

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

M.A. No.2745/2018

Skol Breweries Ltd.

Vs.

Som Distilleries and Breweries Ltd.

Date of Order	14.11.2018
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Appellant: Shri Ravish Chandra Agrawal, learned Senior Counsel with Shri Sankalp Kochar, learned counsel. For Respondent : Shri Naman Nagrath, learned Senior Counsel with Shri Rahul Diwaker, learned counsel
Law laid down	The High Court while deciding the appeal against rejection of temporary injunction and forming an opinion regarding <i>prima facie</i> case can examine the subsequent development took place during the pendency of appeal.
Significant Para Nos.	12 to 17

Reserved on : 01.11.2018

Delivered on : 14.11.2018

(O R D E R)
(14.11.2018)

The instant appeal has been filed by the appellant under Order 43 Rule 1(r) of the Code of Civil Procedure (for brevity "CPC"), whose application filed under Order 39 Rule 1 & 2 of CPC for issuance of temporary injunction has been rejected by the learned Trial Court vide order dated 22.02.2018 (Annexure-A-13) passed in RCS No.A/1900079/2016.

2. Certain important facts for deciding this appeal, need to be considered are that the plaintiff/appellant which is a Company registered under the Companies Act, 1956 (for brevity 'Act, 1956') having its registered office as mentioned in paragraph-1 of the plaint. The plaintiff is involved in the business of brewing market and sale of beer, non-alcoholic beverages and mineral water. The plaintiff manufactures and sells the beer in the name of "HAYWARDS 5000" whereas name of the defendant's beer is "BLACK FORT". The plaintiff has a registered design bottle of their beer under Section 9(1) of the Designs Act, 2000 (for brevity 'Act, 2000') having registration No.223479. The beer which is manufactured by the defendant is filled in their own bottles and apart from it they also purchase

empty bottles from the junk market and after recycling the bottles, use as its own product i.e. "BLACK FORT" and is sold in the market. As such, the defendant also sells its own product in the bottles of the plaintiff which got registered under the Act, 2000 by the plaintiff and, therefore, the plaintiff has made allegation that the defendant has no right to use such bottle and its action is alleged to be illegal. It is also alleged by the plaintiff that the defendant is using bottles of the plaintiff's design with a *mala fide* intention to get the benefit of reputation as owned by the plaintiff in the market and to increase its sale and to confuse the customers who would purchase the beer bottles of the defendant under the impression that it is a product of plaintiff i.e. a beer in the name and style of "HAYWARDS 5000". As per the plaintiff, it got registered the design of its bottle under the Act, 2000 and manufacturing of per bottle cost is almost Rs.20/- and the defendant is purchasing the same from the junk market on a very meager price of Rs.1/- or 2/- and selling its product i.e. beer "BLACK FORT". The registered design of the bottle of the plaintiff can be used by the plaintiff only for selling its product, but if it is used by the

defendant, then not only the reputation of the plaintiff's company is encashed by the defendant but the plaintiff is also suffering the loss of their image and it is also difficult for them to compete with the defendant inasmuch as, per empty bottle costs Rs.20/-. As such, the plaintiff filed a suit under Section 22 of the Designs Act, 2000 and Section 134(1)(c), 135(1) and 135(2) of the Trade Marks Act, 1999, seeking decree in the following manner:-

"A. A decree of permanent injunction restraining the Defendant, their directors, employees, officers, servants, agent and all others acting for and on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in impugned product or any similar impugned product that infringes the subject matter of India Design No.223479 registered by the plaintiffs.

B. A decree of permanent injunction restraining the Defendant, their directors, employees, offices, servants, agents and all other acting for an on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in impugned product or any similar impugned product that amounts to passing off their goods and products as that of the Plaintiff under the trademarks SABMILLER and / or SABMILLER INDIA;

C. To grant order of delivery up of any of the bottles bearing the design and trade mark of the plaintiff lying

in the custody of the defendants whether empty or in filled conditions and all brochures / printed material and/or any material which contributes ultimately to the infringement of plaintiffs trademark;

D. To direct the defendant for rendition of accounts;

E. Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.”

3. Indubitably, this is a second round of litigation by the plaintiff and as such the facts relate to the history of this case are also required to be taken note of, which are as follows:-

(3.1) That the appellant filed a suit bearing registration No.5A/2012 (which was later on renumbered as 2-A/2012) before the District Court at Raisen. A copy of the plaint is available on record as Annexure-A-1.

