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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1310/2006 and IA No.2334/2017 (of the plaintiff and one of the legal representatives of the deceased defendant no.3 under Order XXIII Rule 1&3 read with Section 151 CPC)

S. GURJEET SINGH Plaintiff

Through: Mr. Bharat S. Kumar, Adv.

versus

JAIPAL & ORS. Defendants

Through: Dr. N.K. Khetarpal, Adv. for
defendant 3(iii)/proposed 3(iii) with
Sh. Manmohan Singh.

AND

CS(OS) No.2019/2006, IA No.12809/2015 (under Order XXII Rules 4&9 and Section 151 CPC for substitution of LRs namely (i) Smt. Paramjeet Kaur; (ii) Sh. Manmohan Singh, (iii) Ms. Simran Kaur; and, (iv) Mr. Kamaldeep Singh legal heirs of deceased plaintiff), IA No.12810/2015 (under Section 151 CPC for condonation of delay in filing IA No.12809/2015), IA No.11857/2006 (under Order XXXIX Rules 1&2 CPC), CrI.M.A. No.149/2007 (of the defendant under Section 340 CrPC) and CrI. M.A. No.12755/2007 (of the plaintiff under Section 340 CrPC).

AMARJEET SINGH Plaintiff

Through: Dr. N.K. Khetarpal, Adv. for
proposed LR Sh. Manmohan Singh of
plaintiff with proposed LR Sh.
Manmohan Singh.

versus

GURJEET SINGH Defendant

Through: Mr. Bharat S. Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.02.2017**

1. CS(OS) No.2019/2006 was filed by Amarjeet Singh to restrain

the sole defendant therein i.e. Gurjeet Singh from interfering in Amarjeet Singh's business and user of the trademark/label 'AZAD' and for ancillary reliefs.

2. The counsels on enquiry state that there is no interim order in CS(OS) No.2019/2006 and no issues even have been framed therein.

3. IA No.12809/2015 and IA No.12810/2015 have been filed in CS(OS) No.2019/2006 by Manmohan Singh S/o Amarjeet Singh informing that Amarjeet Singh has died on 1st December, 2013 leaving besides the said Manmohan Singh as his son, Paramjeet Kaur as his widow, Kamaldeep Singh as another son and Simran Kaur as his daughter and seeking substitution and condonation of delay in applying therefor.

4. Notice of the said applications was issued and though has been served on Gurjeet Singh but has not been served on any of the other heirs of Amarjeet Singh.

5. CS(OS) No.1310/2006 has been filed by Gurjeet Singh against (i) Jaipal; (ii) JDH Foundry & Engg. Works; and, (iii) Amarjeet Singh to restrain the said defendants from moulding, casting, assembling, fabricating, making, selling, offering for sale, advertising and in any manner dealing in Oil Expellers, filter presses and boilers and allied and cognate goods using the mark 'AZAD' or any other mark similar or deceptively similar thereto and for ancillary reliefs. It is the case of Gurjeet Singh that he is the registered proprietor of the trademark 'AZAD' with respect to the said goods.

6. Vide *ex parte ad interim* order dated 14th June, 2006 in CS(OS) No.1310/2006, the defendants in CS(OS) No.1310/2006 were restrained from using the trademark 'AZAD' with respect to the goods aforesaid. The counsel for Gurjeet Singh on enquiry states (i) that CS(OS) No.1310/2006 at the time of institution was against Jaipal and JDH Foundry & Engg. Works only and the *ex parte* order dated 14th June, 2006 was thus against the said two defendants only; (ii) that Amarjeet Singh was subsequently impleaded as defendant no.3 in CS(OS) No.1310/2006 on Gurjeet Singh learning that Jaipal and JDH Foundry & Engg. Works were using the trademark 'AZAD' under the authority from Amarjeet Singh; and, (iii) that the interim order was not at any time extended to Amarjeet Singh after became defendant no.3 in the suit as Amarjeet Singh was also registered proprietor of the trademark 'AZAD'.

7. No issues have been framed in CS(OS) No.1310/2006 also and on the demise of Shri Amarjeet Singh, IA No.4339/2016 has been filed by Gurjeet Singh to implead the aforesaid persons as legal representatives of the defendant no.3 (in CS(OS) No.1310/2006) Amarjeet Singh. Notice of the said application has been issued to the legal representatives but of which only Manmohan Singh is appearing and none has been appearing for Paramjeet Kaur inspite of service. The service of other son and daughter namely Kamaldeep Singh and Simran Kaur of Shri Amarjeet Singh is awaited.

