

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: March 13, 2023*
Pronounced on: May 09, 2023

+ **FAO(OS) (COMM) 24/2023 & CM APPL.4971/2023**

BROMPTON LIFESTYLE BRANDS PVT. LTD. Appellant

Through: Mr. Nikhil Kohli, Mr. Gaurav Gupta,
Mr. Kushank Garg, Ms. Akshaya
Ganpath, Ms. Kritika and Mr. Dorab
Sabharwal, Advocates.

Versus

YVES SAINT LAURENT AND ANR. Respondents

Through: Mr. Akhil Sibal, Sr. Advocate with Mr.
Nirupam Lodha, Ms. Shivangi Narang,
Mr. Gautam Wadhwa, Ms. Asavari Jain
and Ms. Sanya Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J.

FACTS INVOLVED:

1. The respondent no.1-*YVES Saint Laurent*¹ (original plaintiff), being part of the multi-national global luxury group Kering and owner of registered well-known marks namely 'Yves Saint Laurent', 'YSL', 'Saint

Laurent', ' , ' , and their variations² since 1961, desirous of venturing into India granted a franchise to the respondent no.2-*Beverly*

¹ Hereinafter referred to as "*YSL*"

² Hereinafter referred to as "*YSL marks*"

Luxury Brands Limited³ (original defendant no.2) for opening and operating a “Saint Laurent” boutique at DLF The Chanakya Mall, New Delhi⁴ by virtue of a Franchise Agreement dated 19th April, 2019⁵. As would unfurl below, since this Franchise Agreement is the fulcrum of the disputes involved, the salient features thereof are reproduced hereunder:-

“2. GRANT OF LICENSE

2.1 Franchisor confirms that it is entitled to grant the non-exclusive right to make use of the Concept and the Trademarks to the Franchisee and that the use of them by the Franchisee will not infringe any third party rights. Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of the Agreement and until its termination or expiration, the nontransferable right and license to use the Concept and the Trademarks listed in Annex A and such other trademarks as Franchisor may direct from time to time (the "Saint Laurent Boutique Trademarks"), which are a portion of the Trademarks, for the sole purpose of:

(a) establishing and operating, according to the Concept, one boutique store (the "Boutique") to be located at the premises listed in Annex B ("Authorized Locations"),

and

(b) the promotion and sale of, at the Boutique only, of all original products, merchandise and items bearing the Saint Laurent Boutique Trademarks listed in Annex C [the "Saint Laurent Product(s)"]

Franchisee hereby undertakes to operate the Boutique only at the Authorized Location, using the Saint Laurent Boutique Trademarks in compliance with the terms and conditions of this Agreement as well as the instructions, conforming with the terms and conditions of this Agreement, from time to time given by Franchisor to Franchisee.

2.2 In connection hereof, Franchisor hereby grants to Franchisee, and Franchisee hereby accepts, the non-transferable right to use the Saint Laurent Boutique Trademarks and the Concept for the promotion and sale, at the Boutique only, of the Saint Laurent Products. Franchisee hereby acknowledges and agrees that the granting by Franchisor of the franchise is contingent upon Franchisee's full and unconditional compliance hereof and relies upon the representations made by Franchisee to Franchisor under the present Agreement.

2.3 The license hereby granted to Franchisee is limited to the right to develop and operate the Boutique at the Authorized Location and does not

³ Hereinafter referred to as “**Beverly**”

⁴ Hereinafter referred to as “**YSL Boutique**”

⁵ Hereinafter referred to as “**Franchise Agreement**”

include, inter alia, any right to sell the Saint Laurent Products at any location other than the Authorized Location, it being understood that Franchisee can sell online provided that Franchisee complies with the Online Guidelines, if any, provided by Franchisor to Franchisee.

