

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 58 OF 2018
WITH CA/11152/2018 IN AO/58/2018

HINDUSTAN DISTILLERIES, AHMEDNAGAR
VERSUS
BRIHAN KARAN SUGAR SYNDICATE PVT. LTD., MUMBAI

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Advocate for Petitioners : Shri Dixit V.J. Sr. Adv. i/b Shri Dixit S.V.
Advocate for Respondents : Shri Kane H.W. a/w Shri Mali D.Y.
h/f Shri Raje V.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 29, 2018
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PER COURT :-

1. I have considered the submissions of the learned Sr. Advocate on behalf of the appellants and the learned Advocates on behalf of the respondent / original plaintiff.

2. I find from the record that after Trademark Suit No.1 of 2018 was instituted by the plaintiff on 29.7.2018, the trial Court has proceeded to issue an ex-parte ad-interim injunction by the impugned order dated 4.8.2018. Notice to the appellants was issued, returnable on 28.8.2018.

3. The grievance voiced by the appellants is that in a Trademark Suit, an ex-parte ad-interim injunction in the nature of the impugned order, should not have been passed since the said order has brought the

entire business of the appellants to a standstill. It is vehemently, submitted that it is the plaintiff who has infringed the rights of the appellants in so far as the Trademark labels used by the appellants, are concerned.

4. I do not intend to keep this petition pending or deal with the issue as to whether the impugned order is perverse or not, precisely on the ground that an ex-parte ad-interim injunctory order has been passed and the trial Court has issued notice to the defendants to show cause as to why the ad-interim order granted should not be confirmed. These appellants, therefore, would be expected in law to enter their written statement and all documents and address the trial Court as to why the ad-interim injunction deserves to be vacated.

5. The learned Sr. Advocate has made a serious grievance that the trial Court should have at least considered the effect of its order before passing such ad-interim injunctory order. This issue is also left open to be considered by the trial Court since the issue of comparative hardships, irreparable loss and manifest inconvenience has to be considered by every Court before passing ex-parte or ad-interim orders.

6. Learned Advocate for the plaintiff has vehemently refuted the contentions of the defendant and submits that the trial Court has rightly

exercised its jurisdiction after being ex-facie convinced that an ad-interim order deserves to be passed.

7. In view of the above and since the learned Sr. Advocate is instructed to state by his client, present in the Court, that the trial Court shall decide application Exhibit 5, expeditiously and in any case on/or before 12.10.2018, that this appeal is disposed off with the following directions:-

(A) The litigating sides shall appear before the trial Court on 1.10.2018 and tender a copy of this order obtained from the official website of the Bombay High Court.

(B) The defendants shall enter their written statement along with all documents sought to be relied upon on 1.10.2018 and supply a copy to the learned Advocate for the plaintiff forthwith.

(C) The plaintiff and the defendants would proceed to address the trial Court on 5.10.2018. Liberty to enter written notes of submissions is granted.

(D) The trial Court shall decide application Exhibit 5 on/or before 12.10.2018 on its own merits and without being influenced by its observations in the impugned order dated 5.8.2018.

(E) All contentions of the litigating sides are kept open.

(F) The trial Court shall note that while deciding Exhibit 5, it shall not take into consideration the fact that the ad-interim order passed on 4.8.2018 has continued for a period of two months and this shall not create equities in favour of the plaintiff.

8. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d

Ajay
Kishanrao
Losarwar

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signed by Ajay
Kishanrao
Losarwar
Date:
2018.09.29
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