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

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Judgment delivered on: 28.08.2017

+ CS(COMM) 1453/2016

M/S KIRAN SHOES MANUFACTURERS

..... Plaintiff

versus

NARINDER KOHLI & ANR

..... Defendants

Advocates who appeared in this case:

For the Petitioner : Mr. Pranay Sarkar with Mr. Jeetu Sharma, Advocates.

For the Respondents : Mr. Ishwinder Walia, power of attorney holder on behalf of defendant Nos.2 and 3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

28.08.2017

SANJEEV SACHDEVA, J. (ORAL)

IA No.9619/2017 (under Order XXIII rule 3 CPC)

1. By this application, under Order XXIII Rule 3 CPC, jointly filed by the plaintiff and the defendants, it is prayed that the suit be decreed in terms of the application.

2. The application is supported by an affidavit of the authorised signatory of the plaintiff as well as Mr. Ishvinder Walia, the power of attorney holder of the defendant Nos.1 and 2. Along with the

application, the original Power of Attorney, issued by the defendant Nos.1 and 2 has also been annexed.

3. In view of the averments in the application, the application is allowed. The suit is taken up for disposal today.

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4. The parties have settled their disputes and, accordingly, have jointly filed the application under Order XXIII Rule 3 CPC.

5. The terms of settlement agreed to between the parties and, as recorded in the said application, are as under:-

“2. The Plaintiffs and the Defendant, hereby also binding all the entities in which, the Defendant are directors/owners/partner have arrived at an understanding on terms and conditions as set out hereinafter:

a) The Defendant, agrees and acknowledges that the Plaintiff is the absolute owner of the trademarks GOLDSTAR, the GOLDSTAR (Side Trim Device) and all other trademarks claimed by the Plaintiff in the plaint.

b) The Defendant acknowledges and agrees that no rights exist with them in the getup of the Plaintiffs Product, "GOLDSTAR" and all the Trade Marks as above in Para (a). Thus, any assignment made or intended to be made in future by Defendant to any entity to manufacture footwear, soles or related articles is null and void.

c) The Defendant admits that the use and adoption of

the marks "GOODSTAR / GQLDSTAR/ GOLBSTAR/ GLOBSTAR/ GALDSTOR/ GOALSTAR/ GOLSTAR/ GLADSTAR" or any other deceptively similar trademark (visually/phonetically/otherwise) and/or the Getup/shape of the Plaintiff's shoe is malafide and amounts to infringement of Plaintiffs Intellectual property.

d) The Defendant undertakes to this Hon'ble Court:

- 1. That it shall never file and shall withdraw if any already filed any identical or deceptively similar trade marks for registration belonging to the Plaintiff as mentioned in paragraph (a) of, the present application/disclosed in the Plaintiff.*
- 2. That it shall pay damages of total INR 1,90,000.00 (Rupees One Lakh Ninety Thousand Rupees Only) for loss caused to the Plaintiff vide cheque:-*

<i>Sl. No.</i>	<i>BANK NAME</i>	<i>CHEQUE NO.</i>	<i>AMOUNT</i>
<i>1.</i>	<i>Punjab National Bank</i>	<i>163986</i>	<i>75000</i>
<i>2.</i>	<i>Punjab National Bank</i>	<i>099327</i>	<i>75000</i>
<i>3.</i>	<i>Punjab National Bank</i>	<i>163990</i>	<i>20000</i>
<i>4.</i>	<i>Punjab National Bank</i>	<i>099331</i>	<i>20000</i>
<i>Total -</i>			<i>1,90,000/-</i>

That the understanding is subject to clearance of the above instruments.

3. The Defendants hereby agree to:

I. never to initiate any fresh and

II. agrees to withdraw all pending if any:

objections, oppositions, cancellations and rectifications, petitions, challenging the registration of the Plaintiffs' trademark copyright and/or design. The Defendant shall also withdraw any application for copyright, design and trademark that has been applied in respect of any mark identical or deceptively similar to Plaintiff's mark "GOLDSTAR" and/or any other intellectual property of the Plaintiff.

