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

% **Date of Decision: 17th January, 2025**

+ CS(COMM) 990/2024 & I.A. Nos. 1208-1209/2025

DCM SHRIRAM LIMITED

.....Plaintiff

Through: Mr. Shantanu Sahay, Ms. Imon Roy,
Ms. Vareesha Irfan, Advocates
(M:9899228168)
Email:vareesha@anandandanand.com

versus

MR AMREEK SINGH CHAWLA & ORS.

.....Defendants

Through: Mr. Amit Sibal, Sr. Adv. with Mr.
Vikas Khera, Ms. Sneha Sethia, Mr.
Dinesh Chaturvedi, Mr. Saksham
Dhingra, Mr. Ankur Vyas, Advocates
(M:7834897828)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

I.A. No. 1208/2025 (Application under Order XXXIX Rule 4 read with Section 151 CPC)

1. The present application has been filed on behalf of the defendants under Order XXXIX Rule 4, read with Section 151 of Code of Civil Procedure, 1908 ("CPC"), for vacation of *ex-parte* ad interim injunction order dated 08th November, 2024.

2. Learned Senior Counsel for the defendants submits that the order dated 08th November, 2024 was passed on the basis of the submissions made



by learned counsel for the plaintiff, that the plaintiff had discovered the product of the defendants on 30th October, 2024, only a few days before filing of the present suit. Attention of this Court has been drawn in this regard to paragraphs 32 and 33 of the order dated 08th November, 2024, which reads as under:

*“32. It is further submitted that **the plaintiff came to know about the infringing activities of the defendants on 30th October 2024 when an operative of the plaintiff, acting under the instructions of Mr. Amarendra Kumar Rakesh, who is the authorized representative of the plaintiff, visited a third-party local retailer, “Bजारंग Galla Bhandar”, located in Shoharba Ghat, KushesharAsthana, Darbhanga Bihar. During his visit, the operative came across certain wheat seed products with a packaging deceptively similar to that of the plaintiff’s “Shriram Super 303” wheat seeds product. The photographs captured by the operative, which was further shared with the representative of the plaintiff, have been reproduced hereinbelow:***





33. It is submitted that thereafter, the plaintiff's operative enquired the local retail person at Bajarang Galla Bhandar if the supplier/distributor had license to sell the products in Bihar. Upon enquiring about the same, the retailer produced Office Memo referring to a License No. 21/2020 issued by the Agricultural Department of Bihar Government in favour of the M/s. Sartaj Seeds and defendant no. 3. By the said Office Memo, the defendant no. 3, along with M/s. Sartaj Seeds has been now allowed to sell the crop varieties Sartaj 303 and Sartaj 404 within the state of Bihar. The plaintiff's operative was able to capture a photograph of the said license copy from his phone and subsequently shared the same with the representative of the plaintiff. A copy of the said license authorization has been reproduced hereinbelow:

कृषि निदेशालय, बिहार, पटना।
द्वितीय तल, नया सचिवालय, विकास भवन, बेली रोड, पटना-800015
दूरभाष - 0812-2215885, ईमेल- krsi.bih.nic.in ई-पेज- diragri-bih@nic.in, diragri.bih@gmail.com
पत्र सं०-09/उपा० बीज/अनु०-10/2019 855 कृ० पटना, दिनांक 15.02.2021

कार्यालय आदेश

मेसर्स सरताज सीड्स (एन० एच०-74, नियर प्रेम आश्रम, काशीपुर रोड, बागवाला, तहसील-रुद्रपुर, जिला-उधम सिंह नगर, उत्तराखंड), श्री अशोक कुमार, द्वारा-मेसर्स विश्वनाथ प्रसाद राजाराम, कचहरी रोड, कृषि उत्पादन बाजार समिति, जिला-बेगूसराय के बीज अनुज्ञापि संख्या-21/2020 वैधता तिथि-20.10.2025 को अन्तर्गत फसल प्रभेद की प्रविष्टि हेतु समर्पित आवेदन पत्र, कोषागार चालान एवं अन्य सुसंगत कागजातों के आन्तर पर निम्न फसल प्रभेदों की प्रविष्टि इनके अनुज्ञापि में की जाती है। मूल अनुज्ञापि की सभी शर्तें यथावत रहेंगी।

