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

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Judgment delivered on: 01.06.2020

+ CM(M) 352/2020

M/S. PT. VED PRAKASH BEVERAGES

..... Petitioner

versus

CRYSTAL BEVERAGES

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Siddharth Joshi, Advocate.

For the Respondent: Mr. Tushar Saini and Mr. Vikrant Choudhary,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 19.05.2020 whereby the Trial Court has rejected the application of the petitioner seeking release of the soft drinks which have been seized by the Local Commissioner pursuant to order dated 26.02.2020.
3. Subject suit was filed by the Respondent/Plaintiff for infringement of trademark, passing off, rendition of accounts and delivery.
4. The case of the respondent/plaintiff was that respondent is a manufacturer of soft drinks under the trademark "XALTA" and that the

petitioner/defendant has adopted a deceptively similar trademark “XARTA.

5. By order dated 26.02.2020 petitioner was restrained from using the trademark “XARTA” or a trademark deceptively similar to the trademark of the respondent/”Plaintiff “XALTA”.

6. A local commissioner was also appointed to visit the premises of the petitioner and seize the infringing product. The local commissioner visited the premises of the petitioner on 06.03.2020 and seized 2500 boxes (containing 24 bottles each) of soft drinks bearing the trademark “XARTA”.

7. Subject application was filed by the petitioner/defendant seeking release of the seized bottles on the ground that the bottles be released to him after removal of the impugned labels and he may be permitted to sell the same under his other brand.

8. Subject application was opposed by the plaintiff and by the impugned order dated 19.05.2020, the Trial Court has dismissed the application holding that the cold drink is an important piece of evidence and articles may be required during proceedings of the case and in case they are released at this stage an integral and important part of the evidence would be lost.

9. Learned counsel appearing for the petitioner submits that petitioner does not object to the Local Commissioner’s report and confirms that 2500 boxes of the product containing the trademark “XARTA” were seized from the premises by the local commissioner pursuant to order dated 26.02.2020. He, however, submits that the trademark of the petitioner “XARTA” is a

registered trademark and there is no deceptive similarity and he has other defences to the maintainability of the suit and the merits of the claim of the respondent.

10. Without prejudice to his defence. He submits that he has no objection to the Local Commissioner's report with regard to the seizure and the quantity and the identity of the bottles seized. He, however, submits that the bottles may be released so that he can dispose of the same in the market and salvage some loss that he has suffered because of the injunction obtained by the respondent.

11. Learned counsel appearing for the respondent submits that as per the application of the petitioner the shelf life of the bottles is three months and as per his instructions most of the contents of the seized bottles have already expired and cannot be sold in the market.

12. The rationale of the Trial Court in the impugned order that the cold drink is an important piece of evidence and articles may be required during proceedings of the case and in case they are released at this stage an integral and important part of the evidence would be lost, is not sustainable. The Petitioner has admitted to the inspection by the Local Commissioner. He does not dispute that 2500 boxes (each containing 24 bottles) bearing the label "XARTA" were seized from his premises.

13. Accordingly, the petition is disposed of in the following terms:-

- a) A representative of the respondent shall visit the premises of the petitioner at House No.220, Pocket D, Sector-5, Bawana Industrial Area, Holambi Khurd, Delhi-110039 on 02.06.2020 at 12 Noon;
- b) In the presence of the representative of the respondent the

entire seized articles shall be verified;

- c) One carton out of the 2500 cartons shall be retained as a sample and be handed over to the representative of the respondent for being produced before the Trial Court as and when so directed by the Trial Court;
- d) Rest of the 2499 boxes shall be opened and examined;
- e) Labels on all the bottles (except the carton handed over to the Respondent) shall be removed and the labels so removed shall be kept separately and sealed in a container and the container shall also be handed over to the representative of the respondent for being produced before the Trial Court as and when so directed by the Trial Court;
- f) The contents of the bottles which have expired i.e. passed their shelf life of three months from the date of manufacture shall be removed and destroyed;
- g) The empty bottles as well as the bottles which are within their shelf life shall be released to the petitioner;
- h) The entire proceedings shall be photographed and videographed.

14. Petition is disposed of in the above terms.

15. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsel for the Parties through email.

SANJEEV SACHDEVA, J.

JUNE 01, 2020

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