3. EXCLUSIVITY

3.1 Subject to Articles 3.3, 3.4 and 3.5, Franchisor will not open a boutique store, nor will grant to any other entity a franchise to locate and operate a Saint Laurent boutique store and/or to offer, sell or distribute any products or services bearing the Saint Laurent Boutique Trademarks to multibrand dealers, in the territory described in Annex B (the "Territory") so long as this Agreement is in effect. **Franchisee does not have any right to sublicense or sub-franchise, within or outside of the Territory, and/or to relocate the Boutique to any other location within or outside the Territory, unless agreed in writing with Franchisor before.**

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39. TRANSFER

39.1 Franchisor has entered into this Agreement with specific reliance upon Franchisee's financial qualifications, experience, skills and managerial qualifications as being essential to the satisfactory operation of the Boutique. **Consequently, neither Franchisee's interest in this Agreement nor in the Boutique or in Franchisee and/ or in the premises/ land/ lease on which the Boutique is established may be directly or indirectly transferred or assigned to or assumed by any other person or entity, in whole or in part without the prior consent of the Franchisor.** Subject to Franchisor's consent, It is further agreed that during the course of this Agreement, the Franchisee shall have the absolute authority to have a change in shareholding of the Franchisee within the family of the Franchisee or in the event of private equity or a financial institutional investor is required to invest in the Franchisee for further funding or strategic purposes."

(emphasis supplied)

2. After sometime, disputes and differences inter-se YSL and Beverly led to termination of the Franchise Agreement by YSL on 23rd July, 2021 (with effect from 8th August 2021), whereafter the appellant-**Brompton Lifestyle Brands Pvt. Ltd.**⁶ (original defendant no.1) issued an Arbitration Notice dated 22nd February, 2022 to both YSL and Beverly on the strength of a Supply Agreement dated 2nd July, 2019 executed inter-se Beverly and itself. Interestingly, by virtue of the said Supply Agreement, Beverly

⁶ Hereinafter referred to as "**Brompton**"

granted Brompton the license to run the YSL Boutique and use the concept and the YSL marks without knowledge of YSL as Beverly was not authorized to do so.

PROCEEDINGS BEFORE THE LD. SINGLE JUDGE:

3. Finding YSL Boutique operational under the occupation of Brompton, despite termination of the Franchise Agreement, YSL instituted a suit (*CS(COMM) 789/2022*) for infringement of trademarks and copyright, passing off, seeking permanent and mandatory injunction, damages, etc. against both Beverly and Brompton before the learned Single Judge, *inter-alia*, for restraining Brompton, its representatives, agents, assignees, employees, officers and anyone acting on its behalf, from directly or indirectly using the YSL Marks and any mark similar to any of the YSL Marks, including as (or as part of) a trademark, trading name, style, domain name, corporate name or as part of packing, artwork, get-up, layout (including on facade of the Boutique) or in any other manner whatsoever, directly or indirectly passing off its goods as those of YSL, including by using the YSL Marks or any marks similar thereto and from reproducing product catalogue and other literary material of YSL along with other reliefs. YSL also filed an application under Order XXXIX rules 1 & 2 read with Section 151⁷ of the Code of Civil Procedure, 1908⁸ seeking certain interim reliefs therein.

4. Pertinently, though the learned Single Judge issued notices to both Brompton and Beverly, *however*, for reasons unknown, though Brompton

⁷ Hereinafter referred to as "*Interim application*"

⁸ Hereinafter referred to as "*CPC*"

was duly represented and filed its reply to the interim application of YSL, there was no appearance for and on behalf of Beverly.

IMPUGNED JUDGEMENT:

5. The learned Single Judge, while disposing of the interim application found that YSL Boutique was set up as a result of the Franchise Agreement executed inter-se YSL and Beverly to which Brompton was a non-signatory and that despite termination of the Franchise Agreement by YSL, Brompton *wrongly* kept running the said YSL Boutique by displaying the YSL marks as if it was authorised by YSL and that by virtue of the said Franchise Agreement YSL granted only “... *...the non-transferable right and license to use the Concept and the (YSL) trademarks ...* ...”.

6. The learned Single Judge also found that it was evident from the language and tenor of the Supply Agreement that the rights in and to the YSL marks were flowing from the Franchise Agreement and the Franchise Agreement granted limited rights qua usage of YSL marks and that too only to Beverly and that after termination of the Franchise Agreement by YSL, Brompton lost its rights to use the YSL marks irrespective of the execution of the Supply Agreement by Beverly in its favour and that though Beverly had not challenged the said termination by YSL, Brompton, in the wake of the Supply Agreement had issued an Arbitration Notice to both YSL and Beverly.

