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

+ TR.P.(C) 12/2016 and I.A. 10099/2016, 4341/2016

M/S HABIB ENTERPRISES

..... Petitioner

Through: Mr. Varun Goswami, Advocate with
Mr. Rajesh Singh, Advocate

versus

M/S NATURE ESSENCE PVT LTD AND ORS Respondents

Through: Mr. Aruni Poddar, Advocate for R-1.
Mr. Sarvesh Rai, Advocate for Mr. Raj Kumar,
Advocate for R-2 to R-5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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09.09.2016

1. Pursuant to the order dated 22.08.2016, counsel for the respondent No.1 is present and so is the counsel for the respondents No.2 to 5, who states that he has no objection to the present petition being allowed. As for the respondent No.1, learned counsel for the said respondent states that he has not been furnished a complete set of the paper book.
2. It is pertinent to note that the respondent No.1 was duly served with the notice in the present petition on 11.05.2016, as per the report of the Process Server. In such circumstances, the submission made by the counsel for the respondent No.1 that he is unaware of the pendency of the present petition is unacceptable. Another copy of the petition has been furnished to the counsel for the respondent No.1.
3. The present petition has been filed by the petitioner, defendant in

CS(OS) 1333/2014 pending in the High Court and in TM No.9/2014 pending before the learned ADJ, South East District, Saket Courts, praying inter alia that TM No.9/2014 may be transferred to the High Court and be tagged with the file of CS(OS) 1333/2014, so that combined evidence can be led in both the suits and common arguments addressed.

4. Mr. Goswami, learned counsel for the petitioner submits that the respondent No.1 had instituted CS(OS) 1333/2014 on 03.05.2014, wherein the petitioner had been impleaded as the sole defendant. The relief in the said suit is for permanent and mandatory injunction restraining infringement of copyright, trademark passing off etc. Issues were framed in the said suit on 18.12.2015 and the same is listed before the Joint Registrar on 17.10.2016, for recording the evidence of the plaintiff therein (respondent No.1 herein). Subsequently, on 13.08.2014, the respondent No.1 had filed another suit for the same relief before the District Court, where in addition to the petitioner, respondents No.2 to 5, who are retailers of the petitioner were impleaded as co-defendants. Issues have already been framed in the said suit on 24.02.2015 and the said suit is now listed on 17.11.2016, for recording the plaintiff's evidence therein. He submits that pleadings in both the cases are identical and the reliefs prayed for are also identical. Therefore, both the suits ought to be consolidated for the purpose of trial and arguments.

5. Counsels for the respondent No.1 and respondents No.2 to 5 do not have any objection to the aforesaid request.

6. Accordingly, the present petition is allowed. The Registry is directed to summon the file of **TM No.9/2014** entitled M/s Nature Essence Pvt. Ltd. Vs. M/s Habib Enterprises and Ors., pending in the Court of Mr. Lalit

Kumar, ADJ, South East District, Saket Courts, Delhi, through a despatch rider and tag it with the file of CS(OS) 1333/2014, subsequently registered as CS(COMM) 608/2016.

7. The present petition is disposed of alongwith the pending application.

8. The date already fixed, i.e, 25.10.2016, stands cancelled.

SEPTEMBER 09, 2016

rkb/ap

HIMA KOHLI, J

