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

+ **CS(OS) 2058/2010**

LUMAX INDUSTRIES LIMITED Plaintiff

Through: Mr. Sajad Sultan, Advocate

versus

ARVIND KUMAR N SHAH & ANOTHER Defendants

Through: Mr. Ashish Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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30.09.2016

IA No.12215/2016 (u/O. 23 R. 3 r/w. S. 151 CPC)

1. This suit was presented in September 2010 seeking the following reliefs against the two defendants :

(a). decree of perpetual injunction restraining the defendants, their promoters, directors, agents, distributors, stockiest and like from using the trademark "LEMAX" or any other trademark deceptively or confusingly similar to the plaintiff's registered trade mark "LUMAX" in relation to automotive components / goods or any other goods / services;

(b). decree of perpetual injunction restraining the defendants its directors, promoters, servants, stockists, distributors and agents from using the trademark "LEMAX" in any manner in relation to automotive components / goods or any other goods / services so as to pass off or enable others to pass off the products of the defendants as and for that of the plaintiff;

(c). direct the defendants to withdraw all the

application made for registration of the impugned trademark "LEMAX" before the Registrar of Trademark.

(d). direct the defendants to render a true and correct accounts of the profits earned, if any, by it by using the impugned trademark "LEMAX" and the defendants be ordered and decreed to pay the plaintiffs such amount as may be found due and payable on such accounts being taken;

(e). decree of mandatory injunction for destruction of the goods / products / advertising materials / stationers / cartons / labels / literatures etc. bearing the impugned mark / artistic work "LEMAX"; and

(f). award costs of the proceedings to the plaintiff."

2. After some contest, both sides have amicably settled the dispute and have come up with this joint application under Order 23 Rule 3 CPC stating, *inter alia*, thus :-

"3. That the defendants declare it has never used the trade mark LEMAX for goods falling in classes 4,7,9,11, 12 and the services of Travel Agency falling in class 39 respectively and has no intention of doing the same. Defendant also declares that they are not in possession of any goods falling in classes 4,7,9,11 and 12 of the Trade Marks Act, 1999 with the mark LEMAX or any trade mark which is identical or deceptively similar to the trademark LUMAX of the plaintiff.

4. That the plaintiff shall not manufacture, market, sell, offer for sale goods falling in class 25 under the mark LUMAX or any trade mark which is identical or deceptively similar to the trade mark LEMAX of the defendant. However, the plaintiff is at liberty to use its trade mark LUMAX on clothing bearing the trade mark LUMAX for the purposes of uniform to be worn by its employees / workers. The plaintiff shall not conduct any

commercial sale of goods falling in class 25.”

3. The application which has been filed on behalf of the plaintiff and both the defendants also states in para 5 that the plaintiff forgoes the claim for damages, rendition of accounts and cost of the present proceedings. The application is supported by affidavit of Mr. Surinder Kaul, authorised signatory of the plaintiff and affidavit of defendant no.1 for self and on behalf of defendant no.2 affirming the settlement terms mentioned in the main application.

4. Having perused the record, it is found that the parties have entered into this settlement voluntarily, out of their own free will and volition. Thus, the application is allowed.

5. The suit is decreed in terms of the settlement set out above. The parties shall remain bound by their respective undertakings and are left to bear their own costs. Decree sheet be drawn up accordingly. The file be consigned to record room.

R.K.GAUBA, J

SEPTEMBER 30, 2016

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