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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 727/2016**
M/S GTC INDUSTRIES LTD. AND ANR. Plaintiffs
Through: Mr. Sunil Dixit, Ms. Pooja Sharma &
Ms. Sujata Shrilokar, Advs.
Versus
LAXMI VENTURES INDIA LTD. Defendant
Through: Ms. Madhumita Bhattacharjee & Ms.
Urmila Kar Purkayastha, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.09.2016**

IA No.12021/2016 (of the defendant under Order IX Rule 7 CPC)

1. The defendant has filed this application for setting aside of the order dated 22nd February, 2010 proceeding *ex parte* against the defendant.
2. Para no.8 of the application is as under:
 - “8. The defendant herein had been diligently following up the matter. It is further submitted that the defendant has stopped manufacturing of cigarettes since Apr 2012 (sic April 2012) and are presently engaged in Printing & Packaging and manufacturing Detergents by the brand name of ‘PALAM’. In view of the fact that the defendants have stopped manufacturing cigarettes, they were given an impression that the matter has become infructuous.”
3. The defendant had earlier also filed IA No.11002/2016 for the same relief as for which this application has been filed and which came up before the Court on 6th September, 2016 when the same was withdrawn with liberty to file afresh.

4. The defendant in the earlier application also had made the same plea as in para no.8 reproduced above.
5. In the light thereof, it was directed on 6th September, 2016 that if any fresh application is filed, the Director of the defendant on whose instructions the application is filed along with resolution of the Board of Directors of the defendant authorizing filing of such application should remain present in person in the Court.
6. In compliance with the aforesaid, Mr. Sunil Agarwal, Director of the defendant is present in Court and states that he is fully authorized by the defendant with respect to the present suit and has brought to the notice of the Court the order of the High Court of Bombay as annexed to the application.
7. The counsel for the plaintiff states that the brother of Mr. Sunil Agarwal viz. Mr. Anil Agarwal, the other Director, had made an application being IA No.3537/2007 under Order I Rule 10 CPC in this suit stating that it is Mr. Sunil Agarwal who was doing the infringing action and he has no concern therewith.
8. I have enquired from the counsels as to why should a decree for permanent injunction as claimed in the plaint be not passed in view of the aforesaid statement in the application of the defendant.
9. The counsel for the plaintiff is agreeable and states that he will then not press for the relief of recovery of damages.

10. However the counsel for the defendant has objected to the suit being decreed and has argued that what is stated therein is without prejudice to the rights and contentions of the defendant and the defendant does not want to suffer a decree for injunction as has been sought by the plaintiff.
11. Statement of Mr. Sunil Agarwal present in Court has been recorded.
12. Mr. Sunil Agarwal has unequivocally stated that he does not in future also intend to carry on business of cigarettes.
13. The counsel for the plaintiff on enquiry states that the grievance of the plaintiff was with respect to use of the mark by the defendant in relation to cigarettes only.
14. The objection of the counsel for the defendant to the suit being decreed for injunction is not understandable.
15. This Court is not to proceed with the suits unnecessarily. Once the defendant, upon the suit being filed, has changed its position and has unequivocally stated that it is not interested in reverting to the original position, no purpose would be served in keeping the suit pending.
16. In fact, the defendant itself has in the application stated that the suit has become infructuous. If the defendant intends to contest the suit, the question of the suit becoming infructuous would not arise.
17. The counsel for the defendant also now agrees.
18. Accordingly, the application is allowed. The order proceeding *ex parte* against the defendant is set aside.
19. The application is disposed of.

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20. In the light of what is recorded hereinabove, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraphs (i) and (j) [supposedly incorrect for '(ii)'], leaving the parties to bear their own costs.

21. The goods seized by the Court Commissioner earlier appointed in the year 2007 are ordered to be de-sealed by the defendant and destroyed by the defendant.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 27, 2016

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