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

+ CS(OS) 2221/2007

SACHIN JOSHI PRODUCTS(INDIA)
PRIVATE LIMITED.

.....Plaintiff

Through: None.

Versus

UNITED DISTILLERS PLC AND ANR.

.....Defendants

Through: Ms. Kripa Pandit, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

25.04.2017

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1. None appears for the plaintiff.
2. The counsel for the defendant No.2 Diageo Brands BV states that the plaintiff has failed to lead its evidence despite numerous opportunities. She also states that the defendant No.1 United Distillers PLC has ceased to exist.
3. A perusal of the file shows the plaintiff to have instituted this suit for recovery of Rs.20 crores jointly and severally from the two defendants on account of damages for wrongful *ex-parte* injunction obtained by the defendant No.1 against the plaintiff in Suit No.1232/1997 of this Court.
4. The defendant No.2 has been impleaded claiming that the defendant No.2 is the assignee of the intellectual property rights of the defendant No.1 and had got itself impleaded in place of the defendant No.1 in the suit aforesaid in which *ex-parte* injunction against the plaintiff was obtained.

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5. The counsel for the defendant No.2, on enquiry, states that the suit aforesaid was dismissed on account of the defendant No.2 within the prescribed time not making application for substitution in place of the defendant No.1 who was the plaintiff in that case.

6. A perusal of the order sheet in this suit shows (a) that the defendant No.1 was proceeded against *ex-parte* on 5th September, 2008; (b) that on the pleadings of the plaintiff and the defendant No.2, the following issues were framed on 23rd December, 2009:

*“1) Whether the suit filed by the plaintiff for damages on the ground of defendant No.1 obtaining the injunction and then not prosecuting the suit with due diligence and then the suit having being dismissed for non-prosecution would be maintainable?
OPP*

*2) Whether the suit filed by the plaintiff is within limitation?
OPD*

3) Whether the plaintiff is entitled to recover the damages as prayed in the suit?”;

(c) that the issues No.1&2 were ordered to be treated as preliminary issues; (d) that vide order dated 5th July, 2011, with the consent of the parties, the issue No.1 aforesaid was deleted and the issues No.2&3 were re-framed as under:

“a. Whether the suit filed by the plaintiff is within the limitation? OPP

b. Whether the plaintiff is entitled to recover the damages as prayed in the suit? OPP”;

(e) and the matter set down for evidence; (f) that the plaintiff did not file list of witnesses and affidavits by way of examination-in-chief inspite of opportunities and vide order dated 7th December, 2011, last opportunity was

given to the plaintiff; (g) that again on 12th March, 2012, further opportunity was given to the plaintiff, subject to payment of costs; (h) that on 24th August, 2012, the plaintiff tendered affidavit by way of examination-in-chief of one of the witnesses and who has been partly cross-examined by the counsel for the defendant No.2 on 3rd September, 2013; (i) that thereafter, PW-1 did not turn up inspite of repeated opportunities; and, (j) finally, on 15th March, 2017, a new counsel appeared for the plaintiff and sought adjournment.

7. As aforesaid, none appears for the plaintiff today.

8. Dismissed for non-prosecution.

9. Not only is the plaintiff negligent in pursuing the suit, I am *prima facie* of the opinion that the suit otherwise also is misconceived, as no claim for damages lies on account of orders of the Court and the claim for wrongfully obtaining an injunction has to be made in the same suit in which the injunction was granted. Mention may also be made of Section 95 of the Code of Civil Procedure, 1908 providing for maximum costs of Rs.50,000/- for wrongfully obtaining an order of injunction. Though Supreme Court in ***Bank of India Vs. Lekhimoni Das*** (2000) 3 SCC 640 has held that in certain circumstances suit can be filed but it appears there are no pleas to that effect.

RAJIV SAHAI ENDLAW, J.

APRIL 25, 2017

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