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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CM(M) 700/2017 & CM No.24279/2017 (for stay)
SATRANG STEEL AND ALLOYS (P) LTD Petitioner
Through: Mr. Utkarsh Jewari and Mr. Piyush
Kumar, Advs.
versus
GANESH STEEL INDUSTRIES Respondent
Through: None.
AND
+ CM(M) 701/2017 & CM No.24285/2017 (for stay).
OM SMELTERS & ROLLERS PVT LTD Petitioner
Through: Mr. Utkarsh Jewari and Mr. Piyush
Kumar, Advs.
versus
GANESH STEEL INDUSTRIES Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **14.07.2017**

CM No.24280/2017 (for exemption) in CM(M) 700/2017 and CM No.24286/2017 (for exemption) in CM(M) 701/2017.

1. Allowed, subject to just exceptions.
2. The CMs stand disposed of.

CM(M) 700/2017 & CM No.24279/2017 (for stay) and CM(M) 701/2017 & CM No.24285/2017 (for stay).

3. Both these petitions under Article 227 of the Constitution of India impugn the separate but similar *ex parte* orders dated 9th February, 2017 (of the Additional District Judge-03, Patiala House Courts, New Delhi in T.M. No.1171/17 and T.M. No.1172/17) of injunction against the petitioner / defendant in each of the petitions in separate suits filed by the respondent /

plaintiff against the petitioners / defendants in the two petitions *inter alia* for infringement of trademark.

4. The counsel for the petitioner / defendant in both the matters states that the petitioner / defendant in CM(M) No.701/2017 is the licensee of the petitioner in CM(M) No.700/2017.

5. The *ex parte* order of injunction, aggrieved wherefrom these petitions have been filed, is of 9th February, 2017 in both the suits and notice of the suits was issued for 15th April, 2017. The petitioners / defendants in both the suits have been appearing since 15th April, 2017.

6. A perusal of the order sheets / narrative of the proceedings in the petitions shows that the learned Additional District Judge posted the suits for hearing of the application for interim relief thereafter on 3rd May, 2017, 5th June, 2017, 6th July, 2017, when for some reason or the other the hearing could not take place and the matter is now posted before the Additional District Judge on 24th July, 2017.

7. I am confident that the learned Additional District Judge will proceed with the matter on 24th July, 2017 or soon thereafter and in this view of the matter need to interfere under Article 227 of the Constitution of India is not felt.

8. Though I have observed as aforesaid but I may also notice that the remedy under Article 227 is not available. Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (CPC) provides for an order under Order XXXIX Rules 1&2 of the CPC to be appealable.

9. The counsel for the petitioner / defendant states that that remedy is available only against an order under Order XXXIX Rules 1&2 of the CPC

after hearing and not against the *ex parte* order.

10. The language of Order XLIII Rule 1(r) is not found to make any such distinction.

10. The petitions are dismissed.

11. No costs.

12. The petitioners / defendants are at liberty to place today's order before the learned Additional District Judge.

Copy of this order be supplied under signature of Court Master.

RAJIV SAHAI ENDLAW, J

JULY 14, 2017

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