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

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Date of Judgment: 18.03.2019

+ **FAO(OS) (COMM) 58/2019**

LEAYAN GLOBAL PVT LTD

..... Appellant

Through: **Mr. S.K. Bansal, Mr. Pankaj Kumar &
Mr. Somnath D.C., Advocates**

versus

BATA INDIA LTD

..... Respondent

Through: **Mr. Neeraj Grover, Ms. Anushka &
Mr. Anmol, Advocates**

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

CM APPL. 12756/2019

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

FAO(OS) (COMM) 58/2019 & CM APPL. 12755/2019

3. Challenge in this appeal is to the order dated 27.02.2019 passed on an application filed by the plaintiff/respondent under Order XXXIX Rule 1 & 2 of CPC and an order dated 13.03.2019 passed on an application filed by the appellant/defendant under Order XXXIX Rule 4 of CPC.

4. Mr. Bansal, learned counsel appearing for the appellant submits that the respondent has concealed material facts from the Court and failed to bring to the notice of the Court that the appellant has been in the trade for more than 10 years and has also been using the mark “POWER FLEX”. He further submits that the respondent has failed to bring to the notice of the learned Single Judge the advertisements which were released by the appellant with the trade mark “POWER FLEX”. He submits that in case the relevant documents and facts were brought to the notice of the learned Single Judge, the ex-parte injunction would not have been granted.
5. His second grievance is that on an application filed by him under Order XXXIX Rule 4, the Single Judge has adjourned the matter to 3rd of April, 2019 without dealing with the prayers made in application.
6. We have heard learned counsel for the appellant. We have also perused the orders passed on 27.02.2019 and 13.03.2019. The order of 13.03.2019 is reproduced below:

“I.A. 3686/2019 (u/O XXXIX Rule 4 CPC)

“This is an application under Order XXXIX Rule 4 CPC. Ld. counsel appearing for the Defendants submits that they have been using the impugned mark ‘*POWER FLEX*’ since 2011. He submits that since the quantum of the goods available with him, bearing the impugned mark, is substantial, his client may be permitted to dispose of the existing stock, till the matter is disposed of. When the matter was heard in the morning Ld. Counsel for the Defendants submitted that they would attempt to obtain a stock statement post lunch. The matter was then taken up post lunch but the stock statement was not available. The matter is, accordingly, being adjourned. Let a stock

statement be filed by Defendant No. 2 before the next date, and the said request shall be considered on the next date.

Reply be filed to the application within one week. Rejoinder before the next date.

List on 3rd April, 2019 for hearing of the application.”

7. Reading of the aforesaid order would show that the appellant sought leave to sell the existing stock till the matter was disposed of, however the matter was adjourned to Post Lunch to enable the counsel for the appellant/ defendant/applicant before the Single Judge to produce the stock statement. However, since the stock statement was not available even post lunch, the matter was adjourned to 3rd April, 2019 for hearing of the application.
8. Since the application under Order XXXIX Rule 4 is already pending, was adjourned to 3.4.2019 as the appellant/defendant was unable to produce the stock register we see no reason to entertain this appeal. As far as the grievance of the application having been adjourned to 03.04.2019 without passing orders on merit is concerned, we find no force in the submission of the learned counsel as the same was adjourned because the stock statement was not available with the appellant. We have no hesitation in saying that when the matter comes up for hearing on 3rd April, 2019, all grounds which are sought to be urged before us, would be urged before the learned Single Judge.
9. We are informed that the written statement and reply to the application under Order XXXIX Rule 1 & 2 have been filed. Replication/rejoinder and reply to the application under Order XXXIX Rule 4 will be filed within 10 days. In case the same are not filed that would not be a ground alone to adjourn the matter.

10. Mr. Bansal submits that since the stock statement has been received by him, he will approach the learned Single Judge for the said relief.
11. With these directions, the appeal is disposed of.
12. Dasti.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 18, 2019

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