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

+ **CS(OS) 1988/2010**

LABORATOIRE GARNIER & CIE Plaintiff

Through: Mr. Ajay Amitabh Suman, Mr. Kapil
Kumar Giri, Mr. Pankaj Kumar, Advocates

versus

MEHRA FABRICS AND ORS. Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

04.12.2017

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1. The plaintiff M/s Laboratoire Garnier & CIE has instituted this Suit against (a) M/s Mehra Fabrics, Ludhiana, (b) M/s Shakti Enterprises, Ludhiana, (c) Chief Commissioner of Customs, New Delhi; and, (d) Chief Commissioner of Customs, Kolkata, for permanent injunction restraining infringement of trademark / trade name 'Garnier' of the plaintiff, infringement of copyright, passing off and for ancillary reliefs.

2. The Suit was entertained and vide ex parte ad interim order dated 27th September, 2010, the defendants No.1 and 2, namely, M/s Mehra Fabrics and M/s Shakti Enterprises restrained from offering for sale any product or goods containing 'Garnier' mark or using any other mark closely similar to 'Garnier' mark was issued. It was further recorded in the said order that since the defendants No.3 and 4, namely, Chief Commissioner of Customs, New Delhi and Chief Commissioner of Customs, Kolkata had already suspended the clearance of goods, no direction of the nature sought was

required to be passed against them, save for recording that the said defendants would proceed in accordance with law.

3. The counsel for the defendants No.1 and 2 appeared before this Court on 14th January, 2011 and disputed that the consignment of goods bearing the mark 'Garnier' was of the defendants No.1 and 2.

4. Neither did the defendants No.1 and 2 file any written statement nor did they appear thereafter. The defendants 1&2 were vide order dated 8th July, 2011, proceeded against *ex parte*. The defendants No.3 and 4 also made a statement on 8th July, 2011 that they did not wish to file any written statement and did not dispute the claim of the plaintiff in the Suit.

5. The Suit was accordingly listed for *ex parte* evidence of the plaintiff.

6. The plaintiff has led *ex parte* evidence of its constituted attorney Ms.Surbhi Bansal.

7. Vide order dated 5th February, 2016, the plaintiff was directed to lead further evidence and the plaintiff has thereafter again examined Ms.Surbhi Bansal.

8. The counsel for the plaintiff has been heard.

9. The plaintiff, on the basis of its pleadings and the evidence led, has made out a case for grant of relief of permanent injunction as claimed in prayer paragraphs 41(a)(i) to (iv) of the amended plaint dated 22nd November, 2014. The counsel for the plaintiff, on being asked to show the evidence led to prove that the consignment of imported goods bearing infringing marks were of the defendants No.1 and 2, has drawn attention to Ex.PW1/15 at Pg.107-108 of Part III file being the letter dated 26th July, 2010 of the office of Commissioner of Customs to the Advocate for the

plaintiff disclosing the seized goods to be of the defendants No.1 and 2. It is contended that though the value of the said goods is shown as of Rs.25,79,040/- only, but the goods were undervalued and the value was much more.

10. I have next enquired from the counsel for the plaintiff the constitution of M/s Mehra Fabrics and M/s Shakti Enterprises, inasmuch as these are assumed names and unless it is known whose assumed names these are, no effective decree can be passed.

11. The counsel for the plaintiff states that since the defendants No.1 and 2 did not file written statement and did not appear, the said material is not before this Court.

12. Without the plaintiff proving whose assumed name Mehra Fabrics and Shakti Enterprises are and what is the connection between them inasmuch as the two bear different addresses, no effective executable decree for recovery of damages can be passed against assumed names. However, the counsel for the plaintiff states that he will execute the decree against the assumed names at the addresses given and if there is nobody with the assumed name, the plaintiff will not execute the decree. The counsel for the plaintiff now states that he did not want to make this statement.

13. Without the said statement, a decree against an assumed name, without knowing the identity of the assumed name, cannot be passed and the enquiry as to who is the real person behind the assumed name cannot be made at the stage of execution inasmuch as the same is beyond the scope of execution. The Court is not required to pass a vague inexecutable decree which cannot be enforced.

14. For this reason, the plaintiff, is not found entitled to a decree for damages or for costs inasmuch as it is not known from whom the same will be recovered.

15. A decree is accordingly passed in favour of the plaintiff and against the defendants No.1 and 2 in terms of prayer paragraphs 41(a)(i) to (iv) of the amended plaint dated 22nd November, 2014, leaving the parties to bear their own costs.

16. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 04, 2017
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