(3.2) The plaintiff sought an injunction by moving an application under Order 39 Rule 1 and 2 of Code of Civil Procedure to the effect that the defendant be restrained from making, selling, distributing, advertising, exporting, offering for sale or in any manner offering for selling the appellant's designed registered bottle bearing design registration No.223479 which is registered under the Designs Act and passing off its goods and services as that of the plaintiff

under the trademark SABMILLER and / or SABMILLER INDIA.

- (3.3) The defendant filed a written statement thereby denied the averments made in the plaint. A copy of the written statement is also available on record as Annexure-A-2.
- (3.4) On 03.02.2012, a temporary injunction was granted in favour of the plaintiff to the effect that “till next date of hearing the defendant is restrained from taking out the design registered bottles of the plaintiff bearing design No.223479, dated 19.06.2009 with the trade mark SABMILLER embossed on it from his factory.
- (3.5) On 26.06.2012, the learned Additional District Judge after hearing the arguments of both the sides, passed by order dated 03.07.2012 (Annexure-A-3) dismissing the application of the plaintiff filed under Section 39 Rule 1 and 2 of CPC.
- (3.6) An appeal was preferred against the order dated 03.07.2012 before this Court which was registered as M.A. No.1946/2012 but that was rejected vide order dated 11.01.2013. A copy of the order of this Court is also available on record as Annexure-A-4.
- (3.7) In the month of February, 2013, the defendant

also filed an application before the competent authority for seeking cancellation of the registration of the plaintiff's design bearing registration No.223479, but their application was rejected by the competent authority vide order dated 03.03.2015 (Annexure-A-7).

- (3.8) The plaintiff/appellant against the order of the High Court dated 11.01.2013 preferred an SLP before the Supreme Court vide SLP No.34265-34286/2013 and finally the said SLP was decided vide order dated 06.07.2015 (Annexure-A-8) giving liberty to the plaintiff to move the trial Court afresh by moving an application taking aid of the order passed by the competent authority on 03.03.2015 rejecting the application of the defendant for seeking cancellation of registration of the plaintiff's design.
- (3.9) The defendant against the order dated 03.03.2015 passed by the competent authority preferred an appeal before the Calcutta High Court and the said appeal is still pending.
- (3.10) The plaintiff has independently instituted a suit against the defendant before the Bombay High Court seeking permanent injunction restraining the defendant from infringing the registered trademark SABMILLER INDIA under registration

1787321, but the said suit was withdrawn.

(3.11) The plaintiff filed a fresh application under Order 39 Rule 1 and 2 of the Code of Civil Procedure as per liberty granted by the Hon'ble Apex Court and vide order dated 22.02.2018, the Trial Court again rejected the application and that order is available on record as Annexure-A-13, which is impugned in this appeal.

4. Although, the appeal has been preferred and order impugned has been challenged on various grounds but during the course of arguments, the learned counsel for the appellant has mainly contended that the order passed by the trial Court is liable to be set aside as the trial Court erroneously rejected the application of the plaintiff though observed that there was *prima facie* case in their favour. The learned counsel for the appellant has drawn the attention of this Court towards the observation made by the learned trial Court in paragraph-11, which reads as under:-

“11. यह सही है कि प्रतिवादी द्वारा माननीय कलकत्ता उच्च न्यायालय के समक्ष कंट्रोलर डिजाइन के आदेश दिनांक 03.03.2015 के विरुद्ध अपील की गयी है उसे लंबित होना बताया गया है। वादी ने उक्त तथ्य को चुनौती भी नहीं दी है। डिजाइन एक्ट की धारा 19 के अंतर्गत प्रतिवादी को जो एक महत्वपूर्ण बचाव प्राप्त था उक्त बचाव के संबंध में डिजाइन कंट्रोलर द्वारा उसका आवेदन निरस्त कर दिया गया है एवं वादी द्वारा रजिस्ट्रेशन करायी गयी डिजाइन की बोटल को नया एवं यूनिक माना है। ऐसी स्थिति में बादी का यह तर्क स्वीकार

