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

+ FAO(OS) (COMM) 20/2023 & CM APPL. 4155/2023 (Stay)

**MOTHER DAIRY FRUIT AND VEGETABLE**

**PVT. LTD.**

..... Appellant

Through: Mr. Saif Khan, Mr. Shobhit  
Agarwal & Mr Prajwal  
Kushwaha, Advs.

versus

**THE NALGONDA RANGAREDDY DISTRICT**

**MILK PRODUCERS MUTUALLY AIDED**

**COOPERATIVE UNION LTD**

..... Respondent

Through: Mr. Jaspreet Singh Kapur, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER**

**31.10.2023**

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1. This appeal is directed against the order dated 01 December 2022 passed by the learned Single Judge disposing of a contempt petition which had been preferred by the plaintiff / appellant. The suit itself has been instituted based on an allegation that the act of the defendant / respondent complained of therein are in clear violation of Clause 2 of the **Settlement Agreement**<sup>1</sup> dated 22 April 2008. The aforesaid Clause is extracted hereinbelow:

“2. MDFVL allows NARMACS to use the words “MOTHER DAIRY” on the labels for sale of their milk and milk products at the bottom of the logo and above their address “Nalgonda Rangareddy Milk Producer’s Mutually Aided Cooperative Union Limited, Hayatnagar-

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<sup>1</sup> Agreement



Hyderabad 501 505” and modify the labels as per Annexure-II & II-A to this agreement. MDFVL agrees not to oppose the registration of the modified labels as and when they are published in Trademark Journal.”

2. The record would further bear out that during the pendency of the suit proceedings, an interim order dated 18 May 2015 came to be passed providing thus:

“The learned senior counsel for the defendant submits, upon instructions, that for the moment, the defendant shall readily comply with the terms of the aforesaid agreement dated 22<sup>nd</sup> April, 2008 and it shall use the trade mark ‘MOTHER DAIRY’ only in terms thereof.

At this stage Mr. Sudhir Chandra, the learned Senior Counsel for the plaintiff states, upon instructions, that the plaintiff shall not pursue the reliefs of injunction, restraining the defendant from manufacturing, processing and selling milk under the trademarks ‘NARMUL’ and ‘Mother Dairy’ in a petition under Section 9 of the Arbitration & Conciliation Act pending before the City Civil Court, Hyderabad.”

3. The aforesaid order was followed by an order of 18 September 2015 with the learned Single Judge providing that the defendant / respondent would continue to remain bound by the statement recorded in the order dated 18 May 2015.
4. Thereafter, and on 14 September 2016 when the suit was taken up for consideration, the learned Single Judge passed an injunction against the defendant / respondent to the following effect:

“**31.** Consequently, it is directed that the Defendant will forthwith stop using the packaging with the words ‘Mother Dairy’ in any form whatsoever for any of its products. In any event, the Defendant will totally stop using even the existing packaging it may have prepared for marketing of its products with the trademark ‘Mother Dairy’ in any form with effect from 1<sup>st</sup> October, 2016.

**32.** On or before 1<sup>st</sup> October, 2016, the Defendant will exhaust all the existing stocks of its products which use



the packaging with the word ‘Mother Dairy’ in any form directly or indirectly. In other words, after 1<sup>st</sup> October, 2016, the Defendant will market its products only in packaging without the trademark ‘Mother Dairy’. If the Defendant is found in violation of any of the above directions, it would be open to the Plaintiff to seek appropriate remedies accordance with law.”

5. The aforesaid order came to be assailed by way of an appeal by the defendant / respondent before the Division Bench of the Court being FAO(OS)(COMM) 261/2018. Taking note of the orders that had been passed on 18 May 2015 and 18 September 2015, the Division Bench held that pending final adjudication of the suit, parties ought to be held bound to the terms of the Agreement. The appeal consequently came to be disposed of in the following terms:

“**15.** In these circumstances, we are of the opinion that, pending the final adjudication of the suit, parties ought to be governed by their rights under the Settlement Agreement. This is in fact the effect of the ad interim order dated 18.05.2015 which had been passed by the learned Single Judge, and which has been restored by the interim order dated 23.09.2016 passed in this appeal.

**16.** For the reasons aforesaid, the appeal is allowed and the impugned order dated 14.09.2016 is set aside. The parties will be bound by the order of the learned Single Judge dated 18.05.2015 during the pendency of the suit. The pending applications are also disposed of.”

6. The contempt petition on which the order impugned before us came to be passed, was not the first occasion when the appellant / petitioner appears to have alleged that the respondent / defendant had violated the terms of the undertaking and the Agreement. This would be evident from the facts recorded in the impugned order itself.
7. Mr. Khan, learned counsel appearing for the appellant /



petitioner has submitted that the appellant / petitioner is principally aggrieved by the following observations as appearing in paragraph 16 of the impugned order:

“16. In my view, reading of the Settlement Agreement would show that the plaintiff/petitioner had agreed to the user of the modified trademark by the defendant/alleged contemnor no.3 in a manner stated in Clause 2, i.e. at the bottom of the logo and above its address. Even though the Settlement Agreement records that the said user of the modified trademark would only be in respect of labels for ‘milk and milk products’, in my view, once the defendant/alleged contemnor no.3 is permitted to use the modified trademark on labels for ‘milk and milk products’, there should be no bar on the defendant/alleged contemnor no.3 on using the modified trademark on other promotional material as well. Hence, the contention of the plaintiff/petitioner that the user of the modified trademark has to be confined strictly to the labels for ‘milk and milk products’ is not tenable.”

8. According to the learned counsel the observations as rendered by the learned Single Judge while disposing of the contempt petition clearly acts to the prejudice of the appellant / petitioner since it is its case that Clause 2 of the Agreement does not restrict the usage of the word “MOTHER DAIRY” by the respondent / defendant solely to the labels for the sale of the ‘*milk and milk products*’. The contempt petition itself appears to have been preferred consequent to the word “MOTHER DAIRY” appearing on certain T-shirts.
9. As we read the order of 01 December 2022 we find that the same is clearly an interlocutory order passed by the learned Single Judge while evaluating an allegation of the respondent / defendant being in contempt. We further note that the suit itself is founded on an alleged violation of the Agreement and more specifically Clause 2 noted above. The scope and the extent of



rights that could be claimed by parties under Clause 2 of the Agreement is one of the principal questions that would have to be addressed and considered in the suit.

10. Since the observation appearing in the impugned order would clearly not operate as res judicata, we find no justification to interfere with the same. We further note that any positive or definite expression of opinion by us on the scope of Clause 2 of the Agreement may perhaps prejudice the rights and contentions of the parties in the suit itself. Since this issue as well as all other contentions raised by the plaintiff / appellant would be open to be addressed in the suit, we find no justification to render any clarification at this stage.

11. In view of the above, the appeal fails and shall stand dismissed. All pending applications, if any shall stand disposed of.

**YASHWANT VARMA, J.**

**ANISH DAYAL, J.**

**OCTOBER 31, 2023/kk**