

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AO-COM/34/2024
IP-COM/21/2024
IA NO: GA-COM/1/2024

MANISH KUMAR JAIN AND ANR.
VS
TUSHAR SARAFF AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN
AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 27th November, 2024.

Appearance:

Mr. Sayantan Basu, Sr. Adv.

Mr. Tanmoy Roy, Adv.

...for the appellants.

Mr. Sarosij Dasgupta, Adv.

Mr. Vishwarup Acharyya, Adv.

...for the respondent no.4.

The Court: We have heard Mr. Sayantan Basu, learned Senior Counsel appearing for the appellants and Mr. Sarosij Dasgupta, learned Counsel appearing for the respondent no.4.

The plaintiffs/respondent nos.1 and 2 are not represented. The defendant no.3 is also not represented.

In a trademark action on the returnable date the learned Single Judge refused to vacate the interim order on the ground that the Court has time and again asked the defendants whether they were interested to file the affidavit-in-opposition to which their response was that they would file affidavit-in-opposition but interim order should not be extended before *de novo* hearing. It

appears that a Co-ordinate Bench on September 11, 2024 while disposing of the matter made the following observations-

“In that view of the matter, it would be in the fitness of things if the interim application was heard out by the learned trial judge de novo, considering all the materials now available before his Lordship to consider whether to extend or modify or reverse or vary the impugned interim order.”

Ordinarily on the returnable date if a prayer for vacating of the interim order is made, the matter is re-considered either on the basis of the materials already on record or any other materials if produced before the learned Single Judge *prima facie* disclosing that the interim order ought not to have been passed having regard to the existence of such documents. However, it is in the discretion of the Court to insist a party to disclose such documents by way of short affidavit limited to the issue of extending the interim order.

The appellants, in my view, ought to have filed a short affidavit disclosing such documents upon prior service to the plaintiffs so that the plaintiffs are also not taken by surprise at the time when such oral prayer is made for vacating or modification of the order. Views from that perspective will not prompt us to interfere with the order at this stage. We have also taken into consideration that the matter is fixed on 10th December, 2024. It would be open for the appellants either to file an application for vacating of the interim order disclosing all relevant documents upon prior service to the plaintiffs or to file an affidavit-in-opposition within December 4, 2024, reply thereto, if, any, be filed by December 9, 2024.

We would request the learned Single Judge to consider the matter without being influenced by the interim order already passed or any of the orders that may have been passed in appeal.

Advance copy of the application or affidavit-in-opposition shall be served upon the plaintiffs so as to give the plaintiffs an opportunity to file affidavit-in-reply or an affidavit to the vacating application as the case may be within the stipulated time.

Accordingly, the appeal and the application are disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)