

IA No: GA-Com 1 of 2024
APOT No. 256 of 2024
with
CS-Com No. 656 of 2024
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Chowdhury Enterprise & Ors.
Versus
Regency Plywood Industries Pvt. Ltd.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice PARTHA SARATHI SEN

Date: 9th September 2024

Appearance:

Mr. Malay Dhar Advocate
Mr. Bhaskar Sengupta , Advocate
for the appellant

Mr. Debnath Ghosh, Advocate
Mr. Tin Kari Jana, Advocate
Mr. Gautam Kr. Ray, Advocate
Mr. Gopal Das, Advocate
Mr. Sourav Jana, Advocate
for the respondent

The Court: The appeal is formally admitted.

Considering the short point involved, we propose to dispose of this appeal today itself dispensing with all formalities.

The dispute between the parties is with regard to use of the marks "METRO" and "MCTRO 710". The respondent/plaintiff is the registered owner of the word mark "METRO" with user

claim from 1992. The appellant/defendant is using the mark “MCTRO 710” recently.

Both are engaged in the business of plywood using this mark.

The appellant’s interim application was moved ex parte before the learned single judge on 29th April 2024. His lordship, prima facie, found similarity in the appellant/defendant’s mark with that of the respondent/plaintiff, infringement of their trademark and passed an order of injunction restraining the appellant/defendant from using this mark in any way. The application was made returnable on 9th July 2024.

Further it is submitted that appellant/defendant has taken out an application for vacation of the interim order. Direction for filing of affidavits was made by the court in both the applications extending the interim order.

What is germane is that on the prima facie case appreciated by the learned judge an ex parte interim order has been passed.

Now, at the interim stage, affidavits are complete. Both the applications are posted for hearing today. The appellant/defendant would have a chance for the first time to substantially resist on affidavit the interim order at the hearing of this application.

In those circumstances, we are of the view that there is no point in hearing out the self-same issue on appeal. It is also not desirable.

We dispose of this appeal and the connected application with the observation that the above interim application along with the vacating application be heard out by the learned single judge

as expeditiously as the business of the court permits. It would be up to the learned single judge to decide, on conclusion of the hearing, whether to continue, reverse or modify the interim order.

All points are kept open before the learned single judge.

(I. P. MUKERJI, J.)

(PARTHA SARATHI SEN, J.)

R. Bose