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

+ **FAO(OS) (COMM) No. 209/2018**

Date of decision: 5th September, 2018

EMAMI LIMITED

..... Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate, Mr. Gopal Jain, Sr. Advocate with Mr. Abhimanyu Bhandari, Ms. Roohina Dua and Mr. Cheitanya Madan, Advocates.

versus

DABUR INDIA LIMITED

..... Respondent

Through: Mr. Hemant Singh, Ms. Mamta Rani Jha, Mr. Manish Mishra and Ms. Akansha Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

CM No. 36069/2018

Exemption allowed subject to all just exceptions.

FAO(OS) (COMM) 209/2018 and CM No. 36068/2018

Counsel for the respondent/ plaintiff in CS(COMM) No. 1074/2018 is present on advance notice.

2. With the consent of the parties, we have taken up this intra-Court appeal for hearing and disposal at the admission stage itself.

3. The primary grievance raised by the appellant/defendant in CS(COMM) No. 1074/2018 is to the direction given in the paragraph 11 of the impugned order, which reads as under:-

“11. Learned senior counsel for the defendant strongly refutes the claim of the plaintiff. Learned senior counsel further submits that with respect to the print media advertisement mentioned in para-15 of the plaint, the defendant has discontinued the said advertisement in July, 2018 and a new advertisement is being prepared. Let the new advertisement be not published by the defendant till the next date of hearing.”

4. Contention of the appellant/defendant is that the new advertisement is under preparation and there cannot be any injunction barring and prohibiting the appellant/defendant from publishing the new advertisement. Injunction cannot be granted on assumption that a legal wrong would be committed.

5. Learned counsel for the respondent/plaintiff, fairly states that the aforesaid observations should not be read to mean that the appellant cannot publish a new advertisement. However, if, the respondent/plaintiff is aggrieved by the new advertisement, they will be entitled to challenge and pray for injunction etc. in accordance with law.

6. We take the statement made by the counsel for the respondent/plaintiff on record. This would satisfy the first objection raised by the appellant/defendant. The impugned order is modified to this extent.

7. Second contention raised by the appellant/defendant relates to the injunction and direction in respect of the advertisement uploaded on the *Youtube* website. It is submitted that the learned single Judge has expressed and accepted several allegations. At the same time, it is submitted that the impugned order is non-reasoned.

8. We observe that the two contentions raised by the appellant/defendant, that the impugned order is non-reasoned and that several allegations against the appellant/defendant have been accepted are contradictory in nature. Paragraph 14 of the impugned order clarifies that the observations made in the impugned order are tentative and all contentions shall be considered after completion of pleadings. It is accordingly recorded that nothing mentioned in the impugned order would be construed as final conclusion on merits. The interim application IA No.10869/2018 is still pending before the learned single Judge.

9. The appellant/defendant have discontinued or as stated, suspended the advertisement from circulation. Thereafter, the advertisement was uploaded on the *Youtube* website. The impugned order also refers to the order passed by the Advertising Standard Council of India. I.A. No. 10869/2018 is listed for hearing before the learned single Judge on 1st October, 2018. At this stage, therefore, no interference on this aspect is required.

10. We accordingly disposed of the present appeal. We clarify that on the second aspect we have not given any findings on merits as the matter is still pending before the learned single Judge. This order would not be treated as an order which decides any issue raised in IA No. 10869/2018. There would be no order as to costs.

Dasti.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 05, 2018
MR/VKR



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