

IA No. GA 1 of 2021
APOT No. 146 of 2021
with
CS No. 147 of 2021
IN THE HIGH COURT AT CALCUTTA
In Appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Marce Cemen Works Ltd.
Versus
Shree Cement Ltd. & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 13th December 2021
(via Video Conference)

Appearance:
Mr. Mahendra Prasad Gupta Advocate
Mr. Samit Rudra, Advocate
Ms. Antara Panja, Advocate
for the appellant

Mr. Rupak Ghosh, Advocate
Mr. Prasanta Kr. Dutt, Advocate
Mr. Susanta Kr. Dutt, Advocate
Mr. S. Banerjee, Advocate
for respondent no. 1

Mr. Saptarshi Kr. Mal, Advocate
Mr. Anurag Mitra, Advocate
Mr. Prinkar Agarwal, Advocate
for respondent nos. 2 & 3

The Court: We admit this appeal.

It is against an ex parte ad interim order dated 16th August 2021
in a trademark action in terms of prayer (a) of the notice of motion,
which is as follows:

“(a) Injunction restraining the Respondents by
themselves and their servants, agents, directors,
representatives, dealers, distributors, stockiest and/or all
person claiming through or under or controlled by them

and the like from using in relation to cement and/or any of its goods and in particular the goods for which the Petitioner's trademarks are registered, the Impugned marks as shown in Annexures 'H', 'I', 'J' and 'K' hereto and/or any other mark which is identical with and/or deceptively similar to Petitioner's trademarks and/or any other mark containing and/or using any other prominent and/or essential features of the petitioner's trademarks so as to infringe the Petitioner's registered trademarks bearing registration Nos. 2947314 and 4348859 being Annexure 'A' and 'B' hereto;"

A Receiver was also appointed to make an inventory of the goods. The order was made operative for six weeks. The application was made returnable after five weeks. In the end of September, 2021 (date illegible) the appeal was filed. The stay application is sought to be moved today.

In the meantime, we are told that the application appeared before the learned single judge and the interim order extended.

We have seen the rival marks in court today.

We are of the opinion that at the ex parte ad interim stage the learned judge has exercised her discretion correctly in passing the order of injunction. However, this order is subject to be varied upon disclosure of adequate materials before the learned trial court by the respondents.

We are of the view that the application should be heard out by the learned trial judge. We keep all points open.

Let affidavits be exchanged before the learned trial court according to the following directions.

Affidavit-in-opposition be filed by 24th December 2021. Affidavit-in-reply may be filed by 10th January 2022. The application may be mentioned before the learned trial court.

Any prayer for extension of the interim order may also be made before that court.

The appeal (APOT No. 146 of 2021) and the connected application (IA No. GA 1 of 2021) are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

R. Bose