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

+ **CS(COMM) 944/2016**

M/S DRS LOGISTICS (P) LTD. & ANR. Plaintiffs

Through: Mr. Chander M. Lall, Ms. Nancy Roy
& Mr. Rupin Bahl, Advs.

versus

PRS AGARWAL PACKEERS & MOVERS PVT. LTD. & ORS.

..... Defendants

Through: Mr. L.B. Rai & Mr. Abhishek Yadav,
Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **08.03.2017**

**IA No. 2245/2014 (under Order 39 Rules 1 & 2 CPC of the plaintiffs),
11963/2013 (under Order 39 Rule 4 CPC of the defendants)**

The defendants had entered appearance from beginning of the proceedings arising out of the suit and, thus, were heard at length when the plaintiffs pressed for *ad interim* injunction by IA No. 2245/2014. The initial order granting *ad interim* injunction in favour of the plaintiffs, as prayed in the application, was passed on 5th February, 2014, taking note also of the submissions of the defendants in opposition. The said order was challenged by the defendants in FAO (OS) 198/2014 before the division bench, the said appeal, however, having been dismissed as withdrawn with submission that defendants would approach this Court under Order 39 Rule 4 CPC. The pleadings thereafter in the main suit and on the application for *ad interim*

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injunction were completed and the defendants came up with application under Order 39 Rule 4 CPC, reply thereto has also come on record.

The hearing on these applications which are connected to each other, brought out that the submissions of the defendants primarily remain the same as were noted in the order dated 5th February, 2014. Therefore, this order will be treated as an order passed in continuation of the said earlier order.

The prime contention urged on behalf of the defendants is that they have approached the Intellectual Property Appellate Board (IPAB) vide case No. SR. No. 125/2014/TM/DEL seeking revocation of the registration of the trademark in favour of the plaintiffs on the basis of which the present suit has been filed. Reference is made to proceedings before the Regional Director in the Ministry of Corporate Affairs (South East region) on the application that had been moved by the plaintiffs against the defendants under Section 22 of the Companies Act, 1956 raising objection to the name of the company, the said objection with the prayer for direction to the defendants to change its name having been repelled by the order dated 25th February, 2014 of the Regional Director, copy whereof has been filed. The defendants also refer to order passed on 2nd November, 2010 on the file of Civil Suit 2081/2010, another litigation initiated by the plaintiffs of the case herein against a third party which had allegedly been using the trade name “AGARWAL PACKERS AND MOVERS PVT. LTD”. It appears the defendants in the said case had also approached the IPAB challenging the trademark registered in the name of the plaintiffs. Be that as it may, by order dated 2nd November, 2010, in the said suit, by way of *pro tem*

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arrangement, the defendants of that case had agreed and the plaintiff had submitted consent thereto, to such entity using the corporate name and trademark “AGGARWAL GOODS SHIFTING (P) LT.” instead of the name to which exception had been taken by the plaintiffs.

In the considered opinion of this Court, the contentions urged by the defendants do not come to their aid for the *ad interim* order granted on 5th February, 2014 to be displaced or varied or modified. On the contrary, there are good grounds, for the reasons already set out in the said earlier order, for the said dispensation to be made absolute for the pendency of the suit at hand.

The decision by the authority under the Companies Act, 1956 cannot bind the parties in the present proceedings wherein the cause of action claimed concerns infringement of the trademark of the plaintiffs which is registered, even with the additional fact that there is a request made for its revocation which is pending before IPAB [*Montari Overseas Limited vs. Montaries Industries Ltd.*, ILR1997 Delhi 64I and *K.G. Khosla Compressors Ltd. vs. Khosla Extrakting Ltd.* AIR 1986 Delhi 181]. The reference to the order dated 2nd November, 2010 in CS (OS) 2081/2010 is misplaced. Concededly, the defendants in the said case had agreed to give up the expression “Movers and Packers” from its trade name which is primarily the reason why the plaintiff agreed to the said *pro tem* arrangement.

In the above facts and circumstances, the application under Order 39 Rule 4 CPC is dismissed. The *ad interim* injunction granted on 5th February, 2014 is made absolute for the pendency of the suit. This disposes of application under Order 39 Rule 1 & 2 CPC.

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IA No. 10950/2014 (under Section 124 of Trade Mark Act, moved by the defendants)

By this application, the defendants seek stay of the proceedings in the suit on the ground they have moved IPAB for revocation of the registration of the trademark on the basis of which the present suit has been filed. The said application for revocation is pending before IPAB. The learned counsel for the plaintiffs has no objection that pending the said revocation proceedings, the proceedings in the suit is stayed.

Having regard to the facts and circumstances of the case, it is just and proper that the proceedings of this case are stayed to await the decision of IPAB.

The proceedings in the suit are thus, stayed *sine die* with liberty to each side to move for revival of the proceedings after IPAB has rendered its decision.

R.K.GAUBA, J

MARCH 08, 2017

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