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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 37/2024 and CM APPL 11413-14/2024**

S. JATINDER SINGH Appellant

Through: Mr.Rajat Wadhwa, Mr.Amulya
Dhingra, Mr.Diwakar Singh, Mr.D.
Bhatia, Mr.Gurpreet Singh and
Mr.Abhishek Dev, Advocates.

versus

S. AMRIK SINGH & ANR. Respondents

Through: Mr.Gurmit Singh Hans, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **26.02.2024**

1. The appellant has filed the present appeal impugning an *ad-interim* order dated 12.02.2024 (hereafter *the impugned order*) passed by the learned Commercial Court on an application filed by the respondents under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) in CS (COMM) No.2600/2022 captioned *S. Amrik Singh v. Jatinder Singh*.

2. The operative part of the impugned order reads as under:-

“The defendants are hereby restrained from using, selling, soliciting, displaying, advertising or dealing in any manner of plaintiff’s mark M/s Amrik Singh & Sons in relation to their goods and business of toys and related items or through online platform by showing the same **or/with** address of Plaintiffs firm i.e., 280-A Towel Market, Sadar Bazar, till further orders.”

3. It is a common ground that the mark has been used by the firm, *M/s.Amrik Singh & Sons*, in which all the parties are partners. Thus, it appears that the partner of the firm has been restrained from using the trademark of the firm. It is also the appellant’s case the suit is not



maintainable as the firm is not registered; therefore, in terms of Section 69 of the Indian Partnership Act, 1932, a partner of the unregistered firm cannot sue another partner of the same firm.

4. Additionally, it is submitted that the parties have entered into a family settlement whereby the firm in question, *M/s. Amrik Singh & Sons* has fallen to the share of the appellant.

5. The impugned order has not captured the disputes and rival contentions between the parties.

6. After some arguments, the learned counsels for parties submit that the impugned order be set aside with liberty to the parties reagitate all the disputes, before the learned Commercial Court, as the application under Order XXXIX Rule 1 & 2 of the CPC is pending consideration and now is listed before the learned Commercial Court on 20.03.2024.

7. In view of the above, the impugned order is set aside. All the rights and contentions of the parties are reserved. It is clarified that this Court has not expressed any opinion on the merits of the dispute between the parties and nothing stated herein shall be construed as such.

8. All pending applications also stand disposed of.

9. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

FEBRUARY 26, 2024

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Click here to check corrigendum, if any