

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO. 4991 OF 2022
IN
COMMERCIAL IPR SUIT NO. 414 OF 2021**

S.G. Star Drinks Pvt. Ltd. ... Applicant/(Orig. Defendant)

In the matter between

Parle Agro Pvt. Ltd. ... Plaintiff

Versus

S.G. Star Drinks Pvt. Ltd. & Anr. ... Defendants

Mr. Hiren Kamod a/w Raina Gajria i/b Gajria & Co. for the Plaintiff.
Ms. Apoorva Kulkarni i/b SMA Law Partners for the Applicant/Defendant.
Ms. Naina Poojary, Section Officer, C.R. Present.

CORAM : R.I. CHAGLA, J.

DATED : 26th OCTOBER, 2023.

ORDER :

1 By this Interim Application the Applicant/Defendant has sought direction to the Court Receiver to draw up proper inventory and photography of the impugned products which are lying in the premises of the Plaintiff and pursuant thereto destroy and/or dispose off the impugned products.

2 The Applicant/Original Defendant has discontinued the manufacturing and selling the impugned products which constitute the subject matter of the dispute in the present Suit.

3 The learned Counsel for the Applicant has referred to the affidavit dated 12.11.2021 of the Applicant in the Interim Application (L) No.16726 of 2021 filed by the Plaintiff wherein it is stated that the Applicant does not intend to manufacture or sell its product as per the layout, artwork or colour scheme as impugned by the Plaintiff, in future. The same is reiterated in the present Interim Application. The Applicant has claimed that in view thereof the Suit has become infructuous. Further, the Applicant has rendered the accounts and sales summary of the impugned products along with the said affidavit dated 12.11.2021.

4 The Court Receiver was appointed by this Court vide ad-interim order dated 10.08.2021 and pursuant to the order dated 28.09.2021 has seized the impugned products which are the subject matter of dispute in the above Suit and has filed a report to this Court.

5 Ms. Apoorva Kulkarni, the learned Counsel for the Applicant has further contended that the impugned products which were manufactured earlier but not supplied, were also seized by the Court Receiver. She has further contended that the Applicant has incurred

heavy losses due to the actions of the Plaintiff on account of which the impugned products were seized by the Court Receiver appointed by this Court and their having reached expiration date and therefore unfit for further and future use.

6 Ms. Kulkarni has further stated that the impugned products which were seized by the Court Receiver have been kept in the godown arranged by the Plaintiff and are of no use to the Applicant since the Applicant does not intends to use the same in future. The charges of the Court Receiver and rent for the godown where the impugned products have been stored by the Court Receiver may be saddled upon the Applicant if the Suit is decreed in favour of the Plaintiff. Hence, the aforementioned relief is sought by the Applicant.

7 Mr. Hiren Kamod, learned Counsel appearing for the Plaintiff has referred to the order dated 28.09.2021 passed by this Court and in particular paragraph 11 of the said order wherein it is observed that the Defendant was found to be in violation of ad-interim order dated 10.08.2021 and the Defendant had not allowed the impugned products to be seized saying that the products had expired. This Court had directed the Court Receiver to take all the goods seized under the previous order and remove them from the Defendants' premises and place them in the

premises to be identified by the Plaintiff. This would initially be at the Plaintiff's costs and will be at liberty to recover these costs with interest from the Defendants at any stage of the proceedings including interim proceedings.

8 Mr. Kamod has submitted that the parties were exploring the possibility of settlement and which has not worked out in view of the Defendants not agree to pay costs which the Plaintiff has claimed as payable in full and final settlement of the dispute in the above Suit. He has submitted that expenses have been incurred towards shifting of the impugned goods including vehicle expenses and other miscellaneous expenses as well as rent from November, 2021 till date for storage of the seized goods in premises of the Plaintiff coming to a total amount of Rs.2,28,306/- transfer. He has submitted that the Defendant is required to pay the said amount as contemplated in paragraph 11 of the order dated 28.09.2021.

9 The learned Counsel appearing for the Defendant states on instructions that the said amount of Rs.2,28,306/- shall be paid by the Defendant in the event this Court is inclined to grant the relief sought for in the Interim Application. The statement is accepted.

10 I have considered the averments in the Interim Application wherein the Applicant has sought for destruction and/or disposal of the seized goods on account of the Applicant stating that it is incurring losses due to action of the Plaintiff as seized goods have reached expiration date and, therefore, unfit for further used. It is necessary to note that in the Interim Application that the Applicant has stated that it has stopped discontinued manufacturing and selling of the products which are subject matter to dispute in the present Suit. This would be taken into consideration at the hearing of the Interim Application. In view of the relief sought in the Interim Application which is not objected to by the Plaintiff other than claiming the said amount of Rs.2,28,306/- as aforementioned, the relief sought for is required to be granted. Hence, the following order is passed :

i) The Court Receiver through Additional Special Receiver

Mr. Dhirendra Sigh Rawat
293, E-Extn. Shyam Vihar Phase-1,
Najafgarh, South West Delhi, Delhi – 110043.
Enrollment No. D/558/2013
Contact No. : 9718518565
Email Id: dsripr@gmail.com

appointed by this Court by the order dated 10.08.2021 is directed to draw up proper inventory of the impugned products seized and pursuant thereto destroy the impugned

products. This shall be done within a period of two weeks from the date of this order.

ii) The Defendant shall make payment of the said amount of Rs.2,28,306/- to the Plaintiff towards rent of the premises where the products seized by the Court Receiver have been stored as well as expenses towards shifting of the impugned goods and which payment shall be made within a period of four weeks from the date of this order.

iii) Interim Application shall be placed for further consideration on 06.12.2023.

iv) Interim Application is accordingly disposed of.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
2023.10.27
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+0530