7. The learned Single Judge further found that Brompton wrongly claimed that it was operating YSL Boutique with permission of YSL as there were no corroborative documents to that effect as its name was reflected only as ‘delivery location’ or as ‘consignee’ and that one Mr. Tript

Singh representing Brompton at the time of reconciliation meetings before, was actually a Director of Beverly.

8. In fact, the learned Single Judge held that there is no written agreement inter-se YSL and Brompton granting any right with respect to usage of the YSL marks or appointing it as a 'Sub-Franchisee' and that the Supply Agreement inter-se Beverly and Brompton was executed without permission or knowledge of YSL and that the Supply Agreement is, in fact, a 'Sub-Franchise Agreement' and the nomenclature was knowingly changed as no such right by virtue of the Franchise Agreement was permissible and that as Brompton was not a '*permitted user*' of the YSL marks, the use thereof in relation to the YSL Boutique tantamounted to infringement under Section 29(1) of The Trade Marks Act, 1999.

9. Accordingly, the learned Single Judge restrained Brompton, its representatives, agents and anybody acting on its behalf directly or indirectly from using YSL marks or any mark similar to any of the YSL marks, including as (or as part of) a trademark, trading name, style, domain name, corporate name or as part of packing, artwork, get-up, layout (including on facade of the Boutique) or any other manner whatsoever; passing off its goods as those of the Plaintiff, including by using the YSL

marks or any marks similar thereto; and reproducing the logos ' ' ,

and ' ' , and product catalogue and other literary material relating to the products under the YSL marks till the pendency of the suit.

APPEAL PROCEEDINGS BEFORE THIS COURT:

10. Hence the present appeal by Brompton before this Court, which though was listed on 2nd February, 2023, 9th February, 2023, 10th February, 2023 and 14th February, 2023 but was heard on 16th February, 2023, when this Court passed the following order:-

“Learned counsel for appellant states that the appellant and/ or its agent shall henceforth not use any of the YSL marks and/ or represent to the public at large that they are authorized representatives/ franchises of any of the YSL marks.

Learned counsel for the appellant assures and undertakes to this Court that the YSL marks displayed at the Chanakya Mall Store shall be covered with cloth till the next date of hearing.

Learned counsel for the appellant also states that the appellant would place on record an inventory of the entire unsold stocks bearing any of the YSL marks lying with it within a week.

Learned counsel for the YSL is directed to obtain instructions as to whether and at what price YSL is willing to repurchase the aforesaid stocks in the possession of the appellant.

Needless to state, the aforesaid is without prejudice to the rights and contentions of the parties.”

(emphasis supplied)

11. As apparent therefrom, learned counsel for Brompton on instructions undertook that Brompton and/or its agents shall henceforth not use any of the YSL marks and/or represent to the public at large that they are authorized by/franchisee of YSL. It was further assured and undertaken that the YSL marks displayed at the YSL Boutique shall be covered by a cloth before the next date of hearing and the inventory of the entire unsold stock bearing the YSL marks shall be filed within a week thereof. Learned counsel for Brompton then sought time to file an appropriate affidavit to this effect. Additionally, learned senior counsel for YSL was directed to

obtain instructions as to whether and at what price YSL was willing to repurchase the aforesaid stocks in the possession of Brompton.

12. Accordingly, the present appeal was adjourned to 28th February, 2023 for compliance by Brompton on which date learned counsel for Brompton handed over an undated photograph of the YSL Boutique showing a plastic sheet (*instead of a cloth*) with small tapes on the edges covering the YSL mark, contending that the YSL mark visible over a beam had since been covered in compliance of the order dated 16th February, 2023. Barring that, there was no other compliance of the undertakings given by learned counsel for Brompton on 16th February, 2023.