LIST OF CROP & VARIETIES

क्र० सं०	फसल का नाम	बीज का प्रकार	प्रभेद का प्रकार	प्रभेद का नाम
1	Wheat	Other Seeds/Self Devloped Seeds	Other	Sartaj-303, Sartaj-404

2. कृषि निदेशालय के ज्ञापक-2408, दिनांक 09.06.2017 से राज्य में रिसर्व फसल प्रभेदों की बिक्री प्रतिबंधित की गई है, जिसका अनुपालन सुनिश्चित किया जाय।
सचिका संख्या-09/उपा० बीज/अनु०- 10/2019 के पृष्ठ 19/टि० एवं दिनांक- 12.02.2021 पर अंकित प्रस्ताव में कृषि निदेशक, बिहार, पटना का अनुमोदन प्राप्त है।

(संयुक्त पति त्रिपाठी)
संयुक्त निदेशक (शष्प) पफखान,
कृषि निदेशालय, बिहार, पटना।
दिनांक :- 855 /क०, पटना, दिनांक 15.02.2021

प्रतिनिधि:- मेसर्स सरताज सीड्स (एन० एच०-74, नियर प्रेम आश्रम, काशीपुर रोड, बागवाला, तहसील-रुद्रपुर, जिला-उधम सिंह नगर, उत्तराखंड), श्री अशोक कुमार, द्वारा-मेसर्स विश्वनाथ प्रसाद राजाराम, कचहरी रोड, कृषि उत्पादन बाजार समिति, जिला-बेगूसराय को सूचनाएं प्रेषित।

संयुक्त निदेशक (शष्प) उपादान,
कृषि निदेशालय, बिहार, पटना।

D:\an-09\an\an-36000\an-Enforcement 2020.docx
कृषि निदेशक के कार्यालय की वेबसाइट पर उपरोक्त सूचनाएं, पत्र संख्या-09/उपा० बीज/अनु०-10/2019



3. Attention of this Court has also been drawn to paragraphs 39 and 63 of the plaint, wherein, the plaintiff has stated with respect to its cause of action arising on 30th October, 2024. Paragraphs 39 and 63 of the plaint, read as under:

“39. The Plaintiff came to know about the infringing activities of the Defendants on 30 October 2024 when an operative of the Plaintiff, acting under the instructions of Mr. Amarendra Kumar Rakesh, who is the authorized representative of the Plaintiff, visited a third-party local retailer, "Bजारंग Galla Bhandar", located in Shoharba Ghat, Kusheshar Asthan, Darbhanga Bihar. During his visit, the operative came across certain wheat seed products with a packaging deceptively similar to that of the Plaintiffs "Shriram Super 303" wheat seeds product. The photographs captured by the operative, which was further shared with the representative of the Plaintiff, have been reproduced hereinbelow:





63. The cause of action first arose on 30 October 2024 when one of Plaintiff's operative visited a third-party local retailer in Darbhanga, Bihar, and came across wheat products being sold under the mark "Sartaj 303" in a green and white packaging, identical to that of Plaintiff's Shriram Super 303 wheat seed products. The cause of action continued to arise when the thirdparty local retailer produced an office memo issued by the Agricultural Department of Bihar Government in favour of the Defendants, allowing the sale of crop varieties "Sartaj 303" and "Sartaj 404" through their existing license No. 21/2020 in the state of Bihar. The cause of action further continued to arise when the Plaintiff came across the products "Sartaj 303" and "Sartaj 404", listed on Defendant Nos. 1 & 2's website [https://sartajseeds.com/bearing identical/deceptively similar marks and packaging as that of Plaintiff's registered marks "303", "Shriram](https://sartajseeds.com/bearing-identical/deceptively-similar-marks-and-packaging-as-that-of-Plaintiff's-registered-marks-303,-Shriram-Super-303,-Shriram-Super-404)

श्रीराम सुपर 303

सू. ३०३



Super 303", "Shriram Super 404", “ ”,



and “ ”for wheat seeds. Thus, the cause of action will continue to subsist until the Defendants are restrained by an order of injunction passed by this Hon'ble Court. ”



4. It is submitted that the aforesaid averments made on behalf of the plaintiff are totally false, as the plaintiff was aware about the defendants' mark and products since the year 2018, six years prior to the filing of the present suit. In this regard, learned Senior Counsel for the defendants has drawn the attention of this Court to the letter dated 20th November, 2018, which has been filed along with the documents of the defendants. The said letter has been written by the plaintiff and signed by the authorized signatory of the plaintiff, wherein, complaint has been made against the distributor of the defendants with respect to 'Sartaj 303' seeds, which is subject matter of the present plaint also.

