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

+ **FAO (COMM) 162/2025 & CM APPLs. 36867-71/2025**
MANISH GUPTA & ORS.Appellants

Through: Mr. Sudarshan Kumar Bansal, Mr.
Rahul Sharma and Mr. Arpit Dudeja,
Advocates

versus

MOHAMMAD ISHAQ & ANR.Respondents

Through: Mr. Satish Kr, Mr. Rakesh Tiwari,
Mr. Shiv Kr. Yadav, Mr. Ramesh Kr.
Singh and Mr. Dinesh Tiwari,
Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **23.06.2025**

FAO (COMM) 162/2025

1. The present appeal has been filed impugning the ex-parte ad-interim order dated 17.05.2025 passed in CS(COMM) No. 460/2025 passed by the Ld. District Judge Commercial Court, Tis Hazari Courts, Central, District Delhi ['Trial Court'] wherein the application of the Respondents for interim ex-parte injunction under Order 39 Rule 1 and 2 read with Section 151 Civil Procedure Code ('CPC') was granted and defendant was restrained from using, in any manner, the trademarks/trade name which are deceptively similar to the marks registered in favour of the plaintiff bearing the word mark 'JAI VIJAY' and device marks with the text 'JAI

VIJAY' ; ;  in respect to Class



No. 7 which pertains to agricultural implements and shovels or any other goods which are allied or cognate thereto for manufacturing, trading and selling.

Submissions on behalf of the Appellants

2. At the outset, learned counsel for the Appellants states that Appellants undertakes to file their written statement before the Trial Court within one (1) week along with all the documents relied upon and the affidavit of admission/denial of documents.

2.1. He states that the Appellant no. 2 has in its favour registration of the



device mark vide registration no. 2165821, which was filed on 27.06.2011 and was registered on 30.11.2013. He states that the Respondents have filed a rectification application for the registration of the said device mark in 2023, which is pending adjudication.

2.2. He states that the Appellants have been using the mark which has been impugned in the present petition since 01.04.1995.

2.3. He states that, therefore, it would be in the interest of justice that the Appellants' documents are placed on record before the Trial Court and Appellants are granted an opportunity to be heard before the application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 ('CPC') is finally disposed of.

2.4. He states that the Appellants, who have been in this business, since 1995 has been seriously prejudiced by the interim injunction order which has been passed ex-parte and without giving an equal opportunity of hearing to the Appellants herein.



Submissions on behalf of the Respondents

3. Issue notice. Mr. Rakesh Tiwari, learned counsel accepts notice on behalf of Respondents.

4. Learned counsel for the Respondents states that the Appellants have not placed on record any documents evidencing his use of the impugned mark since 01.04.1995.

4.1. In addition, he states that he seeks liberty to place on record an application dated 13.06.2025 filed by the Appellants seeking registration of the impugned mark under Class 35 wherein the user details have been marked as 'proposed to be used'.

4.2. He states that the Respondents does not admit that the Appellants have been using the impugned trade mark since 01.04.1995.

4.3. He states that in fact, Respondents are user of the impugned trade mark since 07.07.1991 and he states that appropriate documents evidencing the said user will be placed on record before the Trial Court. He states that a Chartered Accountant's certificate has already been filed to this effect.

4.4. He states on instructions that, however, without prejudice to the rights and contentions of the Respondents, the Respondents consent that the ex-parte ad-interim restraint granted at paragraph '10' of the impugned order may be stayed until the final disposal of the Order XXXIX Rule 1 and 2 CPC application by the Trial Court.

4.5. He states that the replication along with documents and affidavit of admission/denial of documents will be filed within one (1) week from the receipt of the written statement.

Direction

5. In view of the aforesaid submissions made by the parties and on a prima facie consideration of facts and materials placed on record, this Court



deems it fit and proper and hereby directs that operation and effect of paragraph '10' set out in the impugned order dated 17.05.2025 is hereby stayed until the final disposal of the application filed under Order XXXIX Rule 1 and 2 CPC by the Ld. Trial Court.

6. The Appellants and the Respondents are directed to complete their pleadings within the time sought before this Court.

7. It is clarified that if the Appellants defaults in filing its written statement within one (1) week, the Ld. Trial Court shall proceed to hear the Order XXXIX Rule 1 and 2 CPC application on 14.07.2025 on the basis of the record and no further time will be granted to the Appellants.

8. Needless to state that any observations made herein are purely for the purposes of deciding the present appeal and shall not be construed as an expression on the merits of the case.

9. All rights and contentions of the parties are left open.

10. All pending applications stand disposed of.

11. With the aforesaid directions, the appeal stands disposed of.

12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA
(VACATION JUDGE)

RAJNEESH KUMAR GUPTA
(VACATION JUDGE)

JUNE 23, 2025/rhc/ms