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

Date of decision: 18.08.2023

+ **CM(M) 1127/2023 & CM APPL. 36463/2023**

SHRI DHIRAJ KUMAR Petitioner

Through: Mr. T.K. Tiwari, Advocate

versus

R H AGRO OVERSEAS PVT LTD & ANR. Respondents

Through: Ms. Tanvi Bhatnagar and Ms. Shilpi Sinha, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 09.05.2023 passed by District Judge (Comm.)-04, South District, Saket Courts, Delhi ('Trial Court'), in C.S. (COMM.) No. 03/2023, titled as ***R.H. Agro Overseas Pvt. Ltd. & Anr. v. Dhiraj Kumar & Anr.***, taking on record the replication, documents filed along-with the replication and the affidavit of admission/denial of documents.

1.1. The Petitioner herein is the defendant and the Respondents herein are the plaintiffs in the suit.

1.2. The suit has been filed by the Respondents inter-alia for permanent injunction against the Petitioner for infringement of trade mark and passing of action with respect to the Respondents trademark 'NAFIS'.

3. The learned counsel for the Petitioner states that the Trial Court issued



summons in the commercial suit on 19.01.2023 and at paragraph '35' therein granted liberty to the Respondents to file its replication within a period of 15 days after the filing of the written statement along-with the affidavit of admission/denial in respect of documents filed by the defendants.

3.1. He states that admittedly, the written statement was filed on 13.03.2023 and therefore, 15 days for filing replication expired on 28.03.2023.

3.2. He states that however, the Respondents have filed their replication and affidavit of admission/denial of documents filed by the defendant belatedly on 08.05.2023.

3.3. He states that no leave of the Trial Court has been sought for condoning the delay in filing replication and affidavit of admission/denial of documents.

3.4 He further states that the Respondents herein filed additional documents along-with the replication on 08.05.2023, again without seeking prior leave of the Trial Court as mandated by Order XI Rule 1 (5) of the Code of Civil Procedure, 1908 ('CPC') as amended by the Commercial Courts Act, 2015. He, therefore, states the impugned order dated 09.05.2023 suffers from infirmity.

4. In reply, learned counsel for the Respondents states that the Respondents filed the replication in terms of the permission granted by the Trial Court vide order dated 13.01.2023. She states that no outer limit was stipulated in the said order for filing the replication and therefore, the plaintiff bona fide filed the replication before the next date of hearing.

4.1. She states that the Respondents filed the replication and the affidavit of admission/denial of documents before the next date of hearing i.e., 09.05.2023 along-with the additional documents. She states that the additional documents have been filed to answer the case set up by the defendant in the written



statement.

4.2. She states however, without prejudice to Respondents rights and contentions, Respondents will file an appropriate application before the Trial Court within a period of one (1) week from today seeking enlargement of time for filing the replication and affidavit of admission/denial of documents; and file a separate application under Order XI Rule 1 (5) for seeking permission to file the additional documents along-with the replication.

5. In response, learned counsel for the Petitioner states that he has no objection to the said course being adopted by the Respondents, however, he reserves his right to file a reply and raise objections in accordance with law.

6. Accordingly, the aforesaid petition is disposed of reserving liberty to the Respondent as well as the Petitioner as recorded hereinabove; and to that extent, the order dated 09.05.2023 taking the replication, affidavit of admission/denial of documents on record is set aside.

7. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 18, 2023/rhc/sk

Click here to check corrigendum, if any