5. Attention of this Court has been drawn to the colored photocopy of the original letter, which bears the stamp of Mr. Amarendra K. Rajesh, the Constituted Attorney of the plaintiff with his signatures in the said letter. The said letter dated 20th November, 2018 written on behalf of the plaintiff, has been signed by the same person, who is signatory to the present plaint.

6. Thus, it is submitted by learned Senior Counsel for the defendants that the plaintiff was aware of the mark of the defendants 6 years prior to the filing of the present suit.

7. It is submitted that the plaintiff has suppressed the material facts from this Court and has wrongly misled this Court into passing an *ex-parte* injunction by stating that the plaintiff came to know about the defendants only on 30th October, 2024, when the cause of action arose.

8. Attention of this Court has been drawn to paragraph 24 of the plaint, wherein, the plaintiff has claimed that their variety of 'Shriram Super 303' was introduced in the market in the year 2013 and 'Shriram Super 404' was introduced in the year 2015. Paragraph 24 of the plaint, reads as under:



“24. In addition to the above-mentioned statutory rights, the Plaintiff also has common law rights in its packaging and has been using unique colour combinations and packaging styles for different varieties of crop seeds being sold by the Plaintiff, which are distinct and recognized by its customers as an identification to Plaintiff's goods. Since the launch of its 303 and 404 wheat seeds in the market in 2013 and 2015, the Plaintiff has been selling its "Shriram Super 303" wheat seeds in a bag with a white and green color combination and its "Shriram Super 404" wheat seeds in a bag with a white and red color combination, both, with its registered device mark being used by the Plaintiff since 1968 in the agri-rural industry, comprising of a text "SHRIRAM" at the top and the picture of a wheat plant below



it in a hexagon shaped box, i.e., at the top, following the text "SHRIRAM SUPER 303 Wheat Seeds" or "SHRIRAM SUPER 404 Wheat Seeds" (in Hindi/English Languages) below the device, and thereafter followed by an image of a wheat



grain along with the stem of wheat plant, i.e.,

xxx xxx xxx”

(Emphasis Supplied)

9. Learned Senior Counsel for the defendants submits that, per contra, the defendants have been selling their products since the year 2014. Attention of this Court has been drawn to the invoice dated 28th October, 2014, which shows the sale of the product of the defendants since the year 2014. The said invoice dated 28th October, 2014 is reproduced as under:



INVOICE						1	
Sartaj Seeds Opp Unity Law College Near Prem Aarshram Keshipur Road Jafarpur E-Mail : sartajseeds7@gmail.com			Invoice No.	15		Dated	28-Oct-14
			Delivery Note			Mode/Terms of Payment	
Buyer (Bill to) Pargat Singh S/o Akshar Singh Padrikhera Silarganj, U S Nagar			Buyer's Order No.			Dated	
			Dispatch Doc No.	15		Delivery Note Date	
			Dispatched through	Trolley		Destination	
			Terms of Delivery				
Sl No	Description of Goods	Quantity	Rate	per	Amount		
1	Wheat Seeds for Sowing Sartaj 303	5,200 qtl	2,350.000	qtl	12,220.000		
2	Wheat Seed for Sowing Sartaj -404	2,000 qtl	2,050.000	qtl	4,100.000		
		Total	7,200 qtl			₹ 16,320.000	
Amount Chargeable (in words)						E. & O.E	
Indian Rupees Sixteen Thousand Three Hundred Twenty Only							
Company's VAT TIN : 05014873557			Company's Bank Details				
Company's CST No. : RU05014875557			A/c Holder's Name : Sartaj Seeds				
Declaration			Bank Name : Axis Bank				
We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.			A/c No. : 915030014847300				
			Branch & IFS Code : Rudrapur & UTIB0000176				
			SWIFT Code :				
Customer's Seal and Signature						for Sartaj Seeds	
						Authorised Signatory	

This is a Computer Generated Invoice

10. Thus, it is submitted that from the aforesaid, it is clear that the product of the defendants, 'Sartaj 404', has been in the market since 2014, which is prior to the 404 Wheat seeds of the plaintiff, which was introduced only in the year 2015.

