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10.03.
2021
Ct. No.12

FMAT 200 of 2021
With
IA No:CAN/1/2021

M/s. Devi Lakshmi Agro Products & Ors.
Vs
M/s. Cynax Aannaapurna Udyog Private
Limited.

Mr. Debnath Ghosh
Mr. G. K. Roy
Mr. T. K. Jana
Mr. Gopal Das
Mr. Sourav Jana
.....For the Appellants

The appeal has come for admission.

The appellant has filed a suit for declaration and injunction in relation to its trade mark “Krishak Gold” for rice. The claim in the suit is based on the label mark “Krishak Gold” and on the get up of the packet in which the word “Krishak Gold” is prominently displayed.

The plaintiffs/appellants have alleged that they have been using the mark “Krishak Gold” in the similar get up, since its adoption in 2019 for rice, whereas the defendant/respondent is admittedly a subsequent user of such mark, and has been using the same on and from 4th May, 2020. The plaintiffs/appellants further submits that the word “Krishak Gold” is a distinguishing and an essential

feature of the label mark and possibility of causing confusion and deception amongst the customers is sufficient, and no actual confusion/deception is required for making a case for passing an order of injunction restraining the defendant/respondent from using the impugned mark.

The claim in the application for injunction is based on prior using of the mark. The learned trial judge in the impugned order has stated that since prima facie material is forthcoming that the defendants are making representations to the customers but refused ad interim order.

With due respect the learned advocate submits that the test applied by the trial court on a prima facie case is misplaced. In passing off an order of action the plaintiff has established that the mark is unique in the sense of several features that may form part of the mark, whether it is word or label prior to use and to compare the said mark along with infringing mark.

However, pursuant to the two Trade Marks and that are closed to each other at this stage, we feel that the parties shall be directed to make accounts with regard to the sale of rice in the package is the subject matter of suit till the matter is finally taken up by the learned trial judge for consideration. We have been informed that the injunction application is fixed on

12th March, 2021. We request the trial judge to consider the prayer for injunction and other reliefs by the plaintiffs on the adjourned date only after giving the reasonable opportunity of hearing to the defendant. The learned trial court is also required to consider whether the infringing mark is deceptive by similar to the mark on which claim is made in the suit. The learned trial judge shall not be influenced by the words expressed by us in deciding the application for injunction.

The appeal and the application being CAN/1/2021 are thus disposed of. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Subhasis Dasgupta, J.)

