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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 1466/2016

MHCS

..... Plaintiff

Through: Mr. Dhruv Anand, Advocate with
Ms. Udit Patro and Mr. Shamim
Nooreydzan, Advocates.

versus

MR GAURAV SHEKHRI & ORS

..... Defendants

Through: Mr. Rajat Singh, Advocate for
defendants No.1 and 2.

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Date of Decision: 07th November, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

I.A. 13009/2017

1. Present joint application has been filed under Order 23 Rule 3 read with Section 151 CPC. The same is duly signed by learned counsel for the plaintiff and defendants No.1 and 2 as well as by the said parties to the litigation.

2. Present application is also supported by affidavits of authorized representative/constituted attorney of the plaintiff and the defendants No.1 and 2.

3. Both the learned counsel state that the matter has been compromised in accordance with the terms mentioned in the Compromise application.

4. Both the learned counsel further assure and undertake to this Court that the parties shall comply with the Settlement terms mentioned in the said Compromise application.

5. The aforesaid statements, assurances and undertakings as well as undertakings given by learned counsel for the parties are accepted by this Court and parties are held bound by the same.

6. This Court has also perused the compromise application and is of the opinion that it is lawful.

7. Consequently, the suit is decreed qua defendants No.1 and 2 in accordance with paragraph 82(a), (b) and (c) of the plaint as well as the Compromise application being I.A. No.13009/2017, a copy of which is marked as Ex.C-1. Registry is directed to prepare a decree sheet accordingly.

8. With the aforesaid observations, present application is allowed and the suit stands disposed of qua defendants No.1 and 2.

9. The application stands disposed of.

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10. Since none appears for defendants No.3 and 4, they are proceeded ex parte.

11. Learned counsel for the plaintiff states that in view of the judgment of this Court in *Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.*, the present suit should be decreed qua the

relief of injunction. The relevant portion of the said judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

12. He further states that he has instructions not to press for any other relief other than the relief of permanent injunction and costs, as prayed for in para 82(a), (b) and (g) of the plaint.

13. The relevant facts of the present case as stated in the plaint are as under:-

A. The plaintiff is MHCS situated at 9 Avenue de Champagne, 51200, Epernay, France. The plaintiff is a subsidiary of the luxury goods company LVMH. LVMH is a French multinational luxury goods conglomerate headquartered at Paris. The company was formed by the 1987 merger of fashion house Louis Vuitton (LV) with Moët Hennessy (MH).

B. The best known label of MHCS is Dom Pérignon. The plaintiff manages the Dom Pérignon brand of champagne. The iconic champagne derives its name from Mr. Dom Pierre

Pérignon, a Benedictine Monk who was an important quality pioneer for champagne wine and is remembered in legend as the 'Father of Champagne'.

- C. The plaintiff is the owner of the Dom Pérignon trade mark and the unique shield device label, as well as unique trade dress in which the product is packaged.
- D. The distinctive label of the Dom Pérignon product consists of a double-bordered shield-shape device with the innermost of the borders emboldened. The shield-shape is gently curved and has a central point at the bottom and three points at the top. Within these borders, and towards the top, is some scrolling from which crossed garlands of bunches of leaved grapes extend down to the lower point. A five pointed star appears just above the cross of the garlands.
- E. The trade dress of the plaintiff comprising the colour scheme, unique label, layout and get up have been adopted and used by the plaintiff commercially since the year 1921. It is pertinent to note that the unique shield label of the plaintiff has been in commercial use since the 18th Century. Dom Pérignon is a vintage champagne, meaning that it is only made in the best years, and all grapes used to make the wine were harvested in the same year. Many champagnes, by contrast, are non-vintage, which means that the champagne is made from grapes harvested in various year.

