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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 956/2012 & IA No. 5142/2015 (for substitution of witnesses)
SAP AKTIENGESELLSCHAFT & ANR Plaintiffs
Through Mr. Ranjan Narula, Advocate

versus

APPLIED LABS & ANR Defendants
Through Mr. Ram Kishan Singh Yadav,
Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **27.11.2017**

IA No. 13905/2017 (under Order IX Rule 7 by defendants)

1. Counsel for the applicants on enquiry states that the application is on behalf of both the defendants i.e. M/s Applied Labs and M/s Alien SoftNet Technologies Pvt. Ltd.
2. The defendants, vide order dated 26th October, 2017, were proceeded against *ex parte* and the suit listed for recording of *ex parte* evidence of the plaintiffs on 21st February, 2018.
3. No proceedings have taken place since the date when the defendants were proceeded against *ex parte*, the defendants are always at liberty under the law to join the proceedings and the application is misconceived. Such applications are required to be filed only when any proceedings taken *ex parte* is required to be set aside.
4. The application is dismissed.

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5. The counsel for the defendants draws attention to the orders dated 13th February, 2017, 23rd February, 2017, 11th August, 2017 and 26th October, 2017 in the suit.

6. The counsel for the plaintiffs during the hearing on 13th February, 2017 had stated that the plaintiffs are ready to give up the claims for rendition of accounts, damages and costs, subject to the defendant no.2 M/s Alien SoftNet Technologies Pvt. Ltd being asked to destroy the material seized by the Court Commissioner appointed in the suit on 17th May, 2012.

7. It appears that the counsel for the defendants, on 13th February, 2017, had taken time to obtain instructions but thereafter the defendants stopped appearing and were proceeded against *ex parte*.

8. The counsel for the defendants today states Mr. Vivek Kumar Mishra, proprietor of the defendant no.1 Applied Labs and duly authorised Director of the defendant no.2 M/s Alien SoftNet Technologies Pvt. Ltd is present in the Court and the defendants are now agreeable to suffer a decree for permanent injunction and of destruction of the material seized by the Court Commissioner in the presence of representatives of the two plaintiffs.

9. The counsel for the plaintiffs appears on advance notice and reiterates the offer made on 13th February, 2017.

10. The aforesaid compromise between the plaintiffs is found to be lawful and is allowed.

11. The defendants, even otherwise on merits have conceded to the claim of the two plaintiffs for the relief of permanent injunction and delivery claimed in prayer paragraphs 30 (a) & (b) of the plaint dated 9th April, 2012.

12. A decree is accordingly passed, in favour of the two plaintiffs and jointly severally against the two defendants in terms of prayer paragraphs 30 (a) & (b) of the plaint dated 9th April, 2012 with a further direction that the representatives of the plaintiffs to visit the premises of the defendants on 7th December, 2017 at 11.00 hrs and on which date the goods seized by the Court Commissioner earlier appointed shall be destroyed in the presence of the representatives of the plaintiffs. A memorandum thereof be prepared and signed by the representatives of the parties. Upon the same happening, Mr. Vivek Kumar Mishra shall stand discharged from his liability as a Superdar. Else Mr Vivek Kumar Mishra shall continue to be so liable as Superdar.
13. No costs.
14. Decree sheet be drawn.
15. The date of 21st February, 2018 stands cancelled.

RAJIV SAHAI ENDLAW, J

NOVEMBER 27, 2017

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