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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 72/2023 and CM APPL. 20120/2023

PUSHPENDRA YADAV

..... Appellant

Through: Mr Varun Sharma, Ms Manisha Singh, Mr Abhai Pandey, Mr Gautam Kumar, Mr Manish Aryan, Ms Swati Mittal, Ms Shivani Singh and Mr Dhruv Tandon, Advocates.

versus

KENT RO SYSTEMS LTD & ANR.

..... Respondents

Through: Ms Rajeshwari H., Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

22.02.2024

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1. The appellant has filed the present appeal impugning an order dated 24.03.2023 (hereafter '**the impugned order**') passed by the learned Single Judge in an interim application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (IA No.6940/2021) in *CS(COMM) 253/2021* captioned *Kent RO Systems Pvt. Ltd. and Anr. v. Pushpendra and Ors.*

2. By the impugned order, the learned Single Judge had, *inter alia*, restrained the appellant, as well as all other acting on his behalf, from dealing, directly or indirectly, in any products, being water purifiers or parts thereof that infringe the respondents' (plaintiffs in the suit) registered Design No.219309 or using the mark AQUA GRAND/AQUA GRAND+/
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or any other mark that would infringe KENT GRAND+ mark of the respondent. In addition, Flipkart, an online retail platform, was directed to block/take down/remove/delist all URLs that lead



to infringement of the respondents' Design No.219309 and/or respondent's trademarks.

3. The impugned order proceeds on the premise that the trademarks in question were registered in favour of the respondents. Concededly, the said premise is erroneous. The respondents have filed a review petition seeking review of the impugned order (Review Petition No.193/2023) pointing out that its claims were not in respect of infringement of trademarks, but of passing off. The said issue is being considered by the learned Single Judge. Insofar as the infringement of design (Design No.219309) is concerned, admittedly, the said design has since expired and therefore, there the injunction restraining infringement of the said registered design, cannot survive.

4. In view of the above, the present appeal is allowed and the impugned order is set aside. The pending application is also disposed of.

5. It is clarified that nothing stated in this order would be read as an opinion on the merits of the respondents' claim regarding passing off. The said issue is being considered by the learned Single Judge and IA No.6940/2021 would survive qua this question. This order would also not preclude the learned Single Judge from passing a fresh order in IA No.6940/2021.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

**FEBRUARY 22, 2024
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