

Item No.3
18.12.2023
Court. No. 19
GB

C.O. 4226 of 2023

Marico Limited
Vs.
Emami Agrotech Limited

*Mr. S.N. Mookherjee,
Mr. Ratnanko Banerji,
Mr. Soumya Roy Chowdhury,
Mr. Arunabha Deb,
Ms. Ashika Daga,
Mr. Jishnujit Roy*

...for the Petitioner.

*Mr. Arnidam Banerjee,
Mr. Santanu Chatterjee,
Mr. Rajib Ghosh*

...for the Opposite Party.

The revisional application arises out of an order dated November 23, 2023, passed by the learned District Judge at Howrah in Misc. Appeal No.192 of 2023. The misc. appeal arose out of Title Suit No.1659 of 2023.

By the order impugned, the learned court fixed December 14, 2023, for hearing of an application under Section 5 of the Limitation Act. The application for delay was filed in connection with the misc. appeal. As the caveator prayed for an opportunity to file an objection, the next date was fixed on December 14, 2023.

Considering the delay as stated in the application under Section 5 of the Limitation Act, this Court finds that the delay was of only one day and the application could have been taken up by the learned lower appellate court and allowed on the same day. One day's delay, cannot be treated as fatal.

In any event, it is also contended by Mr. Mookherjee, learned senior advocate that the learned lower appellate court did not consider the prayer in the put up petition. On the urgency involved, a prayer for an order of stay of the ad interim order passed by the learned trial judge, was made. The learned trial judge had passed an ad interim order of injunction against the petitioner, restraining the petitioner from broadcasting and/or telecasting the advertisement, depicting their 'soya chunks' as the tastiest and softest, in the country. Mr. Mookherjee has led the Court through different decisions of this court, in support of his contention that there was no scope to pass an ad interim order of injunction, in view of the settled law that a mere 'puff' would not amount to disparagement.

In my opinion, the contentions of Mr. Mookherjee relate to the merits of the order passed by the learned trial judge. The same should be adjudicated in the misc. appeal or at the time of disposal of the injunction application.

Mr. Banerjee, learned advocate appearing on behalf of the plaintiff/opposite party submits that the order of ad interim injunction dated October 18, 2023, has been further extended by the learned trial judge. The said order has not been challenged by way of another misc. appeal. According to Mr. Banerjee, the order could not have been assailed directly before this Court under Article 227 of the Constitution of India. Every extension is a fresh order of injunction and ought to be challenged by filing a misc. appeal.

Both the learned advocates submit on the merits of the case.

The issue involved in the misc. appeal is the validity of the order dated October 18, 2023, which had to be tested on the law applicable. When the order dated October 18, 2023 has already been extended, this Court is of the view that no useful purpose will be served in keeping the application under Section 5 of the Limitation Act for condonation of delay and the Misc. Appeal No.192 of 2023, pending. The misc. appeal and the application are disposed of. The parties are relegated before the learned trial judge for adjudication of the application for injunction.

The learned trial judge will decide the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure filed by the plaintiff, within January 6, 2024, positively. The objection to the said application shall be filed by the defendant/petitioner, within December 22, 2023. Reply, thereto, if any, be filed within January 2, 2024. Thereafter, the matter shall be disposed of as directed hereinabove.

The petitioner is at liberty to file a put up application upon notice to the plaintiff, with a prayer before the learned trial judge for fixing of dates. Accordingly, the revisional application is disposed of.

This Court has not gone into the merits of the claims and counter-claims of the parties. The learned trial judge will decide all the issues, independently, on the settled principles of law.

All the parties and the learned court below shall act on the basis of the server copy of this order.

(Shampa Sarkar, J.)