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

+ CS(OS) No.2247/2007

M/S KRBL LIMITED

..... Plaintiff

Through: Mr. S.K. Bansal and Mr. Ajay
Amitabh Suman, Advs.

versus

M/S ASIAN EXPORTS

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.08.2016

1. The plaintiff has sued for permanent injunction restraining the defendant from using the trademark/label 'INDIA GATE' with device of 'INDIA GATE' or any other identical or deceptively similar word/mark in relation to the business of rice and related products and thereby infringing the copyright of the plaintiff and the label 'INDIA GATE' with device of 'INDIA GATE' and passing off its goods as that of the plaintiff and for ancillary reliefs.
2. The suit was entertained and vide *ex parte ad interim* order dated 14th November, 2007 the defendants restrained from manufacturing, marketing, exporting or in any other manner dealing with their product of rice under the trademark 'INDIA GATE' with device of 'INDIA GATE' put on its packets. The said order has continued till now.
3. The suit as originally filed, besides against the defendant, was also against M/s. India Gate Pty Ltd., Australia. None appeared for the defendant despite service and the defendant was vide order dated 9th December, 2011 proceeded against *ex parte*. The then defendant no.2 M/s. India Gate Pty

Ltd. Australia, though appeared in response to the summons but thereafter stopped appearing and was also proceeded against *ex parte* on 9th December, 2011.

4. The counsel for the plaintiff on 3rd August, 2012 stated that the defendant no.2 M/s. India Gate Pty Ltd. Australia had surrendered the trademark in question in favour of the plaintiff and thereafter filed IA No.17834/2012 for deletion of the defendant no.2 M/s. India Gate Pty Ltd. from the array of defendants; the said application was allowed on 8th April, 2013 and the defendant no.2 M/s. India Gate Pty Ltd. Australia deleted from the array of defendants.

5. The plaintiff in its *ex parte* evidence has examined its officials Mr. Sunil Kapoor and Mr. Pramod Kumar Mishra and closed its evidence.

6. I have heard the counsel for the plaintiff and perused the pleadings and the *ex parte* evidence.

7. The plaintiff is found to have made out a case for grant of the relief of permanent injunction as claimed. The witnesses of the plaintiff however have not proved the claim also made in the plaint for damages. Even otherwise, the claim of the plaintiff in the suit, besides for the relief of injunction, is for the relief of delivery of infringing goods and rendition of accounts and in the alternative for damages; the defendant now for the last about nine years already stand restrained from marketing the infringing goods and thus the need for granting the relief of delivery of infringing goods or of rendition of accounts is not felt; axiomatically, the plaintiff would also not be entitled to damages. Suffice it is to state that the plaintiff shall be entitled to costs of the suit.

8. Accordingly, a decree is passed in favour of the plaintiff and against the defendant in terms of sub paragraph (a) of the prayer paragraph 32 of the plaint. The plaintiff shall also be entitled to costs of the suit. Counsel's fee assessed at Rs.50,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 29, 2016

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