F. The plaintiff's unique shield label is today recognized and treated as a well-known, well-reputed and famous trademark, whose awareness, repute and fame is not confined to any one geographical territory. The plaintiff has made huge investments on the promotion campaigns for its trade dress comprising the label registered as a trademark. The trade dress comprising the well-known label has even featured in major motion pictures like "Moonraker" (James Bond) by Ian Fleming. Celebrities like Marilyn Monroe and Marlene Dietrich have even publicly promoted the plaintiff's product as their favourite champagne. In fact, the plaintiff's product, unique shield label and its reputation is no stranger to India either. The plaintiff's products and unique shield label have been advertised and promoted through iconic celebrities in India. Events such as a Dom Pérignon sponsored fashion show in 1996 celebrating the works of India's famous designer Tarun Tahiliani and the Sawai Man Singh Gold Vase Polo Tournament and Gala dinner are a reflection of the popularity of the plaintiff's product and its promotion in India. Documents showing extensive promotion of the plaintiff's products and the unique shield label all across the world including India have been filed in the present proceedings. As a result of extensive, exclusive and continuous use, the said trade dress including the plaintiff's registered unique shield label has attained immense reputation and goodwill in relation to the plaintiff's Dom Pérignon champagne and acquired a

secondary significance as trade original of the plaintiff.

- G. The unique shield device label trade mark is also used by the plaintiff independently, separate from its champagne bottle.
- H. The reputation and goodwill enjoyed by the plaintiff's trade dress is reflected in the sales figures of Dom Pérignon Champagne being marketed in the said trade dress that are detailed in paragraph 24 of the plaint. Apart from the extensive and continuous use, the plaintiff has been spending huge amount of money and has put in unparalleled efforts to advertise and promote its Champagne in the said dress. The said figures are given in paragraph 25 of the plaint.
- I. The plaintiff has also been diligent in enforcing its rights over the shield device label trade marks in various jurisdictions. Copies of some of orders/judgments passed in favour of the plaintiff, in respect of its shield device label trademarks have been filed.
- J. The plaintiff is the proprietor of the unique shield label for both the device as well as the shape of the device label in Class 33 (alcoholic beverages), under valid and subsisting trademark Registration Nos. 524669 and 2282207. Details of the registrations are given in paragraph 27 and 28 of the plaint.

Plaintiff's Trademark Registrations	
 TM Registration No.524669	The Registration No. 2282207 

K. In addition to the above, one of the plaintiff's trademark application for another similar shield device label, which was pending registration at the time of filing of the law suit, being Trademark No.2235602, has now also fructified into a registered trade mark.

L. The present law suit has been filed by the plaintiff against the defendants on account of sale of 'Spumante Sparking Wine' sold by defendants No.3 and 4 in a bottle that bears a label infringing the registered label of the plaintiff and a trade dress deceptively similar to the trade dress of the plaintiff in its Dom Pérignon Champagne bottle. A pictorial comparison of the plaintiff as well as the defendants' product is reproduced hereinbelow:

Plaintiff's Product



Defendants' Product



M. Defendants No.1 and 2 (Gaurav Shekhri, Director of Fratelli Wines Pvt. Ltd. and Fratelli Wines Pvt. Ltd., respectively) are the contract manufacturers of the products 'SPUMANTE SPARKLING WINE' bearing the infringing labels, sold and marketed by defendants No.3 and 4 (Moksh Shrichand Pardasani, Director of Living Liquidz and Living Liquidz, respectively).

14. This Court had vide its order dated 27th October, 2016 granted an ex parte ad interim injunction against the defendants. Thereafter, the defendants No.3 and 4 wrote a letter dated 12th January, 2017 to the plaintiff, wherein they stated that they have requested their printer and simultaneously their manufacturing department to make fresh

labels for their products, which are different and distinct from the infringing labels. The plaintiff submits that this in itself is an admission of the deceptively similar nature of the defendants' label.

15. As the defendants No.3 and 4 despite due service refrained themselves from appearing before this Court, the said defendants were proceeded ex parte vide order dated 30th October, 2017.

16. In view of the averments made in the plaint, which remain uncontroverted, this Court is of the view that the plaintiff is entitled to the judgment in terms of the relief claimed for in para 82 (a), (b) and (g) of the plaint. However, since the plaintiff has not established the quantum of damages, no relief in this regard can be granted. As noted above, the counsel for the plaintiff has also not pressed for the said relief.

17. In view of the above, the suit is decreed in favour of the plaintiff and against defendants No.3 and 4 in terms of para 82 (a), (b) and (g) of the plaint along with the actual costs. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit. Registry is directed to prepare a decree sheet accordingly.

18. Consequently, the present suit and application stand disposed of.

MANMOHAN, J

NOVEMBER 07, 2017

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