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

+ **FAO(OS) (COMM) 326/2022**

M/S VEDA SEED SCIENCES PVT LTD Appellant

Through: Mr.K.Raghavacharyulu with
Mr.Kailash Pandey and Mr.Krishna
Yadav, Advocates.

versus

KOHINOOR SEED FIELDS INDIA PVT LTD Respondent

Through: Mr.Saurav Agrawal with Mr.Adarsh
Ramanujan, Mr.Shartanu Agarwal,
Ms.Sulekha Agarwal, Ms.Anmol
Dhindsa and Mr.Skanda, Advocates.

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Date of Decision: 15th December, 2022.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J:

C.M.No.54203-54204/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

FAO(OS) No.326/2022 & C.M.Nos.54201-54202/2022

1. Present appeal has been filed challenging the interim order dated 01st December, 2022 passed by the learned Single Judge of this Court in CS (COMM) No. 828/2022, whereby the Appellant-Defendant has been restrained from using or selling any product under the Respondent-Plaintiff's trademarks being 'SADANAND', 'TADAAKHA' and 'BASANT'.

2. Learned counsel for the Appellant-Defendant states that the learned Single Judge has erred in passing the impugned injunction order without considering that the Respondent-Plaintiff had bypassed the statutory provisions of Section 12A of the Commercial Court Act, 2015, which prescribes pre-institution mediation as a mandatory requirement.
3. Learned counsel for the Appellant-Defendant states that the learned Single Judge erred in granting injunction against the Appellant-Defendant solely on the ground of resemblance of the marks “SADANAND”, “TADAAKHA” and “BASANT” without considering the fact the above three marks had been used prior in time by the Appellant-Defendant. In support of his contention, he relies upon the emails dated 20th February, 2018 and 04th February, 2019 as well as letter dated 18th January, 2020.
4. He also states that the Respondent-Plaintiff despite being aware of registration of the trademarks ‘VEDA TADAAKHA GOLD’, ‘VEDA SADANAND GOLD’ and ‘VEDA BASANT GOLD’ by the Appellant-Defendant w.e.f. 07th August, 2021 had suppressed this fact in the plaint. In any event, according to him, the use of the additional word ‘VEDA’ by the Appellant-Defendant constitutes a sufficient distinction and rules out any possibility of confusion between the products being sold by the Appellant-Defendant and the Respondent-Plaintiff.
5. Learned counsel for the Appellant-Defendant lastly relies upon the letter dated 11th April, 2022 wherein the Respondent-Plaintiff had been informed that the Appellant-Defendant would be selling its own cotton seed packaging under the marks ‘VEDA SADANAND GOLD BGII’ and ‘VEDA BASANT GOLD BGII’.

6. *Per contra*, learned counsel for the Respondent-Plaintiff states that the letter dated 11th April, 2022 is a forged and fabricated letter. He emphasises that the said letter is not a part of the trial Court record and bears no reference number unlike all other letters written by the Appellant-Defendant to the Respondent-Plaintiff.

7. He emphasises that the Respondent-Plaintiff is the prior user and registrant of the three marks in question. In support of his contention, he relies upon para 27 of the impugned order which reads as under:-

“The Respondent-Plaintiff has been selling the aforesaid varieties/hybrids under its trademarks, as per the details below:-

<i>Seed Variety</i>	<i>GEAC Approval</i>	<i>Brand</i>	<i>Registration</i>
<i>KSCH 232</i>	<i>Dated 03.06.2014</i>	<i>SADANAND ®</i>	<i>Registered on 14.08.2017</i>
<i>KSCH 207</i>	<i>Dated 30.06.2010 for South Zone</i> <i>Dated 12.05.2010 for Central Zone</i>	<i>TADAAKHA®</i>	<i>Registered on 07.08.2017</i>
<i>KSCH 212</i>	<i>Dated 23.05.2012 for South Zone</i> <i>Dated 10.05.2011 for Central Zone</i>	<i>BASANT™</i>	<i>Not Registered</i>