किये जाने योग्य प्रकट होता है कि परिवर्तित परिस्थितियों में उसके द्वारा दर्ज करायी गयी डिजाइन की बोटल के संबंध में प्रथम दृष्टया प्रकरण उसके पक्ष में है। अतः परिवर्तित परिस्थितियों में यह निष्कर्ष अभिलिखित किया जाता है कि प्रथम दृष्टया प्रकरण वादी के पक्ष में है। ”

5. The learned counsel for the appellant has assailed the impugned order contending that the learned Trial Court has rejected the application despite holding that *prima facie* case is made out in favour of the plaintiff but so far as irreparable loss is concerned, the same can be compensated, if ultimately plaintiff succeeds in the civil suit and as such observed that *prima facie* no case for grant of temporary injunction is made out as plaintiff failed to demonstrate any irreparable injury. Learned Senior counsel for the appellant submits that the Court below has failed to appreciate that *prima facie* case is made out in favour of the plaintiff then injunction could not have been declined. It is also contended by the appellant that the learned Trial Court failed to appreciate that in the existing circumstance, the irreparable injury which may cause to the plaintiff cannot be compensated in any manner especially by way of money and accordingly counsel for the appellant has criticized the order of the Trial Court asking its quashment

and submits that their application under Order 39 Rule 1 and 2 of the Code of Civil Procedure may be allowed restraining the defendants from using the bottles manufactured by them and also to restrain the defendant from infringing the design registered bearing No.223479 in the name of plaintiff.

6. The learned Senior Counsel for the respondent submits that they have moved an application i.e. I.A.No.13572/2018 for dismissal of the case as the same has rendered infructuous because during the pendency of appeal, the Trial Court recorded the evidence of the parties and has fixed the case for final arguments. Thus, under such circumstance, this appeal has rendered infructuous. He further submits that there is no case under the developed circumstances made out in favour of the plaintiff/appellant for granting any temporary injunction because on earlier occasion this Court had already considered each and every aspect of the matter in detail and even after eye test has observed that the plaintiff does not have any *prima facie* case nor shall he suffer any irreparable loss which cannot be compensated by damages

and further balance of convenience is also not in his favour. As per the learned Senior Counsel for the respondent, the only development that took place is a rejection order on their application for cancellation of registration of plaintiff's design bearing registration No.223479 has been passed by the competent authority, but even considering the said order nothing has changed because even before moving such application, the registration was very much in the name of the plaintiff. He further submits that as per the evidence recorded by the Trial Court, the plaintiff in his statement has admitted this fact that there is no proof produced by them to show that the defendant used any of his bottles registered under the Act, 2000 and in such a circumstance, no injunction can be granted in favour of the defendant. He further submits that in the latest decision of Delhi High Court in the case of **Mohanlal, Proprietor of Mourya Industries vs. Sona Paint & Hardwares** passed in CS(05) 384/2008 rendered on 15.05.2013, the Full Bench has laid down that composite suit for infringement of a registered design and a passing off the action would not lie and looking to the plaint and relief claimed therein the

ultimate result would be of dismissal of suit as the plaintiff has filed composite suit under the Designs Act and also the Trade Marks Act and sought decree under both the Acts.

7. As per the arguments advanced by the parties this Court has put a specific query to the parties as to whether this Court, for forming an opinion regarding *prima facie* case, can examine the subsequent development that took place during the pendency of appeal or should confine itself to the material available on record before the Trial Court at the time of considering the application of temporary injunction to form *prima facie* opinion.

8. Shri Ravish Agrawal, learned Senior Counsel for the appellant submits that this Court cannot examine the subsequent development and any other material placed on record by the parties but to confine itself to the material taken note of by the Trial Court while forming *prima facie* opinion and he further emphasized that because from the order of Trial Court it is clear that the Court has found *prima facie* case in favour of the plaintiff, therefore, there was no reason for the Court below to refuse to grant temporary injunction. He has also drawn attention of this Court

towards the provisions of Order 41 Rule 31 of CPC saying that there is specific provision providing as to in what manner the Court has to decide the appeal. He submits that the appeal cannot be disposed of saying that the evidence of the parties is closed and case is fixed for final arguments. He relies upon a decision of the Supreme Court in the case of **(2005) 3 SCC 63 – Dhariwal Industries Ltd. and Another v. M.S.S. Food Products**, especially in para 6, which reads as under:-

