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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) (COMM) 36/2022 & CAV 35/2022, CM APPLs.8310-8312/2022

SIDDHI MARGARINE SPECIALTIES LTD & ANR Appellants

Through: Mr. Sandeep Sethi, Sr.Adv. with
Mr.Sidharth Chopra, Mr.Nitin
Sharma, Mr. Kanishk Kumar,
Ms.Subhoshree Sil, Ms.Ramya
Aggarwal and Mr. Akshit Mago,
Advocates for Appellant No.1.
Mr. Akhil Sibal, Sr.Adv. with
Mr.Sidharth Chopra, Mr.Nitin
Sharma, Mr.Kanishk Kumar,
Ms.Subhoshree Sil, Ms.Ramya
Aggarwal, Ms.Asavari Jain and
Ms.Sanya Kumar, Advocate for
Appellant No.2.

versus

ZYDUS WELLNESS LTD Respondent

Through: Mr.Chander Lall, Sr.Adv. with
Ms.Anuradha Salhotra,
Mr.Naval Kastia, Ms.Aditi Menon,
Ms.Kaveri Jain and Ms.Ananya Chug,
Advocates.

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Date of Decision: 15th February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeal has been heard by way of video conferencing.



2. Present appeal has been filed by the appellants challenging the ex-parte injunction orders dated 20th January, 2022 and 27th January, 2022 passed by learned Single Judge in IA No.1086/2022 and IA No.1422/2022. Appellants also seek a direction to pass an ad interim stay order on the operation of the aforesaid impugned orders during the pendency of the present appeal.

3. Learned senior counsel for the Appellants state that the necessity for filing the present appeal has arisen on account of the fact that by virtue of the two impugned ex parte ad-interim injunction orders, passed in the ongoing suit of copyright infringement and passing off, the Appellants herein have been restrained from using their registered trademark 'NUTDELIGHT', which has been registered since the year 2006 and has been extensively and uninterruptedly being used by them for the last fifteen years. Additionally, they state that the Appellants have also been restrained from selling their products 'NUTDELIGHT' under the present trade dress, which was adopted nearly a decade ago.

4. They point out that while obtaining the ex-parte ad-interim injunction, the Respondent/Plaintiff has failed to disclose that the Appellants/Defendants have a trademark registration in their favour for the mark 'NUTDELIGHT', whereas the Respondent/Plaintiff has no trademark registration for the mark 'NUTRALITE' and additionally, Respondent has also failed to disclose that the Respondent/Plaintiff's application for registration of its trademark 'NUTRALITE' has been abandoned.

5. They state that the Appellants and the Respondents operate and manage their business from the same city i.e. Ahmedabad and in fact appellants regularly conduct exhibition of their products. They emphasise



that the appellants and respondent are operating through same trade channel for the last fifteen years, and hence it is doubtful that the Respondent had come to know about the Appellants'/Defendants' product NUTDELIGHT only in October, 2021.

6. They state that the estimated cost of the inventory lying with the Appellants'/Defendants' distributors across the country is approximately Rs.3 Crores and there is also a substantial amount of impugned packaging material lying with the Appellants. They emphasise that the shelf life of the finished goods is extremely limited.

7. They state that the appellants herein had filed an Application, being I.A No.2252/2022, under Order XXXIX Rule 4 of the Code of Civil Procedure for vacation of the impugned orders and on 10th February, 2022, the learned Single Judge had issued notice in the application and listed the matter on 17th February, 2022 without vacating the ex-parte ad-interim injunction orders.

8. *Per contra*, learned senior counsel for the respondent/plaintiff states that all the facts have been fully and truly disclosed in the plaint. He states that the Respondent/Plaintiff is a market leader of the product in question and the Appellants/Defendants are trying to piggy back on Respondent's/Plaintiff's name, reputation as well as packaging. He states that the Appellants/Defendants have recently started using the trade mark 'NUTDELIGHT'. He emphasises that the appellants/defendants have been selling their products under the mark 'SIDDHILITE' previously. He also states that the sales promotion figure disclosed by the appellants/defendants for the last ten years is a meager amount of Rs.85 lakhs.

9. This Court is of the view that as the learned Single Judge is already



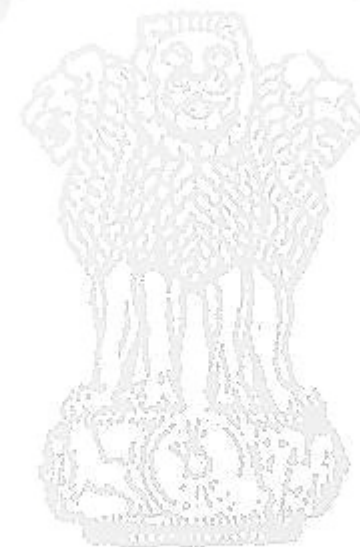
seized of the controversy and has listed the matter day after, it would not be proper for this Court to interfere with the impugned orders at this juncture.

10. However, keeping in view the aforesaid facts, the learned Single Judge is directed to dispose of the pending applications as expeditiously as possible, preferably on the next date of hearing, but not later than one week from the next date of hearing. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open. Accordingly, the appeal and pending applications stand disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 15, 2022
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