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

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Date of decision: 01.10.2021

+ **FAO (COMM) 143/2021**

DISPOSABLE HEALTH AND LIFE CARE LIMITED.Appellant

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Hemant Daswani, Mr. Aishwary
Vikram, Mr. Saksham Dhingra, Mr.
Rishabh Sharma, Mr. Siddhant
Shrivastava and Mr. Sarabpreet
Singh, Advocates.

versus

**HINDUSTAN SYRINGES AND MEDICAL DEVICES LIMITED
& ORS. Respondents**

Through: Mr. Peeyoosh Kalra with Mr. Udayvir
Rana, Advocates for respondent no.1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Court Hearing]

RAJIV SHAKDHER, J. (ORAL):

CM APPLs. 34622-23/2021

1. Allowed, subject to just exceptions.

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2. This is an appeal directed against common judgement dated 11.02.2020, passed by the District Judge (Commercial Court) – 01, Patiala House Court, New Delhi [hereafter referred to as the “trial Court”] on an application filed by the appellant/plaintiff under Order XXXIX Rules 1 and

2 read with Section 151 of the Code of Civil Procedure, 1908 [in short “CPC”] as also on the application filed by the respondent no. 1/defendant no. 1 under Section 10 read with Section 151 of the CPC.

3. Mr. Amit Sibal, learned senior counsel, who appears on behalf of the appellant, has drawn our attention to the operative directions, which are contained in paragraph 34 of the impugned judgment.

3.1. For the sake of convenience, the operative directions are extracted hereafter:

“34. After considering the facts and circumstances of the case, relevant documents and rival submissions, I am of the opinion that even in respect of injunction, it is not appropriate for this court to pass any order as the Hon'ble High Court of Delhi has already passed orders/judgment in respect of applications of the parties relating to interim injunction and therefore, there is no justification for this court to pass an order on the interim application of the plaintiff.”

3.2. We may note that, what is at stake, are three marks, over which the appellant i.e., the original plaintiff claims rights. These marks are: DISPOWAY; DISPONEO and DISPOFLON.

3.3. It is Mr. Sibal's contention that, these marks were not the subject matter of the common judgement delivered by the learned single judge dated 31.10.2018, in the appellant and respondent no.1's interlocutory application(s) under Order XXXIX Rules 1 and 2 of the CPC in CS (COMM.) 139/2016 and CS (COMM.) 1494/2016, respectively, and the judgement of the Division Bench of this Court dated 03.05.2019, albeit, in appeal, against the aforementioned judgement of the learned single judge.

3.4. It is Mr. Sibal's contention that, the aforementioned marks formed part of respondent no. 1's suit action [i.e., CS (COMM.) 1494/2016] only,

after the amendment to the plaint was allowed by the concerned Court on 07.05.2019.

4. On the other hand, Mr. Peeyoosh Kalra, who appears on behalf of respondent no. 1, has attempted to take us through the aforementioned judgement(s) of the learned single judge and the Division Bench to demonstrate that, the aforementioned marks did form part of the suit action.

5. We have been taken through the record.

5.1. According to us, the trial Court needs to examine the record, carefully, and rule on the contentions raised by learned counsel for the parties before us.

6. Both, Mr. Kalra and Mr. Sibal, cannot but accept, that there is no definitive decision taken, on the submissions and counter-submissions raised by the parties before us, by the trial Court.

7. Accordingly, the impugned judgment is set aside to the extent, it did not deal with interim relief claimed by the appellant.

7.1. Thus, the trial Court will rule upon the interlocutory application filed by the appellant. Needless to add, this decision will be rendered after hearing the counsel for the parties in the matter.

8. The appeal is disposed of in the aforesaid terms.

9. It is made clear that, nothing stated by us hereinabove, will impact the merits of the case.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

OCTOBER 1, 2021/tr

Click here to check corrigendum, if any