13. Controverting the said position, learned senior counsel for YSL after handing over few screenshots of WhatsApp messages alleged to be exchanged between Brompton and proposed purchasers showing use and sale of YSL products bearing YSL marks contended that Brompton was still using, selling, dealing in, and offering for sale YSL products bearing YSL marks in gross contempt of not only the impugned judgment but also of the undertaking given by learned counsel for Brompton on 16th February, 2023. Learned senior counsel for YSL after handing over few latest photographs of the YSL Boutique dated 21st February, 2023, 23rd February, 2023, 24th February, 2023, 26th February, 2023, and 27th February, 2023, i.e., after 16th February, 2023, further contended that the YSL marks at the YSL Boutique continued to be on display in complete contravention of the undertaking before this Court. It was then contended that the photograph handed over by learned counsel for Brompton on 16th February, 2023 was fake as the situation was otherwise and Brompton was continuing to use, deal, sell and offer YSL products with YSL marks. It

was thus stated that YSL was not willing to repurchase any unsold stock from Brompton and any such stock should be immediately destroyed by Brompton.

14. In view of the above, the present appeal was adjourned for 13th March, 2023, when this Court heard the same on merits.

CONTENTIONS OF BROMPTON:

15. Relying upon various e-mails qua statements of accounts, payments to vendors etc. exchanged inter-se YSL and Beverly on diverse occasions, which were copied to Brompton, the learned counsel for Brompton contended that both Brompton and Beverly were related/associated to each other, being part of the same parent group Bequest and that YSL was well aware of the same. In view of it being associated with Beverly and actually running the YSL Boutique with the support of Beverly, YSL could not stop Brompton from using the YSL marks.

16. It was then contended that YSL was aware that Brompton was specifically formed to circumvent the Foreign Direct Investment⁹ policy restrictions in India for running the YSL Boutique since Beverly, a foreign company based in the United Kingdom, could neither set up nor carry out business in India. In view thereof, YSL could neither deny the existence nor role of Brompton passing it off as a mere Consignee when it was actually running the YSL Boutique.

17. It was also contended that even though Beverly was its sister concern and YSL was a third party who was not a signatory to the Supply

⁹ Hereinafter referred to as "**FDI**"

Agreement containing the arbitration clause for resolution of disputes, Brompton was free to issue the Arbitration Notice to them.

18. It was lastly contended that at the stage of disposal of an interim application, Brompton was only required to show that YSL was aware of its existence and role played by it in the running of the YSL Boutique and that as the trial was yet to take place, nothing more needed to be established by Brompton.

CONTENTIONS OF YSL:

19. *Per Contra*, learned senior counsel for YSL contended that before this Court Brompton has taken a diametrically opposite stand from what it took before the learned Single Judge by claiming to be associated with Beverly as it had contended otherwise. Attention was drawn to the relevant portions of the reply of Brompton to the interim application before the learned Single Judge, which are hereunder:-

*“Para 8.2. Despite repeated requests made by the Defendant No. 1 herein, the said Defendant was not provided with the new collection of the YSL merchandise and goods, to sell the same at the YSL Boutique in terms of the Franchise and Sub-Franchise Agreement. **The non-supply of goods at the behest of the Plaintiff due to the internal disputes between the Plaintiff and the Defendant No. 2, led to immense losses being incurred by the Defendant No. 1.***

*Para 8.3. The Defendant No. 1 was abruptly informed by the Defendant No. 2 of the termination of the Franchise Agreement. Subsequently, the Defendant No. 2 also issued a termination of the Sub-Franchise/ Supply Agreement. It is not out of place to state here that **due to the abrupt termination of the Franchise Agreement by the Plaintiff; the Sub-Franchise/ Supply Agreement also came to be terminated by the Defendant No. 2.***

Para 8.4. Nevertheless, it is submitted that the Defendant No. 1 was never in breach of the Sub-Franchise/ Supply Agreement and in fact it was the Plaintiff and Defendant No. 2 who were in breach of the Franchise and the Sub-Franchise/ Supply Agreement, for the reason

of non-supply of new collection of the YSL merchandise and goods to the Defendant No. 1. Therefore, in order to settle the disputes, the Defendant No. 1 directly approached the Plaintiff to exercise the repurchase option in terms of the Franchise Agreement, and to the other expenses borne by the Defendant No. 1 for setting up and operating the YSL Boutique for the entire term of the Franchise and Sub-Franchise/ Supply Agreement. However, the Plaintiff in return made an unfair and biased offer, and arbitrarily granted 2 two time for acceptance of such unfair and one-sided offer favoring and suiting itself, without considering the investment made by the Defendant No.1.”

