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

\+ **FAO(OS) (COMM) 158/2017**

Date of decision: 11th August, 2017

SHAMMI NARANG & ANR ..... Appellants
Through Mr. Giriraj Subramanium and Mr. Simarpal Singh Sawhney, Advocates.

versus

PINDROP MUSIC APP PRIVATE LIMITED ..... Respondent
Through Mr. Shiv Johar and Ms. Smriti Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL)

This intra-Court appeal impugns order dated 22nd May, 2017 whereby IA No.2284/2017 filed by the appellant under Order XXXIX Rules 1 & 2 Code of Civil Procedure, 1908 (Code, for short) has been dismissed and the application, IA No.5744/2017, filed by the respondent under Order XXXIX Rule 4 of the Code has been allowed thereby vacating the ex-parte interim order.

2. The appellant, who is the plaintiff, has filed the suit for infringement and passing off of trade mark “Pindrop” against the respondents, who is the defendant.

3. The appellant is the proprietor of the registered trade mark "Pindrop" in Class 41 (Entertainment and Media Solutions). Application for registration was made on 07th November, 2014 and was granted on 23rd August, 2016.

4. The respondent is the proprietor of the registered trade mark "Pindrop Music" in Class 42 (Mobile and Computer Software). The respondent made the said application on 27th January, 2016 and was granted registration on 13th February, 2017.

5. The appellant states that he has been using the trademark "Pindrop" since 1998.

6. The respondent claims that they have been using the trademark since 2015. The respondent asserts that they had developed a concept of music software mobile application in the year 2014 and had launched their website in January, 2015. The respondent has pleaded that the name "Pindrop Music" adopted by them, was selected after much deliberation and careful thought. The software allows the users to select songs by dropping pins on a map and other users of the application gain knowledge of trending music being heard around them.

7. What has primarily weighed with the Single Judge in the impugned order is the fact that the appellant's have a recording studio by the name of PINDROP and is engaged in business of recording high quality video, graphics and sound tracks . The respondent on the other hand has developed the mobile application software, which can

be used by mobile users. The software enables the listener to listen to the music according to his mood. We would observe that the target consumers and users of the appellant and respondent are different and possibility and chance of confusion does not arise. The customers of the appellant and the respondent are knowledgeable, and are distinct and separate.

8. The suit for injunction was filed by the appellant on 10th April, 2017 and the respondent has been in business since 2015. The business and trade mark of the respondent was not hidden or concealed as the software application was freely downloadable.

9. The respondent has spent more than Rs.20,00,000/- on publicity and advertising in the last two years. The appellants as per the impugned order have incurred expenditure of Rs. 2,00,000/-on publicity/advertising. Counsel for the appellant has submitted this is incorrect and the appellant had spent about Rs.20,00,000/- since 1998 on marketing and advertising. However, it is accepted that the appellant has not filed invoices, certificate of the Chartered Accountant etc. to substantiate the said figure.

10. The impugned order records that the respondent has clientele of more than 14 lakh users. The respondent thus profess that they are one of the leading startup ventures in the aforesaid technology domain. Any interim injunction would virtually destroy and annihilate this start up venture. Balance of convenience has to be weighed, and is in favour of the respondent.

11. Further, the word “Pindrop” as noticed is a common dictionary word, which is fairly well known and frequently used. The word is connected and associated with sound. Monopoly of the said word by a single person may not be justified. It does not prima facie appear, that the respondent has acted in a manner to take advantage or benefit of “good will “ and reputation of the appellant to gain acceptance and market the software developed by them.

12. In view the aforesaid, we do not think that the impugned order passed by the single Judge requires interference. However, we clarify that the observations made in this order and the order of the single Judge are prima facie in nature and would not be treated as binding and conclusive findings. Recording this clarification, we dismiss the appeal without any order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 11, 2017
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