$~37 (original)

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

I.A. 2821/2021 *(stay)* in

\+ CS(COMM) 94/2021

PERNOD RICARD INDIA PRIVATE LIMITED ..... Plaintiff

Through: Mr.Hemant Singh, Ms.Mamta Jha, Mr.Ankit Arvind and Ms. Mamta Bhadu, Advs.

versus

FROST FALCON DISTILLERIES LIMITED ..... Defendant

Through: Mr. Chander M Lall, Sr. Adv. with Ms. Nancy Roy, Mr. Sidhartha Das and Mr.Gajanand Kirodiwal, Advs.

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

O R D E R

% 10.03.2021

(Video-Conferencing)

I.A.2821/2021 *(for stay)*

1. Mr. Chander Lall, learned Senior Counsel for the defendant prays for time to file a reply to this application before it is taken up for hearing as he submits that there are several documents and details which have not been disclosed by the plaintiff and which he seeks to place on record.

2. Mr.Hemant Singh, however, pressed for *ex-parte ad-interim* relief, and was heard at length, yesterday as well as today.

3. To the preliminary submissions advanced by Mr. Lall, to the effect

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that the defendant and the plaintiff were in litigation before the Registry of Trademarks, regarding the allegedly infringing brand of the defendant, Mr. Singh submits that it was only in January, 2020 that his client came across the products of the defendant, with the allegedly infringing label/mark "CASINOS PRIDE" in the market, thereby giving rise to the cause of action which has prompted the filing of the present plaint.

4. At the very commencement of his submission, Mr. Lall pointed out that notice of opposition, to the "CASINOS PRIDE" mark of the defendant, was filed before the Registry of Trademarks, by the plaintiff, as far back as on 14th April, 2017. The defendant filed its counter statement, on 12th December, 2017, in which it was categorically asserted that the defendant had adopted the trademark "CASINOS PRIDE" along with the device in the form of an artistic label on 21st September, 2016 and had been using the said trademark continuously, openly and extensively since 2nd August, 2017 till date. It was further asserted, in the same counter statement that the defendant had earned its own goodwill and reputation as a result of long and extensive use and quality of the services provided by it. In its evidence in support of the opposition to the defendant's trademark, as filed before the Registry of Trademarks, the plaintiff had denied this assertion of the defendant, regarding user since 2nd April, 2017, as well as the assertion of resultant goodwill, on the ground that no evidence thereof had been placed on record. Mr. Lall points out that, in response to this submission, the defendant, in its evidence filed on 1st June, 2018 specifically averred, in para 8, thus:

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> "8. As regards Para – 16 of the opponents Evidence, I do not admit what is stated therein and reiterate to what has been stated by me in Para 1 of my counter statement. I submit that we adopted the trademark "CASINOS PRIDE" on 21.09.2016 and applied for registration of Trade mark. *We started using the said trade mark 'CASINOS PRIDE' from 02.08.2017. Photostat copies of few sales bills in respect of our said goods under the said trademark 'CASINOS PRIDE' (Label) are annexed hereto marked as* ***Exhibit 'C' (from pages 04 to 14).***"
>
> (Italics supplied)

5. Invoices, evidencing sales by the defendant, of its product under the mark "CASINOS PRIDE" dating back to 2017 were also placed on record in the proceedings before the Registry of Trademarks.

6. *Prima facie*, therefore, the plaintiff was aware of the defendant's assertion of usage of the "CASINOS PRIDE" mark, in respect of whisky, as far back as in 2017.

7. In view thereof, I am unable to countenance the request of Mr. Hemant Singh to grant *ad-interim* relief without permitting the defendant to file a response to this application. *Prima facie*, the plaintiff has waited for nearly 3½ years, to move the court after coming to know of the user, by the defendant, of the "CASINOS PRIDE" mark. It would not be in the interests of justice, therefore, to pass any *ad-interim* order, without allowing the defendant to file a response to this application.

8. In view thereof, issue notice. Notice is accepted by Mr. Gajanand Kirodia on behalf of the defendant. Let a response to this application be

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filed within a period of two weeks from today with advance copy to learned Counsel for the plaintiff who may file his rejoinder thereto within one week thereof.

9. Renotify the application for hearing and disposal subject to completion of pleadings on 15th April, 2021.

10. Needless to say, the observations contained hereinabove are only for the purpose of deciding whether the prayer for *ad-interim* relief should be taken up at an *ex parte* stage without calling for a response from the defendant, or whether the defendant would be permitted to file a response before the prayer is considered. They would not, therefore, be treated as an expression of opinion on the merits of the case, even tentative, when the application for *ad-interim* relief is taken up.

C. HARI SHANKAR, J.

MARCH 10, 2021/kr

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