



2024:DHC:2230-DE



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

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Date of Decision: 14.03.2024

+ **FAO (COMM) 47/2024 CAV 124/2024 CM APPL. 15789/2024**
CM APPL. 15790/2024

SHREE GIRIRAJJI AND CO.

..... Appellant

Through: Mr. Abhishek Sharma, Adv. with Mr.
Mayank Ahuja, Adv.

versus

GAGAN PAGRANI PROPRIETOR OF PLASTICA INDUSTRIES

..... Respondents

Through: Mr. Rishi Bansal, Adv. with Ms.
Kanupriya and Mr. Rishabh Gupta,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

CAV 124/2024

1. In view of the appearance on behalf of the respondents, the caveat stands discharged.

2. The application is disposed of.

CM APPL. 15789/2024

3. Exemption is allowed, subject to just exceptions.

4. The application is disposed of.

FAO (COMM) 47/2024

5. The appellant has filed the present appeal impugning an order dated 08.01.2024 (hereafter *impugned order*) passed by the learned Commercial Court rejecting the appellant's application under Order XXXIX Rule 4 of



2024 : DHC : 2230-DE



the Code of Civil Procedure, 1908 (hereafter *CPC*) filed in CS(COMM) 479/2023 captioned *Gagan Pagrani v. Shree Giriraj Ji*. The impugned order is a common order passed in applications filed under Order VI Rule 17 of the CPC and Order XXXIX Rule 4 of the CPC. The appellant does not challenge the order insofar as the application under Order VI Rule 17 of the CPC is concerned.

6. The respondent has filed the aforementioned suit for decree of permanent injunction restraining infringement of his trademark, passing off, delivery, damages and rendition of accounts.

7. The respondent (plaintiff in the suit) states that it is engaged in the business of manufacturing, exporting, selling and supplying a wide range of Leno Bags, Mono Filament Net Bags, Rachel Bags, HDPE woven sacks and other allied and cognate goods. The respondent claims that in the year 2009



it adopted the trademark SHAKTI & SHAKTI LENO/SHAKTI and other device marks. The respondent also claims that the label marks are original art works and the respondent holds copyright in respect of the said trademarks as well. The respondent had applied for registration of its trademarks and has secured the registration in respect of some of its marks. The respondent also operates the website 'http://shaktileno.com', which the appellant claims was adopted in the year 2018. The respondent claims that its sales turnover increased from ₹ 1,28,33,244/- in the year 2009-2010 to ₹ 18,02,99,412/- in the year 2022-2023.

8. The appellant (Shri Pranesh Gupta) is an individual and carries on business *inter alia* in name of his sole proprietorship concern – Shree



2024 : DHC : 2230-DE



Girirajji & Company. The appellant is stated to be engaged in the business of manufacturing Plain Jute Bags, Jute Twine, Net Bags, Hessian Cloth, Leno Bags, Printed Jute Bag, Jute Rolls. The respondent alleges that the appellant has in the course of its business adopted the label “SUPER SHAKTI LENO” and a device mark in respect of its goods. It is the respondent’s case that the trademarks used by the appellant are deceptively similar to trademarks and such use by the appellant amounts to infringement of its trademarks, infringement of copyright, and passing off.

9. The respondent alleges that the appellant also sells goods through an interactive website – www.indiamart.com.

10. The learned Commercial Court had, *prima facie*, accepted the said allegations and had issued an *ad interim* order dated 25.08.2023 restraining the appellant and other persons acting on its behalf from using, directly or indirectly, the trademark “SUPER SHAKTI LENO” and various formative trademarks, which are deceptively similar to the respondent’s trademarks. Further, the learned Commercial Court also appointed a Local Commissioner to, *inter alia*, conduct a search and inspect the various premises of the appellant located in Indore, Ratlam and Shajapur. The said commission was executed and its report indicates that goods bearing the trademark “SUPER SHAKTI LENO” were found in the premises of the appellant in sufficient quantities.

11. The appellant had filed an application under Order XXXIX Rule 4 of the CPC seeking vacation of the *ad interim* order principally on the ground that the learned Commercial Court did not have the jurisdiction to entertain the suit. The said application was rejected by the impugned order.

12. The appellant claims that it is not selling the goods bearing the



2024 : DHC : 2230-DE



offending trademarks in NCT of Delhi or through the online market place (www.indiamart.com), therefore, the learned Commercial Court had no jurisdiction to entertain the suit. This is stoutly disputed by the respondents.

13. It is material to note that before the learned Commercial Court, the appellant had conceded that it was selling leno bags through the interactive web page on 'www.indiamart.com'. It was admitted that if an order to purchase these bags was placed by a customer in Delhi, the appellant would service the said order and supply the goods. In view of the above, the learned Commercial Court held that since, the said website is an interactive one that can be accessed from Delhi, the learned Commercial Court would have the jurisdiction to entertain the suit.

14. Undisputedly, if a person carries on his business through an interactive site and, sells and markets its goods through such sites, the courts exercising jurisdiction in respect of places where the goods are made available would have the jurisdiction to entertain a suit for infringement of the trademarks. Indisputably, customers in Delhi can place orders and purchase goods online through the interactive website. Thus, the courts in Delhi would have the jurisdiction to entertain the suit for infringement of trademarks and passing off (Reference: ***World Wrestling Entertainment, Inc. v. M/s. Reshma Collection & Ors.: 2014 SCC OnLine Del 2031***).

15. Having stated above, this Court also notes that there is a dispute whether the goods sold through the interactive site bear the offending trademarks. According to the appellant, it does not do so. It is also material to note that in its written statement the appellant had denied that it is selling the goods clandestinely or using any third-party websites like 'www.indiamart.com' to solicit customers in South Delhi, areas which do



2024 : DHC : 2230-DE



not have any vegetable or fruit *mandi*. However, the material placed on record does indicate that the appellant is registered with Indiamart and its goods are being sold on the Indiamart website. The appellant does not dispute that it sells goods through the online market place, although the appellant disputes that the goods offered through the website bear the offending trademarks. However, there is no specific denial in the written statement to the effect that the appellant is selling goods through the website but not those goods that bear the impugned trademark as is contended before this Court. As noted above, the appellant had conceded before the learned Commercial Court that it was selling leno bags through the website of Indiamart and orders placed by customers through the website would be serviced by the appellant.

16. In view of the above, we find no infirmity with the impugned order rejecting the appellant's application under Order XXXIX Rule 4 of the CPC. However, we clarify that the observations made by the learned Commercial Court are *prima facie* and would not preclude the parties from canvassing their case/defence before the learned Commercial Court.

17. In view of the above, the appeal is disposed of

CM APPL. 15790/2024

18. This is an application filed on behalf of the appellant seeking release of goods. It is pointed out that a similar application was moved before the learned Commercial Court but was rejected. The order rejecting the same is not a subject matter of challenge in these proceedings.



2024: DHC: 2230-DE



19. The application is, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 14, 2024/SA

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DUSHYANT
RAWAL

Signing Date: 27.03.2024