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

% Judgment delivered on: 13th January, 2021

+ FAO 16/2021

QUIKR INDIA PRIVATE LIMITED Appellant

versus

NIKE INNOVATE C.V & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Jayant Mehta, Mr. Rishabh Bansal, Mr. Arjun Rao and
Mr. Maitryi Bhat, Advocates

For the Respondents: Mr. S.K. Bansal, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CM APPLN. 1030/2021 (Exemption)

Allowed, subject to all just exceptions.

FAO 16/2021 & CM APPLN. 1028-29/2021

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 19.12.2020 whereby the trial court has, on the very first date, disposed of the application filed by the respondent under Order 39 Rules 1 and 2 CPC and granted an ex-parte injunction, inter-alia, restraining the appellant from using, manufacturing, selling, soliciting, displaying, advertising by visual,

audio, print mode or by any other mode or by any other mode or manner dealing in or selling/soliciting, intending to sell or solicit through www.quikr.com and their mobile application under the name of Quikr or through any other online websites and/or online platforms or through social medias or in any manner using the impugned counterfeit goods under impugned trademarks/logos Nike, Swoosh Device, Nike Pro, Nike+, Nike Air Jordan, Jordan, Jump man (device) in relation to their impugned goods and business and from doing any other acts pre-deeds amounting to or likely to infringement of respondent's registered trademarks/logos; infringement of respondent's copyrights in the said trademarks/Logos; passing off of the respondent's rights in respondent's said trademarks/Logos; violation of respondent's rights in its trade name/Logos. Appellants have further been restrained till further orders from disposing off or dealing with their assets including their premises at the addresses mentioned in the Memos of Parties of the plaint and their stocks-in-trade.

3. Learned counsel for the appellant contends that appellant is a mere intermediary and is not a seller and does not stock any articles and provides only a consumer-to-consumer based selling platform.

4. Learned counsel further contends that the trial court has disposed of the application under Order 39 Rules 1 and 2 CPC without even issuing notice to the appellant. He further submits that the relief granted of restraining the appellant from disposing of and dealing with their assets including their premises at the addresses as mentioned in

the Memo of Parties is beyond the pleadings in the suit. He further submits that since the appellant is an intermediary there is no stock-in-trade of the subject footwear under the brand name in issue of the respondent.

5. Learned counsel for the appellant contends that no complaint was ever received from the respondent prior to filing of the suit.

6. Issue notice. Notice is accepted by learned counsel for respondent no. 1.

7. Learned counsel for respondent no. 1 submits that the direction in the impugned order that the application stands disposed of is apparently erroneous. He further concedes that the subject matter of the Suit is not the assets or the premises of the appellant.

8. Learned counsel for respondent no. 1 contends that there was no mention of a Grievance Officer on the website and as such no complaint has been lodged.

9. In view of the above the appeal is disposed of with a direction that the application under Order 39 Rules 1 and 2 CPC is restored to the file of the trial court and be decided afresh.

10. Appellant shall file the Written Statement and its reply to the application in accordance with law.

11. Pending consideration of the application under Order 39 rule 1

& 2 by the trial court, the restraint placed on the appellant *from using, manufacturing, selling, soliciting, displaying, advertising by visual, audio, print mode or by any other mode or by any other mode or manner dealing in or selling/soliciting, intending to sell or solicit through www.quikr.com and their mobile application under the name of Quikr or through any other online websites and/or online platforms or through social medias or in any manner using the impugned counterfeit goods under impugned trademarks/logos Nike, Swoosh Device, Nike Pro, Nike+, Nike Air Jordan, Jordan, Jump man (device) in relation to their impugned goods and business and from doing any other acts pre-deeds amounting to or likely to infringement of respondent's registered trademarks/logos; infringement of respondent's copyrights in the said trademarks/Logos; passing off of the respondent's rights in respondent's said trademarks/Logos; violation of respondent's rights in its trade name/Logos shall continue till the disposal of the application under order 39 rule 1 and 2 CPC.*

12. Further, in view of the statement of learned counsel for the appellant that they are mere intermediaries and only provide an online trading platform and do not have any stock-in-trade of footwear of the subject mark, the impugned order to the said extent also does not warrant any interference at this stage, as no prejudice that would be caused to the appellant pending the disposal of the application under order 39 rule 1 & 2 CPC.

13. However, with regard to the restraint on the appellant from

disposing of or dealing with their assets, including their premises at the addresses mentioned in the Memo of Parties is concerned, since there is no rationale or justification qua the same and admittedly are not subject matter of the Suit, the same cannot be sustained and accordingly, the order to the said extent is set aside.

14. This would be without prejudice to the rights and contentions of the parties and that would not, in any manner, amount to waiver of the rights of the plaintiff.

15. Trial Court shall decide the application under order 39 rule 1 and 2 CPC afresh, without being influenced by anything stated in this order.

16. The appeal is disposed of in the above terms.

17. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 13, 2021

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