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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1081/2004 & IA No.2275/2005(under Order XXXIX Rule 2A CPC).

HINDUSTAN PENCILS Plaintiff

Through: Mr. Sushant Singh, Adv.

versus

CELLO SALES AND MARKETING Defendant

Through: Mr. K.K. Nangia, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.11.2016

IA No.13838/2016 (under Order I Rule 10) and IA No.13839/2016 (under Order XXIII Rule-3 CPC).

1. The plaintiff Hindustan Pencils Ltd. instituted this suit to restrain the sole defendant Cello Sales & Marketing from infringing trademark and passing off its goods as that of the plaintiff and for ancillary reliefs.
2. On the last date i.e. 27th September, 2016 the counsels stated that the matter had been orally settled and had sought time to file the compromise application before this court.
3. IA No.13838/2016 has been filed by the defendant under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking substitution of the existing defendant with Cello Pens Private Limited. It is stated that the existing defendant Cello Sales & Marketing which was a sole proprietary has been converted into Cello Pens Private Limited.
4. The counsel for the plaintiff has no objection.
5. IA No.13838/2016 is allowed and the existing defendant is ordered to be substituted with Cello Pens Private Limited.

6. Amended memo of parties filed along with IA No.13838/2016 is taken on record.
7. IA No.13839/2016 has been filed by the plaintiff and Cello Pens Pvt. Ltd. recording the compromise arrived at.
8. The counsel who was earlier appearing for Cello Sales & Marketing now appears for Cello Pens Private Limited.
9. Both counsels support the application and state that the application is signed by them as well as by the authorised representatives of the plaintiff and the defendant and accompanied with their affidavits.
10. I have perused the compromise arrived at between the parties as contained in this application and find the same to be lawful.
11. The counsel for the defendant on enquiry states that the original defendant in the suit is no longer carrying on the business in which the impugned trademark was being used and has authorised him to make a statement in this court that he will also remain bound by the decree passed in this suit and will not take advantage of the substitution and again start indulging in actions impugning which this suit was filed.
12. The said undertaking of the proprietor of the erstwhile defendant as well as of the present defendant and of Mr. Ganesh Parameswaran of the defendant who has signed the application and the affidavit accompanying the same are accepted and the proprietor of the erstwhile defendant and existing defendant and the said Mr. Ganesh Parameswaran are bound by their undertakings aforesaid and as contained in the application and are through counsel informed of consequences of breach of undertaking given to the court.

13. IA No.13839/2016 is allowed.

14. The suit is decreed in terms of the compromise as contained in IA No.13839/2016 and in terms of paras 33 (a), (aa) and (b) of the amended plaint dated 26th June, 2007 and this order.

15. The parties are left to bear their own costs.

Decree sheet be prepared. IA No.13839/2016 and this order to form part of decree.

RAJIV SAHAI ENDLAW, J

NOVEMBER 09, 2016

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