

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

% Decided on: 17th July, 2017

+ **CS(COMM) 308/2016**

WUXUE ZHANG & ANR Plaintiffs
Represented by: Mr. Ankur Sangal and Mr.
Sharngan A., Advocates.

versus

AMMEET NAYAK & ORS Defendants
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Summons in the present suit were issued to the defendants on 20th October, 2010. In the suit, plaintiffs claimed to be the owners and users of “G’FIVE” and engaged in manufacturing, trading and marketing diverse products, including mobile phones and allied products. The plaintiffs further claimed to be the owner of website www.gfivemobile.com which was registered on 17th July, 2008 and stated that they have been marketing their products inter alia through website.
2. The plaintiff was aggrieved by the defendants’ use of identical mark “G’FIVE” and adoption of a similar device as well as registration of domain name www.gfivemobiles.in. While issuing summons in the suit, this Court granted ex-parte ad-interim injunction in favour of the plaintiffs and against the defendants.

3. Initially defendant No. 3 was served however, no written statement was filed by defendant No. 3.
4. Despite service defendant No. 4 also failed to file the written statement. The right of defendant Nos. 3 and 4 to file written statement was closed on 23rd November, 2012 and 28th May, 2012 respectively and that of the defendant Nos. 1 and 2 on 1st April, 2016.
5. The matter was listed for filing evidence by way of affidavits of the plaintiffs' witnesses however, despite repeated adjournments, the plaintiffs failed to file their evidence by way of affidavit. On 2nd September, 2016 the plaintiffs were permitted to file evidence by way of affidavit subject to the cost of ₹10,000/- to be deposited with the Prime Minister Relief Fund within two months. The said cost has also been not deposited.
6. On 14th September, 2016 learned counsel for the plaintiff stated that the plaintiffs propose to file an application under Order XIII-A CPC requesting the Court to pronounce a summary judgment. Despite repeated adjournments the said application has also not filed.
7. On 23rd December, 2016 last opportunity was granted to the plaintiffs to lead evidence or file an application under Order XIII Rule 1 CPC, neither has been done till date. Further opportunity was granted on 6th March, 2017 whereafter when the matter came up before the learned Joint Registrar on 4th July, 2017, learned counsel for the plaintiffs sought time to file application seeking discharge as he was not receiving any instructions from the plaintiffs. No such application has been filed.
8. Considering the fact that the defendants have already proceeded ex-parte and the plaintiffs despite umpteen opportunities have failed to lead evidence; have not deposited the cost; have nor filed an application under

Order XIII-A CPC, this Court has no option but to dismiss the suit.

9. Ordered accordingly.

(MUKTA GUPTA)
JUDGE

JULY 17, 2017
‘vn’