11. Learned Senior Counsel for the defendants has also drawn the attention of this Court to the list of notified varieties, wherein, at serial no. 232, a variety, i.e., NP-404 is shown to be in use since 1965, with date of



notification being 01st January, 1967. The relevant portion of the document in question is reproduced as under:

“

List of Notified Varieties				10-4-2014	100
Group Name \ Crop Name \ Variety Name	Year of Release	Notification Date	Notification Number		
1 CEREALS					

xxx xxx xxx

232 NP-404

1965

01/01/1967

xxx xxx xxx”

12. Thus, learned Senior Counsel for the defendants submits that ‘404’ is a kind of variety of the seed, which has been in existence since a long time.

13. Learned Senior Counsel for the defendants has also drawn the attention of this Court to the invoice dated 21st October, 2015 of the plaintiff, wherein, ‘Shriram Super 404’ is shown to be sold. Thus, it is submitted that the sale of the defendants for the variety ‘404’ is much prior to that of the plaintiff.

14. Attention of this Court has also been drawn to a document showing the registration with number 303, in favour of a third party, by the name Nirmal-303 (Julie), showing the user detail from 01st January, 2002. The said document is reproduced as under:



As on Date : 15/01/2025

Status : Registered

[View TM Application](#) | [View Examination Report](#)

TM Application No.	1982417
Class	31
Date of Application	21/06/2010
Appropriate Office	MUMBAI
State	MAHARASHTRA
Country	India
Filing Mode	Branch Office
TM Applied For	NIRMAL-303 (JULIE)
TM Category	TRADE MARK
Trade Mark Type	WORD
User Detail	01/01/2002
Certificate Detail	Certificate No. 1173948 Dated : 19/06/2014
Valid upto/ Renewed upto	21/06/2030
Proprietor name	(1) NIRMAL SEEDS PVT LTD Body Incorporate
Proprietor Address	BHADGAON ROAD. PACHORA, TAL - PACHORA, DISTJALGAON - 424201
Email Id	
Attorney name	AGNIHOTRI & JHA ASSOCIATES[87]
Attorney Address	FLAT NO. 102, TULSI NIWAS, PUSHTIKAR SOCIETY, JOGESHWARI (W), MUMBAI 400 102
Goods & Service Details	[CLASS : 31] SEEDS FOR AGRICULTURAL AND HORTICULTURAL PURPOSE (NAMESLY; TREE, CROPS, FRUITS, CEREALS GRAINS, GRASS, SEEDS, AND BULBS).
Publication Details	Published in Journal No. : 1617-0 Dated : 02/12/2013

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15. Thus, it is submitted that the use of the number '303' by a third party is, 11 years prior to that of the claim of the plaintiff.

16. Learned Senior Counsel for the defendants submits that '303' and '404' are varieties of seeds, over which the plaintiff cannot claim monopoly. He, thus, submits that defendants have been in the market for more than 10 years and selling their products under the said numbers '303' and '404' under their own mark.

17. Learned Senior Counsel for the defendants further submits that though plaintiff claims to be using its packaging for a long time, no evidence of actual user of the packaging has been stated or produced.

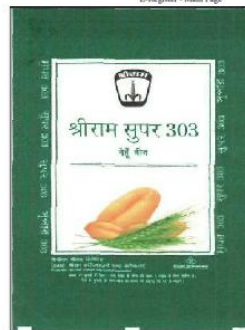


18. Attention of this Court has been drawn to the plaintiff's documents, wherein, the plaintiff has filed an application dated 26th September, 2019 for its device/packaging, with user detail shown as 'proposed to be used'. The said document is reproduced as under:

