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

I.A. 45368/2024

In

+ **CS(COMM) 834/2023**

UPAKARMA AYURVEDA PRIVATE LIMITEDPlaintiff

Through: Mr. Jayant Mehta, Sr. Advocate with
Mr. Hemant Daswani, Ms. Saumya
Bajpai, Ms. Pranjal, Ms. Tina Aneja,
Advocates.

versus

RASAYANUM ENTERPRISESDefendant

Through: Mr. Anil Goel, Advocate

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

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19.11.2024

I.A. 45368/2024 (under Order XXXIX Rule 2A CPC)

1. This application has been filed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 alleging wilful disobedience by the respondents of the order passed by this Court on 22nd March, 2024.

1.1 On the date first date of hearing i.e., 21st November 2023, an *ex-parte ad-interim* injunction was granted in favour of the plaintiff, restraining the

defendant from using the following trade dress .

1.2 In light of the aforesaid order, the defendant adopted a different



packaging for their 20gram product being



and also

introduced a new packaging in 10 gram being



1.3 Subsequently, *vide* order dated 22nd March, 2024, this Court decided the I.A. 23080/2023 (*application under Order XXXIX Rules 1 and 2 of CPC*). The operative directions passed by this Court in the aforesaid order, are set out hereinafter:

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35.1 Defendant's new 10gm packaging ' is not violative of the injunction order granted by this Court on 21st November, 2023;

35.2 Defendant's new packaging of the 20gm product



' which introduced important elements of differentiations continues to be deceptively similar to that



of the plaintiff's product only regarding the colour combination;"

1.4 To be noted, the order dated 22nd March, 2024 has been upheld by the Division Bench *vide* order dated 18th September, 2024.

2. Mr. Jayant Mehta, senior counsel appearing on behalf of the applicant/plaintiff has drawn the attention of this Court to screenshots from the third-party websites including Amazon, where the impugned product is being listed/advertised/offered for sale and the name of the seller shown therein is that of the respondents. (*Document-D and E to the application*)

3. Mr. Mehta has further drawn the attention of this Court to the two invoices both dated 29th October, 2024 to show that the impugned products are still being sold by the respondents. (*Document-F to the application*)

4. Mr. Mehta submits that this is the third application under Order XXXIX Rule 2A of the CPC alleging wilful disobedience of the orders passed by this Court which demonstrates that the respondents have repeatedly been violating the orders of this Court.

5. Issue Notice

6. Notice is accepted by counsel for non-applicants *i.e.*, respondent no.2 and respondent no.3 (*alleged contemnors*).

7. Issue notice to respondent no.1/alleged contemnor no.1 *via* all permissible modes including email.

8. Reply be filed within two (2) weeks.

9. Rejoinder thereto, if any, be filed before the next date of hearing.

10. Based on the submissions noted above, a *prima facie* case of contempt is made out.

11. Accordingly, all the aforesaid non-applicants/respondents *i.e.*, Mr.



Ayush Aggarwal, Ms. Riddhi Agarwal and Ms. Archana Aggarwal shall be physically present in Court on the next date of hearing.

12. It is further directed that the respondents shall take down and/or take steps to take down all listings of the impugned product from the various e-commerce platforms, details of which are given in the Document-D and E attached with the application.

12.1 A communication to all the aforementioned platforms shall be sent within four (4) days from today.

12.2 An affidavit shall be filed on behalf of the respondents within three (3) weeks annexing all the communications sent by the respondents and response(s) received, if any.

13. At this stage, Mr. Mehta makes a request for appointment of a Local Commissioner to visit the premises of respondent in order to make an inventory of the infringing goods.

14. I am inclined to accede to the said request.

15. Accordingly, Mr Rahul Mourya, Advocate (Mobile No.+91-7834933890) is appointed as the Local Commissioner to visit the premises of the respondent i.e., “Rasayanum Enterprises” situated in:

‘Rasayanum Enterprises
Basement, Plot No. 794,
Sector 16, Faridabad - 121002
Haryana
Email: contact@rasayanam.in’

AND

‘Rasayanum Enterprises
Plot No. 697, Sector 69 IMT HSIIDC,
Faridabad- 121 004, Haryana’



16. The following directions are passed in this regard:

- I. The Local Commissioner, along with a representative of the applicant and its counsel, shall be permitted to enter upon the premises of the respondent mentioned above or any other location/premises that may be identified during the course of commission.
- II. The Local Commissioner shall make an inventory of all



infringing products bearing the trade dress



and being sold by the respondents.

- III. The Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing products of the respondent.
- IV. The respondent(s) and their representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
- V. The Local Commissioner shall have the liberty to take photographs and/or videos of the inventory stock and to take a sample of the same to be filed along with the report.



17. The Local Commissioner shall file its Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

18. The fees of the Local Commissioner, to be borne by the plaintiff, is fixed at Rs.1,25,000/-. The plaintiff shall also bear expenses for travel and other miscellaneous out-of-pocket expenses for the execution of the commission.

19. The application stands disposed of in the above terms.

20. *Dasti.*

AMIT BANSAL, J

NOVEMBER 19, 2024/PB