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

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+ **CS(COMM) 61/2015**

TATA SONS LIMITED Plaintiff
Through: Mr. Achuthan Sreekumar, Advocate.

versus

GURUDATT KARJAGAR & ORS Defendants
Through: Mr. Anand Sanjay, Advocate and
Mr. M. Nuli, Advocate for D-1 & 2.

CORAM:JUSTICE S.MURALIDHAR

ORDER

% **08.09.2016**

CS(COMM) 61/2015 & IA No. 26023 of 2015(O. 39 Rule 1&2)

1. In the written statement filed by Defendants, it is stated that the Defendant No.1 had created a prototype demo website for the Plaintiff's business so that the same could be used by the Plaintiff to further enhance its revenue. It is stated in para 5 as under:

"5. That, the Defendant No.1 & 2 has never had the intention for infringement of any Trademark of the Plaintiff but the present act done by the Defendant No.1 is only with an intention of developing the business from the Plaintiff and the Plaintiff was very much aware about the said domain i.e. <www.tatamart.com> it is also further submitted that none of the defendant used the brand name for furtherance of any business for himself now has sold a single product of the plaintiff or used any website/domain for business purposes."

2. According to the Defendants, an email was sent to the Plaintiff on 23rd September 2015 seeking a business opportunity to develop the

website/domain for the Plaintiff. This is, however, denied by the Plaintiff.

3. Counsel for the Defendants states that the Defendants are willing to suffer decree in terms of prayers (i) (ii), (iii) and (vi). As regards the prayer for damages, it is stated that the Defendant No.1 is a young person of poor means living in Karnataka. Inasmuch as he has not exploited the domain name to seek financial gain for himself, the Plaintiff should not press for damages.

4. It appears that the Plaintiff and the Defendants were in talks on the issue of damages but no settlement could be arrived at on this aspect.

5. A decree is passed against the Defendants in terms of prayers (i), (ii) and (iii) and (vi) of the plaint and accordingly a decree for permanent injunction is issued restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents:

(i) from selling, offering for sale, advertising, directly or indirectly dealing in goods and services in any manner whatsoever under the name and style TataMart.com Online Grocery and from using the domain and website <www.tatamart.com> and from using the mark TATA or any other mark/name deceptively similar or identical to the Plaintiffs registered 'TATA' amounting to infringement of the registered trademarks of the Plaintiff as mentioned in paragraph 16 of the instant plaint as well as the other registered marks as mentioned in the list of TATA word mark registrations which has been annexed with the list of documents as filed with

the plaint; and

(ii) from selling, offering for sale, advertising, directly or indirectly dealing in the business from selling, offering for sale, advertising, directly or indirectly dealing in goods and services in any manner whatsoever under the name and style TataMart.com Online Grocery and from using the domain and website <www.tatamart.com> and from using the mark 'TATA' or any other mark/name deceptively similar or identical to the Plaintiffs registered 'TATA' amounting to passing off of the Defendants' services as that of the Plaintiff; and

(iii) from, selling, offering for sale, advertising, directly or indirectly dealing in goods and services in any manner whatsoever under the name and style TataMart.com Online Grocery and from using the domain and website <www.tatamart.com> and from using the mark 'TATA' or any other mark / name deceptively similar or identical to the Plaintiffs registered 'TATA' resulting in the dilution and tarnishment of the well-known trademark namely 'TATA' of the Plaintiff.

6. It is directed that within four weeks from today, the Defendant Nos. 1 and 2 will make a written request to Defendant No.3 to transfer the domain name in favour of the Plaintiff. It is directed that in the event the Defendant Nos. 1 and 2 fails to do so, the Defendant No.3 will nevertheless transfer the said domain name in favour of the Plaintiff. It is noted that a statement to this effect has already been made by Defendant No.3 before the Joint Registrar on 5th August 2016.

7. In view of the above, the Court is of the view that the Plaintiff ought not to press for damages. Counsel for the Plaintiff states that they will abide by whatever decision is passed by the Court in that regard. The prayer for damages and costs is accordingly rejected.

8. Decree sheet be drawn up accordingly on the above basis.

9. The suit and the application are disposed of.

S.MURALIDHAR, J

SEPTEMBER 08, 2016

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