(emphasis supplied)

20. Based thereon, learned senior counsel then contended that assuming both Brompton and Beverly were associated, Brompton was hiding behind an artificial façade of arbitration as contents thereof were also contrary to what Brompton was pleading before this Court. Attention in this regard was drawn to the Arbitration Notice issued by Brompton, wherein it made allegations against Beverly, as under:-

“4. Please note that you the Addressee No. 1 since, the inception of the agreement was negligent in performance of your contractual obligations in time bound manner. That you the Addressee No. 1 on most of the occasions had delayed in time bound delivery of the goods as demanded by our Client, which has caused immense financial loss to our Client.

*5. That you the Addressee No. 1 used to supply the goods in delayed manner as and when demanded to our Client. However, you the Addressee No. 1, since 2021 had stopped to the supply the goods demanded by our Client for the reason best known to you. The aforesaid actions/ inactions of you the addressee no.1 is in sheer contravention of terms of the agreement. It is noteworthy to mention here that you the Addressee No. 1 had failed to perform its contractual obligation with no rhymes or reasons by not supplying the goods to our Client, which was essence of the agreement. **It is further stated that you the Addressee No. 1 had never gave any plausible explanation for not supplying the goods to our Client, which demonstrates the breach committed by you the Addressee No. 1.***

6. Our Client had time and again made representations to you the Addressee No. 1 with respect to the said breach and requested to regularize the supply of goods with immediate effect. Our Client had also sought explanations for the action of non-delivery of goods to our Client and requested to perform its contractual obligations. However, despite acknowledging and being aware of the said breach committed by you, you the Addressee No. 1 made no efforts to regularize the supply of goods or provided any explanation for discontinuing that as supply of goods to our Client.”

(emphasis supplied)

21. Relying upon *paragraph 9* of the impugned judgment and various other documents, particularly e-mails exchanged inter-se the parties, it was then contended that Brompton was guilty of fraud, non-disclosure and misrepresentation as it never disclosed about the common Directors of both Brompton and Beverly which also showed that what Brompton was pleading before this Court was contrary to what was pleaded by it before the learned Single Judge.

22. It was then contended that the fact that Brompton had accepted the Franchise Agreement and also the termination thereof by YSL was sufficient proof that it had no right to use, deal, sell or offer any YSL products bearing YSL marks. Even otherwise, Beverly could not have entered into the Supply Agreement with Brompton. Additionally, after the unchallenged termination of the Franchise Agreement, the Supply Agreement did not survive and the same was sufficient to bar Brompton from drawing any strength from the subsequent Supply Agreement. Be that as it may, *admittedly*, there was no agreement inter-se YSL and Brompton with respect to any YSL marks and the rights of Brompton, if any, were

flowing from the Supply Agreement, which in the wake of termination of the Franchise Agreement, was *non-est*.

ANALYSIS:

23. After a careful perusal of the relevant documents and having heard the learned senior counsel for YSL and counsel for Brompton, in the considered view of this Court, as YSL had entered into the Franchise Agreement with Beverly, to which Brompton was not a signatory, Brompton has no right to use, sell, deal and offer for sale YSL products bearing the YSL marks. Brompton, being a rank outsider with no privity of contract with YSL cannot contend that it had a right to use, sell, deal and offer for sale YSL products bearing the YSL marks. In fact, a reading of *Clause 2.1(a)* of the Franchise Agreement reveals that YSL executed the Franchise Agreement to enter into the Indian market only based on the assurances and projections made by Beverly. It is also to be borne in mind that the Supply Agreement from which Brompton claims to derive its rights was entered into by Beverly with Brompton in contravention of the earlier original Franchise Agreement with YSL. Further, the position qua Brompton's association with Beverly remains unclear before this Court as neither Brompton has given any response to what was asked by this Court nor Beverly appeared before this Court despite due service. Hence, any reliance by Brompton upon the Supply Agreement, is futile.

