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

+ **CS(COMM) 575/2016**

DABUR INDIA LIMITED

..... Plaintiff

Represented by: Mr. K. Nangia, Mr. Manish K.
Mishra and Ms. Akansha
Singh, Advocates.

versus

REAL HERBAL COSMETIC

..... Defendant

Represented by: Ms. J. Stuti Narayan, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

10.10.2017

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I.A. No. 11668/2017 (under Order XXIII Rule 3 CPC)

1. By this application the plaintiff and defendant seek disposal of the suit in terms of the settlement arrived at between the parties.
2. Application is disposed of decreeing the suit in terms of the settlement.

CS(COMM) 575/2016

1. Parties have settled the matter, terms whereof are incorporated in I.A. No. 11668/2017 in paras 2 to 10 as under:-

“2. *The Defendant acknowledges Plaintiff to be the owner of the original artistic work of the DABUR AMLA HAIR OIL label as enunciated in the plaint.*

3. *The Defendant undertakes not to manufacture, sale, offer for sale, advertise in any manner including on internet and/or directly or indirectly deal in hair oil or any other ayurvedic preparations or any other goods under the*

impugned REAL HERBAL AMLA HAIR OIL label or any other label as may be a colourable imitation or substantial reproduction of DABUR AMLA HAIR OIL label in respect of its colour combination, get-up, arrangement of features amounting to infringement of copyright of the Plaintiff.

4. *The Defendant undertakes not to manufacture, sale, offer for sale, advertise in any manner including on internet and/or directly or indirectly deal in hair oil or any other ayurvedic preparations or any other goods under the impugned REAL HERBAL AMLA HAIR OIL label/get-up/trade dress or any other label/get-up/trade dress as may be deceptively similar to DABUR AMLA HAIR OIL label/get-up/trade dress leading to confusion and deception amounting to passing off of the goods and business of the Defendant as that of the Plaintiff apart from unfair competition.*
5. *The Defendant has changed the impugned REAL HERBAL AMLA HAIR OIL label to the present label enclosed herein as ANNEXURE –A to which the Plaintiff has no objection.*
6. *The Defendant undertakes to destroy all the infringing goods, labels, packaging, printing materials, printing cylinders, blocks, dyes, articles, point of sale materials, advertisement or publicity materials, if any, which is in the possession of the Defendant within a week from the recordal of the present terms of settlement.*
7. *The Defendant undertakes to withdraw all trade mark and/or copyright and/or design application (s) filed by it, if any, in respect of the impugned REAL HERBAL HAIR OIL label/get-up/trade dress within a week from recordal of the present terms of settlement. The Defendant further undertakes not to oppose/challenge any trade mark or copyright or design application (s)/registration(s) of the*

Plaintiff pertaining to DABUR AMLA HAIR OIL label and/or get-up and/or trade dress.

8. *In view of the above undertakings of the Defendant and subject to the Defendant strictly complying with the above-mentioned terms and conditions, the Plaintiff agrees to waive off the claims for rendition of accounts/damages in the present suit. However, the Plaintiff reserves its rights to take any fresh action available under law against the Defendant, if the Defendant either by itself or through anyone acting for or on its behalf is found in breach of the above settlement terms and conditions. Further, in case of any breach of these settlement terms by the Defendant herein or by any person acting for or on its behalf, the Plaintiff shall be entitled to avail all remedies as available under law and also be entitled to damages as claimed in the present suit.*
9. *The abovementioned undertaking has been tendered by Mr. Kuldeep Gupta, s/o Shri Y.K. Gupta, Proprietor of Real Herbal Cosmetics having address at C-160, Sector-1, Bawana Industrial Area, Bawana, Delhi-110039, and the same shall be binding on the Defendant, its proprietor, associates, assigns in business, distributors, dealers, stockists, servants, franchisee and successor-in-interest, for all times to come.*
10. *That in light of the aforesaid terms, the suit filed by the Plaintiff be decreed qua the Defendant herein and the Plaintiff be entitled for refund of the Court Fee under Section 16A of the Court Fee Act, 1870 read with Section 89 of Code of Civil Procedure, 1908, as deposited and the Defendant has no objection to the same."*

2. The application is duly supported by the affidavit of Shri Kuldeep Gupta, proprietor of defendant and also by the affidavit of Shri B.K. Gupta, authorised signatory of the plaintiff company duly authorised vide

Resolution dated 28th January, 2016 placed at page 139 of the documents file.

3. Suit is accordingly decreed in terms of the settlement noted above. Decree sheet will incorporate the terms of the settlement.

4. Court fee be returned to the plaintiff under Section 16A of the Court Fee Act.

5. The suit and application were listed for 9th September, 2017 however, vide this Court's Notification No. 462/G-4/Gen./DHC dated 10th August, 2017 the next date fixed in the matter was 25th November, 2017 which date is cancelled.

I.A. No. 6287/2016 (under Order XXXIX Rule 1 and 2 CPC)

Suit having been decreed, application is dismissed as infructuous.

MUKTA GUPTA, J.

OCTOBER 10, 2017

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