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

+ **CS(COMM) 145/2023 & I.As. 4912/2023, 4913/2023,
4914/2023, 4915/2023, 4916/2023**

RSPL HEALTH PRIVATE LIMITED Plaintiff

Through: **Mr. S K Bansal, Mr. Pankaj
Kumar and Mr. Neeraj
Bhardwaj, Advocates.**

versus

**RECKITT AND COLMAN OVERSEAS HYGIENE HOME
LTD. & ORS.** Defendants

Through: **Mr. Chander Mohan Lall, Sr.
Advocate with Ms. Nancy Roy,
Ms. Ananya Chugh, Ms.
Prakriti Varshney, Ms. Astha
Kakkar and Ms. Nida Khanam,
Advocates.**

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER
28.03.2023**

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1. Mr. S K Bansal, learned Counsel for the plaintiff, alleges infringement, by the defendant, of the device mark registration held by the plaintiff in which according to the plaintiff, 'XPERT' is the prominent part.



2. Mr. Bansal contends that by using a device mark which includes the word "XPERT" the defendant is infringing the plaintiff's registered marks.

3. The matter merits consideration. However as the defendant



holds a registration for a word mark “HARPIC DRAIN XPERT” in classes 3 and 5 of the NICE classification, I am of the opinion that, in view of Section 31 of the Trademarks, Act, 1999 the defendant ought to be permitted to file a reply to this application before it is taken up for hearing.

4. In the circumstances, let the plaint be registered as a suit. Issue summons in the suit.

5. Ms. Nancy Roy, learned Counsel for defendant accepts notice.

6. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendant within 30 days thereof.

7. List before the learned Joint Registrar (Judicial) for completion of the pleadings, admission and denial of documents and marking of exhibits on 30th May 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 4912/2023(Order XXXIX Rule 1 & 2)

8. Issue notice. Ms. Nancy Roy, learned Counsel for defendant accepts notice.

9. Reply be filed within two weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any,

within one week thereof.



10. Re-notify on 1st May 2023.

I.A. 4913/2023(Order XI Rule 1(4))

11. This application seeks permission to file additional documents.

12. The plaintiffs are permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.

13. The application stands disposed of accordingly.

I.A. 4914/2023(Exemption from filing clear/legible copies, English translation of vernacular documents and documents with proper margins)

14. Allowed, subject to all just exceptions.

15. Application is disposed of.

I.A. 4915/2023(Exemption From Pre-Institution Mediation Under Section 12 A)

16. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*¹, the application is allowed, to the extent of exemption from the

¹ 2022 SCC OnLine Del 3529
CS(COMM) 145/2023



requirement of pre-institution application under Section 12A of the Commercial Courts Act, 2015.

17. The application stands disposed of.

I.A. 4916/2023(Order XXVI Rule 9 And Order XXXIX Rule 7 CPC)

18. Issue notice, returnable on 1st May, 2023.

19. Ms. Nancy Roy, learned Counsel for defendant accepts notice.

20. Reply be filed within two weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any, within one week thereof.

C.HARI SHANKAR, J

MARCH 28, 2023/st