

Emami Ltd vs.dabur India Ltd

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SooperKanoon Citation : sooperkanoon.com/1219686

Court : Delhi

Decided On : Dec-03-2018

Appellant : Emami Ltd

Respondent : Dabur India Ltd

Advocate for Def. : Mr. Hemant Singh, Ms. Mamta Rani Jha, Mr. Manish Kumar Mishra

Advocate for Pet/Ap. : Mr. Rajiv Nayar, Mr. Abhimanyu Bhandari, Ms. Roohina Dua, Mr. Anirudh Bakhru, Mr. Cheitanya Madan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

3. d December, 2018 % FAO(OS) (COMM) 285/2018 & CAV. Pet. No.1113/2018 and CM. Nos. 50290/2018 and 50291/2018 + EMAMI LTD Through: Mr. Rajiv Nayar, Sr. Adv. with .Appellant Mr. Abhimanyu Bhandari, Ms. Roohina Dua, Mr. Anirudh Bakhru and Mr. Cheitanya Madan, Advs. versus DABUR INDIA LTD

... RESPONDENTS

Through: Mr. Hemant Singh, Ms. Mamta Rani Jha, Mr. Manish Kumar Mishra and Akansha Singh, Advs. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V. KAMESWAR RAO V. KAMESWAR RAO, J.

(ORAL) CAV. Pet. 1113/2018 As learned counsel for the caveator appears, caveat stands discharged. CM. No.50291/2018 (for exemption) Exemption allowed subject to all just exceptions. Application stands disposed of. FAO(OS) (COMM) 285/2018 1. The present appeal has been filed by the appellant challenging the order dated 27th November, 2018 passed in IA No.16105- 16106/2018, whereby the learned Single Judge has directed the FAO (OS) (COMM.) 285/2018 Page 1 of 5 appellant to withhold the printing, publishing and broadcasting of the impugned advertisement till the next date of hearing as according to the learned Single Judge the impugned advertisement of the appellant is misleading unfair, deceptive and appears to have been created with a dishonest intention to disparage the respondent's product.

2. The challenge of the respondent before the learned Single Judge was that the appellant has started impugned advertisement campaign (at Annexure A-5, Page 56) of the paper book, on 13th November, 2018 that Chyawanprash is nothing but sugar, and is harmful. It was the contention of the learned counsel for the respondent that the advertisement which shows the father eating Chyawanprash, and the child as well as the mother telling the father that he is eating sugar, disparages and denigrates Chyawanprash. The last frame showing the appellant's product removing the spoonful of Chyawanprash further adds to denigration of Chyawanprash and projects it in bad light.

3. It is the case of the respondent that the television commercial has been made to disparage the entire category of Chyawanprash by creating fear in the mind of the consumers that it contains high level of sugar and is therefore inferior, unhealthy and an incorrect choice and indeed that the consumer should turn to the product of the appellant herein. In other words, the appellant herein, in the present FAO (OS) (COMM.) 285/2018 Page 2 of 5 advertisement, has called Chyawanprash as sugar, without acknowledging its therapeutic and medicinal benefits. The appellant has further used the sentence / phrase "ab chini wali immunity bhagaiye", which is a clear indication to the consumers not to buy Chyawanprash. Learned Single Judge had suggested to the appellant to withhold the impugned advertisement till the next date of hearing, i.e., 8th January, 2019. However, the said suggestion

was not acceptable to the appellant herein. Pursuant thereto, the learned Single Judge has passed the aforesaid order.

4. We have heard the learned counsel for the parties. During the course of his submissions, Mr. Rajiv Nayar, learned Sr. Counsel appearing for the appellant submits that the basis for the respondent to file the suit seeking injunction on the alleged ground that the appellant's advertisement is misleading unfair, deceptive and is sought to be issued with a dishonest intention to disparage the respondent's product is because of the depiction of the bottle in white and red colour, which according to the respondent herein depicts its bottle of Chyawanprash. He submits that the appellant herein is ready and willing to replace the said bottle in the advertisement with a bottle of the appellant's own product / Zandu Chyawanprash wherever it occurs in the advertisement. He states that the very basis FAO (OS) (COMM.) 285/2018 Page 3 of 5 on which the allegations as afore-stated are being made shall not subsist and the stay needs to be vacated. He states, the appellant shall continue this depiction in the advertisement till the next date of hearing before the learned Single Judge on 8th January, 2019 as according to him, it is this period where there is maximum consumption of Chyawanprash.

5. Mr. Hemant Singh, learned counsel appearing for the respondent, on this submission of Mr. Nayar, states that the appellant must also ensure that the printing on the bottle of the appellant", as proposed to be used in the subject commercial, should also depict the words "Zandu Chyawanprash". If this being the submission made by Mr. Singh, we are of the view that even the bottle of red and white depicted in the impugned advertisement, supposed to be relating to the respondent herein, does not depict any words on the same.

6. There is no denial of the fact that the colour of green and yellow is the colour of the bottle of the appellant herein and is different from the bottle of the respondent herein. We take the submission of Mr. Nayar on record. The appellant shall carry out necessary changes in the advertisement and thereafter proceed to advertise the product. This arrangement shall continue till the next date, i.e., 8th January, 2019, when the suit is listed before the learned Single Judge. The order dated

27th November, 2018 is modified to that extent. FAO (OS) (COMM.) 285/2018
Page 4 of 5 The appeal stands disposed of. CM. No.50290/2018 (for Stay)
Dismissed as infructuous. V. KAMESWAR RAO, J DECEMBER03 2018/jg CHIEF
JUSTICE FAO (OS) (COMM.) 285/2018 Page 5 of 5

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