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

Date of Decision: 24.06.2024

+ **FAO (COMM) 118/2024 & CM APPLs. 35517/2024, 35518/2024 & 35519/2024**

VIVEK RANJAN GUPTA & ANR.

..... Appellants

Through: Ms. Kangan Roda with Ms. Vidhi Gupta, Mr. Pawash Piyush, Mr. Nishant Bhargava and Mr. Yash A. Arora, Advocates.

Versus

SHIVJEE INDUSTRIES AND MARKETING PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

HON'BLE MR. JUSTICE DHARMESH SHARMA

MINI PUSHKARNA, J (ORAL)

CM APPL. 35518/2024 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

FAO (COMM) 118/2024 & CM APPLs. 35517/2024 & 35519/2024

3. The present appeal has been filed under Section 13(1) of the Commercial Courts Act, 2015 seeking setting aside of the order dated 03rd June, 2024, passed by the learned District Judge (Commercial Court)-02, Rohini District Court, New Delhi, in *CS (COMM) No. 356/2024*.



4. By way of the impugned order, the learned District Judge has passed an *ex-parte ad interim* injunction in favour of the respondent and against the appellants, thereby restraining the appellants from manufacturing, selling, using, displaying, advertising, importing/exporting or by any other mode dealing with the impugned Trademark/label/trade-name/trade-dress, etc., i.e., ‘*Chanashree*’.

5. Learned counsel appearing for the appellants submits that the suit for infringement has wrongly been filed by the respondent, and the said suit of the respondent, is not maintainable, for the reason that the respondent has no statutory protection/registration of the impugned mark, as alleged in the plaint.

6. It is submitted that appellant no. 1 is the sole proprietor trading under the name of “*Chanashree Food*” and is engaged in marketing, manufacturing and selling the goods of flour preparations made from Cereals, Semolina, Corn Flour, Broken Wheat, Refined Flour, Rice, Tea, Sattu, Roasted Gram Flour, etc. since 16th October, 2021. It is further submitted that the same is included in Class 30. Thus, it is the contention of the learned counsel for the appellants that application bearing nos. 5834487 and 6277351 under Class 30 have already been moved by the appellants before the Trademark Registry on 03rd March, 2023 and 29th January, 2024.

7. She further submits that the District Court did not have the jurisdiction to entertain the suit of the respondent, as no document has been filed to show that the District Court had the jurisdiction to entertain the said suit. It is submitted that due to the impugned order, the business activity of the appellants has been stopped, which is affecting their livelihood.

8. Having heard learned counsel for the appellants, it is to be noted that



perusal of the impugned order dated 03rd June, 2024 shows that the respondent had raised the contention that it had applied for registration of its trademark/label before the Trademark Registry for the label “*SHREE*” vide application no. 6325864 dated 29th February, 2024.

9. Further, from the perusal of the record, it also transpires that the father of the appellant no. 1, namely, Mr. Vijay Kumar Gupta, was also one of the partners in the firm of the respondent. Thus, on the basis that the mark of the appellant no.1, i.e., *Chanashree*, is deceptively similar with the mark being used by the respondent, which is “*SHREE*”, that the impugned order has been passed by the learned District Judge.

10. Considering the submissions made before this Court, this Court is of the view that all the issues that have been raised by the appellants before this Court, can be raised before the learned District Judge, who is seized of the matter.

11. Accordingly, it is directed that the appellants shall move an appropriate application before the learned District Judge (Commercial Court)-02, North West District, Rohini District Courts, Delhi, with respect to the impugned order dated 03rd June, 2024 passed by the said Court.

12. As and when, an appropriate application is moved by the appellants, the same shall be decided by the said Court, in accordance with law.

13. At this stage, learned counsel appearing for the appellants submits that the goods of the appellants that have been seized, are of perishable nature, therefore, there is urgency in the matter.

14. Accordingly, it is directed that the application that may be moved by the appellants before the learned District Judge/Vacation Judge, shall be decided in a time bound manner.



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15. With the aforesaid directions, the present appeal is disposed of, along with the pending applications.

**MINI PUSHKARNA
(VACATION JUDGE)**

**DHARMESH SHARMA
(VACATION JUDGE)**

JUNE 24, 2024

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