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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 71/2017 & CM APPL. 10035/2017, 14193-14194/2017**
RAM KUMAR GULATI & ORS Appellants

Through: Mr.Suwarn Ranjan, Advocate.

versus

MEHRA COSMETICS Respondent

Through: Mr.Mohan Vidhani, Ms.Elisha
Kumari and Mr.Ashish Singh,
Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
17.09.2018

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This appeal is questioning the order of learned Single Judge whereby the appellants were enjoined from using the word '*CHEF*' in conjunction with the word '*BLUE*' in respect of the white petroleum jelly or any other cosmetics or any other marks deceptively similar to the mark 'CHIEF' of the respondent.

This Court proposes to dispose of this matter through the present short order. The respondent filed cross-objections with respect to denial of interim injunction under Order XLI Rule 22 read with Section 151 CPC for claim of infringement.

The appellants secured license from the Drug Controller on 16.07.2015 to market white petroleum jelly. It proceeded to

commercialise this in the market by placing the same in a small plastic jar under the brand mark “BLUE CHEF” with the first letter ‘B’ and the last letter ‘F’ in the same font style and bigger in the same proportion than the rest of the letters as are written by the respondent over its products. This was noticed by the respondent in the same year in October in which the appellants started manufacturing and selling white petroleum jelly under the similar trade mark “BLUE CLIFF” (registered mark of the respondent) or “BLUE CHIEF” (unregistered mark of the respondent). Significantly, with regard to the containers, learned Single Judge decided *prima facie* that appellants’ products amounted to passing off and restrained him from using composite mark “BLUE CHEF”. The appellants’ request for using words “PALAK” above the words “BLUE CHEF” was declined.

It is urged on behalf of the appellants that learned Single Judge overlooked the fact that the mark ‘BLUE CHIEF’ was unregistered and that registration was not sought (though application was made in the year 2011 for the mark) in respect of class subject goods. It was secondly urged that the respondent could not produce any meaningful material evidence to substantiate *prima facie* that it was using the mark “BLUE CHIEF” in the manner that it claimed. It was further urged that the material produced in the form of invoices was forged and could not be the subject matter of the present dispute.

This court has considered the materials on record including the documents placed in the original suit. They contained the copies of invoices which the respondent had drawn from the period 2010 onwards. The respondent has been in production for over seven years before filing of the suit; it *prima facie* established that it was a prior user of market. Given these facts and circumstances, and broad similarity, which are the only determinative facts that the Court has to keep in mind while deciding the issue of interim injunction, this Court is satisfied that a comparison of the marks would confuse the purchaser in believing that the appellants' goods are that of the respondent. In these circumstances, grant of injunction was justified.

So far as the respondent's cross-objections with respect to refusal for grant of injunction for design registration of the production (i.e the container of jar of white petroleum jelly was filled up), the Court finds that it appears that visually, *per se*, there is nothing which suggested novelty that is expected; for a design of the production. On a plain visual inspection, it appears that the unique feature that respondent emphasises in order to reinforce its claim of a valid design in which it complains registration, were missing, of course thus *prima facie* expression on opinion by the learned Single Judge, which he was entitled to contain.

Since the relief of the parties was considered only on the material available on record at the stage when the applications were decided, the Court is of the opinion that no final view can be said to

have been expressed. Consequently, no interference is called for.

For the above reasons, appeal and cross-objections are dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 17, 2018

SSC