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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(OS) 267/2008, IA No.3931/2015 (u/O VII R14 CPC), IA  
No.5557/2016 (u/O XXII R-10 CPC) & IA No.6324/2016 (u/O  
XXXIX R-1&2 CPC)

M/S BRIGHT ELECTRICALS

..... Plaintiff

Through: Mr. Lalit Vohra, Adv. for Mr. S.K.  
Bansal, Adv.

Versus

RAMESH KUMAR PATEL & ANR.

..... Defendants

Through: Mr. H.P. Singh & Mr. Navroop  
Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**07.11.2016**

1. This suit was filed for permanent injunction to restrain the two defendants viz. Ramesh Kumar Patel & M/s Racer Industries (stated by the counsel for both the defendants to be proprietary of Ramesh Kumar Patel) from using the trademarks "GOLDMEDAL", "REAL MEDAL", "MEDAL", "MODEL", "G MEDAL", SILVER MEDAL" on the ground of the same being in infringement of the plaintiff's trademark "GOLDMEDAL", and for ancillary reliefs.
2. The suit came up for admission before this Court on 15<sup>th</sup> February, 2008 when though summons of the suit were issued but the application of the plaintiff for interim relief being IA No.1811/2008 was rejected.
3. The counsel for the defendants states that the defendants filed the written statement pleading use only of their registered trademark "MEDAL".

4. Though the plaintiff filed another application being IA No.6835/2008, also for interim relief, but no order was granted thereon also and the said application remains pending.

5. On the pleadings of the parties, on 16<sup>th</sup> September, 2010, the following Issues were framed:

- “(i) Whether this Court has the territorial jurisdiction to try and decide the present suit? OPD
- (ii) Whether the suit as framed is not maintainable in view of Section 30(2)(e) of the Trademarks Act? OPD
- (iii) Whether the trademark of the plaintiff registered as GOLDMEDAL is in gross violation of the prohibition contained under Section 9(1)(a) and Section 9(2)(d) of the Trade Marks Act, 1999? OPD
- (iv) Whether the proceedings of the present suit are liable to be stayed in view of Section 124 of the Trade Marks Act? OPD
- (v) Whether the present suit is liable to be rejected on the ground of misjoinder of cause of actions? OPD
- (vi) Whether the plaintiff is the proprietor of the trade mark/label GOLDMEDAL, REAL MEDAL, MEDAL, MODEL, G MEDAL, SILVER MEDAL? OPP
- (vii) Whether the defendant has infringed the trade mark of the plaintiff, if so, to what effect? OPD
- (viii) Whether the defendant has passed off its goods as that of the plaintiff under the trademarks /label GOLDMEDAL and thus violated the common right of the plaintiff? OPP
- (ix) Whether the plaintiff is entitled to damages to the tune of Rs.20,1000/- from the defendant? OPP

- (x) Whether the plaintiff is entitled to relief of delivery up of the impugned goods and the other offending packaging material etc. used by the defendant for alleged action of passing off? OPP
- (xi) Relief.”

and the matter posted for trial with the plaintiff being required to lead evidence first.

6. In spite of six years having lapsed, not a single witness of the plaintiff has been examined till date, though some application or the other continued to be filed.

7. On 26<sup>th</sup> February, 2015, the counsel for the plaintiff sought adjournment for leading evidence on the ground that the plaintiff has assigned the trademark to M/s Goldmedal Pvt. Ltd. and the said assignee intends to take steps to proceed with the suit. However no such application was filed immediately thereafter also and after much delay, IA No.5557/2016 has been filed under Order XXII Rule 10 read with Order VI Rule 17 of the CPC.

8. IA No.6835/2010 supra for interim relief was withdrawn on 29<sup>th</sup> February, 2016 and now IA No.5557/2016 has been filed by the assignee.

9. IA No.3931/2015 of the plaintiff under Order VII Rule 14 CPC is also pending consideration.

10. The counsel for the plaintiff states that rejoinder is required to be filed to the reply to IA No.5557/2016. However, on enquiry as to what he intends to say in rejoinder, he is unable to state anything and states that he is the ‘non-main’ counsel and the main counsel Mr. S.K. Bansal is travelling.

11. I have already in several orders commented on the practice which has evolved in this Court of only ‘non–main’ counsel appearing in the Court and the ‘main counsel’ after the order has been passed, seeking review / modification. Allowing such practice to continue has led to pendency and delays in disposal. There is no ground for adjournment.

12. The plaintiff in the present case has kept this suit pending for the last six years at the stage of evidence and the only consequence has to be of dismissal of the suit for non-prosecution.

13. Merely because the plaintiff, after keeping the suit so pending, assigns the rights in favour of another, will not give any right to that assignee to take advantage of the pendency of the suit.

14. Moreover, there is no interim order for it to be said that there is any need to continue with the old suit and the assignee can always institute fresh proceedings if so advised.

15. In this respect, I may also note that the assignment deed pleaded is also of 22<sup>nd</sup> March, 2013 i.e. of nearly two years prior to the date on which the assignment was disclosed to this Court and which also shows the complicity of the assignee in the delay and that the assignee also not earnestly pursuing this suit.

16. The counsel for the defendants has in Court handed over a copy of the letter dated 23<sup>rd</sup> August, 2014 written by the advocate for the plaintiff to the Registrar of Trademarks and contends that the stand of the plaintiff herein is contrary to what is stated in the said letter.

17. The said letter is taken on record.

18. Be that as it may, the suit is dismissed for non-prosecution, with the clarification aforesaid and reserving the right aforesaid of assignee as it has not been impleaded in this suit as yet.

I refrain from imposing any cost on the plaintiff.

Decree sheet be prepared.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 07, 2016**

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