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

+ **FAO 101/2019, CM APPL. 11574/2019, CM APPL. 11575/2019**

SHAURYA AGARWAL & ANR

..... Appellants

Through: Mr. Farrukh Khan and Ms. Rubina
Jawed, Advocates.

Versus

RAKESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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12.03.2019

The appellants are aggrieved by the *ex-parte* injunction order dated 22.02.2019 passed by the learned Trial Court, which they allege lacks jurisdiction. It is the appellants' case that their products are not sold in Delhi. Hence, no cause of action arose in Delhi, and therefore, the Trial Court had no jurisdiction to entertain the suit. It is argued that trade design on the packaging of the appellants' products is entirely different and has a distinctive colour scheme and is *ex facie* so different that by no stretch of imagination could it be liable to cause confusion in the mind of an innocent observer, when compared with the trade design and packaging of the respondent's products. The latter sells its products under the name of SBD, whereas the appellants' trade design is: i) Pops Dhoom Dhoom Zoo, ii) Pops Dhoom Dhoom Bindass and iii) Pops Dhoom Dhoom Shahi Daal.

The learned counsel for the appellants has handed over a copy of the trade design used by both the parties. It is as under:-

RESPONDENT/PLAINTIFF	APPELLANT/DEFENDANT
	
	
	
	
	
	

The learned counsel for the appellants submits that due to some oversight, the appellants could not file a coloured copy of the comparative trade dress adopted by the parties. For this error, they would be willing to

put to such terms as plantation of 50 trees in Delhi. The order in this regard will be passed on the next date.

Issue notice through ordinary process, Speed Post, approved courier and *dasti*, through counsel as well, returnable on 18.03.2019.

A copy of this order be given *dasti* to the learned counsel for the parties under signature of the Court Master.

NAJMI WAZIRI, J

MARCH 12, 2019/RW/sb