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

+ **FAO(OS) (COMM) 334/2022, CM APPL.56653/2022**

VINAY RATHI AND ORS

..... Appellants

Through: Mr. Jayant Mehta, Sr. Advocate. With
Mr. Rohit Amit Sthalekar, Mr. Ashish
Choudhury, Mr. P.D.V. Srikar, Mr.
anand Kamal and Mr.akash Agrawal,
Advs.

Versus

DHANANJAY RATHI AND ORS.

..... Respondents

Through: Mr. C.M. Lal, Sr. Adv. with Mr.
Rupin Bahl, Mr. Karan Bajaj, Mr.
Karan Bajaj and Ms. Ananya, Advs.

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Date of Decision: 23rd December, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J (Oral):

CM APPL.56655/2022 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

CM APPL.56654/2022

Keeping in view the averments in the application, the delay in filing
the present appeal is condoned.

Accordingly, the application stands disposed of.

FAO(OS) (COMM) 334/2022, CM APPL.56653/2022

1. The instant appeal has been filed challenging the impugned order
dated 28th April, 2022 passed by a learned Single Judge of this Court

whereby the learned Judge granted an ex-parte ad-interim injunction against the respondents No.2 to 4 in I.A. No.6428/2022 in CS(COMM) No.267/2022 restraining the respondents No. 2 to 4 from using the trademark RATHI. The appellants are also challenging the impugned order dated 19th July, 2022 whereby the learned Single Judge after hearing all the parties at length reserved final judgment in I.A. No.6428/2022 and I.A. No.7588/2022 in CS(COMM) No.267/2022 but no judgment/order has been pronounced despite passage of five months.

2. Learned senior counsel for the appellants states that the Order XXXIX Rule 3A provides that where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted and where it is unable so to do, it shall record its reasons for such inability. He submits that in the present case, almost eight months have passed from the date injunction was granted but no order under I.A. No.6428/2022 and I.A. No.7588/2022 in CS(COMM) No.267/2022 has been pronounced till date, despite orders being reserved twice over on 2nd June, 2022 and 19th July, 2022.

3. After some arguments, it transpires that while the judgment/order has been reserved in I.As. No.6428/2022 and 7588/2022 by a learned Single Judge of this Court on 19th July, 2022, the respondents/plaintiffs have been requesting for postponement of the judgment/order on the ground that the respondents/plaintiffs have filed an application under Order VI Rule 17 for amendment of the plaint.

4. Due to the change in roster, the amendment application is now pending consideration before the successor Court.

5. Keeping in view the aforesaid peculiar situation, learned senior counsel for the respondents/plaintiffs states that the respondents/plaintiffs would move an application for de-reserving the judgment/order and would forthwith argue the amendment application before the successor Court. Learned senior counsel for the respondents/plaintiffs also clarifies that there is no injunction in subsistence against the present appellants and therefore, the present appeal is not maintainable.

6. In rejoinder, learned senior counsel for the appellants/defendants No.13 to 18 states that they are directly adversely impacted by the impugned order as their licensees are not able to use the trademark. He vehemently prays that the ad-interim injunction order be suspended.

7. However, keeping in view the statements/undertakings given hereinabove by learned senior counsel for the respondents/plaintiffs, which are accepted, this Court is of the view that it would be appropriate to direct the successor learned Single Judge to hear and decide the application under Order VI Rule 17 being I.A.10366/2022 and applications under Order 39 Rules 1 & 2 and Order 39 Rule 4 being I.As.6428/2022, 10738/2022 and 7588/2022 respectively.

8. The parties are directed to ensure that the pleadings are complete before the successor learned Single Judge before the next date of hearing.

9. With the aforesaid directions, the present appeal and application is disposed of.

MANMOHAN, J

SAURABH BANERJEE, J

DECEMBER 23, 2022/TS