As on Date : 20/08/2024	View Registration Certificate
Status : Registered	View Examination Report
TM Application No.	4304648
Class	31
Date of Application	26/09/2019
Appropriate Office	DELHI
State	DELHI
Country	India
Filing Mode	Branch Office
TM Applied For	SHRIRAM SUPER 303
TM Category	TRADE MARK
Trade Mark Type	DEVICE
User Detail	Proposed to be used
Certificate Detail	Certificate No. 2421875 Dated : 14/03/2020 Notified in Journal No : 1946
Valid upto/ Renewed upto	26/09/2029
Proprietor name	(1) DCM SHRIRAM LIMITED Trading As : DCM SHRIRAM LIMITED Body Incorporate
Proprietor Address	1ST FLOOR, KANCHENJUNGA BUILDING, BARAKHAMBA ROAD, NEW DELHI-110001
Email Id	****orpusadv@gmail.com
Attorney name	LEX CORPUS[21971]
Attorney Address	SHRIRAM FERTILISERS & CHEMICALS (A UNIT OF DCM SHRIRAM LTD.), 2ND FLOOR, 19, KIRTI MAHAL, RAJENDRA PLACE, NEW DELHI-110008
Goods & Service Details	[CLASS : 31] SEEDS
Associated Trademarks	2546600
Publication Details	Published in Journal No. : 1925-0 Dated : 28/10/2019

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19. Issue notice. Notice is accepted by learned counsel appearing for the plaintiff.



20. Learned counsel for the plaintiff, on the other hand, draws the attention of this Court to the table showing the comparison of the trade dress of the plaintiff and the defendants. He submits that the defendants are using a similar packaging/ trade dress as that of the plaintiff and that there is deceptive similarity, thereto. He further draws the attention of this Court to the report filed by the Local Commissioner to submit that the Local Commissioner was manhandled and there was huge resistance from the defendants in the execution of the local commission. He submits that on account thereto, police complaint had to be filed by the plaintiff as well as by the Local Commissioner against the defendants.

21. He further draws the attention of this Court to the notice dated 07th October, 2013 to show that the number '303' has been used by the plaintiff, since the year 2013.

22. Learned counsel for the plaintiff submits that the defendants had copied the device mark of the plaintiff, as well as the picture of the wheat, which is likely to create deception in the minds of the consumers.

23. I have heard learned counsel for the parties and have perused the record.

24. Considering the aforesaid discussion, this Court is *prima facie* of the view that the plaintiff did not approach this Court with clean hands when it made the assertion that it discovered about the defendants only in October, 2024. The documents filed by the defendants clearly show that the plaintiff was aware of the defendants since the year 2018.

25. This Court has also perused the documents which clearly show that the defendants have been conducting its business under its mark '303' and '404' for more than 10 years, since 2014.



26. Considering the facts of this case, it is *prima facie* established that the plaintiff is guilty of material suppression and misrepresentation before this Court. Further, the plaintiff is also guilty of non-compliance in terms of Order XI of the CPC, as amended by the Commercial Courts Act, 2015, wherein, a party is required to disclose all the documents in its power, possession, control or custody, pertaining to the suit, along with the plaint. Further, Order XI Rule 12 of CPC, casts a duty upon the parties to disclose all documents, which shall continue till disposal of the suit. The Order XI Rule 1 and 12 of CPC reads as under:

“ORDER XI

*Disclosure, Discovery and Inspection of Documents in Suits Before the
Commercial Division of a High Court or a Commercial Court*

1. Disclosure and discovery of documents.— (1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:

(a) Documents referred to and relied on by the plaintiff in the plaint;

(b) Documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiffs case;

xxx xxx xxx

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

xxx xxx xxx”

27. In a similar matter, where a party misrepresented the occurrence of the cause of action and all the facts were not brought before Court, this Court in the case of ***Tata Sons Private Limited & Anr. Versus Marvel Limited, CS(COMM) 724/2024***, vide order dated 23rd October, 2024, had proceeded to vacate the stay on the same day.



28. In the judgment dated 14th December, 2023, in the case of *Freebit AS Versus Exotic Mile Private Limited, 2023 SCC OnLine Del 8213*, this Court while holding that a plaintiff approaching the court for equitable relief has to approach with clean hands, has held as follows:

“xxx xxx xxx

36. *In Satish Khosla v. M/s. Eli Lilly Ranbaxy Ltd. [71 (1998) DLT 1 (DB)]*, the ld. Division Bench of this Court has underscored the importance of candour and forthrightness in instituting legal proceedings. It is incumbent upon a Plaintiff that approaches the Court to approach the Court with ‘clean hands’, a principle that mandates the full disclosure of all relevant and material facts. This disclosure is not limited to facts that bolster a party's case but extends to all information that could potentially aid in a comprehensive and fair adjudication of the dispute. The duty of disclosure encompasses not only the submission of all documents pertinent to the current litigation but also an obligation to inform the Court of any previous litigations between the parties, any previous litigations concerning the suit patent, along with their respective outcomes. Such transparency is indispensable for ensuring that the Court has a complete and unobscured view of the relevant factual landscape, which is crucial for the fair dispensation of justice. The relevant extract of the said decision is set out below:

15. *In S.P. Chengalvaraya Naidu v. Jagannath and Others, AIR 1994 SC 853* it was held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

16. ...

