

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

% Date of decision: 3rd December, 2018

+ FAO(OS) (COMM) 285/2018 & CAV. Pet. No. 1113/2018 and
CM. Nos. 50290/2018 and 50291/2018

EMAMI LTD

....Appellant

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Abhimanyu Bhandari,
Ms. Roohina Dua, Mr. Anirudh
Bakhru and Mr. Cheitanya Madan,
Adv.

versus

DABUR INDIA LTD

Respondents

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

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CAV. Pet. 1113/2018

As learned counsel for the caveator appears, caveat stands
discharged.

CM. No. 50291/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

FAO(OS) (COMM) 285/2018

1. The present appeal has been filed by the appellant challenging
the order dated 27th November, 2018 passed in IA No. 16105-
16106/2018, whereby the learned Single Judge has directed the

appellant to withhold the printing, publishing and broadcasting of the impugned advertisement till the next date of hearing as according to the learned Single Judge the impugned advertisement of the appellant is misleading unfair, deceptive and appears to have been created with a dishonest intention to disparage the respondent's product.

2. The challenge of the respondent before the learned Single Judge was that the appellant has started impugned advertisement campaign (at Annexure A-5, Page 56) of the paper book, on 13th November, 2018 that Chyawanprash is nothing but sugar, and is harmful. It was the contention of the learned counsel for the respondent that the advertisement which shows the father eating Chyawanprash, and the child as well as the mother telling the father that he is eating sugar, disparages and denigrates Chyawanprash. The last frame showing the appellant's product removing the spoonful of Chyawanprash further adds to denigration of Chyawanprash and projects it in bad light.

3. It is the case of the respondent that the television commercial has been made to disparage the entire category of Chyawanprash by creating fear in the mind of the consumers that it contains high level of sugar and is therefore inferior, unhealthy and an incorrect choice and indeed that the consumer should turn to the product of the appellant herein. In other words, the appellant herein, in the present

advertisement, has called Chyawanprash as sugar, without acknowledging its therapeutic and medicinal benefits. The appellant has further used the sentence / phrase "*ab chini wali immunity bhagaiye*", which is a clear indication to the consumers not to buy Chyawanprash. Learned Single Judge had suggested to the appellant to withhold the impugned advertisement till the next date of hearing, i.e., 8th January, 2019. However, the said suggestion was not acceptable to the appellant herein. Pursuant thereto, the learned Single Judge has passed the aforesaid order.

4. We have heard the learned counsel for the parties. During the course of his submissions, Mr. Rajiv Nayar, learned Sr. Counsel appearing for the appellant submits that the basis for the respondent to file the suit seeking injunction on the alleged ground that the appellant's advertisement is misleading unfair, deceptive and is sought to be issued with a dishonest intention to disparage the respondent's product is because of the depiction of the bottle in white and red colour, which according to the respondent herein depicts its bottle of Chyawanprash. He submits that the appellant herein is ready and willing to replace the said bottle in the advertisement with a bottle of the appellant's own product / Zandu Chyawanprash wherever it occurs in the advertisement. He states that the very basis

on which the allegations as afore-stated are being made shall not subsist and the stay needs to be vacated. He states, the appellant shall continue this depiction in the advertisement till the next date of hearing before the learned Single Judge on 8th January, 2019 as according to him, it is this period where there is maximum consumption of Chyawanprash.

5. Mr. Hemant Singh, learned counsel appearing for the respondent, on this submission of Mr. Nayar, states that the appellant must also ensure that the printing on the bottle of the appellant", as proposed to be used in the subject commercial, should also depict the words "*Zandu Chyawanprash*". If this being the submission made by Mr. Singh, we are of the view that even the bottle of red and white depicted in the impugned advertisement, supposed to be relating to the respondent herein, does not depict any words on the same.

6. There is no denial of the fact that the colour of green and yellow is the colour of the bottle of the appellant herein and is different from the bottle of the respondent herein. We take the submission of Mr. Nayar on record. The appellant shall carry out necessary changes in the advertisement and thereafter proceed to advertise the product. This arrangement shall continue till the next date, i.e., 8th January, 2019, when the suit is listed before the learned Single Judge. The order dated 27th November, 2018 is modified to that extent.

The appeal stands disposed of.

CM. No. 50290/2018 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 03, 2018/jg

