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

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Date of Decision: 28th May, 2021

+ **CM (M) 382/2021**

AAROGYA PATHCARE LLP

.....Petitioner

Through: Mr. Avadh Kaushik, Advocate

Versus

WELLNESS PATHCARE INDIA LLP & ORS.Respondents

Through: Mr. Sanjeev Singh & Mr. D.K. Yadav, Advocates for respondents No. 1 & 2.

Mr. Ashok Gupta, Advocate for respondent No. 3.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

ASHA MENON, J: (Oral)

CM APPLN. 17332/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPLN. 17333/2021 (Exemption from filing affidavit, etc., in support of the applications)

1. The application is allowed subject to the applicant filing duly

affirmed affidavit(s) alongwith the court fees/deficit court fees, if any, within 72 hours from the date of resumption of the regular functioning of this court.

2. The application is disposed of.

CM (M) 382/2021, CM APPLN.17334/2021 (by the petitioner u/S 151 CPC for interim orders and directions)

1. The present petition has been filed under Article 227 of the Constitution of India, with the following prayers:

- “(i) *Pass appropriate orders and directions to the respondents and/or to the learned Trial Court i.e. Court of learned District Judge (Commercial Courts), -03, Central District, Tis Hazari Courts, Delhi conducting trial of Commercial Civil Suit bearing CS (Comm.) No.242/2020 tiled as ‘Wellness Pathcare India LLP & Anr. Vs. Wellness Health Lab (OPC) Pvt. Ltd. & Anr.’ to de-seal the petitioner’s room in the premises bearing No.1/4, First Floor, Single Story, Tilak Nagar, New Delhi and to remove the seized items/material/documents/papers, as mentioned in the Supardari Memo (ANNEXURE-P-6) from the said room and to make the same available to the petitioner for his use to store the samples and other. Path-Lab purposes;*
- (ii) *Pass any other order or direction, which this Hon’ble Court may deem fit and proper, under the facts and circumstances of the case, and in*

the interest of justice.”

2. The case of the petitioner, as submitted by Mr. Avadh Kaushik, learned counsel for the petitioner, is that the petitioner's room had been sealed in proceedings between the respondents i.e., respondents No.1 & 2 (plaintiffs) and respondents No.3 & 4 (defendants), where the plaintiffs were seeking a permanent injunction restraining the infringement, passing of and unauthorized use of their trade mark and for rendition of accounts and delivery up etc. against the defendants. The learned counsel for the petitioner submits that directions be issued by this Court to either or both of them to remove the goods which are lying in the room forming part of premises of the petitioner bearing No. 1/4, First Floor, Single Storey, Tilak Nagar, New Delhi, which be also de-sealed so that the petitioner could use the premises for its purposes, particularly in the present pandemic conditions as it was running a pathology lab from the premises.

3. The first query that arises for consideration is the *locus standi* of the petitioner to file the present petition, as admittedly it is not a party before the learned Trial Court. While the learned counsel for the petitioner is right in submitting that this is a petition under Article 227 of the Constitution of India and not an appeal, the principles governing a challenge to an order by a person not a party before the learned Trial Court would remain the same. A petitioner must fall under the category of an aggrieved person before he can be heard if he is not a party to the suit.

4. A three-Judge Bench of the Supreme Court in **V.N. Krishna**

Murthy And Another v. Ravikumar And Others (2020) 9 SCC 501 has observed that merely saying that the appellants therein are prejudicially affected by the decree is not sufficient. It was further held:-

“22. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out.....”

23. The appellants have thus, failed to demonstrate that they are prejudicially or adversely affected by the decree in question or any of their legal rights stand jeopardised, so as to bring them within the ambit of the expression “person aggrieved” entitling them to maintain appeal against the decree.”

5. In other words, a party not before the learned Trial Court has to show clearly and specifically in what manner it is prejudiced and what legal rights have been jeopardised by the order passed by the learned Trial Court.

6. It has been pointed out by Mr. Sanjeev Singh, the learned counsel for the respondents No.1 & 2/plaintiffs who appears on advance notice, that the suit had been filed for infringement of trade mark and for rendition of accounts and the prayer was for seizure of infringing goods and articles not only in the premises of the defendants i.e., respondents No.3 & 4, but in all other premises where these materials were being stored or used. It is in that context that the goods were recovered by the Local Commissioner from the premises of the petitioner. According to the learned counsel for the respondents No.1 & 2/plaintiffs, the petitioner

has not disclosed the connection between the petitioner and the respondents No.3 & 4/defendants in the present petition. Thus, it has not disclosed what independent right it has and how they have been prejudiced by an order that protects the interests of the respondents No.1 & 2.

7. The learned counsel for the respondents No.3 & 4/defendants Sh.Ashok Gupta, who also appears on advance notice, confirms that these respondents/defendants have filed an application under Order XXXIX Rule 4 CPC, 1908 which was pending before the learned Trial Court. The learned counsel for the petitioner when queried in respect of the delay in seeking de-sealing, since the impugned order was passed on 4th February, 2020 and the Local Commissioner had visited the premises and sealed the premises on 6th February, 2020, submitted that the petitioner had awaited orders on the application of the defendants under Order XXXIX Rule 4 CPC, 1908. There is no dispute that when the Local Commissioner visited the room of the petitioner, material belonging to the respondents No.3&4/defendants were found there. The argument of the learned counsel for the petitioner that these were found in the room in possession of the petitioner as it was shifted there by the respondents No. 3 & 4/defendants due to maintenance work in their premises, is facetious to say the least. In other words, it appears that the petitioner's activities may be intertwined and intermixed with the business of the respondents No. 3 & 4/defendants. No prejudice is made out to the rights of the petitioner due to the impugned order. Neither has any right of the petitioner been

jeopardized by the impugned order.

8. Even otherwise, no perversity or illegality has been pointed out in the impugned order. The learned Trial Court is also required to dispose of the application under Order XXXIX Rule 4 CPC, 1908 moved by the respondents No.3 & 4/defendants and if the impugned order is varied, the benefit of the same would also accrue to the petitioner.

9. The petition is, accordingly, dismissed along with the pending application.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

**ASHA MENON
(JUDGE)**

MAY 28, 2021
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