- 4. That Defendant and/or all shareholders, representatives, partners, employees, agents, assigns, distributors, etc. of the Defendant and in specific Defendant No. 1's brother Mr. Vaishno Kohli shall be bound by this understanding and none shall challenge the same in any Court of law.*
 - 5. The Defendant shall not create any nuisance and/or disturbances or cause any hindrance in the peaceful enjoyment of any trademarks, copyright and design of the Plaintiff.*
 - 6. All disputes and differences between the Defendant and Plaintiff with regard to trademarks of the Plaintiff stands settled.*
 - 7. The Defendant hereby covenants with the Plaintiff that the Defendant will never use without approval/license from the Plaintiff, sell and advertise any mark which nearly resembles and/or is identically similar and/or confusingly similar and/or deceptively similar even phonetically, visually and structurally similar to the said Trademarks and/or Copyrights and/or Designs of, the Plaintiff in relation to the said goods and business of the allied / cognate description.*
- e. The Defendant and its affiliates, further undertake*

in terms of the above para (c) to this Hon'ble Court not to engage in any such activities as would lead to passing-off/infringement/piracy of the Plaintiffs trade mark/copyright/ design.

f. The Defendant undertakes to this Hon'ble Court not to directly or indirectly manufacture, sell or offer for sale, advertise or deal in goods or in services depicting any of the Plaintiffs mark/copyright/design/getup and other similar/identical artistic feature and not to use any other label/mark/copyright/design as may be a colourable or slavish imitation or substantial reproduction of the Plaintiffs label packaging/copyright/design..

g. The Defendant undertakes to this Hon'ble Court that it shall destroy in presence of the Plaintiffs representative and not keep, in its custody, or control over, any goods, dyes, moulds, blocks, tags, labels, other printed matter and any other material whatsoever used to produce/bearing, the mark "GOLDSTAR /"GOODSTAR"/ "GQLDSTAR"/ "GOLBSTAR"/"GLOBSTAR" / "GALDSTOR"/"GGALSTAR" / "GOLSTAR" / "GLADSTAR" or any other deceptively similar trade mark (visually/phonetically/otherwise) and/or the Getup/shape of the Plaintiff s shoe and/or with embossing "MODEL IN NEPAL", "MADE IN NEPAL", "DESIGN IN NEPAL", "DEGN IN NEPAL", "MADE AS NEPAL", "DESIGN AS NEPAL" "DESIGN FROM NEPAL" and/or any other mark confusingly and deceptively similar to the trade mark/label mark within 15 days of the signing of the present application.

h. The present undertaking is given by Mr. Ishvinder Wadia Power of Attorney Holder and duly competent to enter into this understanding with the Plaintiff on behalf

of Defendant 1-2.”

6. I have perused the terms of settlement and find them to be lawful.

7. Mr. Ishwinder Walia, power of attorney holder of defendant Nos.1 and 2 is present in Court and has produced his original Identity card, copy of which is annexed to the application.

8. The defendants have paid the damages in the sum of Rs.1,90,000/-. Learned counsel for the plaintiff acknowledges receipt of the said amount.

9. The defendants have also given undertaking in terms of the above referred Clauses.

10. The undertaking is accepted.

11. In view of the above, the suit is decreed in terms of application under Order XXIII Rule 3 CPC. The said application shall form part of the Decree.

12. Decree Sheet be drawn accordingly.

13. Since the suit has been settled and compromised leading to a compromise decree prior to any evidence having been recorded on the merits of the claim, the plaintiff is entitled to refund of half of the amount of the Court fee paid in terms of Section 16A of the Court Fee

Act, 1870, as amended for the State of Delhi.

14. Accordingly, the Registry is directed to issue a certificate to the plaintiff authorising the plaintiff to seek refund of appropriate court fee from the concerned authorities.

15. The next date of 07.09.2017 is cancelled.

AUGUST 28, 2017
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SANJEEV SACHDEVA, J