24. Further, in view of the admission of Brompton of the unchallenged termination of the Franchise Agreement by YSL, there is no plausible reason as to why Brompton can be entitled/ permitted to use YSL marks. Post termination of the Franchise Agreement by YSL and non-challenge

thereof by Beverly leaves no doubt in the mind of this Court that Brompton cannot use, sell, offer for sale, or deal in any of the YSL marks in any manner whatsoever as nothing survives in favor of Brompton in the said YSL marks belonging to YSL.

25. As borne out from what is extracted in paragraphs 19 and 20 hereinabove from the pleadings before the learned Single Judge, the case of Brompton before the learned Single Judge was otherwise to what has been pleaded before this Court. Therefore, Brompton cannot plead anything contrary thereto. Brompton cannot *approve and reprobate* by claiming before this Court that both Brompton and Beverly are two sides of the same coin, when this was not the position taken before the learned Single Judge. In any event, if Brompton has any grievance(s) against Beverly, the same is not for adjudication before this Court and it is free to take action against Beverly, if any. This Court need not go into the aspect of dispute(s) inter-se Brompton and Beverly.

26. Brompton cannot be permitted to blow hot and cold and take inconsistent stands at different points of time suiting to its convenience and purpose, especially from the one it took before the learned Single Judge. It is incumbent upon Brompton to sustain and maintain the same stand at all levels and before all Courts by not pleading anything divergent therefrom before this Court. Brompton cannot pick and choose from extracts to shift its stand at successive stages, especially when the proceedings are arising out of and are pertaining to the same suit, *albeit*, before two different Courts as the proceedings herein are nothing but an extension of the proceedings below. Contrary to the basic tenets of law, Brompton took one

stand of being a separate entity having no association with Beverly before the learned Single Judge, *however*, before this Court, Brompton took a diametrically opposite stand of being the same as Beverly. The said submission, on the face of it, is false. As held in a catena of judgements, including in a recent judgement of the Supreme Court in ***Union of India v. N. Murugesan***¹⁰ such practice of Brompton taking two stands before two different Courts is to be deprecated and has to be dealt with sternly.

27. *De hors* the above and adverting to the state of affairs *vis-à-vis* the conduct of Brompton of taking contrary stands before the learned Single Judge and before this Court; and giving false assurances and undertakings and handing over false photographs on 16th February, 2023 before this Court, especially whence it is trite law that a party has to approach the Court with clean hands, clearly reflects that Brompton has not only approached this Court with unclean hands but also has attempted to overreach this Court by portraying something which is far from the reality and the truth. As held in a plethora of judgements, including the decisions of the Hon'ble Supreme Court in ***Ramjas Foundation v. Union of India***¹¹, as also in ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam***¹², by doing so, Brompton has been guilty of obstructing justice resulting in its disentitlement to any relief.

28. The admitted facts that both Franchise Agreement and Supply Agreement were executed by two different sets of parties and are, anyways,

¹⁰ (2022) 2 SCC 25

¹¹ (2010) 14 SCC 38

¹² (2012) 6 SCC 430

independent of each other are vital to disentitle use of YSL marks by Brompton on any YSL products in any manner whatsoever.

29. The contention qua creation of Brompton to overcome the restrictions of the FDI policy and knowledge thereof of YSL is of no relevance and being new pleadings cannot be urged by Brompton before this Court as it is statutorily barred from either incorporating or agitating any fresh pleadings before this Court to fill up the lacuna and improve upon its case already set up before the learned Single Judge. The same cannot be permitted. This Court in *Jain Shikanji (P) Ltd. v. Satish Kumar Jain*¹³, has recently held so, observing that as the proceedings before the Appellate forum of subsequent instance are nothing but an extension/continuation of the earlier proceedings before the original Court of first instance, no party like the appellant herein can be allowed to improve/built upon its case. In view thereof, this Court finds no merit in the said contention.

