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

+ **FAO (COMM) 78/2023 & CM APPLs.14863-64/2023**

MANDEV TUBES PRIVATE LIMITED Appellant

Through: Mr. Sushant Singh, Advocate with
Mr. Prakhar Sharma, Mr. Kunal
Khana, Ms. Geetika Kapoor and
Mr. Sourav Pattanaik, Advocates.

versus

GOEL SALES CORPORATION Respondent

Through: None

Date of Decision: 27th March, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J:

1. Present appeal has been filed challenging the order dated 13th March, 2023 passed in CS(COMM) No. 286 of 2019 by Ld. District Judge, Commercial Court-03, Saket South East District, Saket District Court, Delhi, whereby the Trial Court has ordered release of the goods seized by Local Commissioner.

2. Learned counsel for the plaintiff-appellant states that the impugned order allowing the application for release of goods is without appreciating the fact that the respondent-defendant was found selling counterfeit goods under the impugned trademark/label. He also states that the direction to release the goods is pre-mature, inasmuch as applications for release of

goods are normally considered after conclusion of trial. He emphasises that releasing the goods at this stage would be contrary to public interest as the public could be deceived into buying counterfeit goods.

3. Learned counsel for the plaintiff-appellant states that the defence set up by the respondent-defendant was that it had purchased genuine products from one M/s Chirag Metals who was the distributor of the plaintiff-appellant. He, however, states that none of the bills mention the trademark MANDEV to prove that the goods under the said mark were purchased. He also states that the Report of the Local Commissioner clearly establishes that the respondent/defendant was selling goods under the impugned trademark/label MANDEV which did not bear any batch numbers.

4. A perusal of the paper book reveals that the Trial Court dismissed the injunction application of the plaintiff-appellant on the ground of concealment. The Trial Court noted that the plaintiff-appellant had not disclosed in its plaint that the respondent-defendant was a stockist of the plaintiff-appellant, till as recently as 31st December, 2017.

5. The respondent-defendant in the written statement filed before the Trial Court has given a list of invoices including some issued in 2018 by M/s Chirag Metal, an authorised distributor of the plaintiff-appellant. M/s Chirag Metal has also issued a certificate that it had sold goods manufactured by the plaintiff-appellant under the 2018 invoices. In fact, these invoices have been admitted by the plaintiff-appellant. It is pertinent to note that the Local Commissioner had conducted a raid on 5th June, 2018 and the respondent-defendant was a stockist from 1st January, 2017 till 31st December, 2017, and Chirag Metal was Plaintiff-appellant's distributor till December 2017.

6. Moreover, despite the respondent-defendant defence, the plaintiff-appellant has not impleaded M/s Chirag Metal as a defendant to the suit.

7. An appeal against the said order vacating the injunction order was disposed of by this Court with a direction for expeditious disposal of the suit only.

8. Consequently, as Order 39 Rule 1 & 2 of CPC application of the plaintiff-appellant has already been dismissed and the *prima facie* view of the Trial Court was that the respondent-defendant had obtained the products in question legally, this Court is of the view that the impugned order directing release of goods seized by the Local Commissioner calls for no interference.

9. Accordingly, the present appeal along with pending applications is dismissed.

10. This Court clarifies that the Trial Court shall finally decide the matter on its own merits without being influenced by any observation made by this Court.

MANMOHAN, J

SAURABH BANERJEE, J

MARCH 27, 2023
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