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

+ **FAO(OS) 578/2015**

KONINKLIJKE PHILIPS N V & ANR Appellants
Represented by: Ms.Vaishali Mittal, Ms.Neha
Reddy and Mr.Siddhant
Chamola, Advocates

versus

AMITKUMAR KANTILAL JAIN & ORS Respondents
Represented by: Mr.Navroop Singh and
Mr.H.P.Singh, Advocates for
R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
28.01.2016

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1. In spite of service effective for the date November 19, 2015 none appeared for respondent No.4 on said date. None appears even today. Replies have been filed by respondents No.1, 2 and 3. We proceed ex-parte against respondent No.4.

2. At the outset, learned counsel for respondents No.1 to 3 states that whereas respondents No.1 and 2 never manufactured and do not intend to manufacture and sell hair trimmers, much less in the packaging material deceptively similar to that of the appellants, respondent No.3 is a shopkeeper and was purchaser of the offending goods from the open market and selling them in the open market. He would not do so in future.

3. Learned counsel for the appellants disputes the stand taken by respondents No.1 and 4 and says that they are continuing to sell hair trimmers but with different packaging material.

4. Be that as it may. This aspect of controversy could be resolved before the learned Single Judge.

5. Concern in the appeal is to the order dated October 12, 2015 passed by the learned Single Judge declining grant of ex-parte ad-interim injunction prayed for giving a reason in paragraph 5. The learned Single Judge has noted that merely because plaintiff may have a very strong prima-facie case, automatically the same does not entitle grant of ex-parte orders. Monetary compensation being available to the plaintiff is a reason for denial of interim orders. Delay in approaching the Court is another factor.

6. These observations are in direct conflict with the well settled principles of law, holding to the contrary. We note only two such decisions on the point. The first is a decision dated August 29, 2006 reported as AIR 2006 SC 3304 Ramdev Food Products Pvt. Ltd. vs. Arvindhrai Rambhai Patel & Ors. We may refer to paragraph 59 of the decision. It holds that in cases of infringement either of trademark or of copyright, normally an injunction must follow in prima-facie case is made out. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases.

7. The other decision is reported as 2004 (3) SCC 90 Midas Hygiene Industries P. Ltd. & Anr vs. Sudhir Bhatia & Ors. In paragraph 5 of the decision, same principle of law was recognised.

8. Since the learned Single Judge has himself concluded that the appellants have a strong prima-facie case we simply record that having perused the offending packaging material we find a strong prima-facie case

made out in favour of the appellants.

9. We dispose of the appeal granting ad-interim injunction in favour of the appellants as per prayer (i) of IA No.21857/2015 till it is decided on merits.

10. No costs.

CM No.23965/2015

The application is disposed of as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 28, 2016

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