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

% *Date of Order: 04.12.2018*

+ **FAO 476/2018 & CM No. 41843/2018**

M/S SNS PRODUCTS PRIVATE LIMITED Appellant

Through: Mr.Saurabh Banerjee, Advocate with
Mr.Bikram Singh, Advocate.

Versus

M/S OSG AGRO PRODUCTS PRIVATE LIMITED....Respondent

Through: Mr.N.S. Negi, Advocate with Mr.B.S.
Tiwari, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned order dated 27.09.2018 passed by the Court of Sh.Ramesh Kumar-II, learned Additional District Judge-01 (Central), Tis Hazari Courts, Delhi ('ADJ') in Suit No. TM 196/2018, has been assailed in this appeal by the appellant/plaintiff.

2. After directing to issue the notice to the defendant on filing of the process fee/RC, the learned ADJ considered the application filed by the appellant/plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') and passed the following order: -

"Keeping in view of urgency of matter, Defendant is restrained for using Trademark for period of One week. In between he may file reply to application.

Application disposed off accordingly.

Now matter be listed on 05.12.2018”

3. At this stage, learned counsel for the respondent/defendant requests that he may be supplied the copy of the plaint and documents annexed by the appellant/plaintiff. Learned counsel for the appellant/plaintiff submits that though he has already deposited the requisite number of copies with the trial court but he would supply one complete set of the plaint and documents to the learned counsel for the respondent within two days.

4. By the impugned order, the learned ADJ has not disposed of the application under Order XXXIX Rule 1 & 2 CPC on merits. He has not discussed the three essential ingredients for grant of injunction under Order XXXIX Rule 1 & 2 CPC i.e. (i) prima facie case, (ii) balance of convenience, and (iii) irreparable loss and injury. Though, he has granted the protection to the appellant/plaintiff for one week, there is no reasoning provided as to why the protection should not be granted beyond the said period of one week. On the face of it, the order passed by the learned ADJ is cryptic and has been passed without application of mind.

5. With the consent of the parties, the appeal is disposed of, in the following terms: -

(i) the impugned order dated 27.09.2018 passed by the learned ADJ in Suit No. TM 196/2018 is set aside.

(ii) The respondent/defendant shall put in his appearance before the Trial Court on 05.12.2018 i.e. the date already fixed there. He shall file the Written Statement and reply to the injunction application within two weeks. In turn, the appellant/plaintiff shall file rejoinder thereto, if any, within one week thereafter.

(iii) The trial court shall decide the application under Order XXXIX Rule 1 and 2 CPC on merits after hearing both the parties within 30 days from 05.12.2018 without being influenced by the observations made in this order.

(iv) Till the disposal of the application under Order XXXIX Rule 1 and 2 CPC, the respondent shall not use the Trademark 'Shan-e-Delhi' or copyright in packing in respect of edible spices.

6. In view of the above, the application, being CM No.41843/2018, is also disposed of.

7. Copy of this order be given *dasti* under the signatures of Court Master.

(VINOD GOEL)
JUDGE

DECEMBER 04, 2018
"shailendra"