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

+ CS(COMM) 546/2016

MONSANTO HOLDINGS PVT LTD Plaintiff

Through Ms.Nancy Roy with Mr.Rupin
Bahl, Advocates.

versus

M/S REAL AGRO SEEDS & ANR Defendants

Through Mr.Sunil Verma with
Mr.Mohinder Singh Sachdeva,
Advocates for D-1.

% Date of Decision: 30th October, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral)

I.A.No.12398/2017

1. Present joint application has been filed under Order 23 Rule 3 read with Section 151 CPC. The same is duly signed by learned counsel for the plaintiff and defendant no.1 as well as by the authorized representatives of the said parties.

2. Present application is also supported by the affidavits of authorized representative of the plaintiff and one of the partners of defendant no.1.

3. Both the learned counsel state that the matter has been compromised qua defendant no.1 in accordance with the Settlement terms mentioned in the present application.

4. Both the learned counsel further assure and undertake to this Court that the parties shall comply with the Settlement terms mentioned in the present application.

5. The aforesaid statements, assurances and undertakings as well as undertakings given by learned counsel for the parties are accepted by this Court and parties are held bound by the same.

6. This Court has also perused the present compromise application and is of the opinion that the same is lawful.

7. Consequently, the suit is decreed in accordance with the Settlement terms mentioned in the present application, copy of which is marked as Ex. C-1. Registry is directed to prepare a decree sheet accordingly.

8. With the aforesaid observations, present application is allowed and the suit stands disposed of qua defendant no.1.

9. The application stands disposed of.

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10. Since none appears for defendant no.2, it is proceeded *ex parte*.

11. Learned counsel for the plaintiff states that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.***, the present suit should be decreed qua the relief of injunction. The relevant portion of the said judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“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. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

12. She further states that she has instructions not to press for any other relief other than the relief of permanent injunction, as prayed for in paras 38(i) to (iii) of the plaint.

13. The relevant facts of the present case are that the plaintiff has instituted the present suit against the defendants for the reliefs of permanent injunction restraining infringement of trademark, copyright, passing off etc. The plaintiff is a company registered under the Indian Companies Act, 1956 and is based in Mumbai. The plaintiff-company is a subsidiary/affiliate of the Monsanto Company, which is based in the U.S.A.

14. The Monsanto Company is stated to be the leading producer of the genetically engineered seeds/hybrid seeds and is the world's largest conventional seed company. The product, subject matter of the present suit, is a hybrid cucumber seed manufactured and sold under the brand, 'Malini', which is stated to be a high yielding hybrid of cucumber seeds that yields four to five times more fruits than other

open-pollinated and non-hybrid cucumber varieties and it fetches a premium price in the market.

15. The mark, 'Malini' is a Sanskrit word, meaning 'fragrant' and its use as a mark for hybrid seeds is arbitrary, making it a distinctive trademark. The hybrid cucumber seeds under the mark 'Malini' and the label, which comprises of two cucumbers and a yellow flower, was previously produced by Seminis Vegetable Seeds (India) Private Ltd and was first adopted in the year 2001 in India. The said label was thereafter registered in the name of the aforesaid company in October, 2006 in class 31 under the Trademarks Act, 1999.

16. Vide order dated 18.07.2008, passed by the Bombay High Court, the aforesaid company had ultimately merged/amalgamated with the plaintiff/company. Pursuant to the aforesaid order, all the assets and proprietary rights of the aforesaid company were transferred in favour of the plaintiff, which also included the label and brand of the product 'Malini'. Apart from the trademark rights in the product, 'Malini', the plaintiff is also the owner of the copyright in the artistic work comprised in the get up, lay out, arrangement and colour scheme of its 'Malini' product. The label and the trade dress of the plaintiff's product 'Malini' have been depicted in paras 17 and 21 of the plaint.

17. It is submitted that the 'Malini' mark/label and trade dress have come to be associated in the market with the quality product emanating exclusively from the plaintiff. It is also submitted that the plaintiff has undertaken extensive activities for promotion and

publicity of its product to raise awareness amongst the farmers and the agricultural traders about the usage and benefits of its product 'Malini' and has conducted several events and workshops in various cities across India so as to inform and educate the farmers about the benefits of its product and its value to the agricultural business. The revenues and expenses incurred by the plaintiff for the purpose of advertisement and publicity for its products, including 'Malini', for the past four years have been set out in para 12 of the plaint. The overall net sales and profit figures for its various products, including 'Malini', have also been mentioned in the same para.

18. It is stated that the defendants were engaged in manufacturing, offering/stocking for sale, hybrid cucumber seeds under the mark, "Mallni", which is identical and deceptively similar to the plaintiff's registered product. The manner in which the defendants have copied the plaintiff's product label, packaging and get up for selling its hybrid seeds under the impugned mark, "Mallni" have been detailed in para 24 of the plaint. At page 19 of the plaint, the plaintiff has visually depicted its product juxtaposed against the defendant's product to demonstrate the commonality of features of both the products. It is submitted that the visual comparison of the packaging, trade dress and label of both the products makes it amply clear that the defendants have deliberately tried to confuse and deceive the consumers, who are farmers and agricultural traders with an imperfect recollection and are likely to believe that their products are associated with that of the plaintiff.

19. In view of the averments made in the plaint, which remain uncontroverted, this Court is of the view that the plaintiff is entitled to the judgment in terms of the relief claimed for in para 38 (i) to (iii) of the plaint. However, since the plaintiff has not established the quantum of damages, no relief in this regard can be granted. As noted above, the counsel for the plaintiff has also not pressed for the said relief.

20. In view of the above, the suit is decreed in favour of the plaintiff and against defendant no.2 in terms of para 38 (i) to (iii) of the plaint along with the actual costs. 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.

21. Consequently, the present suit stands disposed of.

MANMOHAN, J

**OCTOBER 30, 2017
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