30. In view thereof, though according to this Court, *prima facie*, Arbitration Notice issued by Brompton seems to be a sham, however since the same is an independent right of Brompton, which is nowhere related with the disputes raised by YSL herein and has no relevance whatsoever, the said issue being beyond the scope of the present appeal is not gone into.

31. For the reasons stated above and even otherwise, this Court finds no merit in either the case of Brompton or the grounds urged by it before this Court, more so, as this Court is in complete approval of the analysis,

¹³ 2023 SCC OnLine Del 1241

reasonings, findings and conclusion drawn by the learned Single Judge set out in the well-detailed impugned judgment.

CONCLUSION:

32. Therefore, after careful deliberation and hearing the learned (senior) counsel for parties, in the opinion of this Court, Brompton has not been able to make out any, much less, a reasonable case on merits calling for any kind of interference with the impugned judgment under challenge. This Court finds no illegality, irrationality, or impropriety in the impugned judgment. The impugned order is not liable to be set aside. More so, whence there is hardly any scope of interference by the appellate Court. This Court is fortified by what has been laid down by the Hon'ble Supreme Court in ***Wander Ltd. & Anr. vs. Antox India P. Ltd.***¹⁴ and reiterated by the Hon'ble Supreme Court in ***Shyam Sel and Power Limited & Anr. vs. Shyam Steel Industries Limited***¹⁵ wherein it has been held as under:-

“33. We ask a question to ourselves that, in an appeal against the order of a Single Judge, if the Division Bench of the High Court is not required to evaluate the question as to whether the discretion exercised by the trial court was right or wrong, what else is it required to do. We are unable to trace the source of the duty of the Appellate forum which makes it bound to pass a suitable interim order pending the trial of the suit.

34. The Division Bench of the High Court further observes that for doing so, it has to put itself in a position as if it was moved to pass an interim order in the suit. At the cost of repetition, we reiterate that if the approach of the Division Bench of the High Court is to be upheld, then there would be no necessity to have the trial courts at all. Thereafter, the Division Bench of the High Court observes that the case was different from Wander Ltd. (supra). The Division Bench of the High Court stops at that. It does not even take the trouble to observe as to how the scope of the appeal before it was different

¹⁴ 1990 (Supp) SCC 727

¹⁵ 2022 SCC OnLine SC 313

from the scope as defined by this Court in Wander Ltd. (supra). In a line thereafter, the Division Bench of the High Court observes that prima facie case on facts theoretically is in favour of the appellant therein (plaintiff) and thereafter, passes various directions including the injunction. Though, in fact, it allows the appeal in entirety by allowing an application under Order XXXIX Rules 1 and 2 CPC pendente lite the suit, it graciously observes in the ultimate para that it was only modifying the order dated 2nd April 2019 passed by the learned Single Judge.

35. The learned Judges of the Division Bench of the High Court have taken pains to make a mention of the judgment of this Court in the case of Wander Ltd. (supra). This judgment has been guiding the Appellate forums in the country for decades while exercising their Appellate jurisdiction considering the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions. In the said case, the learned Single Judge had refused an order of temporary injunction in favour of the plaintiff who was claiming to be a registered proprietor of the registered trade mark. The Division Bench of the High Court had reversed the order passed by the learned Single Judge and granted interim injunction. Reversing the order of the Division Bench of the High Court and maintaining the order of the learned Single Judge, this Court observed thus:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate forum will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate forum will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The Appellate forum would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the Appellate forum would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseinton & Co. v. Jhanaton [1942] A.C. 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The Appellate judgment does not seem to defer to this principle.”

33. Accordingly, for the afore-going reasons, the present appeal of Brompton, along with the application, if any, is dismissed as meritless with nominal costs of Rs.50,000/- (*Rs. Fifty Thousand*) on Brompton to be paid to YSL within a period of *four weeks* from today.

SAURABH BANERJEE, J.

MANMOHAN, J.

MAY, 09, 2023
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