... It is contended by Mr. Oberoi, appearing on behalf of the respondent that the respondent had no intention or motive to suppress the pendency of the earlier application in which the stay was not granted and having disclosed in the plaint that a suit between the parties was pending, it was not relevant or necessary to mention that in the said suit the Court had not



granted any stay in its favour. In our view, the arguments are wholly fallacious. A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which are relevant to the litigation and he must also disclose to the court about the pendency of any earlier litigation between the part is and the result thereof. ...

... In our opinion, it was obligatory upon the respondent to disclose to the Court that in the application filed in the earlier suit a similar relief had been claimed, however, the Court had not granted the said relief. In our view, if these facts were before the Court on February 6, 1997 when the second suit came up for hearing before it, may be Hon'ble the Single Judge was persuaded not to grant any ex parte stay in favor of the respondent. Moreover, in a suit for specific performance of an agreement to register the agreement of lease, it appears to us that the plaintiff could not claim an injunction which had already been claimed in Suit No. 3064/96. We are, Therefore, of the opinion that the respondent has not come to the Court with clean hands and has also suppressed material facts from the Court with a view to gain advantage in the second suit. This in our view is clearly over reaching the Court.”

*37. The Supreme Court in **Arunima Baruah v. Union of India (UOI)** [MANU/SC/7366/2007] emphasised the importance of the maxim “He who comes into equity must come with clean hands.” The Supreme Court ruled that suppression of material facts by a party can impact their right to equitable relief. This principle would also be relevant in a suit for patent infringement, where the Plaintiff’s failure to disclose revocations or invalidations of corresponding foreign patents of the asserted patent has a material bearing on the case. Such suppression and misrepresentation would undoubtedly affect the Court’s willingness to grant equitable relief, as it contradicts the principle of approaching the court with clean hands.*

*38. Vide judgement dated 29th July, 2010, a ld. Single Judge of this Court, in **Charanjit Thukral and Ors. v. Deepak Thukral and Ors.** (2010:DHC:3737) again emphasised that Plaintiffs seeking relief from the Court, whether equitable or otherwise, are obligated to honestly disclose all material facts relevant to a case. Plaintiffs seeking an injunction must inform the Court of all material facts pertinent to their claim for an injunction. Failure to do so, even under the guise of being unaware of the significance of any omitted facts, is not permissible. Court possesses the inherent authority to deny an injunction if the plaintiff acts in bad faith or withholds any material facts. The relevant extracts of the said decision are set out*



below:

17. Interim order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fate accompli before the final hearing. The purpose of an interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial.

18. It is settled principle of law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which has bearing on the adjudication of the issues raised in the case. It is the duty of the party asking for an injunction to bring to the notice of the Court all facts material to the determination of his right to have injunction and it is not an excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. Where plaintiff does not act bona fide and does not put every material facts before the Court, the Court is within its inherent power to refuse to grant him injunction, even though there might be facts upon which injunction might be granted. Conduct of the plaintiff is very material in bringing the case and disclosing the facts before the Court. plaintiff is required to make fullest possible disclosure of all material facts within his knowledge to the Court and if he does not make that fullest possible disclosure, he cannot obtain any advantage from the proceedings and is liable to be deprived of any advantage he might have already obtained by means of the order which has thus wrongly been obtained by him by concealment of material facts.

