

**(2016) 08 AP CK 0039**

**Andhra Pradesh High Court**

**Case No:** CMA. No.580 of 2016.

Jagdamba Phosphate, Kota,  
Rajasthan, repled by its Director  
Raghunath Prasadji Goel -  
Appellant @HASH Coromandel  
International Ltd.,  
Secunderabad, repled by its  
Vice-President Legal P.  
Vardharajan

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Aug. 8, 2016

**Citation:** (2016) 6 ALT 537 : (2016) 6 AndhLD 491 : (2017) 1 CivCC 413 : (2017) 1 ICC 240

**Hon'ble Judges:** C.V. Nagarjuna Reddy and G. Shyam Prasad, JJ.

**Bench:** Division Bench

**Advocate:** Mr. M. Govind Reddy, Advocate, for the Appellant; Mr. S. Ravi, Learned Senior counsel for Mr. Ch. Pushyam Kiran, Advocate, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

**Sri. C.V. Nagarjuna Reddy, J.** - This Civil Miscellaneous Appeal arises out of an ex parte interim injunction order, dated 22.4.2016, passed by the learned I Additional Chief Judge, City Civil Courts, Secunderabad, in I.A.No.782 of 2016 in O.S.No.56 of 2016.

2. We have heard Mr. M. Govind Reddy, learned counsel for the appellant and Mr. S.Ravi, learned senior counsel, who has submitted that he has instructions to appear for the respondent.

3. The respondent, which is a company of repute and manufacturing fertilizers, filed the afore-mentioned suit inter alia for perpetual injunction restraining the appellant and the people claiming through it from in any manner infringing its trade mark "Double Horse Brand" label for fertilizers by use of "Three Horses" label.

4. The respondent has also filed I.A.No.782 of 2016 for interim injunction. By order, dated 22.4.2016, the lower Court has granted ad interim injunction. While granting such order, the lower Court has observed as under:

"Thus, prima facie the alleged action of respondent adopting "Three Horses" similar to the registered trade mark of the petitioner "Double Horse" similar to the product of fertilizer is prima facie infringement of trade mark of the petitioner. Against Doc.No.8 notice at page 128, dated 22.8.2015, the respondent sent reply notice at Doc.No.9 at page No.131 dated 18.9.2015 with an attempt to distinguish the registered trade mark of "Double Horse" brand of the petitioner with the "Three Horses" brand adopted by the respondent and admitted about the existence of a trade mark in favour of petitioner for "Double Horse" brand as evident from other documents relied upon by the petitioner's side and about the alleged activity of the respondent with "Three Horses" brand products. In the above circumstances, unless the respondent is restrained by way of ad interim/temporary injunction order, he may continue to proceed with the threatened action of passing of his products with "Three Horses" brand which is prima facie found as a deceptive trade mark similar to the registered trade mark of the petitioner and thereby, cause irreparable loss to the petitioner."

5. Learned counsel for the appellant has sought to raise contentions touching the merits of the case. We are afraid, at this stage, we cannot adjudicate the case on merits for, the order impugned, as observed herein before, is only an ad interim injunction.

6. As rightly submitted by the learned senior counsel appearing for the respondent, the jurisdiction of this Court to examine the validity or otherwise of an ad interim injunction order in a Civil Miscellaneous Appeal is limited to examining whether such order conforms to the requirements of the proviso to Rule-3 of Order-XXXIX of the Code of Civil Procedure, which inter alia reads as under:

"Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies; and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent."

7. Dealing with the scope of an appeal arising out of an ad interim injunction order, a Division Bench of this Court in **Innovative Pharma Surgicals v. Pigeon Medical Devices (P) Ltd and Ors., (2004) 4 ALT 8**, held that as a matter of course, no appeal lies against an ad interim injunction order, except in extra-ordinary circumstances, as to the non-compliance of the mandatory provisions, or the rarest of the rare cases, where the order is perverse or bias or it suffers from lack of jurisdiction.

8. On a perusal of the reasons assigned by the lower Court, as extracted above, it cannot be said that they are perverse.

9. It is not the case of the appellant that the impugned order is a result of bias or that the lower Court has lacked jurisdiction to pass the order under appeal.

10. Since the impugned order contains reasons, it satisfies the requirements of the proviso to Rule-3 of Order-XXXIX C.P.C. Therefore, applying the tests indicated in *Innovative Pharma Surgicals (supra)*, we are of the opinion that it is not a fit case for entertaining the appeal against the ad interim injunction order.

11. Learned counsel for the appellant expressed an apprehension that if his client is relegated to the lower Court, there is a likelihood of long delay in disposal of I.A.No.782 of 2016, which results in irreparable injury to his client's interests.

12. Mr. S.Ravi, learned senior counsel, fairly submitted that his client is prepared for an early hearing of the afore-mentioned I.A. and that, an appropriate direction in this regard may be issued to the lower Court.

13. In view of the afore-mentioned facts of the case and the reasons mentioned herein before, we are not inclined to entertain the appeal for adjudication on merits.

14. The appellant is permitted to file an application for vacating the ad interim injunction order. On such application being filed, the lower Court shall dispose of the same as expeditiously as possible, and, not later than three months from the date of filing of such application.

15. Subject to the above observation and direction, the Civil Miscellaneous Appeal is dismissed.

16. As a sequel to dismissal of the appeal, CMAMP. No. 1176 of 2016 filed by the appellant for interim relief is dismissed as infructuous.