



2024:DHC:9855-DB



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

Date of decision: 20.12.2024

+ **FAO (COMM) 246/2024**

AISHWARYA AGRIPROCESSORS PVT LTD AND ANR

.....Appellants

Through: Mr. Deepak Jain, Ms.
Anoushka Singh, Mr.
Dashampreet Kaur, Ms.
Twinkle Gupta, Mr. Sajal
Gupta and Mr. Arsh Raina,
Advs.

versus

**SRI AISHWARYA FOOD INDUSTRIES PVT LTD AND
ANR**

.....Respondents

Through: Mr. Jayant Mehta, Sr. Adv.
with Mr. Himanshu Deora, Ms.
Anupriya Alok, Ms. Aashita
Khandelwal and Mr. Jasleen
Virk, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CAV 629/2024

1. Since the learned counsels for the caveators/respondents have put in their appearance, the caveat stands discharged.

CM APPL. 75238/2024, CM APPL. 75239/2024 & CM APPL. 75240/2024 (Exemption)

2. Allowed, subject to all just exceptions.

FAO (COMM) 246/2024 & CM APPL. 75237/2024

3. This appeal has been filed challenging the Order dated



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20.09.2024, passed by the learned District Judge (Commercial Court)-08, Central District, Tis Hazari Courts, Delhi (Trial Court) in CS(COMM.) No. 1046/2024, titled *Sri Aishwarya Food Industries Pvt. Ltd. vs. Aishwarya Agriprocessors Pvt. Ltd.*, granting an *ad-interim ex-parte* order restraining the appellants from selling, marketing, advertising, using in any manner whatsoever any product under the mark 'Aishwarya/Aiswarya'.

4. The Appellants further challenge the order dated 13.12.2024 passed by the learned Trial Court, dismissing the application filed by the appellants herein under Order XXXIX Rule 4 of Code of Civil Procedure, 1908 (for short, 'CPC') seeking the vacation of the *ad interim ex-parte* Order dated 20.09.2024.

5. Issue notice.

6. Notice is accepted by Mr. Himanshu Deora, the learned counsel on behalf of the respondents.

7. The learned senior counsel appearing on behalf of the respondents fairly states that the impugned order dated 13.12.2024, being unreasoned, may be set aside, and the matter be remanded back to the learned Trial Court for a fresh consideration of the application filed by the respondents under Order XXXIX Rules 1 and 2 of the CPC and the application filed by the appellants under Order XXXIX Rule 4 of the CPC.

8. In view of the above submissions, the order dated 13.12.2024 passed by the learned Trial Court is set aside.

9. Having perused the impugned order, we are of the opinion that it would be in the fitness of things that the said suit be transferred to



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another Commercial Court within the same District by the Principal District and Sessions Judge (Central), to be listed on 24th December, 2024.

10. The applications shall be considered by the transferee Judge, remaining completely uninfluenced by the observations made in the impugned order, and decide the applications afresh within a period of three weeks of the first date of hearing. We make it clear that we have not expressed any opinion on the merits of the case of either of the parties.

11. The learned counsel for the appellants further prays for the waiver of the costs that was imposed by the learned District Judge for taking the written statement on record. He submits that there was a delay of 8 days in filing of the written statement as the appellants are not situated at Delhi.

12. For the reasons stated, the costs imposed by the impugned order dated 13.12.2024 for condoning the delay in filing the written statement shall stand waived.

13. The appeal, along with pending applications, is disposed of in the above terms.

14. Order *dasti* under the signatures of the Court Master.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 20, 2024

SU/SK/DG

Click here to check corrigendum, if any