39. The specific view that suppression and misrepresentation can have a bearing on interim injunction application, especially in the context of IP disputes, was upheld by a ld. Single Judge of this Court in *Aura Synergy India Ltd & Anr v. M/s New Age False Ceiling Co Pvt Ltd*, [2016:DHC:1109]. The said decision has also been approved by the ld. Division Bench vide judgement dated 18th November, 2016 in *Aura Synergy India Ltd & Anr v. M/s New Age False Ceiling Co Pvt Ltd*, [2016:DHC:7530-DB].

xxx xxx xxx”

(Emphasis Supplied)

29. In the above cited judgment, reference has been made to the judgment



of the Supreme Court in the case of *Kishore Samrite Versus State of U.P. and Ors.*, (2013) 2 SCC 398, wherein, with regard to suppression and misrepresentation, it has been held as follows:

“xxx xxx xxx

38. No litigant can play “hide and seek” with the courts or adopt “pick and choose”. True facts ought to be disclosed as the court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court. (K.D. Sharma v. SAIL [(2008) 12 SCC 481].)

xxx xxx xxx”

(Emphasis Supplied)

30. Judgment of learned Single Judge in *Freebit AS (Supra)* was carried in an appeal. The learned Division Bench vide its judgment dated 31st January, 2024 in the case of *Freebit AS Versus Exotic Mile Private Limited, 2024 SCC OnLine Del 5361*, has held as follows:

“xxx xxx xxx

19. Undeniably, the errors as pointed out above are significant and adverse to the appellant's case. Given the vast extent of incorrect presentation, the fact that the appellant had correctly disclosed that its application for European Patent was revoked by the European Patent Office, does not mitigate the overall misrepresentation on the part of the appellant. Revocation of patent in one jurisdiction, while persisting in a large number of jurisdictions would suggest that the case of revocation is just one-of aberration. However, revocation of the patent and refusal to grant the same in several jurisdictions would suggest that there is a serious challenge to the validity of the patent.

20. In view of the above, the conclusion of the learned Single Judge that the appellant had suppressed and misrepresented material facts, cannot be faulted. There is no cavil that an interim relief under Order XXXVII Rule 1 and 2 of the CPC are discretionary reliefs and suppression or misrepresentation of facts by a party disentitles it to such a relief.

21. The learned Single Judge had referred to an earlier decision of



this Court in Satish Khosla v. Eli Lilly Ranbaxy, 1997 SCC OnLine Del 935. In this case the Court had rejected the suit on account of the failure to disclose earlier proceedings. In addition, the learned Single Judge had also referred to various authorities where the courts had declined relief on account of misrepresentation on the part of the party seeking relief. There is no cavil that in cases where a party seeking interim relief has withheld necessary information and misrepresented material facts, it would be disentitled for equitable relief. We are, thus, unable to accept that the learned Single Judge had disregarded any settled principles of law in rejecting the appellant's application for interim relief.

xxx xxx xxx”

(Emphasis Supplied)

31. A Co-ordinate Bench of this Court in the case of ***Kent Ro System Ltd. and Another versus Gattubhai and Others, 2022 SCC OnLine Del 791***, while holding that vacation of stay is liable to be granted on suppression and concealment alone, has held as follows:

“xxx xxx xxx

23. Furthermore, a party that approaches the court for a grant of discretionary relief has to come with clean hands and disclose all material facts, which would have a bearing on the merits of the case. It has been held in *Wheels India v. S. Nirmal Singh* [*Wheels India v. S. Nirmal Singh, 2009 SCC OnLine Del 3251*] and *Seemax Construction (P) Ltd. v. State Bank of India* [*Seemax Construction (P) Ltd. v. State Bank of India, 1991 SCC OnLine Del 668 : AIR 1992 Del 197*], that the orders granting injunction, which are obtained on account of deliberate suppression of material facts, are liable to be vacated on the ground of suppression and concealment alone. The observations of this Court in *Wheels India* case [*Wheels India v. S. Nirmal Singh, 2009 SCC OnLine Del 3251*] are set out below:

“18. The plaintiff, therefore, has disentitled itself to the equitable relief of injunction on account of deliberate suppression of material facts in the plaint as well as suppression of documentary evidence from the scrutiny of this Court. Concealment of material facts or documents deserves to be seriously viewed, for one who comes to the court owes a duty to the court to disclose all facts and documents to the court. The contention of the plaintiff in the instant case that it had disclosed in the plaint that it was purchasing goods from the defendants is neither here nor there. The plaintiff deliberately and intentionally, in my view, hid from the court the fact that Defendant 2, M/s



