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

+ **FAO(OS) (COMM) 252/2023**

HULM ENTERTAINMENT PVT LTD & ORS

..... Appellants

Through: Mr. Rajiv Nayyar, Sr. Adv.
With Mr. Sandeep Sethi, Sr.
Adv. With Mr. Sudeep
Chatterjee, Mr. Rohan Swarup,
Ms. Tanya Arora, Mr. Saurabh
Seth, Mr. Sumer Dev, Advs.

versus

FANTASY SPORTS MYFAB11 PVT LTD & ORS.

..... Respondents

Through: Mr. Jayant Mehta, Sr. Adv.
With Mr. J.Sai Deepak, Ms.
Sucheta Roy, Ms. Amrit
Sharma, Advs. D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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10.11.2023

CM APPL. 58676-77/2023

Allowed, subject to all just exceptions.

This applications stand disposed of.

**FAO(OS) (COMM) 252/2023, CM APPL. 58675/2023 (Stay) &
CM APPL. 58678/2023**

1. Notice. Since the respondents are duly represented, let a reply be filed within a period of two weeks from today. The petitioner shall have a week thereafter to file a rejoinder affidavit.



2. Prima facie, we are inclined to agree with the challenge as laid to the impugned order and addressed by Mr. Nayyar and Mr. Sethi, learned senior counsels appearing in support of the present appeal bearing in mind the following facts.

3. However, and before we notice the submissions addressed on behalf of the appellant, we note that the learned Judge had reserved orders on the applications for interim injunction and the prayer made by the respondents for vacation thereof way back on 27 May 2022. The order impugned has come to be passed more than a year thereafter on 17 October 2023.

4. Additionally, we note that the assumption as forming part of paragraph 38 namely of certain fantasy game applications having commonality of features of trade of players having been launched prior to that of the plaintiff/appellants would prima facie appear to be contrary to the record and bearing in mind the material appearing at pages 637 and 645 of the digital record. Learned senior counsels have also drawn our attention to the commonality of features which were adopted by the respondent after the launch of the application of the appellant. The extent to which the two applications could be said to be completely identical and indistinguishable, a test which Mr. Mehta commends for our consideration, shall also warrant further examination.

5. We further note that there was undoubtedly an ex parte injunction which had been granted on 13 April 2022 and operated in favour of the plaintiff/appellants. The said order was thereafter modified on 25 April 2022 and had provided as under: -

“5. In view of the said stand of Mr. Sibal, Mr. Bhatia, learned counsel appearing on behalf of the Plaintiffs, on instructions,



submits that the directions passed by this Court in order dated 13.04.2022 to Defendant No.6 in paragraph 36, to Defendant No.4 in paragraph 37 and to Defendant No.5 in paragraph 38, may be suspended till the next date of hearing. The said stand is, however, without prejudice to the rights and contentions of the Plaintiffs in the present suit and subject to its outcome.

6. Accordingly, directions issued to Defendant No.6, Defendant No.4 and Defendant No.5 in paragraphs 36, 37 and 38 respectively, of the order dated 13.04.2022 are suspended, till the next date of hearing.”

6. Since for reasons aforementioned we are of the opinion that the appeal raises issues which would merit further consideration, it would be appropriate to hold parties to abide by the said order till we hear the appeal finally.

7. Consequently, there shall be stay of the impugned order dated 17 October 2023. The rights of parties shall however be governed by the order of 25 April 2022 and which shall continue to hold the field till we hear the instant appeal again.

8. Let the appeal be called again on 19.12.2023.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 10, 2023

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