$~3

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

Date of Decision: 25th November, 2019

\+ FAO(OS) (COMM) 264/2019

SIDDHANT CHOUDHARY ..... Appellant
Through: Mr.Samar Singh Kachwaha, Adv. with Mr.Raghavendra M.Bajaj, Mr.Sanskar Agarwal, Advs.

versus

TOASHA AGENCIES & ANR ..... Respondents
Through: Mr.Ravi Sikri, Sr.Adv. with Mr.Rohan Gupta, Mr.Dipank Yadav, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This appeal has been preferred by the original defendant against the stay granted in IA No.13185/2016 in CS(COMM) 1441/2016 vide order dated 24th July, 2019 passed by the learned Single Judge.

2. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, it appears that CS(COMM) 1441/2016 is pending before the learned Single Judge and hence, we are not going into the fine niceties of the facts. Too much dissection of the facts is not required at this stage otherwise the observations of this Court may affect the outcome of the suit. For disposal of the present appeal, suffice it is to say:-

(a) The appellant (original defendant) has got registered trade mark 'TOASHA'.

(b) The said registration was given by the competent authorities in favour of the defendant on 29.06.2011.

(c) The respondent (original plaintiff) has already preferred an application for rectification under Section 47 to be read with Section 57 of the Trade Marks Act, 1999 further read with Rule 92 of the Trade Mark Rules, 2017 and the same is pending before the concerned authorities since June, 2016.

(d) Thus, it appears that there is a registered trade mark namely 'TOASHA' in favour of this appellant (original defendant) and rectification preferred by the respondent (original plaintiff) is pending before the Registrar of Trade Marks, as stated hereinabove. These facts constitute a *prima facie* case in favour of this appellant (original defendant).

3. Looking at para 3 of CM No.45408/2019 preferred in this appeal, it appears that the present appellant (original defendant) has purchased vaccines worth ₹1,25,00,000/- from the manufacturer. Since this stock of vaccines is a perishable item, as submitted by the counsel for the appellant, they are bound to be sold out as early as possible, else an irreparable loss will be caused to this appellant if the stay as prayed for is not granted. Moreover, balance of convenience is also found to be in favour of this appellant. We, therefore, stay operation, implementation and execution of the order dated 24th July, 2019 passed by the learned Single Judge in IA No.13185/2016 in CS(COMM) 1441/2016 which is at Annexure A-1 to the memo of this FAO.

4. It is pertinent to mention that the aforesaid aspects of the matter have not been properly appreciated by the learned Single Judge while granting stay in favour of the plaintiff in IA No.13185/2016 vide judgment and order dated 24th July, 2019. Since all the three ingredients for giving stay for grant of injunction are in favour of the defendant, we hereby quash and set aside the order passed in IA No.13185/2016 in CS(COMM) 1441/2016. As the suit is already fixed for further hearing on 16th March, 2019, the parties are at liberty to mention before the learned Single Judge for preponing the date of hearing.

5. With the aforesaid observation, this appeal is hereby disposed of.

C.M.No.45408/2019 *(stay)*

6. In view of the final order passed in FAO (OS)(COMM) No.264/2019, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 25, 2019
ns