

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

+ **CS(OS) 3613/2014 & IA No.23566/2014**

Decided on: 09.01.2015

IN THE MATTER OF

FLAMAGAS,S.A.

..... Plaintiff

Through : Ms. Aparna Gaur, Advocate
versus

SHARAD (ALIAS RAJA)

..... Defendant

Through : Mr. Rudro Chatterjee, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

IA No.365/2015 (joint application u/O XXIII R-3 CPC)

1. The plaintiff/company has instituted the present suit against the defendant praying *inter alia* that he be restrained from infringing its trademark, "CLIPPER", for protection of its copyright, for passing off, rendition of accounts, etc.

2. Vide order dated 28.11.2014, summons were issued in the suit to the defendant, returnable on 11.2.2015. On the said date, an interim order was granted in favour of the plaintiff, restraining the defendant and his representatives from manufacturing, marketing, distributing, advertising, importing, exporting or offering for sale, the lighters under the trademark "CLIPPER" as well as shape mark "CLIPPER" or any other mark or shape which is exclusively associated with the plaintiff. A Local Commissioner was

also appointed to visit the premises of the defendant and make an inventory of the infringing products.

3. It is jointly stated by the counsels for the parties that the Local Commissioner has executed the commission and thereafter, the parties have interacted with each other and arrived at an out of court settlement, as recorded in para 2 of the present application, whereunder the defendant has acknowledged the plaintiff to be the sole and exclusive owner of the trademark "CLIPPER", including its formative variants, distinctive packaging, etc., and he has undertaken not to manufacture, advertise, promote, export, market, sell, distribute, offer for sale distribute, export directly or indirectly any product, including lighters in the shape or packaging or under the mark "CLIPPER", as set out in para 13 of the plaint. The defendant has further undertaken that the products bearing the impugned packaging already in the market have been exhausted by him.

4. In view of the undertaking given by the defendant, the plaintiff has decided not to press the relief for compensation/damages as prayed for in the suit.

5. Counsels for the parties jointly state that the present suit may be disposed of in terms of the settlement arrived at between the

parties.

6. The Court has perused the present application. The same has been signed by the authorized signatory of the plaintiff and the defendant and their respective counsels. The application is supported by the affidavits of the constituted attorney of the plaintiff company and the defendant.

7. As the counsels for the parties state that the parties have arrived at the aforesaid settlement of their own free will and volition and without any undue influence or coercion from any quarters, there appears no legal impediment in accepting the same. The parties shall remain bound by the terms and conditions of the settlement.

8. The application is allowed and the suit is disposed of, along with the pending application, in terms of the settlement arrived at between the parties, while leaving the parties to bear their own costs.

9. The date already fixed in the matter, i.e., on 11th February, 2015 stands cancelled.

(HIMA KOHLI)
JUDGE

JANUARY 9, 2015/sk