



2024:DHC:9825-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 19.12.2024***

+ **FAO(OS) (COMM) 293/2024**
ELDER ORGICHEM PVT LTDAppellant
Through: Ms.Shwetasree Majumder,
Mr.Aditya Nayyar, Advs.
versus

ELDER PRROJECT LTDRespondent
Through: Mr.C.M. Lall, Sr. Adv. with
Mr.Ustav Saxena, Mr.Kaveesh
Nair, Ms.Anaya Mohan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)**CM APPL. 74549/2024 & CM APPL. 74551/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

CM APPL. 74550/2024

2. For the reasons stated in the application, the delay of 49 days in filing the appeal is condoned.

3. The application stands disposed of.

FAO(OS) (COMM) 293/2024 & CM APPL. 74548/2024

4. This appeal has been filed challenging the Order dated 28.08.2024 passed by the learned Single Judge of this Court in CS(COMM) 720/2024, titled *Elder Project Limited v. Elder*



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Orgichem Private Limited, whereby an *ad interim ex-parte* order was passed restraining the appellant herein from using the impugned mark “Elder” or any other mark/device/logo/name/packaging/trade dress, which is identical and/or deceptively or phonetically similar to the plaintiff’s earlier, famous and registered trademark “Elder”, in any manner whatsoever without the permission, consent, or license of the respondent herein.

5. The learned counsel for the appellant has submitted that the Impugned Order has been obtained by the respondent by concealing various important and vital facts from the learned Single Judge.

6. Issue notice.

7. Notice is accepted by Mr.Utsav Saxena, the learned counsel for the respondent.

8. The learned senior counsel for the respondent, while disputing the averments made in the appeal, submits that the Impugned Order be set aside and the learned Single Judge be requested to decide upon the application filed by the respondent herein under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short, ‘CPC’) afresh after hearing the parties.

9. In view of the above submission, the Impugned Order dated 28.08.2024 is set aside.

10. The learned Single Judge shall consider the application filed by the respondent under Order XXXIX Rules 1 and 2 of the CPC afresh, remaining uninfluenced by any observation made in the Order dated 28.08.2024.

11. In the hearing of the said application, it shall be open to the



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appellant to point out that the respondent is not entitled to the discretionary relief of injunction because of the alleged concealment made by the respondent.

12. The appellant shall file its reply to the application under Order XXXIX Rules 1 and 2 of the CPC within a period of two weeks from today. Rejoinder thereto, if any, be filed by the respondent within a week thereafter.

13. We are informed that the application is listed before the learned Single Judge on 15.01.2025.

14. The learned Single Judge shall make an endeavour to hear the said application under Order XXXIX Rules 1 and 2 of the CPC on the next date.

15. The appeal and the application are disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 19, 2024/Arya/SJ

Click here to check corrigendum, if any