

Adani Wilmar Limited vs Baljit Agro Tech Pvt. Ltd. & Anr on 4 January, 2023

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 21/2020 & I.As. 583/2020, 5608/2020, 7662/2020
7678/2020, 7679/2020

ADANI WILMAR LIMITED

Through: Mr. Chander M. Lall, Sen
Advocate with Mr. Dushya
Mahant, Ms. Shivani G. M
Ms. Ananya Chug, Advocat

versus

BALJIT AGRO TECH PVT. LTD. & ANR.

Through: Mr. Amit Sibal, Senior A
Mr. S. Basu, Mr. Neeraj
Mr. Ranjeet Kumar Singh,
Saksham and Mr. Shivang
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 04.01.2023

1. Mr. Chander M. Lall, Senior Counsel for Plaintiff has been heard for some time on the applications under Order XXXIX Rule 1 & 2 and 4 of the Code of Civil Procedure, 1908. Parties are directed to file a brief note of submissions, not exceeding three pages, along with relevant case law(s), before the next date of hearing. The same shall also be handed over as well as e-mailed to the Court Master within the same timelines.

2. Mr. Lall has also raised an issue pertaining to legal effect of declaration made by Defendant in their affidavit dated 29th June, 2018 [Page 407 of Defendant's Documents] for seeking GST exemption, relevant portion whereof is extracted as under: -

"BEFORE THE NOTARY PUBLIC AT KOLKATA I, Pramod Kr. Bubna, son of Late Babu Lal Bubna, aged about 58 years, by faith - Hindu, by occupation Businessman, residing at 7A Pretoria Street, Kolkata 700071, do hereby solemnly affirm and say as follow:

1. I am the Director of Baljit Agrotech Pvt Ltd. having office at 7A, Pretoria Street, Kolkata 700071 and carrying on business inter-alia, of manufacturing, trading and selling of Rice under the brand name "Shubh Labh Fortune".

Within a short span of time, due to good quality of product, the brand name "Shubh Labh Fortune" has become distinctive, well known and earned goodwill and reputation in the market.

2. The aforesaid brand name "Shubh Labh Fortune" is unregistered.

3. I am making this affidavit to put it on record that we voluntarily forego any actionable claim or enforceable right in respect of aforesaid brand name namely "Shubh Labh Fortune".

[Emphasis Supplied]

3. The issue pertaining to legal implication of such a declaration on proceedings under Trade Marks Act, 1999 also arose for consideration in CS (COMM) 32/20221 wherein, vide order dated 26th April, 2022, Mr. Zoheb Hussain, Senior Standing Counsel for Department of Revenue, Ministry of Finance, Government of India, was directed to put forth the stand on the question - "whether rights in trademarks can be enforceable under the Trade Marks Act, 1999 in respect of registered trademarks after giving up the right to file actionable claims qua the same very brands by claiming an exemption from GST". Mr. Lall states that stand of Department of Revenue filed in the said suit is germane to the present proceedings.

4. Keeping Defendant's objections open as to whether such an issue arises for consideration in the instant suit, it is considered appropriate to request Mr. Hussain to file a copy of submissions/report filed by the Titled as Amritsar Rice Land v. Sumit Bansal & Anr.

Department of Revenue in CS(COMM) 32/2022, in the present proceedings as well.

5. Re-notify on 12th January, 2023.

6. A copy of this order be given dasti under signatures of Court Master to enable the Counsel for Plaintiff to serve the same on Mr. Zoheb Hussain, Senior Standing Counsel, for necessary compliance.

SANJEEV NARULA, J JANUARY 4, 2023 d.negi