

\$~46

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

+ **CS(OS) 1786/2012**

DISNEY ENTERPRISES, INC & ANR ..... Plaintiffs

Through Ms Rachel Mamatha, Advocate.

versus

KHIMJI SHAH & ANR ..... Defendants

Through Mr Gautam Gupta, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

%

**30.05.2017**

1. The learned counsel for the parties state that the disputes between the parties are settled in terms of the Settlement Agreement dated 16.05.2017 arrived at before the Delhi High Court Mediation and Conciliation Centre. The said agreement along with the Mediation report dated 25.05.2016 has been placed on record.

2. A perusal of the said Settlement Agreement indicates that the parties have settled their disputes in terms of paragraph 6 of the Settlement Agreement, which reads as under:-

6. Now in view of the above, the parties hereinabove agrees as follows:-

a) The Defendants acknowledge that the Plaintiff No.1 is the exclusive owner of, and holds all rights and title to the Plaintiff No.1's Characters, Character Names, Trademarks and Copyrights, more particularly described in the Plaint.

b) The Defendants tender an unconditional apology to the Plaintiffs for offering for sale, selling, manufacturing, exporting, marketing, distributing and otherwise dealing in goods on which the Plaintiff No.1's Characters, Character Names, Trade Marks and Copyrights were affixed unauthorisedly.

c) The Defendants agree and undertake that it will not, now or at any time in the future, offer for sale, sell, manufacture, advertise, deliver, export, market, distribute and/or otherwise deal, in any manner whatsoever, in any goods/ products/ merchandise which bear any character/character name/mark/artistic work which is identical with and/or deceptively similar to the Plaintiff No.1's Characters, Character Names, Trade Marks and Copyrights, unless such goods/products/merchandise are genuine goods/products/merchandise, sourced/obtained/procured from the authorized dealers/licensees of the Plaintiffs.

d) The Defendants have further unconditionally agreed and undertaken to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as legal costs/penalty/reimbursement of legal costs in lumpsum for the infringement alleged and admitted in the instant suit. It is hereby stated that the said amount has been tendered by way of wire transfer in the name of The Walt Disney Company dated 04<sup>th</sup> May 2017, through Bombay Merchantile Co-operative Bank Limited, Mumbai. It is further stated that the said amount has been credited in the Plaintiffs' account abroad as stated in the details mentioned in Annexure B. That the Plaintiffs accepts and acknowledge that they will not demand any further amount in future in relation to this present suit.

e) The Plaintiffs have been informed about the fact that the infringing goods given to the Defendants under superdari were destroyed during flood and thereafter the same were discarded due to heavy infestation of insects, by the Defendants. The Defendants further state and submit that the said goods had not been sold to any third party and neither any third right has been

created on such goods since the same has been discarded by the Defendants after the said goods were destroyed during flood. That the Defendant will be filing a detailed affidavit in this regard before the Hon'ble Court with this present settlement agreement.

f) The Defendant agrees that the present settlement in this suit before the Delhi High Court shall in no manner effect the criminal proceedings initiated against it, by the Plaintiff herein, in Mumbai, India (FIR No. 235/14, CR No. 21/2014). The Defendant further understands that a settlement in the present suit is in no manner a consent for settling the criminal proceedings in the aforementioned matter. The Plaintiffs and the Defendants agree that the signatories to the present Application are fully competent and authorized to enter into the present settlement.

g) That the defendants agree and undertake to comply with the terms and conditions agreed hereinabove and shall submit an undertaking in this regard before the Hon'ble Court.

h) In view of the aforesaid terms and conditions, the Plaintiffs do not press its relief for rendition of accounts and damages. That the plaintiff shall confine its relief to the extent of permanent injunction as prayed for in the suit in para no. 23(a), (b) and (c). In lieu of the aforesaid, the plaintiffs let go of its prayer for damages as in para 23(e) of the plaint.

i) The present undertakings will be binding henceforth on the parties, their partners, legal heirs, representatives and assigns in the business.

3. In terms of the aforesaid Settlement Agreement, the defendants have already paid a sum of ₹ 2 lakhs as legal costs/penalty/reimbursement of legal costs in lumpsum for the infringement alleged and admitted in the instant suit. The defendants have also acknowledged that the Plaintiff No1 is the exclusive owner of plaintiff's No.1's Characters/Character names,

trademarks and copy rights described in the plaint.

4. The learned counsel for the parties request that the suit be decreed in terms of the Settlement Agreement dated 16.05.2017.

5. In the circumstances, the suit is decreed in terms of the Settlement Agreement dated 16.05.2017. Let a decree sheet be drawn up. The Settlement Agreement shall form a part of the decree sheet.

**MAY 30, 2017**

pkv

**VIBHU BAKHRU, J**