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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRP-IPD 1/2024, CM 24/2024 & CM 25/2024**

VIKRANT CHEMICO INDUSTRIES PVT LTD Petitioner
Through: Mr Siddharth Chopra, Mr. Nitin
Sharma, Ms. Snehima Jauhari and Mr.
Priyansh Kohli, Advocates.

versus

JAIDEEP RASTOGI & ANR. Respondents
Through: Mr. Anshuman Upadhyay, Mr. Naseem,
Ms. Apoorva Sharma, and Mr. Rahul
Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
% **07.03.2024**

1. This civil revision petition assails order dated 29th January, 2024 (“**impugned order**”) passed by the District Judge (Commercial Court)-02, East District, Karkardooma Courts, Delhi.
2. The impugned order was passed pursuant to plaintiff’s (*petitioner herein*) application under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (“**CPC**”) in the circumstance that defendant’s (*respondent herein*) right to file a written statement stood closed on 28th April, 2022.
3. Subsequently, the matter was referred to the mediation cell at the request of both parties but the said mediation talks failed. While deliberating upon the application under Order VIII Rule 10 of CPC, the District Judge has come to



the conclusion on the basis of the assessment recorded in the impugned order that:

“...it shall not be proper to pronounce judgment under Order VIII Rule 10 of CPC in favour of the plaintiff and against the defendant and it in the interest of justice if opportunity be given to the plaintiff to prove its case, against the defendant..”

4. This Court does not find any infirmity with the decision of the District Judge in reaching the conclusion considering that Order VIII Rule 10 of CPC mandates the Court to exercise its discretion for pronouncement of judgment.

5. This is also in consonance with what has been held by the Hon’ble Supreme Court in ***Asma Lateef & Anr v. Shabbir Ahmad & Ors***, 2024 SCC OnLine SC 42. The Hon’ble Supreme Court, relying on the decision in ***Balraj Taneja & Anr v. Sunil Madan & Anr***, (1999) 8 SCC 396, opines as under:

“18. What emerges from a reading of Balraj Taneja (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja (supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

19. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to



a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.

(emphasis added)

6. Counsel for petitioner, however, has an issue relating to certain findings rendered by the District Judge at this stage, particularly, when the petitioner-plaintiff was yet to plead its positive case.
7. A reference, in particular, is made to observations in para 12 of the impugned order where the Court has adverted to Section 28(3) of the Trade Marks Act, 1999 (“**the Act**”) stating that petitioner was under a legal liability to show from the judicial record that it is the plaintiff who has an exclusive right because of registration and respondents have no registration for their trademark.
8. Counsel for respondents, who is present in Court, confirms that there is indeed no registration of the trademark in favour of respondents.
9. Issue of Section 28(3) of the Act will, therefore, not arise since it is



predicated on two or more persons being registered proprietors of the trademarks.

10. Other observations in the impugned order will not come in the way of adjudication of the suit, considering that the burden of proof is on the plaintiff to prove its case on the basis of its plaint and documents filed in support.

11. Since right of defendant to file written submission has already been closed, it will be up to the District Judge to conduct proceedings in the suit and application, in accordance with law.

12. Both the parties will be at liberty to place all rights and contentions in accordance with law.

13. This petition is accordingly disposed of.

14. Pending applications, if any, are rendered infructuous.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 7, 2024/RK/rj