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

+ CS(OS) 1530/2006 & IAs No.3405/2011 (of defendant u/S 151 CPC),
3406/2011 (of defendant for exemption from filing original
documents), 13199/2013 (u/O 39 R-2A CPC), 21259/2015 (u/S 151
CPC) & 22286/2015 (u/O 39 R-2A CPC) & CC

M/S SANCHETI APPLIANCES PVT.LTD. Plaintiff
Through: Mr. Pankaj Kumar, Mr. Vinay Kumar
Shukla, Mr. Rahul Sharma and Mr.
Ajay Amitabh, Advs.

Versus

M/S J.K. ELECTRICAL INDUSTRIES Defendant
Through: Mr. Mohan Vidhani, Adv. with Mr.
Sumit Jain, proprietor of defendant in
person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.09.2016

1. The plaintiff has sued for permanent injunction to restrain the defendant M/s J.K. Electrical Industries (of whom Mr. Sumit Jain aged about 38 years son of Mr. Umed Singh, resident of 9/76, Motilal Nagar, Road No.9, near Water Tank, Goregaon (W), Mumbai is stated to be the sole proprietor) from using, manufacturing, selling, exporting, advertising or dealing in electrical accessories and fittings, switches, fuse & fuse units, sockets, indicators, electrical bells & buzzers, lightening fixtures, tops, holders ventilating devices, fan regulators etc. or any other allied / cognate

goods under the trademark / label 'WINNER' or any other trademark / label identical with or deceptively similar to the plaintiff's trademark / label 'WINNER', amounting to the defendant passing off its goods as that of the plaintiff and infringement of the plaintiff's registered trademark and for ancillary reliefs.

2. The suit was entertained though no interim relief granted. After notice, vide order dated 9th February, 2011, the defendant vide ad-interim order was restrained from using the plaintiff's marks 'WINNER' and 'PRETTY' in respect of electrical appliances, switches, fans, sockets etc. classified in Item 9 of the Trademarks Act, 1999 or any other mark similar to the mark of the plaintiff.

3. The defendant, besides filing the written statement also filed a counter claim for restraining the plaintiff from using the mark 'WINNER'.

4. Issues were framed in the suit on 15th February, 2012 and the parties put to trial.

5. The counsels inform that the plaintiff has concluded its evidence and the evidence of the defendant though has also commenced but the defendant has indicated that it does not want to lead any evidence.

6. The plaintiff filed IAs No.13199/2013 & 22286/2015 under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 (CPC) averring violation by the defendant of the order of the Court.

7. Vide order dated 1st June, 2016, the defendant was found to be in flagrant violation of the interim order and bailable warrants for appearance of the defendant before this Court were issued.

8. The defendant preferred FAO(OS) No.196/2016 and on 9th August, 2016 stated before the Division Bench of this Court that it was willing to settle with the plaintiff and to suffer an injunction and to pay Rs.11 lakhs to the plaintiff by way of damages. Unconditional apology was also tendered.

9. The aforesaid offer of the defendant was not agreed to by the plaintiff.

10. The Division Bench vide order dated 9th August, 2016 accepted the apology of Mr. Sumit Jain, proprietor of the defendant and recording his undertaking to appear before this Bench, disposed of the appeal.

11. The counsel for the defendant states that Mr. Sumit Jain is present in Court today and has reiterated the offer.

12. The counsel for the plaintiff has been heard.

13. I am of the view that Mr. Sumit Jain, proprietor of the defendant cannot be so permitted to buy his way out of the punishment which he is liable to suffer for violation of the interim order in this suit.

14. The counsel for the defendant under instructions from Mr. Sumit Jain, proprietor of the defendant offers to pay additional sum of Rs.9 lakhs by way of compensation for the loss, if any suffered by the plaintiff owing to the violation of the interim order by the defendant and by way of penance. He also states that the defendant is willing to withdraw the counter claim preferred.

15. In the aforesaid state of affairs, the suit, counter claim and the application being IAs No.13199/2013 & 22286/2016 under Order XXXIX Rule 2A CPC are disposed of as under:

(I) The suit of the plaintiff is decreed against the defendant in terms of prayer paragraph 27(a) of the plaint;

- (II) The counter claim of the defendant is dismissed as withdrawn;
- (III) A decree is also passed in favour of the plaintiff and against the defendant for recovery of Rs.11 lakhs towards damages / compensation;
- (IV) Mr. Sumit Jain, proprietor of the defendant, for violating the interim order of this Court, is punished with payment of Rs.9 lakhs, out of which a sum of Rs.7 lakhs will be payable to the plaintiff and the balance Rs.2 lakhs to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

16. Mr. Sumit Jain, proprietor of the defendant and as identified by the counsel for the defendant undertakes to this Court:

- (A) that he has defaced all the dies used for using the infringing trademark;
- (B) that he will pay the sum of Rs.11 lakhs to the plaintiff on or before 20th October, 2016;
- (C) that he will pay additional Rs.7 lakhs to the plaintiff on or before the end of February, 2017;
- (D) that he will deposit a sum of Rs.2 lakhs with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi on or before 31st January, 2017 and furnish proof thereof to the to the plaintiff as well as to the Registrar General of this Court;
- (E) that he has already withdrawn application No.2104243 for registration of trademark 'W WYNN' and other proceedings;

(F) that he has also withdrawn all other proceedings initiated against the plaintiff and if any proceedings are pending shall withdraw the same within one month of today.

17. Mr. Sumit Jain, proprietor of the defendant present in Court has been made aware of the consequences of breach of undertaking given to the Court.

18. The counsel for the plaintiff has agreed to the aforesaid, subject to the undertaking aforesaid being accepted by this Court and Mr. Sumit Jain being bound thereby.

19. The undertakings of Mr. Sumit Jain, proprietor of the defendant are accepted and he is ordered to be bound therewith.

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

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 15, 2016

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