Prince Auto Industries had been dealing with the same goods, viz. wheel covers and auto accessories and had made a mark in its field of activity well before the plaintiff got registered the trade mark 'Prince'. The plaintiff also hid from the court the exact relationship between the plaintiff and the defendants and that there were written agreements to ensure the smooth working of the said relationship duly executed by the parties and registered with the statutory authorities. The reason for suppression of such material facts is clearly discernible. Had the plaintiff stated in the plaint that Defendant 2 had been in the same field of activity from the year 1998 under the trade name 'Prince Automobile Industries' and had the plaintiff further stated in the plaint that it had been working as the authorised stockiest of the plaintiff from the year 2001 to the 15-9-2004, the plaintiff, in my view, may not have succeeded in obtaining an ex parte ad interim injunction from this Court, which is enuring to the benefit of the plaintiff till date, though with some modification."

*24. In the present case also, the aforesaid documents were deliberately not disclosed by the plaintiffs to the court as the same were detrimental to the case of the plaintiffs. **If the aforesaid documents were disclosed, it is possible that the court would not have granted the ex parte ad interim injunction in favour of the plaintiffs. Concealment of material facts and documents is a serious matter and sufficient for disqualifying a litigant from obtaining relief.** Reference in this regard has been rightly made by the counsel for the defendants to the judgments in S.J.S. Business Enterprises (P) Ltd. case [S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166] and Harkirat Singh case [Harkirat Singh v. Amrinder Singh, (2005) 13 SCC 511].*

*25. **Therefore, the ex parte ad interim injunction granted in favour of the plaintiffs by this Court vide order dated 13-8-2019 is liable to be vacated on the grounds of gross suppression and concealment of material facts alone.***

xxx xxx xxx"

(Emphasis Supplied)

32. Similarly, the Supreme Court in the case of ***High Court Bar Association, Allahabad Versus State of Uttar Pradesh and Others, (2024) 6 SCC 267***, while elucidating on the power of High Courts to vacate or modify an order of interim relief, has held as follows:



“xxx xxx xxx

17. The High Courts are always empowered to vacate or modify an order of interim relief passed after hearing the parties on the following, amongst other grounds:

17.1. If a litigant, after getting an order of stay, deliberately prolongs the proceedings either by seeking adjournments on unwarranted grounds or by remaining absent when the main case in which interim relief is granted is called out for hearing before the High Court with the object of taking undue advantage of the order of stay;

17.2. The High Court finds that the order of interim relief is granted as a result of either suppression or misrepresentation of material facts by the party in whose favour the interim order of stay has been made; and

17.3. The High Court finds that there is a material change in circumstances requiring interference with the interim order passed earlier. In a given case, a long passage of time may bring about a material change in circumstances.

18. These grounds are not exhaustive. There can be other valid grounds for vacating an order of stay.

xxx xxx xxx”

(Emphasis Supplied)

33. Considering the facts and circumstances of the present case and considering the fact that the injunction order dated 08th November, 2024, was passed on a *prima facie* case made out by the plaintiff, this Court is of the view that a *prima facie* case has now been made by the defendants in their favour with respect to vacation of the stay.

34. Thus, the injunction order dated 08th November, 2024 passed by this Court is hereby vacated. The defendants are free to carry on their business lawfully and sell their products in the market. Further, the products that were seized by the Local Commissioner are directed to be released to the defendants and the defendants are held entitled to market the said products, in the course of their business.

35. Let reply be filed by the plaintiff within a period of four weeks.



Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

36. This Court takes note of the submissions made by learned counsel for the plaintiff that the trade dress of the packaging of the plaintiff and the defendants' is deceptively similar, which is denied by learned Senior Counsel for the defendants.

37. It is to be noted that the target consumers of the plaintiff and defendants are mostly from rural areas, who would buy the said products only upon seeing the packaging.

38. Learned Senior Counsel for the defendants submits that on the aspect of packaging, the matter can be referred to mediation, without prejudice to their rights and contentions.

39. Learned Counsel for the plaintiff also expresses his consent with respect to referring the matter to mediation.

40. Accordingly, with the consent of the parties, the matter is referred to Delhi High Court Mediation and Conciliation Centre, to be listed before the learned Mediator on 27th January, 2025.

41. List before the Court on 10th March, 2025.

MINI PUSHKARNA, J

JANUARY 17, 2025

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