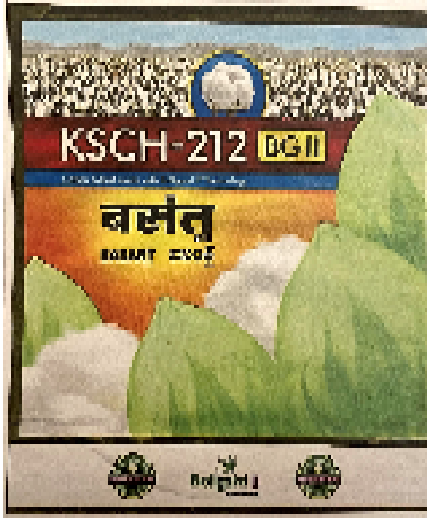
8. Having heard learned counsel for the parties, this Court is of the view that the Appellant-Defendant had been selling seeds under the said marks since 2014 by virtue of the authority and power conferred by Respondent-Plaintiff under Marketing Agreement which were renewed on an annual basis. In the Marketing Agreements the Appellant-Defendant has admitted and acknowledged that the three marks in question are owned by the Respondent-Plaintiff. The relevant portion of the Marketing Agreement dated 22nd April, 2015 executed between the parties reads as under:-

“4. KSFIPPL (Respondent-Plaintiff) has produced the Hybrid Seeds and wishes to sell them through this marketing agreement with VSSPL (Appellant-Defendant) under KSFIPPL’s (Respondent-Plaintiff) own brand names Tadaakha, SaiCharan, Basant, Sadanand respectively.”

9. Consequently, this Court is of the view that the Respondent-Plaintiff is the owner and prior user / adopter of the impugned trademarks.

10. While the Appellant-Defendant has obtained registration for the aforesaid three marks in Class 31 w.e.f. 07th August, 2021, the Respondent-Plaintiff had already obtained registration for the marks ‘SADANAND’ and ‘TADAAKHA’ way back in 2017 with user date since 2014. Consequently, the Respondent-Plaintiff is not only a prior adopter but also a prior registrant of the trademarks in question and the allegation of suppression is irrelevant.

11. This Court is in agreement with the view of the learned Single Judge that the packaging and aesthetic of the Appellant-Defendant’s products are deceptively identical to that of the Respondent-Plaintiff. A comparative analysis of the Respondent-Plaintiff’s marks along with the Appellant-Defendant’s marks as reproduced by the learned Single Judge is as under:-

Trademark	Plaintiff	Defendant
SADANAND		
TADAAKHA		
BASANT		

12. This Court is of the view that the use of the additional words like 'VEDA' in Respondent-Plaintiff's marks, would not result in a material difference so as to distinguish the essential and dominant mark of the Appellant-Defendant from those of the Respondent-Plaintiff. In the emails and letters referred to by the Appellant-Defendant, it had made certain suggestions with regard to the packaging of pouches as well as for urgent supply of pouches under the aforesaid three marks, when it was functioning as a marketing agent of the Respondent-Plaintiff. Consequently, the same do not offer any assistance to the Appellant-Defendant.

13. Further, as the Appellant-Defendant had been selling seeds under the said marks by virtue of the authority and power conferred by Respondent-Plaintiff under the Marketing Agreements, the Appellant-Defendant is estopped from challenging either the validity of the marks or the Respondent-Plaintiff's ownership of the said marks. In fact, the Appellant-Defendant's adoption of the marks in question is prima facie dishonest as the same is motivated and with an intent to springboard their business by drawing affiliation with the Respondent-Plaintiff and its trademarks and to make unfair gains.

14. This Court is also of the view that as urgent interim relief was sought in the present matter, the Respondent-Plaintiff was rightly granted waiver by the learned Single Judge of the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

15. Accordingly, the present appeal along with pending applications being bereft of merits is dismissed with costs of Rs.50,000/- to be paid to the Respondent-Plaintiff. Needless to state that the aforesaid findings are

prima facie in nature and would not prejudice either of the parties at the time of final hearing of the suit.

MANMOHAN, J

SAURABH BANERJEE, J

**DECEMBER 15, 2022
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