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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **C.O. (COMM.IPD-TM) 227/2023, I.A. 19904/2023 & 19905/2023**  
**VIMAL AGRO PRODUCTS P. LTD. .... Petitioner**

Through: Mr. Sachin Gupta, Mr. Ajay Kumar,  
Mr. Manan Mandol, Mr. Rohit  
Pradhan & Ms. Gaurangi Sharma,  
Advocates, (M: 9811180270)

versus

**CAPITAL FOODS P. LTD. & ANR. .... Respondent**

Through: Mr. Chander M Lall, Sr. Advocate  
with Mr. Hiren Kamod, Mr. Nishad  
Nadkarni, Mr. Asif Navodia, Ms.  
Khushboo Jhunjhunwala, Mr.  
Shaurya Pandey, Ms. Jaanvi Chopra  
& Mr. Abhinav Bhallab, Advocates  
(M: 7761895769).

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
% **11.10.2023**

1. This hearing has been done through hybrid mode.

**I.A. 19904/2023 (for exemption)**

2. This is an application filed by the Plaintiff seeking exemption from filing originals/better copies/annexures of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.



4. The present rectification petition filed by the Petitioner-Vimal Agro Products Private Limited under Section 57 of the Trade Marks Act, 1999 seeks cancellation of the trade mark 'SCHEZWAN CHUTNEY' bearing No. 2431851 dated 22<sup>nd</sup> November 2012 in Class 30 registered by the Respondent No. 1-Capital Foods P. Ltd. The said trademark relates to a large number of food products *inter alia* chutneys, salad, dressing, sauces, snack foods and so on.

5. The case of the Petitioner is that 'SCHEZWAN CHUTNEY' is a descriptive and a generic mark. Furthermore, Mr. Gupta Id. Counsel, argues that the Respondent No. 1 did not reply to the objection raised by the Respondent No. 2-Registrar of Trademarks under Section 9 of the Trade Marks Act, 1999. It is stated that no reply was filed, and therefore the said application was abandoned vide order dated 29<sup>th</sup> March 2016. However, despite this, the Registrar granted the registration without addressing the objection under Section 9 of the Trade Marks Act, 1999.

6. On behalf of the Respondent No. 1, it is contended by the Id. Sr. Counsel Mr. Chander Lall that this Court does not have jurisdiction to hear this present petition, as a suit is pending between the parties before the Id. District Judge, Nashik bearing *Commercial Suit (Trade Mark) No. 2 of 2023* titled '*Capital Foods v. Vimal Agro*' wherein the Petitioner itself admitted that the Bombay High Court alone would have jurisdiction to hear the cancellation proceedings.

7. It is also pointed out that in another suit, relating to the same vary trademark i.e., 'SCHEZWAN CHUTNEY' bearing no. *CS (COMM) 379/2020* titled *Capital Foods Pvt. Ltd. v. Radiant Indus Chem Pvt. Ltd.*,



the Id. Single Judge vide order dated 11<sup>th</sup> January, 2023 had refused to grant interim injunction by holding that the ‘SCHEZWAN CHUTNEY’ is a descriptive mark. This was carried in appeal in *FAO (OS) (COMM) 16/2023* titled *Capital Foods Pvt. Ltd. v. Radiant Indus Chem Pvt. Ltd.* In the said order, the judgment of the Id. Single Judge has been stayed by the Id. Division Bench.

8. The question that arises is whether Respondent No. 1’s mark ‘SCHEZWAN CHUTNEY’ is descriptive/generic, and would be hit by Section 9 of the Trade Marks Act, 1999 or not. The said issue is clearly pending before the Id. Division Bench, which has at the *prima facie* stage observed in its order dated 25<sup>th</sup> January, 2023 as under:-

[...]

*Further, this Court is of the prima facie view that an injunction is normally to be granted in the infringement matters, especially those involving facts of the aforesaid nature. **Though the learned Single Judge has held that the mark in question is descriptive, yet prima facie, keeping in view the advertisement and sale figures of the appellant-plaintiff, this Court is of the view that the mark of the appellant-plaintiff has acquired secondary significance.***

*Issue notice. Mr. Hemant Singh, learned counsel for the respondent defendant, accepts notice. He prays for and is permitted to file a reply affidavit within four weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.*

*Till further orders, the findings and conclusions given by the learned Single Judge in the impugned order are stayed, except the relief granted to the appellant-plaintiff in paragraph 62 of the impugned order.*

[...]



9. In addition, this Court would also have to also consider the issue of jurisdiction in the light of the pleadings of the Petitioner before the Id. District Judge, Nashik. In the application filed by the Petitioner (i.e the Defendant before the Id. District Judge, Nashik) under Section 124 of the Trade Marks Act, 1999, it has been clearly pleaded as under:-

“[...]

3. *The Defendant is filing the present application under Section 124 of the Trade Marks Act, 1999 craving leave of this Hon’ble Court to seek permission to initiate cancellation proceedings against the impugned mark before the Hon’ble Bombay High Court, which court alone would have jurisdiction to decide the said cancellation proceedings.*

...

28. *It may be noted that third parties namely, Majithia Masala, and Madhuri Niranjan Mahtani have filed cancellations before the Registrar of Trade Marks, which have remained pending. It is most respectfully submitted that the Defendant cannot do anything to expedite the said proceedings but can only crave leave to file a cancellation before the Hon’ble Bombay High Court immediately as per the mandate of Section 124 of the Trade Marks Act, 1999.”*

10. Mr. Gupta, Id. Counsel submits that even despite the above pleadings in the application before the Id. District Judge, Nashik no estoppel would arise, as the issue of jurisdiction is a question of law.

11. Both these issues would deserve consideration. Especially, in view of the *prima facie* finding of the Id. Division Bench, today, this Court is not inclined to stay the impugned trade mark registration for the mark



‘SCHEZWAN CHUTNEY’. Moreover, the issue of jurisdiction of this Court would have to be considered first.

12. Let a reply be filed by the Respondent No. 1 on the issue of territorial jurisdiction of this Court within 4 weeks. The same shall be considered at the outset. Rejoinder, if any, be filed within four weeks thereafter.

13. List before the Joint Registrar on 5<sup>th</sup> December, 2023.

14. List before the Court on 21st February, 2024.

**PRATHIBA M. SINGH, J.**

**OCTOBER 11, 2023**

*mr/dn*