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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 998/2012, IA No.6767/2012 (u/O XXXIX R-1&2 CPC), IA No.9260/2012 (u/O XXXIX R-4 CPC), IA No.22544/2012 (u/O VI R-17 CPC) & IA No.5396/2013 (u/S 65A & 65B of the Evidence Act), CCP No.82/2012 & CCP No.53/2013 and IA No.15190/2017 (under Order XXIII Rule 3 CPC).

AAP KI PASAND & ANR Plaintiffs

Through: Ms. Suhasini Raina, Adv.

versus

NEW DIRECTION EXPORTS & CRAFT Defendant

Through: Mr. Satyajit Sarna, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.12.2017

1. The parties in this suit for permanent injunction restraining passing off and for ancillary reliefs are stated to have compromised all their disputes and differences subject matter of the suit and IA No.15190/2017 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) has been filed and the counsel for the two plaintiffs namely (i) Aap Ki Pasand and (ii) Aap Ki Pasand Exports and the counsel for the sole defendant namely New Direction Exports & Crafts support the application and state that the same is signed by the duly authorised representatives of the parties and supported by their affidavits.

2. I have perused the compromise application and find the defendant to have undertaken to not use packaging deceptively similar to the packaging of the plaintiff for sale and marketing of tea, without however referring to any particular packaging.

3. I have enquired from the counsels as to how such a vague compromise and undertakings can be accepted and made actionable and will it not have to be determined in a fresh suit as to whether the packaging which is claimed to be deceptively similar is deceptively similar or not.

4. While the counsel for the plaintiffs is satisfied with filing a fresh suit in that case, the counsel for the defendant states that the order be made with reference to the packaging to which objection was taken in the plaint. The counsel for the plaintiff states that she is satisfied therewith.

5. With the clarification as aforesaid, the compromise is found to be lawful. It is further clarified that if the defendant uses any other packaging and which the plaintiffs claim to be deceptively similar to the packaging of the plaintiffs, the plaintiffs will have to institute a fresh suit therefor and cannot claim any relief in execution of the compromise decree sought.

6. A decree is passed in favour of the plaintiffs and against the defendant in terms of the compromise application clarified as above and both of which shall form part of the decree sheet, leaving the parties to bear their own costs.

7. Decree sheet be drawn up.

8. A certificate entitling the plaintiffs to refund of 50% of the court fees paid on the suit be issued and handed over to the counsel for the plaintiffs.

CCP No.82/2012 & CCP No.53/2013

9. Dismissed as not pressed in terms of above.

RAJIV SAHAI ENDLAW, J.

DECEMBER 18, 2017/‘pp’..