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

Date of decision: 01.11.2019

+ **FAO(OS) (COMM) 312/2019 & CM No.47359/2019 (for stay)**

FIRST CONSTRUCTION COUNCIL Appellant

Through: Mr.Parth Goswami, Adv. with
Mr.Hemant Phalpher, Adv.

versus

KAMDHENU LTD & ORS Respondents

Through: Mr.Akhil Sibal, Sr. Adv. with
Mr.S.K. Bansal, Adv. & Mr.Rishi
Bansal, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice (Oral)

CM No.47360/2019 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM No.47361/2019 (for condonation of delay)

1. This application has been preferred under Section 5 of the Limitation Act for condonation of delay of 13 days in preferring this appeal.
2. Having heard the counsel for the appellant and looking into the reasons stated in the application, there are reasonable grounds for

condonation of delay. We hereby condone the delay of 13 days in preferring this appeal.

3. The application is allowed and disposed of.

FAO(OS) (COMM) 312/2019 & CM No.47359/2019 (for stay)

1. This appeal has been preferred by the appellant who was the original defendant no.2 in CS (COMM.) No.1229/2018. The suit was filed by the present respondent no.1 with the following prayers:-

“A. Allow the present Appeal and set aside the impugned order dated 19.07.2019, passed by the Ld. Single Judge of this Hon'ble Court in CS (Comm) 1229 of 2018.

B. Pass such other and further order[s] as may deem fit and proper and in the interest of justice.”

2. The respondent no.1 (Original Plaintiff) preferred an application under Order 39 Rules 1 & 2 CPC for getting injunction against the publication of defamatory material at the behest of this appellant.

3. It further appears from the facts of the case that initially vide order dated 06.11.2018, the learned Single Judge has granted ex parte ad interim relief. The notice was issued upon the defendants in Civil Suit (COMM.) No.1229/2018. These notices were served upon the defendants including upon the present appellant.

4. After hearing the plaintiff and the defendants in the aforesaid Civil Suit, ex parte ad interim relief was granted by the learned Single Judge vide order dated 06.11.2018, which was confirmed vide order dated 19.07.2019. Thus, the learned Single Judge has granted

injunction upon the publication of the defamatory material by this appellant against respondent no.1 (Original Plaintiff). Hence, the original defendant no.2 has preferred the present appeal.

5. Having heard the counsel for both sides and looking to the facts and circumstances of the case and also looking to the fact that this appellant (original defendant no.2) is publishing defamatory material against the original plaintiff's product i.e. Thermo-Mechanically Treated Bars (TMT Bars). The original plaintiff has trademarks in relation to TMT Bars.

6. Looking to the materials published by the present appellant (original defendant no.2) there exists a prima facie case in favour of the original plaintiff. Balance of convenience rests in favour of the plaintiff and if, the stay, as prayed for is not granted, it will cause irreparable loss to the plaintiff. These aspects of the matter have been properly appreciated by the learned Single Judge while confirming the ex parte ad interim relief vide the impugned order dated 19.07.2019 (Annexure 1 to the memo of this appeal).

7. It has been argued by the learned counsel for the appellant that they are relying upon the report given by the Shree Ram Institute which is an independent research Institute. As the suit is pending, we refrain from analysing the facts about the aforesaid report given by Shree Ram Institute, but suffice it to say, that without proper sampling of the TMT Bars and as the suit is pending, we are restraining ourselves in further analysing or criticizing such type of report given by the Institution. Suffice it to say that such type of reports prima facie does not inspire any confidence. These aspects of

the matter have been properly appreciated by the learned Single Judge and we are in full agreement with the reasons given by the learned Single Judge in granting the injunction against this appellant for further publication of the defamatory material about the products/TMT Bars for which there is a trademark that is registered by the original plaintiff.

8. Counsel appearing for the plaintiff has relied upon several decisions in *Mother Dairy Foods & Processing Ltd. Vs. Zee Telefilms Ltd.* 2005 (80) DRJ 74; *Ashoh Ghosh Vs. Urmi A. Goswami & Anr.* (2006) 133 DLT 69; *Khushwant Singh & Another Vs. Maneka Gandhi* AIR 2002 Del 58; *Fiitjee Limited Vs. Nitin Jain & Ors.* 2010 SCC OnLine Del 2120 & *Pushpa Sharma Vs. D.B. Corp. Ltd. & Ors.* 2018 SCC OnLine Del 11537.

9. None of the aforesaid decisions are helpful to the appellant for the reasons stated in para 14 of the impugned order dated 19.07.2019. For the ready reference, paragraph 14 of the impugned order dated 19.07.2019 which reads as under:-

“14. As far as the said judgments, are concerned, what is laid down therein is that there can be no injunction at pre-publication stage, i.e. censorship, and which was held to be infringing the fundamental right of freedom of expression. Moreover, *Asoke Ghosh & Khushwant Singh* supra were cases of defamation of person, which had already happened in the print media. As distinct therefrom, this is a case of commercial disparagement and qua which the Courts, whenever satisfied, have been granting injunctions. Such cases of disparagement are generally through advertising of competitors. The only difference is, that here, instead of an advertisement, we have a test report. However it is the plea of the plaintiffs,

that the said test report is at the behest of competitor of plaintiffs. Independence of those carrying out the test, is still to be established. Just like continued display of the disparaging advertisement continues to cause damage, so will the continued display of the impugned report cause continued damage. Though *Mother Dairy Foods & Processing Ltd.* supra was a case of disparagement of goods, but the news report therein was found to be in interest of larger public. That is not the position here in *Fiitjee Limited* supra, the contents in a book were not found to be per se defamatory. The judgement distinguishes certain other judgements cited at Bar in that case, observing that the content therein was per se defamatory.”

10. In view of the aforesaid reasons, the decisions upon which the reliance is placed by the counsel for the appellant, are not of any help to the appellant (original defendant no.2). Even otherwise also, the Civil Suit is already pending before the learned Single Judge and the next date of hearing is 28.11.2019.

11. Hence, there is no substance in this appeal and the same is, therefore, dismissed along with pending application.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 01, 2019/aa