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

+ **FAO (COMM) 11/2023**

**M/S INDIAN PLYWOOD AND SUNMICA THROUGH ITS
PROPRIETOR MD. YUSUF HASAN AND ANR & ANR. ... Appellants**

**Through: Mr.Jeevesh Nagrath with Mr.Sujoy Datta,
Ms.Nishtha Khurana, Mr.Aarsheya
Sharda and Ms.Monika Prakash, Advs.**

Versus

M/S CENTURY WORLD & ANR. Respondents

**Through: Mr.Samar Bansal (through VC) with
Mr. Anmol Chadha, Adv. for R-1.
Advocate for R-2 (appearance not given).**

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Date of Decision: 13th January, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J: (ORAL)

C.M.No.1395/2023

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

Accordingly, the application stands disposed of.

C.M.Nos.1393-1394/2023

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

FAO (COMM) 11/2023 & C.M.No.1392/2023

1. Present appeal has been filed challenging the *ex parte ad-interim* order dated 7th October, 2022 passed by the learned District Judge (Commercial Court), North-West District, Rohini Courts, Delhi in CS (Comm.) No. 778/2022.
2. Learned counsel for the Appellants states that the Respondent No. 1/Plaintiff No.1 has incorrectly arrayed Appellant no.1/Defendant No.1 in the impugned suit proceedings, as the Appellant No. 1 is neither the manufacturer nor the holder of any trademark and is merely engaged in the sale and distribution of various goods including kitchen hardware, door hardware etc. including goods bearing mark 'PAR CENTUARY' which it procures from the manufacturer –M/s National Hardware Products i.e., the Respondent No. 2 in the present proceedings.
3. He states that the impugned order has been passed on a misrepresentation and concealment of facts by the Respondent No.1/ Plaintiff No.1. He further states that the Respondent No. 1/ Plaintiff No.1 has only disclosed that he has previously filed a suit being CS (COMM) 393/2021 against the Respondent No.2 and has obtained an injunction order dated 24th December, 2021 restraining the Respondent No.2 from using the mark 'PAR CENTURY'. He emphasises that the Respondent No.1/ Plaintiff No.1 has deliberately concealed the order dated 31st January, 2022, whereby the learned District Judge has categorically and expressly refused any interim relief with respect to the mark 'PAR CENTUARY' in Class 21. He contends that the present suit is a third attempt by

the Respondent No. 1/ Plaintiff No.1 to obtain interim relief for the mark 'PAR CENTUARY'.

4. Per *contra*, learned counsel for the Respondent No.1/ Plaintiff No.1, who appear on advance notice, states that in the products being sold by the Appellant No.1/Defendant no.1, there is no mention that the Respondent no.2 is the actual manufacturer of the goods in question. He vehemently denies the allegation of suppression and seeks to rely upon the orders passed by the learned predecessor Division Bench of this Court in FAO (COMM) Nos.130/2022 and 102/2022.

5. Learned counsel for the Respondent No.2, in the present appeal, states that he has filed applications for impleadment and for vacation of stay. He states that advance copies of the said applications have been served upon the learned counsel for the plaintiff.

6. Having heard learned counsel for the parties, this Court is of the view that the Appellants/Plaintiffs have an alternative effective remedy by filing an application for vacation of the *ad-interim* injunction. In any event, this Court is informed that the suit is listed for arguments on the injunction application on 19th January, 2023.

7. Keeping in view the aforesaid, this Court disposes of the present appeal as well as the application with a direction to the Appellants/Plaintiffs to file a reply to the injunction application on or before 14th January, 2023. Rejoinder, thereto, if any, shall be filed on or before 18th January, 2023. The replies to the applications filed by Respondent No.2 shall be filed by the plaintiff on or before 18th January, 2023. The Trial Court is directed to decide the said injunction application on the date already fixed i.e. 19th January, 2023 or immediately thereafter. Needless to state that the Trial Court shall decide the matter uninfluenced by any observations made by this Court. It is clarified that the

rights and contentions of all the parties are left open. The parties are given liberty to mention the matter in the event present order is not complied with.

MANMOHAN, J

SAURABH BANERJEE, J

JANUARY 13, 2023/KA

