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

+ CS(COMM) No.140/2016

SHEELA FOAM PVT. LTD. Plaintiff

Through: Ms. Arushi Singh proxy counsel for
Mr. Amarjit Singh, Adv.

versus

KURLON LTD. Defendant

Through: Mr. Sushant Singh and Mr. Harsh
Vardhan Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.02.2017**

1. In this suit for reliefs on the basis of passing off, after framing of issues on 16th March, 2012, a Court Commissioner was appointed for recording evidence and the matter posted before the Court on 30th August, 2012.
2. Thereafter the matter was adjourned to 10th January, 2013, 16th May, 2013, 3rd October, 2013, 11th February, 2014, 21st May, 2014 and 10th November, 2014 upon the counsels representing that the recording of evidence before the Court Commissioner was underway. Finally, vide order dated 29th April, 2015, when the counsels submitted the same, this Court directed the recording of evidence to be completed within two months and further directed the Court Commissioner not to grant any adjournments.
3. On enquiry, the counsels inform that the plaintiff has filed affidavit by way of examination-in-chief of only one witness and who was cross examined in part by the counsel for the defendant on 8th March, 2013 and thereafter no proceedings whatsoever have taken place before the Court

Commissioner.

4. It is thus evident that notwithstanding the order dated 29th April, 2015, the plaintiff did not take any steps for leading evidence.

5. Thereafter also, the proceedings before this Court were adjourned on 20th August, 2015, 28th September, 2015, 7th October, 2015, 3rd December, 2015 and 22nd February, 2016.

6. Today the counsels for the parties mentioned the matter in the morning and again before lunch, seeking for adjournment stating that the settlement talks are underway between the parties.

7. In view of aforesaid, adjournment was refused.

8 It is quite evident that neither of the two parties is in any hurry.

9. However the Court procedure cannot be misused in this way. Merely because the parties are not in a hurry to have the suit disposed of does not oblige the Court to keep the suit pending notwithstanding that for the last three years and inspite of order dated 29th April, 2015 no effective steps have been taken in the suit.

10. The plaintiff though does not have any interim order in this suit but is obviously not in a hurry.

11. If the parties are to settle the matter, they can settle even without the suit remaining pending.

12. The evidence of the plaintiff is closed.

13. The onus of the main issues being on the plaintiff and the plaintiff having failed to discharge the same, the need to grant any opportunity to the defendant to lead evidence is not felt.

14. The plaintiff having failed to prove its case, the suit is dismissed.

No order as to costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

FEBRUARY 07, 2017

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