8. IA No.2334/2017 in CS(OS) No.1310/2006 has been filed by Gurjeet Singh and Manmohan Singh S/o Amarjeet Singh, reporting compromise

arrived at between them. It is stated that Manmohan Singh does not want to use the trademark 'AZAD' and is willing to give a statement to the said effect and in the light thereof Gurjeet Singh, without prejudice to his right to claim the said reliefs against Jaipal and JDH Foundry & Engg. Works and the other legal representatives of Amarjeet Singh, is not claiming any other reliefs against Manmohan Singh.

9. IA No.2334/2017 had come up before this Bench yesterday i.e. 22nd February, 2017 when it was directed to be put up for today i.e. 23rd September, 2017 and CS(OS) No.2019/2006 was also directed to be listed for today.

10. The compromise arrived at between Gurjeet Singh and Manmohan Singh S/o Amarjeet Singh and as contained in IA No.2334/2017 is found to be lawful and is allowed, binding Gurjeet Singh and Manmohan Singh thereto.

11. CS(OS) No.1310/2006 is decreed in favour of Gurjeet Singh and against Manmohan Singh in terms of IA No.2334/2017.

12. Resultantly, Manmohan Singh does not press IA No.12809/2015 and IA No.12810/2015 moved by him in CS(OS) No.2019/2006 and the same are dismissed as not pressed.

13. No other legal heirs of Amarjeet Singh has come forward to pursue CS(OS) No.2019/2006 and the same is dismissed as abated.

14. As far as CS(OS) No.1310/2006 is concerned though the application aforesaid therein for substitution of legal representatives of the defendant

no.3 Amarjeet Singh is pending but Manmohan Singh present in Court states that all the other three legal representatives, namely Paramjeet Kaur, Kamaldeep Singh and Simran Kaur are in Canada and the counsel for Gurjeet Singh states that they are now not using the trademark 'AZAD'.

15. As far as the defendant no.1&2 in CS(OS) No.1310/2006 namely Jaipal and JDH Foundry & Engg. Works are concerned, they are not even appearing in the suit.

16. The counsel for Gurjeet Singh states that he would be willing to, for the time being, not press for the other reliefs claimed in CS(OS) No.1310/2006 if the decree for permanent injunction as claimed in CS(OS) No.1310/2006 is passed and his right to claim the other reliefs including of damages is reserved in the event of any of the legal heirs of Amarjeet Singh or Jaipal and JDH Foundry & Engg. Works apply for setting aside of the decree.

17. A perusal of the order dated 21st April, 2014 in both the suits shows that Kamaldeep Singh and. Paramjeet Kaur, son and wife respectively of Amarjeet Singh had appeared before the Court on that date and in fact Kamaldeep Singh had also stated on that date that he was residing outside India and was not even aware about the present litigation. The same shows that the said Kamaldeep Singh and Paramjeet Kaur, legal heirs of Amarjeet Singh are in the know of the present proceedings and have intentionally chosen not to pursue/contest the same.

18. Resultantly, the need to serve them again with the notice of the application for substitution of legal representatives of Amarjeet Singh in

CS(OS) No.1310/2006 is not felt.

19. IA No.4339/2016 in CS(OS) No.1310/2006 is allowed and the aforesaid legal representatives of Amarjeet Singh (defendant no.3 therein) are substituted in his place.

20. The counsel for Gurjeet Singh to file amended memo of parties during the course of the day and handover to the same to the Court Master, who is directed to take the same on record.

21. None having appeared for the other legal heirs of Shri Amarjeet Singh namely Paramjeet Kaur, Kamaldeep Singh and Simran Kaur, and none having appeared for the defendants no.1&2 i.e. Jaipal and JDH Foundry & Engg. Works, they are proceeded against *ex parte*.

22. Need to relegate Gurjeet Singh to *ex parte* evidence is not felt in the light of the aforesaid facts and as has been held in by me in ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del. 508, that in such cases there is no need to list the suit for *ex parte* evidence which serves no better purpose than the affidavit already accompanying the plaint.

23. Gurjeet Singh, on the basis of averments contained in the plaint and the documents filed therewith, has made out a case for grant of a decree for permanent injunction, against defendants no.1&2 i.e. Jaipal and JDH Foundry & Engg. Works and also against Paramjeet Kaur, Kamaldeep Singh and Simran Kaur being the legal heirs of the defendant no.3 Amajeet Singh, in terms of prayer paragraph 16 (i), (ii) & (iii) of CS(OS) No.1310/2006.

24. It is however clarified that if the said *ex parte* decree is set aside, Gurjeet Singh would be entitled to agitate his other claims made in CS(OS) No.1310/2016 against the aforesaid persons.

25. No costs.

26. Decree sheet be drawn up in CS(OS) No.1310/2006.

27. The date of 17th July, 2017 in CS(OS) No.1310/2006 and CS(OS) No.2019/2006 before the Joint Registrar stands cancelled.

RAJIV SAHAI ENDLAW, J

FEBRUARY 23, 2017

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