consent was given at the first place, but one reason is that counsel do realise sometimes as to which way a case is proceeding and in the interest of the client, with the consent taken in the Court itself, to gain some territory yield some.

9. We find no merit in the appeal which is dismissed.

10. No costs.

CM No.11328/2015

Dismissed as not pressed.

CM No.11327/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 22, 2016
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