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

+ **FAO(OS) (COMM) 35/2020 & C.Ms.No.5797/2020 (stay),
5798/2020 (addl. docs.)**

BALJIT AGRO TECH PVT LTD & ANR Appellants
Through: Mr.Amit Sibal, Sr.Adv. with
Mr.S.Basu, Mr.Neeraj K.Gupta, Mr.Partha
Chakarbarty, Mr.Ambar Bhushan, Mr.Shaksham
Dhingra, Mr.Vinay Tripathi, Advs.

Versus

ADANI WILMAR LIMITED Respondent
Through: Mr.Chander M.Lall, Sr.Adv. with
Mr.Dushyant K.Mahant, Ms.Shivani G. Mahant,
Ms.Nancy Roy, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
14.07.2020

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1. The proceedings in the matter have been conducted through video conferencing.
2. This appeal has been preferred by the defendants No.1 and 2 in CS(OS)(Comm) No.21/2020 against ad-interim order dated 21.01.2020 (Annexure P-1 to the memo of this appeal) passed in I.A. No.583/2020 under Order XXXIX Rule 1 and 2 of CPC.
3. We have heard the counsel for the parties.
4. Mr. Amit Sibal, the learned Senior Counsel appearing for the appellants (original defendants No.1 and 2) submitted that in the impugned order dated 21.01.2020, the learned Single Judge has not dealt with the principle of irreparable loss and balance of convenience as far as the

appellants (original defendants No.1 and 2) are concerned. It is also submitted by the learned Senior Counsel for the appellants that this is a gross case of false submission made in the plaint by the original plaintiffs. Learned Senior Counsel for the appellants has also submitted on merits, mainly about the appellants being prior user of the trademark in question. Looking to paragraph No.18 of the impugned order dated 21.01.2020, since the suit is adjourned for framing of the issues and for further hearing, this appeal has been preferred instead of an application under Order XXXIX Rule 4 of the CPC for vacation of stay.

5. We are not going into the merits of the case. It is not disputed that the application filed by the original plaintiff under Order XXXIX Rule 1 & 2 of the CPC remains pending. It would suffice for the disposal of this appeal if the appellants are also granted liberty to prefer an application under Order XXXIX Rule 4 of the CPC for vacation of ad interim relief granted by the learned Single Judge vide impugned order dated 21.01.2020. As and when such an application is filed, the same shall be disposed of as expeditiously as possible and practicable without being influenced by the observations made in the impugned order dated 21.01.2020 especially as stated in paragraph No.14 of the impugned order.

6. Accordingly, with these observations, the appeal is disposed of along with the other pending applications.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 14, 2020

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