"6. Before proceeding to consider the appeal, we may observe that in this appeal, various documents, not produced before the trial court or before the lower appellate court, have been produced and elaborate arguments addressed based on those documents. The present proceeding is an appeal by special leave against an order passed by the High Court in an appeal under Order XLIII Rule 1(r) C.P.C. and normally the appeal here must be considered based on the material that was produced before the trial court or before the appellate court in terms of the permission granted by that court under Order XLI Rule 27 C.P.C. At this interlocutory stage it would not be proper for this Court to enter into an adjudication based on the various documents produced before this Court which are not of undoubted authenticity and the genuineness, acceptability and value of which are mutually questioned. Generally, the arguments based on genuineness, admissibility and so on, are ones to be raised at the trial, though no doubt they could be raised at the interlocutory stage in respect of a prima facie case or

in opposition thereto. In other words, we think that it will be proper to confine ourselves to the materials available before the trial court and those made available before the lower appellate court with the permission of that court while considering this interlocutory appeal."

9. As per the learned Senior Counsel for the appellant, the Supreme Court in the above paragraph has clearly laid down that the High Court while deciding the appeal under Order 43 Rule 1(r) of CPC should normally consider the material which was produced before the Trial Court. He has also placed reliance upon a decision reported in **1982 MPLJ 432 - Dhundasing v. Liladhar and another** and contended that in view of this decision, the Appellate Court while deciding the appeal has no jurisdiction to entertain any subsequent event and scope of appeal is very limited. He has further relied upon a decision reported in **(2002) 5 SCC 760 – Hindustan Petroleum Corpn. Ltd. v. Sriman Narayan and Another** saying that while deciding the application for granting temporary injunction, existence of *prima facie* case is enough. He further submits that the Trial Court though found *prima facie* case in favour of the plaintiff but injunction was refused, which could not have been done. He relied upon a

case reported in **1997 (40) DRJ (DB) High Court of Delhi – Rajesh Batra v. M/s. Grandlay Electricals (India)**, in which the Division Bench in para 9 has opined as under:-

"9. Looking to the trend of judicial opinion, we are of the opinion that :-

- (i) an order of injunction whether ex-parte or bye-parte is appealable under Order 39 Rule 1 (r) of the CPC;
- (ii) The scope of hearing in such an appeal is limited. Ordinarily the appellate Court would not take into consideration any new material. The hearing would be confined to finding out whether the original Court was justified or not in granting the ex-parte order of injunction on the material available before it.
- (iii) If the appellate Court may concur with the view taken by the original Court then the appeal would be dismissed leaving it open to the appellant to contest the ex-parte order of injunction before the original Court. If the appellate Court may form an opinion that on the material available before original court, the grant of injunction ex-parte cannot be sustained then the appellate court would set aside the ex-parte order of injunction leaving it open to the parties to appear before original court and have a hearing by parte on the grant or otherwise of the order of injunction.
- (iv) If the appellate Court forms an opinion that on the material available on record of the suit before the original court an injunction not in the form granted by the original court but in a different form could only have been granted ex-parte then it may substitute its own order in place of the original order (under appeal) leaving it open to the opposite party

to contest the issue as to grant of injunction by parte before the original Court.”

10. However, considering the judgment relied upon by the learned Senior Counsel for the appellant, I am of the opinion that as far as the case of Dharimal Industries (supra) is concerned, in the said case, the plaintiff filed a suit for declaration that the defendants do not have any right to sell Panmasala, Gutkha, Supari and Supari-mix or any other goods under the trade mark ‘Manikchand’ which is deceptively similar to the mark ‘Manikchand’ used by the plaintiff. The plaintiff also filed an application under Order 39 Rule 1 and 2 CPC seeking an interim injunction pending suit, restraining the respondents from selling the product referred above under the name ‘Manikchand’. The Trial Court passed *ad interim* order of injunction as sought by the plaintiff. Thereafter, the defendants made their appearance; filed their objection and also filed an application seeking vacation of *ad interim* injunction and also produced various documents. The Trial Court held that the plaintiff had made out a *prima facie* case for *ad interim* injunction and the balance of convenience was in his favour

