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

+ **FAO (COMM) 4/2024**

M/S. BUREAU OF PHARMA PUBLIC SECTOR

UNDERTAKINGS OF INDIA

..... Appellant

Through: Mr. Anand Kumar Pandey, Ms.
Theepa Murugesan and Mr. Kaushal
Kishor, Advocates.

versus

JAN AUSHADHI SANGH

..... Respondent

Through: Mr. Rishi Sood and Mr. Gurjot Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

08.01.2024

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CM APPL. 860/2024

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

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3. The appellant has filed the present appeal impugning an order dated 21.10.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court whereby, the appellant's application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (hereafter '**the CPC**'), was dismissed. The appellant had filed the said application alleging that the



respondent had violated the order dated 13.02.2023, whereby, the learned Commercial Court had directed the respondent/ its officers/ servants/ agents/ representatives and all other acting for and on behalf of the respondent from using, advertising/ selling any medicines/ goods or running stores or dealing in any manner using the name '*Jan Aushadhi*' during the pendency of the present suit. A plain reading of the said order indicates that one of the appellant's principal grievances was that the respondent was selling and advertising various goods using the said mark (which was a registered trademark of the appellant).

4. According to the appellant, the respondent had violated the said order, *inter alia*, as it has sent a letter dated 07.06.2023 to the Minister of Chemicals and Fertilizers, Government of India requesting that it be engaged as the nodal agency for onboarding primary agricultural credit societies across the country for opening '*Pradhan Mantri Jan Aushadhi Kendras*'. Admittedly, the respondent has not used the mark in question in advertising or selling any goods to the public. The appellant assails the use of the mark in question as a apart of its name in the communication to the Government of India. Additionally, the appellant also questions the use of the mark in the respondent's email id.

5. The learned Commercial Court had considered and rejected the appellant's contention that the respondent had wilfully disobeyed the order dated 13.02.2023. The learned Commercial Court noted that the respondent had not used the said mark '*Jan Aushadhi*' for selling any of its goods or dealing with the public. The learned Commercial Court also noted that the order dated 13.02.2023 was passed for protecting the public at large. Accordingly, the learned Commercial Court dismissed the appellant's



application.

6. A plain reading of the order dated 13.02.2023 indicates that the learned Commercial Court had restrained the respondent from using the mark '*Jan Aushadhi*' principally on the basis that the term was a registered trademark of the appellant and the respondent was using the said trademark for selling various medicines/products. The learned Commercial Court had also noted that the balance of convenience was in favour of the appellant as the trademark '*Jan Aushadhi*' was known to the public and was extensively advertised by the Government. In addition, the learned Commercial Court had observed that, *prima facie*, the appellant would suffer irreparable loss, if an *ex-parte* injunction is not granted, as the goodwill of the appellant would be frittered away in addition to causing loss to general public who may be confused. In the aforesaid backdrop, the communication by the respondent to the Ministry of Chemicals and Fertilizers, Government of India, which is stated to be the Authority to which the appellant reports, does not indicate that the respondent had wilfully disobeyed the said order. It is material to note that the said letter does not indicate that the expression '*Jan Aushadhi*' is used as a mark. It merely mentions the name of the respondent and the footer mentions the website which includes the term '*janaushadhi*'. In our view, the same does not constitute wilful disobedience of the order passed by the learned Commercial Court.

7. It is also material to note that the appellant had also alleged that the respondent had uploaded certain documents on its website after the order dated 13.02.2023, which would fall foul of the said order. The learned Commercial Court had examined the allegation and found that the respondent had not uploaded any offending document on its website after



the order dated 13.02.2023. The learned counsel does not raise any grievance regarding the said finding.

8. We find no infirmity with the impugned order. The present appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 8, 2024

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[Click here to check corrigendum, if any](#)