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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) No.817/2005**
HITKARI POTTERIES LTD. & ANR. Plaintiffs
Through: Mr. Rahul Malhotra, Adv.
versus
HITKARI POLYFILMS P. LTD. & ANR. Defendants
Through: Mr. Sumit Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.11.2016

1. This order is in continuation of the earlier order dated 26th October, 2016.
2. The counsel for the plaintiffs and the counsel for the defendants inform that the application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) remained to be filed and seek liberty to present the said application in the Court.
3. Allowed.
4. The application is handed over in the Court and is taken on record.
5. The same be got numbered.
6. The plaintiff instituted this suit for permanent injunction to restrain the defendant from infringing the trademark and trade dress of the plaintiff and for ancillary reliefs.
7. I have perused the terms on which the parties claim to have compromised the suit. There appear to have been various disputes subject matter of several litigations between the parties and the parties have signed a Deed of Settlement dated 3rd December, 2015 annexed to the application

under Order XXIII Rule 3 CPC.

8. The application under Order XXIII Rule 3 of the CPC is stated to be signed by the authorised representative of the plaintiff as well as by the defendant no.2 for self as well as his authorised representative of the defendant no.1.

9. In terms of the aforesaid Settlement Agreement, the present suit is to be withdrawn accepting the undertaking of the defendant no.2 to in future not use the trademark/trade name 'HITKARI' or any other similar trade mark in relation to his business activities as detailed in this suit.

10. The counsel for the plaintiff states that the undertaking has to be of the defendant no.1 only.

11. However the counsel agrees that it is not so spelt out in the Deed of Settlement.

12. The counsel for both the defendants however states that undertaking is to be of both the defendants and he has been authorised by both the defendants to furnish an undertaking to this Court in terms of para 2 of the Deed of Settlements and furnishes the said undertaking. He also states that he has made both the defendants aware of the consequences of breach of undertaking given to the Court.

13. The undertaking of the defendants through counsel in terms of para 2 of the Deed of Settlement annexed to the application under Order XXIII Rule 3 CPC is accepted and the defendants are ordered to be bound thereby.

14. Accepting the said undertaking, the suit is dismissed as withdrawn.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 23, 2016/‘pp’..

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