for grant of interim injunction and allowed the application of temporary injunction dismissing the application for vacating of stay order. An appeal was preferred under Order 43 Rule 1(r) of CPC, in which, the High Court observed that the High Court normally should consider the material on the basis of which temporary injunction has been granted but simultaneously the Court has also directed the Trial Court to conclude the trial of the suit expeditiously. The facts of the said case are altogether different as *ad interim* injunction was granted in favour of the plaintiff and application for vacating interim injunction was considered and rejected by the Court and not taken into account any other material which was lateron produced by the parties. In such a circumstance, when appeal was filed against grant of injunction and the Trial Court has found *prima facie* case in favour of the plaintiff on the basis of material available on record, no other material could have been taken into account by the High Court while considering the appeal in which the request has been made for vacating the interim injunction. Likewise, in case of **Dhundasing** (supra) again the same situation arose wherein the

temporary injunction was granted to the plaintiff against which appeal was preferred but in the meantime an application for amendment of the plaint was moved and the District Judge taking note of the amended portion, set aside the order of grant of injunction but in the High Court, it is observed that the District Judge committed an error taking note of the amendment which was incorporated subsequent to the date on which injunction was granted. The High Court has observed that while rejecting the injunction, the Court cannot take additional facts into account but should confine itself to the material which have been taken note of by the Trial Court while granting injunction. In case of **Rajesh Batra** (supra) an *ex parte* injunction was granted against which appeal was filed under Order 43 Rule 1(r) of CPC. The Court in para 9 has very clearly laid down that when an appeal is preferred against the order of injunction whether *ex parte* or *by parte*, what would be the scope of hearing of appeal and to examine whether the Court was justified in granting the *ex parte* order of injunction on the material available before it, but in the present case the circumstances are altogether

different. Not only the Trial Court, but even the High Court has also considered the material available on record and has refused to grant injunction in favour of the plaintiff against which appeal has been preferred. In the case of **Hindustan Petroleum Corpn. Ltd.** (supra), the Supreme Court has observed that the existence of *prima facie* case is enough and in view of the observation made by the Trial Court finding *prima facie* case in favour of the plaintiff, temporary injunction had to be granted. But, I am not convinced with the contention raised by the appellant for the reason that in the present case situation is otherwise and this case would not be applicable for the reasons mentioned in the later part of this order.

11. *Per contra* Shri Nagrath, learned Senior Counsel for the respondent has relied upon a decision of Karnataka High Court passed in **M.F.A.No.38276/2012 (MV) Nagendra & Others vs. Nazeer Ahmed**, in which, the High Court has observed that in an appeal against rejection of temporary injunction, if during the pendency of appeal suit has attained the advanced stage there was no necessity to pass any temporary injunction, but Trial Court was directed

to decide the suit as expeditiously as possible. He further submits that in the present case, the Trial Court has concluded the evidence and this fact was also not disputed by the appellant, moreso, case is fixed for final arguments and therefore there is no reason for granting temporary injunction in favour of the plaintiff at this juncture.

12. In reply to the query raised with the parties, I am of the opinion that for forming an opinion of *prima facie* case in an appeal preferred against the rejection of temporary injunction especially in a suit which was filed in the year 2012, 6 years have passed, no temporary injunction was granted by any of the Court when matter has already travelled upto the Hon'ble Apex Court and the evidence has been recorded and concluded by the Trial Court, this Court has every right to form its own opinion in respect of *prima facie* case and for which the Court can take into account certain aspects of the matter. As per the Major Law Lexicon by P. Ramanatha Aiyar, 4th Edition 2010, Vol.5, a *prima facie* case is defined as under:

"*Prima facie* case" is that which raises substantial question, of course *bona fide* which needs investigation and ultimately a decision on merits.

When the Court is called upon to examine whether the plaintiff has a *prima facie* case in a suit, for the purpose of determining whether a temporary injunction should be granted, the Court must perforce examined the merits of the case, and it will be compelled to consider whether there is likelihood of the suit being decreed. The depth of investigation which the Court must necessarily pursue for that purpose will vary with each case. When the decision of the suit turns principally on a question of law, very often the decision as to whether a *prima facie* case exists will turn on considerations identical with or substantially similar to those affecting the ultimate determination of the suit.

A '*prima facie*' case implies the probability of the plaintiff obtaining a relief on the materials placed before the Court at that stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a *prima facie* case to justify issuance of a temporary injunction."

