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

+ **FAO(OS) (COMM) 233/2023 and CM APPL. 55260/2023**

NISHITA DESIGN AND ANR.

..... Appellants

Through: Ms Shwetashree Majumder, Mr Prithvi Singh, Mr Vardaan Anand and Ms Shilpi Sinha, Advocates.

versus

CLAY CRAFT INDIA PRIVATE LIMITED
AND ORS.

..... Respondents

Through: Mr Sushant M. Singh, Mr Shravan Kumar Bansal and Mr Rishabh Gupta, Advs. for R-1.
Mr Arun C. Mohan, Mr Advaidh and Ms B. Bhatia, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

08.04.2024

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1. The appellants have filed the present intra court appeal impugning an order dated 13.10.2023 (hereafter *the impugned order*) passed by the learned Single Judge in IA No.20347/2023 filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter the *CPC*).
2. The appellants had filed the said suit being CS(COMM)737/2023 alleging infringement of two of its registered designs (Design Nos.272627 and 256801 captioned as '*Devanagari*' and '*Banaras*'). The said designs are used on crockery.
3. Insofar as the design '*Devanagari*' is concerned, the learned counsel for the respondents had stated before the learned Single Judge that the respondents did not intend to use the said design in respect for which the



appellants hold registration. Accordingly, the learned Single Judge had restrained the respondents from using the said design on any crockery items, including cups, till the next date of hearing. However, the *ad interim* order in respect of 'Banaras' design was declined and the learned Single Judge held that the said issue would be considered on the next date of hearing. The learned Single Judge was of the view that the appellants' plea regarding the infringement of the said design is not of a nature that warranted issuance of an *ad interim order* without hearing the respondents.

4. At this stage, it is relevant to note that before this Court, on 20.10.2023, the learned counsel for the respondents undertook not to manufacture, sell, offer for sale, advertise, directly or indirectly, articles containing the alleged infringing design 'Banaras' till the next date of hearing (in the present appeal). The said order continues till date.

5. Ms Majumder, learned counsel appearing for the appellants submits that although, the impugned order is an *ad interim* order, it does contain observations, which lend finality to some of the contentions raised by the appellants.

6. We are unable to accept the same as the impugned order is an *ad interim* order. It does not finally dispose of the appellants' application under Order XXXIX Rules 1 and 2 of the CPC. Although, some of the observations may read as finally concluding the points in issue, it is obvious that they are not. All observations made in the said order are by the very nature of the order, *prima facie*, observations. The same are only for the purposes of considering issuance of an *ad interim* order. None of the parties are precluded from finally advancing such contentions as they may be



advised.

7. In view of the above, the only possible grievance of the appellants is regarding denial of an *ad interim* order in respect of the design Banaras.

8. Mr Singh, learned counsel appearing for the respondents submits that the *ad interim* order passed by this Court in this appeal on 20.10.2023 may continue till the learned Single Judge finally disposes of the appellants application under Order XXXIX Rules 1 and 2 of the CPC. He, however, requests that it be clarified that this Court has not expressed any opinion on the merits of the appellants' claim.

9. In view of the above, we consider it apposite to dispose of the appeal by binding down the respondents to the statement made on their behalf. Consequently, the *ad interim* dated 20.10.2023 shall continue to be operative till the learned Single Judge disposes of the application under Order XXXIX Rules 1&2 of the CPC. It is clarified that this Court has not examined the merits of the appellants claim or the defence raised by the respondents and therefore, nothing stated in this order or in the impugned order would preclude the parties from advancing such contentions as they consider relevant. All rights and contentions of the parties are reserved.

10. The appeal is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 08, 2024
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