

\$~24

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

+ **CS(COMM) 1188/2018**

**HINDALCO INDUSTRIES LIMITED** ..... Plaintiff

Through: **Mr.Sachin Gupta, Adv. with  
Mr.Jasleen Kaur, Adv.**

versus

**MEENAKSHI SHARMA** ..... Defendant

Through:

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**ORDER**

% **16.10.2018**

**IA No.14397/2018**

Allowed, subject to just exceptions.

**CS(COMM) 1188/2018 & IA No.14398/2018**

1. Issue notice to the defendant by all modes, returnable on 03<sup>rd</sup> December, 2018.
2. The notice to the defendant shall indicate that the written statement to the plaintiff shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file the replication within two weeks of the receipt of the advance copy of the written statement.
3. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.
4. Admission/denial of documents shall be filed on affidavit by the

  
16/10/18

parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document in terms of Order XI Rule 4 of Code of Civil Procedure.

5. The plaintiff is manufacturing aluminium foils under the trademark 'FRESHWRAPP'. The plaintiff registered the trademark 'FRESHWRAPP' in the year 2003. The particulars of the trademark of the plaintiff are given in para 10 of the plaint. In September 2018, the plaintiff came across defendant's aluminium foil being sold with the trademark 'FRESH N WRAPP' which is deceptively similar to the plaintiff's trademark as the defendant has merely inserted an 'N' between 'FRESH' and 'WRAPP' of the plaintiff's trademark. The plaintiff is seeking *ex-parte ad-interim* injunction against the defendant.

6. This Court is satisfied that an *ex-parte ad-interim* order is warranted in this matter. In the facts and circumstances of this case, the defendant, its distributors, dealers, stockists, retailers, servants and agents are thereby restrained from selling, offering for sale, advertising, directly or indirectly dealing in aluminium foil and/or cling film under the impugned mark/trade name/domain name containing 'FRESH N WRAPP' or any other trademark/trade name/domain name when may amount to infringement of the plaintiff's trade mark 'FRESHWRAPP' and/or amounting to passing off their goods as those of the plaintiff, till the next date of hearing.

**IA No.14399/2018**

7. The plaintiff is seeking appointment of a Local Commissioner. The application is allowed and Mr. Pranav, Advocate (Mobile No.9958868577) is appointed as Local Commissioner to visit the premises of the defendant namely M/s Vashist Trading Company, Ward No.3, Sitaram Colony, Hailymandi, Gurugram, Haryana - 122504 to do the following acts:-

Handwritten signature and date: 16/11/18

- (i) To search and seize, seal and make an inventory of all the products under the impugned mark 'FRESH N WRAPP', including packaging material, its promotional materials, stationery, dyes, blocks, etc.;
- (ii) Release the seized goods/materials on *superdari* to defendant or in alternative to the plaintiff for safe keeping;
- (iii) Photograph the premises and seized goods/materials; and
- (iv) Make copies and sign all books of accounts including ledgers, cash register, invoices, books etc. of the defendant.

8. The Local Commissioner shall conduct the commission proceedings on a working day when the defendant premises are supposed to be open. If the Local Commissioner finds that defendant have deliberately locked the premises on a working day during workings hours to frustrate the Local Commission proceedings, the Local Commissioner shall inform the S.H.O. of the concerned police station who shall intimate the defendant to open the premises. However, in event of the failure of defendant to open the premises within a reasonable time, the S.H.O. shall be authorized to break open the locks. It clarified that the S.H.O. shall not break open the locks if the office is closed in the ordinarily course of the business.

9. The defendant is directed to co-operate in the execution of the commission and to allow the Local Commissioner to access all their goods/premises.

10. The S.H.O. of the concerned police station shall provide necessary police assistance to the Local Commissioner for execution of this order.

11. The plaintiffs' representatives are permitted to accompany the Local Commissioner and enter the premises of defendant along with Local Commissioner.

12. The fees of the Local Commissioner, besides the out of pocket and

  
6/12/18

travel expenses, is fixed at Rs.1,00,000/-.

13. The plaintiff is directed not to give any kind of publicity in the print media or otherwise to the order passed by this Court as well as the local commission proceedings.

14. The Local Commissioner shall submit the report to this Court in a sealed cover before the next date of hearing.

15. The plaintiff shall serve the copy of this order along with the paper book on defendant at the time of Local Commissioner proceedings.

16. The provisions of Order XXXIX Rule 3 of Code of Civil Procedure be complied within one week from the date of execution of the Local Commissioner proceedings.

17. Copy of this order be given *dasti* to counsel for the plaintiff under signature of Court Master.

**OCTOBER 16, 2018**

**ab**



Court Master  
High Court of Delhi  
New Delhi

  
**J.R. MIDHA, J.**