

Interim Injunction Under Order Xxxix ... vs Jatin Hemendrabhai Vora Trading As M/S ... on 20 September, 2021

Author: Asha Menon

Bench: Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (COMM) 459/2021, I.As.12185/2021 (by the plaintiff for interim injunction under Order XXXIX Rules 1 and 2 read with Section 151 CPC), 12186/2021 (by the plaintiff under Order Rule 1 (4) (as amended by the Commercial courts, Commercial Division and Commercial Appellate Division Of High Courts 2015) read with Section 151 CPC seeking leave to file additional documents), 12187/2021 (by the plaintiff under Section 14 with Section 151 CPC for extension of time in furnishing fee and permitting the counsel for the plaintiff to remit fee to SHCIL), 12188/2021 (by the plaintiff under Section 151 CPC for exemption from filing original documents at this stage), 12189/2021 (Exemption) & 12190/2021 (by the plaintiff under Section 151 CPC for exemption from prior service to the defendants and seeking ex-parte audience for urgent order) RICA S.P.A

Through: Mr. Aayushmaan Gauba, M
Gunjan Chhabra, Advocat

versus

JATIN HEMENDRABHAI VORA TRADING AS M/S PARUL
MARKETING & ANR. Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 20.09.2021 I.A. 12189/2021 (By the plaintiff under Section 151 CPC for exemption from vernacular, legible copies of Dim documents, certified copies of orders, true typed copies & Left hand proper margin of documents, highlighted annexures alongwith typed true copies) & I.A. No. 12188/2021 (by the plaintiff under Section 151 CPC for exemption from filing original documents at this stage)

1. Allowed, subject to all just exceptions.

2. The applications stand disposed of.

I.A. No. 12187/2021 (by the plaintiff under Section 149 read with Section 151 CPC for extension of time in furnishing the Court fee and permitting the counsel for the plaintiff to remit the Court fee to SHCIL)

1. For the reasons stated in the application and subject to the court fees being filed within two weeks, the application is allowed.

2. The application stands disposed of.

I.A. No. 12186/2021 (by the plaintiff under Order XI Rule 1 (4) (as amended by the Commercial courts, Commercial Division and Commercial Appellate Division Of High Courts Act 2015) read with Section 151 CPC seeking leave to file additional documents)

1. This application has been filed by the plaintiff seeking leave to file additional documents.

2. For the reasons stated in the application and subject to the plaintiff filing the additional documents within two months, the application is allowed.

3. The application stands disposed of.

CS (COMM) 459/2021, I.As.12185/2021 (by the plaintiff for interim injunction under Order XXXIX Rules 1 and 2 read with Section 151 CPC), and I.A. No. 12190/2021 (by the plaintiff under Section 151 CPC for exemption from prior service to the defendants and seeking ex-parte audience for urgent orders)

1. The plaint be registered as a suit.

2. This suit has been filed by the plaintiff for permanent injunction, damages, infringement of trademarks and passing off etc., under the Trade Marks Act, 1999. The plaintiff RICA S.P.A. is a company which is engaged in manufacturing, trading and exporting cosmetic products. It is stated that the plaintiff has been using the trademark RICA since January 2005 for the cosmetic products and this trademark has been registered in India.

3. It is submitted that the plaintiff is also dealing in other products particularly hair removal wax and the defendants have now recently sought registration of a trademark "REAL RICA Wax" for identical product of hair removal wax. It is submitted that the defendants have applied for registration of their trademark only in August 2021 and which has been recently published in the Register of Trademarks. Mr. Aayushmaan Gauba, learned counsel for the plaintiff submits that the plaintiff has filed an opposition to the same.

4. Heard submissions of learned counsel for the plaintiff on the interim application.

5. Issue summons in the suit and notices in the applications to the defendants by all permissible modes, returnable before the Joint Registrar.

6. The summons shall indicate that the written statement(s) to the suit and reply(ies) to the application(s) be filed by the defendant(s) within thirty days from the date of receipt of the summons. The defendant(s) shall also file the affidavit of admission/denial of the document(s) filed

by the plaintiff(s), failing which the written statement(s) shall not be taken on record.

7. The plaintiff is at liberty to file replication(s) to the written statement(s) and rejoinder(s) to the reply(ies) filed by the defendant(s) before the next date of hearing following the filing of the written statement(s)/reply(ies). The replication(s) shall be accompanied by the affidavit of admission/denial in respect of the documents filed by the defendant(s), failing which the replication(s) shall not be taken on record.

8. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

9. Till the next date of hearing, the defendants are restrained from using the trademark "REAL RICA Wax"/ "REAL RICA" for their hair removal products.

10. Provisions of Order XXXIX Rule 3 CPC be complied with.

11. List before the Joint Registrar on 8th November, 2021, for completion of service and pleadings.

12. The order be uploaded on the website forthwith.

ASHA MENON, J SEPTEMBER 20, 2021 pkb