

ORDER SHEET
APOT 41 OF 2021
WITH
CS 40 OF 2020
GA 1 OF 2021
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
COMMERCIAL DIVISION
ORIGINAL SIDE

VIKAS D JAIN
Versus
DILIP KUMAR JAIN ALIAS DILIP KUMAR RANAWAT AND ORS.

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 17TH MARCH, 2021.

Appearance:
Mr. Soumabho Ghose, Adv.
Mr. S. Roy, Adv.
Ms. T. Bhattacharya, Adv.
...for the appellant

Mr. Rajeev Kr. Jain, Adv.
Mr. A. Chakraborty, Adv.
Mr. A. Jain, Adv.
...For the respondent No.1

The Court : In an interim application connected with a suit for infringement of copyright and design and passing off, the learned single judge initially directed service of the petition upon the defendant/appellant.

On the returnable date, only directions were made for filing of affidavits.

The appellant did not file any affidavit-in-opposition, the justification being the circumstances arising out of the Covid-19 pandemic and the lockdown in connection with it in the State of Maharashtra.

On the adjourned date of the application on 1st March, 2021, the learned judge made the impugned order.

On the basis of the available evidence, the learned judge appears to have taken a prima facie view that the respondent/plaintiff was a prior user, although the appellant/defendant obtained registration of the subject mark. Further, the two marks “MI SumEEt” and “NAKODA SUMEET” used by the appellant/defendant and the respondent/plaintiff were similar.

On the basis of the available facts, we find no reason to interfere with the impugned judgement and order of the learned single judge, save and except to the extent below.

However, considering the fact that there may have been good reasons preventing the appellant/defendant from filing an affidavit-in-opposition in the Court below, we grant leave to them to file their affidavit-in-opposition by 22nd March, 2021. Affidavit-in-reply may be filed by 31st March, 2021.

Upon filing of affidavits, the prima facie case of the parties is to be considered afresh. All points are kept open.

Considering the circumstances, the only modification to the interim order we are making is that the Receiver shall visit the establishment of the appellant and the other defendants, make an inventory of the goods but their possession for the time being will remain with the appellant. If the Receiver has taken possession of any goods or gadgets, their possession shall be restored to the appellant.

However, the order of injunction as granted by the learned single judge shall continue to operate.

The appeal (APOT No.41 of 2021) along with the connected application (GA No.1 of 2021) is disposed of accordingly.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)