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

+ **CS(COMM) 512/2020**

I.A.10732/2020 (under Order XXXIX Rule 1 and 2 CPC)

SOPARIWALA EXPORTS & ANR.

..... Plaintiffs

Represented by: **Mr. Pravin Anand, Advocate with
Ms. Jaya Negi, Advocate.**

versus

MR.HAJI IQBAL AHMED ANSARI

TRADING AS M/S AFZAL BIDI CO. & ANR. Defendants

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **19.11.2020**

The hearing has been conducted through Video Conferencing.

I.A.10734/2020 (Exemption)

1. Exemption allowed subject to just exceptions.
2. Application is disposed of.

I.A.10733/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.
2. Application is disposed of.

CS(COMM) 512/2020

I.A.10732/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as suit.
2. Issue summons in the suit and notice in the application to the defendants on the plaintiffs taking steps through Email, SMS, Whatsapp, speed post and courier, returnable before the learned Joint Registrar on 19th



January, 2021 for completion of service, pleadings and admission-denial of documents.

3. List the suit and the application before Court on 26th April, 2021.
4. Written statement to the suit and reply affidavit to the application along with affidavit of admission-denial be filed within 30 days.
5. Replication and rejoinder affidavit along with affidavit of admission-denial be filed within three weeks thereafter.
6. Plaintiffs claim that the plaintiff No.1 which is a registered partnership firm first used the trademark 'AFZAL' for its tobacco products in the year 1977 and thereafter on 20th November, 1985 applied for the registration of its device mark 'AFZAL DE. OF HUKKA' in Class 34 of tobacco products. The plaintiff No.1 also applied for the registration of the word mark 'AFZAL' in Class 34 on 27th November, 1986 which registrations were granted to the plaintiff No.1.
7. Plaintiff No.2 has been issued 'Licensed User Agreement' by the plaintiff No.1 for the use of the trademark 'AFZAL' as well as other 'AFZAL' formative trademarks, in India and for export with effect from 15th September, 2006 for a period of 10 years. The said 'Licensed User Agreement' was further extended by another 'Trademark License Agreement' for an infinite term.
8. As on date the plaintiffs have more than nine registrations, out of which more than three registrations are for the word mark 'AFZAL' whereas more than six device marks are registered in favour of the plaintiffs. The plaintiffs have registrations of its trademarks in various other countries besides India and claim to enjoy long, extensive and continuous use of the trademarks in relation to very fine quality of tobacco products and thus,



having attained even Common Law Rights in the said trademarks.

9. Grievance of the plaintiffs against defendant Nos.1 and 2, who are the partners of M/s. Afzal Bidi Company carrying on its business from House No. 758, Mohalla Qureshi, Distt. Amroha-244221, Uttar Pradesh is that the defendants are infringing the plaintiffs mark by selling *Bidis* and *Khaini* under the mark 'AFZAL BIDI No. 90' and 'AFZAL TAMBAKU No. 90.'

10. The defendant No.1 has also applied for registration of the device mark which is pending consideration and has been opposed by the plaintiffs.

11. The plaintiff's investigator further reveals that the defendants are also selling their products under the mark 'A-ONE CHAP TAMBAKU NO.90' and 'A-ONE BIDI NO.90', to which the plaintiffs have no objection.

12. Considering the averments in the plaint as also the nature of documents filed therewith the plaintiffs have made out a *prima facie* case in their favour and in case *no ex parte ad interim* injunction is granted, the plaintiffs would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiffs and against the defendants.

13. Consequently, till the next date of hearing an *ex parte ad interim* injunction is granted in favour of the plaintiffs and against the defendants in terms of prayer (a) in Para 22 of I.A.10732/2020.

14. Compliance under Order XXXIX Rule 3 CPC be done within one week.

15. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

NOVEMBER 19, 2020/vk