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

+ **CS(COMM) 222/2016**

TATA SONS LIMITED Plaintiff
Through: Ms. Geetanjali Visvanathan
with Ms. Asavari Jain,
Advocates

versus

MR RAJBIR JINDAL @ ORS Defendant
Through: Ex Parte

% Date of Decision: 4th September, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A. 9440/2017

1. Present application has been filed under Order VIII Rule 10 read with Section 151 CPC and Order XIII-A Rules 3 and 6(1)(a) of the Commercial Courts Act, 2015.
2. It is pertinent to mention that the present suit has been filed seeking a permanent injunction restraining infringement of registered trademarks, passing off, dilution and tarnishment, unfair competition, damages, rendition of accounts, delivery up, etc. against the

defendants. The prayer clause in the present suit is reproduced hereinbelow:-

“30. In light of the foregoing, it is respectfully prayed that this Hon’ble Court may be pleased to issue:-

(i) An order for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents from using manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing in any product including but not limited to animal feed under the mark TATA No.1 and/or any other mark / name deceptively similar or identical to the Plaintiff’s well known trademark TATA amounting to infringement of the registered trademarks of the Plaintiff as mentioned in paragraph 12 of the instant plaint as well as the other registered marks of the Plaintiff as appended in the list filed in the present proceedings; and

(ii) An order for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing in any product including but not limited to animal feed under the mark TATA No.1 and/or any other mark / name deceptively similar or identical to the Plaintiff’s well known trademark TATA amounting to passing off of the Defendants’ goods / services as that of the plaintiff’s; and

(iii) An order for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents acting for and on their behalf etc. from engaging in any acts whatsoever that will result in the unfair competition, dilution and tarnishment of the well-known trademark TATA of the Plaintiff; and

(iv) An order of delivery up of all infringing material (tangible and intangible), if any to the Plaintiffs for purposes of destruction and / or erasure; and

(v) An order for rendition of accounts of profits illegally earned by the Defendants on account of Defendants' infringing activities and a decree for the said amount so found be passed in favour of the Plaintiff's; and

(vi) An order for damages in the sum of Rs.20,05,000/- in favour of the Plaintiff and against the Defendants on account of the unauthorised use of the impugned mark / name / device and a decree for the said amount be passed in favour of the Plaintiff; and

(vii) An order for costs of the proceedings against the Defendants in favour of the Plaintiff; and

Any further orders and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. On 29th July, 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

"I have heard learned counsel for the plaintiff, perused the plaint and the documents annexed therewith and am of the prima facie view that plaintiff is the registered proprietor of trade mark "TATA" in respect of several products and has attained high reputation in the market in respect of its goods/products. Defendants have adopted the mark "TATA" in order to encash the goodwill and reputation of plaintiff for manufacturing, distribution and sale of animal feed and allied products. In case defendants are not restrained from using the mark "TATA", plaintiff shall suffer irreparable loss and injury, inasmuch as, balance of

convenience is also in favour of the plaintiff. Accordingly, till further orders, defendants are restrained from using, manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing with mark "TATA" in animal feed and their other allied products or any other deceptively similar trade mark as that of the plaintiff."

4. On 21st March, 2017, the matter between the plaintiff and defendant Nos. 1 and 2 stood settled and suit qua them was disposed of in accordance with the terms of the settlement incorporated in the joint application under Order XXIII Rule 3 CPC.

5. Though the defendant Nos. 3 and 4 were duly served, yet after 28th October, 2015 they stopped appearing. Accordingly, defendant Nos. 3 and 4 were proceeded ex parte vide order dated 03rd August, 2017.

6. The contentions and submissions advanced by learned counsel for the plaintiff are as under:-

- i. The plaintiff is the registered proprietor of the trade mark **TATA** as well as other **TATA** formative trade marks in several Classes including Class 31. The plaintiff along with its group of companies and subsidiaries has been continuously and consistently using the said mark for its business activities since 1917.
- ii. The plaintiff's trade mark **TATA** is derived from the surname of the plaintiff's founder Sh. Jamsetji Nusserwanji Tata, which is a rare patronymic name possessing the distinctiveness of an invented word.

- iii. The **TATA** trade mark has been continuously and extensively used since 1868 as a result of which, the said mark enjoys an unparalleled reputation and goodwill and has acquired the status of a well-known trade mark.
- iv. The plaintiff's associate company Tata Chemicals Limited is engaged in the business that focuses on farm essentials and animal nutrition amongst other fields. The products manufactured by Tata Chemicals Limited are the trusted choice of farmers and dairy owners for cattle and poultry feed.
- v. In May, 2015, the plaintiff through market sources came to know that the defendant No. 3, believed to be a proprietor of defendant No. 4, is engaged in the sale/offer for sale, marketing and distribution of animal feed and other allied products under the mark **TATA NO. 1** manufactured by the defendant Nos. 1 and 2.
- vi. Upon receipt of said information, the plaintiff instructed an independent investigating agency to conduct an investigation which confirmed the fact that the defendants were indeed manufacturing and selling/offering for sale animal feed under the mark **TATA NO. 1**. The investigator was able to purchase two bags of **TATA NO. 1** animal feed at a price of Rs. 750/- from defendant Nos. 3 and 4.

7. This Court while dealing with a similar application under Order VIII Rule 10 CPC in **CS(OS) 873/2015 Samsung Electronics**

Company Limited & Anr. Vs. Mohammed Zaheer Trading As M/s. Gujarat Mobiles & Ors. has culled out the relevant law as under:-

“10. The Supreme Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:-

"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment

although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."

11. A Coordinate Bench of this Court in *Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta and Ors.*, 235 (2016) DLT 354 has held as under:-

"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

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28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to persue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."

12. Another Coordinate Bench of this Court in *Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd.*, 2013 III AD (Delhi) 176 has held as under:-

"4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex

parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record....."

8. This Court is further of the view that the plaintiff is entitled to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 as the said provision empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant Nos. 3 and 4 have no real prospect of defending the claim.

9. In the opinion of this Court, the act of defendant nos. 3 and 4 of using the plaintiff's registered trademark **TATA** with any prefix or suffix for animal feed or any other product clearly amounts to infringement. The said infringing activities of the defendant Nos. 3 and 4 have also confirmed by the local commissioner appointed by this court vide order dated 29th July, 2015.

10. Considering the fact that the plaintiff is the prior and registered user of the mark **TATA**, this Court is of the opinion that the defendant Nos. 3 and 4 have no justification for the adoption and use of virtually identical trade mark as that of the plaintiff in relation to identical products.

11. This Court is further of the opinion that the plaintiff's mark **TATA** is a well known mark and there is no plausible explanation for the defendants to have adopted it other than to ride upon the goodwill and reputation of the plaintiff's mark.

12. In any event, as the averments in the plaint have not been rebutted by the defendant Nos. 3 and 4 nor did they bother to put forth their stand in spite of ample opportunities given by this Court, they are deemed to have been admitted.

13. As the Local Commissioner found the defendant nos. 3 and 4 in possession of 37 bags bearing the infringing mark and the cost of one bag of animal feed, according to the evidence filed by the plaintiff, is Rs.750/- per bag, the quantum of actual loss is determined at Rs. 27,750/- (Rs. 37 x 750).

14. Accordingly, the present application is allowed and the suit is decreed against the defendant nos. 3 and 4 in accordance with prayers (i), (ii) and (iii) of para 30 of the plaint along with Rs. 27,750/- as damages and actual costs of litigation including attorney's fees as well as fees of the Local Commissioner. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

SEPTEMBER 04, 2017

rn/js