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

+ FAO(OS) (COMM) 50/2023 & CM APPLs.13087-13089/2023

FDC INDIA (FRANCHISE DEVELOPMENT CONSULTING
INDIA) & ANR. Appellants

Through: Mr.Amit Sharma, Advocate with
Mr.Dipesh Sinha, Ms.Pallavi Chumki
Barva, Ms.Aparna Singh and
Ms.Sakshi Upadhyaya, Advocates.

versus

FDC LIMITED Respondent

Through: Mr.Prithvi Singh, Advocate with
Ms.Devyani Nath, Advocate.

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Date of Decision: 20th March, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J (Oral):

CM APPL.13088/2023 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

CM APPL.13087/2023 & 13089/2023

Keeping in view the averments in the application, the delay in
filing/re-filing the present appeal is condoned.

Accordingly, the application stands disposed of.

FAO(OS) (COMM) 50/2023

1. Present appeal has been filed challenging the order dated 24th March, 2021 passed by the learned Single Judge of this Court in CS(COMM) 300/2020, whereby the application being I.A. 6945/2021 filed under Order VI Rule 17 CPC has been allowed and the Respondent-plaintiff has been permitted to amend the plaint.
2. Learned counsel for the appellant-defendant states that by way of the amendment application, the Respondent-Plaintiff had sought to amend para 19 of the plaint to reflect the correct status of its trademarks. He states that the Respondent-Plaintiff in the said application states that it had inadvertently pleaded in the plaint that its trademarks were registered when in fact the applications for registration of the marks being Applications No.1200579 and 1200578, were pending before the trademark registry. He further states that an interim injunction vide order dated 5th August, 2020 was granted in favour of the plaintiff on the basis of the averments in the unamended plaint.
3. He states that the learned Single Judge has erroneously held in the impugned order that vide the application for amendment, the Respondent-Plaintiff merely seeks to correct a factual mistake when in fact the alleged factual mistakes had been presented as truth before the predecessor learned Single Judge that led to the grant of the ad-interim injunction dated 5th August, 2020 against the Appellant.
4. Learned counsel for the appellant states that by allowing the aforementioned amendment application, the learned Single Judge has effectively rendered the perjury application under Section 195 read with Section 340 Cr.P.C being Crl. M.A. 12062/2020 as well as application for

vacation of stay being I.A. No. 9598/2020 filed by the appellants infructuous.

5. *Per contra*, learned counsel for the respondent, who appears on advance notice, states that the order dated 5th August, 2020 whereby the ad-interim injunction was granted in favour of the Respondent, quotes para 19 of the plaint (that was amended vide the amendment application) and it mentions the plaintiff's trademarks. He states that even if the three trademarks that were mistakenly stated to be registered in the plaint are not considered, the Respondent-Plaintiff has three other trademarks registered in its favour.

6. In rejoinder, learned counsel for the appellant states that out of three marks wrongly mentioned, two are associate marks and the other is a repetition.

7. This Court is of the view that the impugned order insofar as it allows the amendment application is legally sound, inasmuch as, it follows the judgment of the Supreme Court in ***Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4 SCC 385*** and ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors., MANU/SC/1724/2009***.

8. However, to balance the equities, this Court directs that when the learned Single Judge considers the perjury application as well as application for vacation of stay, the plea that the initial plaint contained details of three additional registrations out of which one was repetition shall be considered for what it is worth. The rights and contentions of all the parties are left open.

9. With the aforesaid direction, the present appeal along with pending application stands disposed of.

MANMOHAN, J

SAURABH BANERJEE, J

MARCH 20, 2023
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