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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1483/2014 & IAs No.9744/2014 & 11587/2014**

Decided on : 08.04.2015

IN THE MATTER OF:

M/S LEAYAN GLOBAL PVT LTD Plaintiff
Through : Mr. D.K. Yadav, Advocate

versus

M/S BHAVYA Defendant
Through : Mr. Gurvindr Singh, Advocate

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The present suit has been instituted by the plaintiff against the defendant praying *inter alia* that the defendant be restrained from manufacturing, selling, using or dealing with the impugned trademark/label "RED CHIEF LABEL" and "ROYAL CHIEF", which is identical/deceptively similar to the plaintiff's trademark/label in relation to the impugned goods and business of manufacturing and marketing of shoes and footwear.

2. A perusal of the order sheets reveals that the suit was registered on 20.5.2014 and on the said date, an *ex parte ad interim* order was granted in favour of the plaintiff in I.A.No.9744/2014.

Simultaneously, a Local Commissioner was appointed to visit the suit premises and inventorize and seize the goods bearing the plaintiff's trademark/label "RED CHIEF LABEL" and "ROYAL CHIEF". After the commission was executed, the Local Commissioner had submitted a report. Thereafter, the defendant had filed an application under Order XXXIX Rule 4 CPC, registered as IA No.11587/2014, on which notice was issued on 25.6.2014.

3. Learned counsel for the defendant refers to the averments made in IA No.11587/2014 and to the documents enclosed therewith to contend that the products being sold by the defendant are genuine products manufactured by the plaintiff and his client was only procuring the said products from the plaintiff's authorized distributor.

4. In view of the submission made by the counsel for the defendant, learned counsel for the plaintiff states that he would not have any objection as long as the defendant deals with the genuine products manufactured by the plaintiff through its authorized distributor.

5. As long as the defendant is not manufacturing, distributing or selling spurious or counterfeit products of the plaintiff, the same cannot amount infringement of the plaintiff's trademark.

6. Subsequently, the defendant has filed a written statement

wherein it has been categorically stated that it is neither manufacturing nor counterfeiting or displaying any of the impugned products of the plaintiff company and that the products being sold by it are original. It has been clarified that though the defendant is not a distributor of the plaintiff company, it has been purchasing the plaintiff's products from the authorized dealer and is selling the same in the open market, which is legally permissible.

7. Counsel for the plaintiff states that in view of the averments made by the defendant in the written statement and further, as the defendant does not have any objection to the suit being decreed in terms of prayer (a), his client does not wish to press the remaining reliefs at prayers (b) to (f). The other side is agreeable to the same.

8. Accordingly, with the consent of the parties, the suit is decreed in terms of prayer (a) alone, while leaving the parties to bear their own costs.

9. At this stage, counsel for the defendant states that in terms of interim order dated 20.5.2014, passed in IA No.9745/2014, the Local Commissioner had taken into custody the impugned goods and after sealing the same, had returned them to his client on *superdari*. He submits that now that the suit has been disposed of, the defendant be given liberty to break open the seal and access the said goods so that

they can be sold in the open market.

10. Counsel for the plaintiff states that he does not have any objection to the aforesaid request.

11. The defendant shall be at liberty to de-seal the impugned material sealed by the Local Commissioner and handed over to him on superdari and dispose of the same in the open market.

12. The suit is disposed of, along with the pending applications.

13. File be consigned to the record room.

(HIMA KOHLI)
JUDGE

APRIL 08, 2015
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