

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 138/2023 and CM APPL.35300/2023(Stay)
BENNETT COLEMAN AND COMPANY LIMITED

..... Appellant

Through: Mr. Hemant Singh, Ms. Mamta
Rani Jha, Ms. Pragya Jain, Ms.
Soumya Khandelwal, Advs.

versus

E! ENTERTAINMENT TELEVISION LLC..... Respondent

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

16.08.2023

%

1. The instant appeal has been preferred by the plaintiff / appellant aggrieved by the order dated 31 May 2023 in terms of which three applications referable to Order XXXIX Rule 1 and 2 of the **Code of Civil Procedure, 1908** ["Code"] moved by the plaintiff / appellant as well as two applications moved by the defendant / respondent being under Order XXXIX Rule 4 and Order VII Rule 10 and 11 of the Code have come to be disposed of.

2. The Court notes from the record that an ad interim injunction operated in favour of the appellant and which had been granted as far back as on 14 May 2019. We are further informed that judgment on the aforesaid applications was reserved initially on 15 February 2021 whereafter the matter was reopened after more than a year therefrom on 16 February 2022. After conclusion of hearings, the learned Single Judge has proceeded to pass the impugned order of 31 May 2023.

3. In our considered opinion, quite apart from the aforesaid facts which are referred to by Mr. Singh, the judgment is rendered

unsustainable for the following additional reasons.

4. Despite the appellants having pointedly raised the issue of territoriality as enunciated in **Toyota Jidosha Kabushiki Kaidsha vs. Prius Auto Industries Ltd. & Ors.** [(2018) 2 SCC 1], the learned Single Judge has clearly failed to record any conclusions in this respect. The appellant had contended that in the absence of any rights being claimed by the defendant which could be said to arise or emanate within the territorial borders of India, there existed no ground on which the injunction could have been refused.

5. The Court also takes note of the submission of learned counsel who had submitted that the plaintiff / appellant had been constrained to institute the suit on the basis of the Cease and Desist Notice which had been issued by the defendant / respondent and consequently, the conclusions to the contrary as recorded in the impugned order cannot sustain. We additionally note that the learned Single Judge has rested the judgment on the decisions rendered in **Peps Industries Private Limited vs. Kurlon Limited** [2020 SCC OnLine Del 1882] and **S.B.L. Limited vs. The Himalaya Drug Co.** [1997 SCC OnLine Del 571] which have admittedly come to be overruled.

6. In view of our aforesaid conclusions, we find the impugned order cannot be sustained and the ends of justice would warrant the matter being remitted to the learned Single Judge for trial of the injunction application as well as the application for vacation of stay afresh.

7. The appeal shall consequently stand allowed. The impugned order dated 31 May 2023 is hereby set aside. The ad interim injunction dated 14 May 2019 shall stand revived. I.A 7077/2019 and I.A 8833/2019 may be taken up for consideration by the learned Single Judge afresh. The said applications may be considered and disposed of by the learned Single Judge without being influenced by any

observations appearing in the present order. All rights and contentions of respective parties are kept open in this respect.

8. Consequently, list before the learned Single Judge on the date already fixed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

AUGUST 16, 2023

neha