

Red Bull Ag vs Vandana Chetankumar Maraviya Trading ... on 11 April, 2023

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 203/2023
RED BULL AG

Through: Mr. Anirudh Bakhru, M
Vig, Ms. Apurva Bhuta
Naqeeb Nawab, Mr. Uma
and Mr. Vijay Laxmi R
Advocates.

versus

VANDANA CHETANKUMAR MARAVIYA TRADING AS
VANDANA BEVERAGES & ORS. Defenda
Through: Mr. Rajul Shrivastava, Mr. Mohit D
Ram and Mr. Anubhav Sharma,
Advocates for D-1 and D-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 11.04.2023 I.A. 6565/2023(under Order XI Rule 1(4) of the Commercial Courts Act, 2015 r/w Section 151 of CPC seeking leave to file additional documents at a later stage)

1. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

2. Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

3. Application is disposed of.

I.A. 6566/2023(under Section 151 of CPC seeking exemption)

4. Exemption is granted, subject to all just exceptions.

5. The Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

6. Accordingly, the application stands disposed of.

I.A. 6567/2023(under Section 151 of CPC seeking exemption from serving advance suit papers on Defendants)

7. Noticing the matter in the cause list, Mr. Rajul Shrivastava, counsel for Defendant No. 1, has appeared on his own and has also been supplied a copy of the paper-book. In view thereof, application is rendered infructuous.

8. Disposed of.

I.A. 6568/2023(under Section 12A of the Commercial Courts Act, 2015 seeking exemption from instituting pre-institution mediation)

9. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.,¹ exemption from attempting pre- institution mediation is allowed.

10. The application is accordingly, disposed of.

I.A. 6564/2023(under Order XXVI Rule 9 and Order XXXIX Rule 7 r/w Section 151 of CPC seeking appointment of Local Commissioner)

11. Issue notice. Mr. Shrivastava accepts notice on behalf of Defendants No. 1 and 3. Reply, if any, be filed within a period of two weeks. Rejoinder thereto, if any, be filed within a period of one week thereafter.

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12. Let the plaint be registered as a suit.

13. Issue summons. Summons are accepted by Mr. Rajul Shrivastava, counsel for Defendants No. 1 and 3. Written statement on behalf of said Defendants be filed within 30 days from today. Upon filing of process fee, issue summons to the Defendant No. 2, by all permissible modes. Summons shall state that the written statement shall be filed by Defendant No. 2 within 30 days from the date of receipt of summons. Along with the written statement(s), Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

14. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the

replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

15. List before the Joint Registrar for marking of exhibits on 03rd July, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

16. List before Court for framing of issues thereafter.

I.A. 6563/2023(under Order XXXIX Rules 1 & 2 r/w Section 151 of CPC)

17. Plaintiff is an internationally well-established manufacturer and marketer of energy drinks that are sold inter alia under the trademarks "RED BULL", "RED", "BULL", " ", " ", " ", " ", " " and " ". Their grievance pertains to Defendant No. 1's use of their registered device mark " ", the marks " ", " ", " ", "RED" and trade dresses " " and " ".

18. Counsel for Plaintiff submits that their enquiries have revealed that Defendant No. 1 is the manufacturer for Defendant No. 2. On an earlier occasion, Defendant No. 2 had filed a trademark application for " ", noticing which, Plaintiff issued a cease and desist notice to them. Consequent thereto, Defendant No. 2 had voluntarily given an undertaking dated 01st December, 2020 that they shall discontinue the use of the aforesaid mark.

19. Mr. Shrivastava states that Defendant No. 1's registered device " " comprises of the word "WILDFIRE" as well as the device " ". Nonetheless, on instructions from Defendant No. 1 (registered proprietor of the impugned marks) as well as Defendant No. 3 (who markets the impugned products), he states that till the next date of hearing, said Defendants shall not use the mark/ device " ", or " " standalone or as a part of any device mark, as well as the trade dresses " " and " ". Mr. Shrivastava however, requests that no restraining order be passed in respect of the goods that have already been manufactured and distributed.

20. In view of the above, the following directions are issued:

20.1 The statement of Mr. Shrivastava is taken on record and till the next date of hearing, Defendants No. 1 and 3 are held bound by the same. 20.2 Defendant No. 1 shall, within a period of five days from today, file an affidavit setting out the batch numbers and other relevant details of the products manufactured under the aforesaid impugned marks/ trade dresses, in stock as of today.

20.3 Defendant No. 1 shall immediately take steps to bring down online advertisements of the impugned products bearing the aforesaid devices/ trade dresses, posted on various social media websites.

21. The existing stock of the impugned goods already manufactured and sold as of today, are not restrained by this injunction order.

22. Defendants No. 1 and 3 are permitted to file a reply to the present application within a period of four weeks weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

23. Upon filing of process fee, issue notice to Defendant No. 2, by all permissible modes, returnable on 03rd August, 2023.

24. Re-notify on 03rd August, 2023.

SANJEEV NARULA, J APRIL 11, 2023 d.negi