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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 87/2020 & CM APPL. 15737/2020 (stay)**
OM PRAKASH SINGHAL SOLE PROPRIETOR OF
M/SBABU RAM OM PRAKASHAppellant
Through: Mr. Sahil Gupta, Advocate.

versus

M/S EMAMI LIMITEDRespondent
Through: Mr. Abhimanyu Bhandari, Ms.
Rooh-e-Hina Dua and Mr.
Sahib Kochhar, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
06.11.2024

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1. This appeal is directed against the order dated 13 February 2020 passed by the learned Single Judge and in terms of which the prayer of the plaintiff-appellant for interim injunction has come to be refused.
2. As is evident from the recordal of facts as they appear in the order impugned before us, the application for temporary injunction had come to be considered after issues had been settled in the original suit. The suit itself had been instituted in 2017 and had alleged that the defendant-respondent while using the tradename "EMAMI DIAMOND SHINE" on their products for hair colour amounted to an act of infringement and would be liable to be enjoined in light of the plaintiff-appellant being the prior adopter of the trademarks Black Diamond, Black Henna, Diamond Heena, Diamond Device and various others which are noticed in paragraph 1 of the order



impugned.

3. The registrations held by the appellant were also noticed in the order by way of a tabular representation and which is reproduced hereinbelow: -

S. NO.	TRADE MARK NO. CLASS & JOURNAL NO.	STATUS /DATE OF REGISTR- ATION	TRADE MARK/LABEL	GOODS
i.	515076 IN CLASS 03 Journal No.1065-1	Registered 14.08.1989		Black henna (Mehandi) powder for sale in India & for export also.
ii.	1116817 IN CLASS 03 Journal No.9999-4	Registered 05.07.2002		Black henna (Mehandi) powder for sale in India and for export, cosmetics, soaps & detergents.
iii.	1196309 IN CLASS 03 Journal No. 1332-1	Registered 05.05.2003		Black henna (Mehandi) powder for sale in India and for export.
iv.	1305862 IN CLASS 03 Journal No. 1328-4	Registered 31.08.2004		Brown Heena (Mehandi) powder, Burgandi henna (Mehandi) powder, black henna (Mehandi) powder, - red henna (Mehandi) powder for sale in india and for export and cosmetics.
v.	1385411 IN CLASS 03 Journal No. 1349-0	Registered 19.09.2005		Brown Henna (Mehandi) powder, Burgandi henna (Mehandi) powder, black henna (powder), red henna (Mehandi) powder for sale in india and for export.

4. As is manifest from the recordal of facts, it would appear that the appellant had claimed an exclusive right to use the word “DIAMOND” as part of a label mark for its various products. Apart from the above, it had also relied upon various copyright registrations for its work. It was alleged that the respondent had sought to take advantage of the goodwill and reputation which had been earned by the appellant in the course of its business and had wrongfully adopted the word “DIAMOND” in their trademark.



5. While dealing with the aforesaid, the learned Single Judge has taken note of the turnover in business of the respondent, as well as the fact that it had, in the year 2009, coined the word mark “EMAMI DIAMOND FAIR” with respect to a range of cosmetic products. It has further been observed that as per the respondent, the mark “EMAMI DIAMOND SERUM” with respect to hair serum had also come to be registered and was subsisting on the date when the application for injunction was taken up for consideration.

6. The learned Single Judge while proceeding to identify the dominant parts of the marks adopted by the respondent has observed as follows:-

“9. Claim of the defendant is that the term DIAMOND is *publici juris* on account of being common to trade and is used by the defendant in a descriptive sense. Further the word diamond is used for number of other products and is common to trade as is also evident by the response of the trademark Registry when the plaintiff applied for registration of the trademark “DIAMOND”.

10. A perusal of the packaging of the defendant would clearly show that the defendant predominantly uses the word EMAMI which is its trademark and DIAMOND SHINE is a descriptive word and the plaintiff cannot claim any monopoly on the word DIAMOND as it has no registration of the word mark DIAMOND simpliciter in its favour.”

7. Proceeding then to take note of the salient principles which came to be recorded by the Court in **Marico Limited vs. Agro Tech Foods Limited**¹, the learned Single Judge has come to conclude that the usage of the mark “DIAMOND” would not meet the test of distinctiveness, and which is essential for the purposes of evaluating whether the grant of an injunction was warranted.

8. It is in the aforesaid conspectus that the learned Judge has

¹2010 SCC OnLine Del 3806



ultimately come to hold that since the word “DIAMOND” has been merely used as a descriptive word, the test of deceptive similarity would not be met.

9. We are presently informed that the suit itself is at the stage of recordal of evidence. The ultimate conclusion which has come to be rendered by the learned Single Judge fails to meet the test of perversity and which may have warranted interference by us in appeal.

10. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 6, 2024/vp