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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 33/2017 & CM No.33263/2017 (of the petitioners u/S 151 CPC)**
DAYAL FERTILIZERS PVT LTD & ANR Petitioners
Through: Mr. Pravin Anand & Mr. Ravin Galgotia, Advs.
Versus
DAYAL AGRO INDUSTRIES & ANR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.09.2017

1. This petition under Section 24 of the Code of Civil Procedure, 1908 (CPC) seeks transfer of CS/TM No.13862/2016 titled "M/s Gopika Industries Vs. Dayal Industries Pvt. Ltd." pending in the Court of Sh. Mukesh Kumar, Additional District Judge (ADJ), Patiala House Courts, New Delhi to this Court for being taken up along with CS (COMM) No.101/2017 of this Court.
2. Notice of the petition was issued and the counsel for the respondents appears.
3. The counsels have been heard.
4. The counsel for the petitioners argues i) that the respondents instituted the suit (sought to be transferred to this Court) to restrain the petitioner no.2 Dayal Industries Pvt. Ltd. from infringing the trade mark "DAYAL" of the respondent no.2 Gopika Industries; ii) that the petitioners have filed CS (COMM) No.101/2017 in this Court to restrain the respondents from passing off their goods with the trade mark "DAYAL" as that of the petitioners; and,

iii) that common questions of law and fact would arise in both the suits and thus it is expedient that the two are tried by the same Court.

5. The counsel for the respondents contends i) that the respondents' suit in the Patiala House Courts is the previously instituted suit; ii) that though the respondents had got an *ex parte* order of injunction against the petitioner no.2 but in appeal filed by the petitioner no.2, the stay has been vacated but with a direction to the ADJ to decide the application under Order XXXIX Rules 1&2 of the CPC within one month; iii) that to frustrate the said direction, the petitioners first filed their own suit and now have filed this Transfer Petition and on the ground whereof the petitioners have been taking adjournments before the ADJ; iv) that the respondents have already filed an application under Section 10 of the CPC in the suit pending in this Court and the proceedings wherein are liable to be stayed.

6. On enquiry, it is informed that marks of both are registered, though the counsel for the respondents states that the mark of the petitioner no.2 is not registered with respect to the same class of goods for which the mark of the respondent no.2 is registered.

7. From the aforesaid, in my understanding, the objection of the respondents to transfer is on the ground of the delay likely to be caused thereby in disposal of the application under Order XXXIX Rules 1&2 of the CPC in the respondents' suit.

8. The counsel for the petitioners assures that the petitioners, on transfer, will not take any date on any ground till the disposal of the application of the respondents in the respondents' suit under Order XXXIX Rules 1&2 of the CPC.

9. Else, I am of the view that it is expedient that the two suits are tried by the same Court.

10. Since the suit filed by the petitioners cannot be transferred to the ADJ, the only option is to transfer the suit filed by the respondents to this Court.

11. Binding the petitioners to their statement aforesaid, the petition is allowed.

12. CS/TM No.13862/2016 titled “M/s Gopika Industries Vs. Dayal Industries Pvt. Ltd.” pending in the Court of Sh. Mukesh Kumar, Additional District Judge (ADJ), Patiala House Courts, New Delhi is ordered to be transferred to this Court to be taken up along with CS (COMM) No.101/2017 of this Court.

13. The learned ADJ is requested to forthwith physically transfer the file of CS/TM No.13862/2016 and it be re-numbered and be listed before the concerned Court on 16th October, 2017.

14. CS (COMM) No.101/2017 though informed to be listed next on 27th October, 2017 be also listed before the same Court on that date.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 12, 2017

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