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

+ **CS(COMM) 1174/2016**

ALLERGAN, INC.

..... Plaintiff

Represented by: None.

versus

BIO-MED PRIVATE LIMITED & ANOTHER Defendants

Represented by: Mr. Sushant Kumar, Advocate
for defendant No.1.

Mr. Anshu Bhanot, Advocate
for defendant No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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01.11.2017

1. Despite pass-over none is present on behalf of the plaintiff.
2. Present suit has been filed by the plaintiff seeking permanent injunction restraining infringement of the trademark, passing off, damages etc. against the defendants. Plaintiff claims common law proprietary rights in the trademark 'BOTOX' and alleges that the defendants have violated its rights by use of mark BOTO GENIE/Genie.
3. Summons in the suit were issued on 9th January, 2009 and defendant No. 1 was served. Later defendant No. 2 was served. Parties sought to settle the matter but could not arrive at a settlement.
4. Affidavits of admission/denial were filed by plaintiff and defendant No.1 and learned counsel for plaintiff sought time to take instructions that in case defendant No.2 was a distributor of defendant No.1 it may be deleted from the array of parties.

5. Be that as it may, fresh notice through all modes was issued to defendant No. 2 on 3rd August, 2012 which was received back unserved.
6. Learned counsel for defendant No. 2 entered appearance and filed an application being I.A. No. 4031/2013 for deletion of its name from the array of parties which application was dismissed by this Court on 7th May, 2014.
7. Fresh admission/denial of documents qua defendant No. 2 was carried out and the matter was listed for framing of issues before this Court on 10th July, 2015. On 10th July, 2015 this Court noted that though the matter was pending since 2009 issues had not been framed and repeated adjournments were being sought. Though adjourning the suit it was noted that in case no settlement was arrived at on the next date suit will be proceeded in accordance with law including framing of issues.
8. In compliance of office order dated 24th November, 2015 for the pecuniary jurisdiction of suit being upto the value of ₹2 crores, the same was transferred to the District and Sessions Judge however, on 10th August, 2016 it was re-transferred from the District Court to this Court.
9. On 22nd November, 2016 issues were settled and the suit was fixed for recording of evidence on 3rd March, 2017 before the learned Joint Registrar. On 3rd March, 2017 parties again sought reference of the matter to Delhi High Court Mediation and Conciliation Centre. On 20th July, 2017 when the matter came up before the learned Joint Registrar the parties again sought further time for settlement and matter was listed on 11th October, 2017 for plaintiff's evidence.
10. On 11th October, 2017 learned counsel for the plaintiff submitted that he wished to withdraw the present suit and thus the present suit was listed today before this Court.

11. As noted above, even on pass-over none is present on behalf of the plaintiff. The order sheets reflect that the plaintiff is not seriously pursuing the suit and seeking adjournments on one pretext or the other. Despite repeated opportunities till date neither the list of witnesses nor the evidence by way of affidavits of the plaintiff have been filed.

12. Consequently the suit is dismissed for non-prosecution.

MUKTA GUPTA, J.

NOVEMBER 01, 2017

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