13. In a case reported in **AIR 1968 Kerala 179 – Vellakutty vs. Karthyayani**, the Court has observed what has to be considered by the Court while granting temporary injunction, which reads thus;

"3.....The granting of an injunction being a very serious matter in that it restrains the opposite parties from the exercise of their rights, the court does not issue the injunction unless it is thoroughly satisfied that there is a *prima facie* case in favour of the applicant. (Abdul Qadeer v. Municipal Board, Moradabad. AIR 1955 All 414). It is also clear that a *prima facie* case implies the probability of the plaintiff obtaining a relief on the materials placed before the Court at

that stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction."

14. Besides, in a case reported in *AIR 1977 Himachal Pradesh 10 – Roshan Lal vs. Ratto*, the Court has observed the *prima facie* case, which reads thus;

"When the Court is called upon to examine whether the plaintiff has prima facie case in a suit for the purpose of determining whether a temporary injunction should be granted, the court must perforce examine the merits of the case and it will be compelled to consider whether there is likelihood of the suit being decreed. The depth of investigation which the court must necessarily pursue for that purpose will vary with each case. When the decision of the suit turns principally on a question of law, very often the decision as to whether a prima facie case exists will turn on considerations identical with or substantially similar to those affecting the ultimate determination of the suit."

15. Likewise, in a case reported in *AIR 1993 Delhi 356 - Krishan Lal Kohli v. V.K. Khanna and another*, the Court has held as under:-

"4..... What is meant by prima facie case? Prima facie case is that which raises substantial question, of course bona fide, which needs investigation and ultimately a decision on merits and, as already noticed by me above, the respondent before me and the plaintiff in the suit, namely Mr. Khanna does succeed in raising such questions. And, for the present, I find no reason to hold that the questions so raised have not been raised bona fide. But then, as we all know, mere

existence of a prima facie case would not suffice."

16. Since the appellant/plaintiff is claiming temporary injunction then it is the duty of this Court to first form an opinion regarding *prima facie* case in favour of the plaintiff and then to decide whether temporary injunction can be granted or not. To form an opinion this Court cannot shut its eyes ignoring the stage of the suit, especially when admittedly evidence has been closed by the parties and case is fixed for final arguments. Further, it cannot be ignored by this Court in the light of law laid down by the Full Bench of Delhi High Court in case of **Mohanlal, Proprietor of Mourya Industries (supra)**, on which the respondent has placed reliance contending that suit filed by the plaintiff/appellant is not maintainable. As per the respondent, the plaintiff/appellant in his evidence has also admitted that he failed to produce any of the incidents showing use of bottle of the plaintiff by the defendant for the purpose of selling their beer. Therefore, I do not find any substance to grant temporary injunction of any nature in favour of the plaintiff/appellant and to reverse the finding given by the Trial Court especially under the circumstance, when on earlier occasion this Court has passed detailed

order refusing injunction to the plaintiff and thereafter the only change made in favour of plaintiff is that the application submitted by defendant for cancellation of registration of their design bearing No.223479 has been rejected by the competent authority. I am also not convinced with the contention made by learned counsel for the appellant that as per the provisions of Order 41 Rule 31 of CPC, this Court has no option but to decide the appeal on merits. On a close scrutiny of the provisions of Order 41, it is seen that the said provisions deal with the appeal arising out of the original decree and Rule 31 of Order 41 prescribes the manner in which the judgment is written by the Appellate Court, but here in this case, the appeal is not against the original decree, this Court is not writing any judgment, therefore, Rule 31 of Order 41 has no applicability. This appeal is under Order 43 and under the said provision, there is no such binding for this Court. Accordingly, this contention of the learned Senior Counsel for the appellant has no substance that the present appeal has to be decided by this Court on merits and also on the basis of material available before the Trial Court at the time

of deciding the application of temporary injunction.

17. In view of the overall circumstances, I do not find any substance in the appeal nor I think it apposite to grant temporary injunction in favour of the plaintiff/appellant at this stage. However, it is feasible to direct the Trial Court to decide the suit finally within a period of two months from today. Needless to say that the Trial Court shall not grant any adjournment to the parties, if it is found that the parties are avoiding the hearing of the suit. Furthermore, the Trial Court while deciding the suit finally, shall not be influenced by any of the observations made in this order.

18. With the aforesaid direction, this appeal is **dismissed.**

19. Before parting with the case, it is necessary to mention that no order is required to be passed on I.A. No.13572/2018 filed by the respondent.

**(Sanjay Dwivedi)
Judge**