



\$~ 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 182/2024 & CM APPLs. 53839/2024**
(additional documents), 53843/2024 (injunction)
M/S. SHAVEX PROPRIETOR
MR. GAURAV PAREEKAppellant

Through: Mr. Anirudh Bakhru, Mr. M.D.
Sazid Rayeen, Mr. Prabhu
Tandon, Mr. Christopher
Thomas, Advocates

versus

VERTICE GLOBAL
PRIVATE LIMITED & ANR.Respondents
Through: Ms. Rashi Bansal, Mr. Naveen
Kumar and Mr. Vishwajeet
Dubey, Advocates.

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

ORDER
08.10.2024

%

1. The instant appeal impugns the order dated 20 May 2024 passed by the Trial Judge dismissing the application of the plaintiff/appellant under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 [“CPC”] and allowing the application filed by the defendants/respondents under Order XXXIX Rule 4 of CPC vacating the interim injunction which was operating in the suit.
2. We find ourselves unable to countenance or sustain the findings as rendered by the Trial Judge for reasons which appear hereinafter. We find that it has been observed by the Trial Judge itself that the



plaintiff was the prior user of the trademark and which was also registered in its name prior to that of the defendant. It has, thereafter, proceeded to observe as follows: -

“Though it has been pointed out by the Ld. counsel for the plaintiff that the prior user must be in respect of the registered trademark and has nothing to do with the class of goods, however, it does not sound appealing to a prudent mind as to why a customer would purchase the goods of defendants which are though used exclusively for the purpose of shaving, considering them to be those of the plaintiff whereas the product of plaintiff is not only used in shaving but also has other uses as well including its medicinal and industrial uses.

Though it has been submitted by Ld. counsel for plaintiff that both the products being jointly used at Barbar shops as well as saloons and by people at their respective homes are thus likely to create a confusion, however, in the absence of any specific averments having been made to this effect, this only appears to be an argument in the air and does not hold any basis for the same, at this stage.”

3. As was rightly pointed out by Mr. Bakhru, learned counsel who appears for the appellant, the Trial Judge has clearly ignored and failed to bear in consideration the principles of allied and cognate goods. The reasoning assigned, even if it could be so described, is thoroughly misconceived and defies comprehension.

4. On the Court expressing its doubt as to the correctness of the approach adopted by the learned Trial Judge, the respondents submitted that the end of justice would warrant the matter being remitted for consideration afresh by the Trial Judge subject to all rights and contentions of respective parties being kept open.

5. Accordingly, and for reasons assigned hereinabove, we allow the instant appeal and set aside the order dated 20 May 2024. The application filed by the plaintiff under Order XXXIX Rule 1 and 2 and the application filed by the defendant under Order XXXIX Rule 4



shall stand revived on the board of the Trial Judge to be considered afresh. The injunction which was otherwise operating in the suit shall stand revived and will abide by the fresh decision that the Trial Judge may take on the application moved by the respondents.

6. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 8, 2024/vp