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

% ***Date of Judgment: 14th May, 2019***

+ **RFA(OS)(COMM) 16/2018 & CM Appls.30970-72/2018**

SINGAPURASHIP PRODUCE (INDIA) PVT LTDAppellant

Through: Ms. Priya Adlakha, Mr. Nikhil Nagpal
and Mr. Ashish Sharma, Advocates

versus

REDELIFFE HYGIENCE PVT LTD Respondent

Through: Mr. Ashutosh Nagar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the final consent order dated 15.05.2018 passed by a learned Single Judge of this Court in a suit for permanent injunction filed by the respondents restraining passing off, dilution of goodwill, unfair competition, rendition of accounts of profits/damages, delivery up, etc..

2. It is not in dispute that a counsel appeared on behalf of appellant herein, as is reflected in the order dated 15.05.2018, upon instructions from the defendants. It is also not disputed that he consented for passing of a decree on the following terms as set out in the order: -

(i) The defendant shall forthwith cease use of the mark "PEE SAFE" in any manner in the course of trade and shall remove all materials from all platforms containing the said mark.

(ii) *With respect to the products which are lying at the warehouse of the defendant, the defendant agrees that the products shall leave the warehouse only after ensuring that the mark “PEE SAFE” is not visible to any third party, especially the end customer. The defendant seeks a period of fourteen days to take the necessary steps to comply with the said condition in letter and spirit.*

(iii) *Should the defendant succeed in defending its trade mark registration in the rectification petition filed by the plaintiff before the IPAB, the defendant should be at liberty to approach this Court in accordance with law.*

In light of the above undertakings by the defendant, the learned counsel for plaintiff does not wish to press for damages. With respect to products which have already entered the channel of delivery, the plaintiff agrees that the present injunction shall not apply with respect to the said products.

The aforesaid statements/undertakings given by both the learned counsel are accepted by this Court and parties are held bound by the same.

Consequently, present suit and application are decreed in accordance with the aforesaid statements/undertakings. Registry is directed to prepare a decree sheet accordingly.

3. Post passing of the decree, it is the case of the appellant that the appellant was shocked to learn that without any authority, without any *vakalatnama* and without any instructions, a decree was passed based on the statement made by the counsel.

4. Learned counsel for the appellant submits that the impugned judgment and decree be set aside and the matter be remanded back and till the application under Order XXXIX Rules 1 & 2 of CPC is heard by the learned Single Judge, the order of injunction be continued.

5. Learned counsel for the respondents on instructions agrees to the

aforesaid arrangement. Accordingly, while setting aside the impugned order and decree passed by the learned Single Judge, the present appeal is allowed on the following agreed terms by the parties: -

- (i) The written statement, documents and reply to the application under Order XXXIX Rules 1 & 2 of CPC shall be filed within four weeks.
- (ii) Replication/rejoinder thereto, if any, would be filed within three weeks thereafter.
- (iii) The matter would be listed before the learned Single Judge on 18th July, 2019 to enable him to fix the date for hearing of the application for injunction under Order XXXIX Rules 1 & 2 of CPC.
- (iv) Both parties agree not to seek any adjournment before the learned Single Judge.
- (v) The learned Single Judge would endeavour to hear the said application under Order XXXIX Rules 1 & 2 of CPC expeditiously.
- (vi) Till the hearing of the stay application under Order XXXIX Rules 1 & 2 of CPC, the defendant/appellant shall not use the mark “PEE SAFE” in any manner in the course of trade and shall remove all materials from all platforms containing the said mark. Further, with respect to the products which are lying at the warehouse of the defendant/appellant, the defendant/appellant agrees that the products shall leave the warehouse only after ensuring that the mark “PEE SAFE” is not visible to any third party, especially the end customer.

6. With above agreed directions, the appeal and the pending applications are disposed of.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 14, 2019

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