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

+ **CS(OS) 873/2015**

SAMSUNG ELECTRONICS COMPANY

LIMITED & ANR.

..... Plaintiffs

Through

Ms. Kripa Pandit, Advocate

versus

MOHAMMED ZAHEER TRADING AS

M/S. GUJARAT MOBILES & ORS. Defendants

Through

None

Reserved on : 12th July, 2017

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Date of Decision: 24th July, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A. 7593/2017

1. Present application has been filed seeking pronouncement of judgment and for passing of a decree against the defendants in accordance with the provision of Order VIII Rule 10 CPC.
2. At the outset, learned counsel for the plaintiffs stated that she is pressing only prayers A and D of the plaint. The said prayers are reproduced hereinbelow:-

“A. A decree of permanent injunction be passed restraining the Defendants, their partners, agents, distributors, suppliers, fanchisees, representatives, affiliates and assigns from:

i Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs’ well-known and registered trade marks “SAMSUNG”, SAMSUNG device/  "SAMSUNG GALAXY

TAB”, “SAMSUNG GALAXY S” and/or any other trade mark device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs.

ii. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs’ well-known and trade marks "SAMSUNG", “SAMSUNG oval device/  ', "SAMSUNG

GALAXY / GALAXY”, “SAMSUNG GALAXY TAB/GALAXY TAB”, “SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAZXY S5”, SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4”, and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs.

iii Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the marks SAMTEL and SMTEL CALAYX, or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' trade marks "SAMSUNG", "SAMSUNG oval device/  ; "SAMSUNG GALAXY / GALAXY",

"SAMSUNG GALAXY TAB/GALAXY TAB", "SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAZXY S5", SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4", either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs or pass off their products as that of the Plaintiffs.

iv. Copying, reproducing, adopting and/or using the Plaintiffs' artistic oval device/logo  and/or any other artistic work, which slavishly imitates the Plaintiffs' said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe upon the Plaintiffs' copyright.

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D. Costs of the suit be awarded to the Plaintiffs;"

3. The relevant facts of the present case are that the plaintiffs have filed the present suit against the defendants seeking inter alia

permanent injunction against the infringement of Trade Marks and Copyrights, passing off, unfair competition, dilution and rendition of accounts, delivery up and recovery of damages etc.

4. On 27th March, 2015, this Court issued summons in the suit and notice on the plaintiffs' injunction application bearing I.A. No.6487/2015. This Court also granted an ad interim ex parte injunction in favour of the plaintiffs restraining the defendants and their partners, agents, distributors, franchises, representatives and assigns and all other acting for and on behalf of the defendants, from:

"i Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and registered trade marks "SAMSUNG", SAMSUNG device/  "SAMSUNG GALAXY TAB",

"SAMSUNG GALAXY S" and/or any other trade mark device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs.

ii. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and trade marks "SAMSUNG", "SAMSUNG oval device/  , "SAMSUNG GALAXY/ GALAXY",

"SAMSUNG GALAXY TAB/GALAXY TAB", "SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAZXY S5", SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2,

SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4”, and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs.

iii Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the marks SAMTEL and SMTEL CALAYX, or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ trade marks “SAMSUNG”, “SAMSUNG oval device/ ”, “SAMSUNG

GALAXY/GALAXY” “SAMSUNG GALAXY TAB/GALAXY TAB”, “SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAZXY S5”, SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4”, either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs or pass off their products as that of the Plaintiffs.

iv. Copying, reproducing, adopting and/or using the Plaintiffs’ artistic oval device/logo  and/or any other artistic work, which slavishly imitates the Plaintiffs’ said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe upon the Plaintiffs’ copyright.”’

5. The aforesaid order is still valid and subsisting.

6. Vide order dated 27th March 2015, this Court also appointed Local Commissioners to visit the premises of all the defendants i.e. defendant Nos.1 to 37 located in Hyderabad to inter alia search, seize and seal all such counterfeit and/or infringing goods materials, products, prepare an inventory of the said products and take into custody the said counterfeit and infringing materials. The Local Commissions were executed and completed on 21st May, 2015.

7. During the commission approximately 9381 counterfeit and infringing goods, materials, products such as Ear Mic Phones, Car Adapters, Protective case, Mobile Phones, Flip Covers, Batteries, Printed on covers, Big Batteries, Tab Covers, Hard Covers, Tab Cases, Bluetooth Headset, Power Bank, Travel Adapters, Chargers, hands free, Tablets, Piece of Galaxy S-4, White Coloured mobile phone and two pieces of Note-II, mobile phones etc. were found and seized by the Local Commissioners.

8. Though the defendants were given several opportunities to file their written statements, yet they chose not to file the same. Ultimately, the defendants were proceeded ex parte and their rights to file written statements were closed on 10th July, 2017.

9. Order VIII Rule 10 CPC reads as under:-

“10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed

by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

10. The Supreme Court in **C.N. Ramappa Gowda Vs. C.C. Chandregowda, (2012) 5 SCC 265** has interpreted the Order VIII Rule 10 CPC as under:-

"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex

parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."

11. A Coordinate Bench of this Court in ***Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta and Ors., 235 (2016) DLT 354*** has held as under:-

"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents."

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28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to persue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."

12. Another Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 III AD (Delhi) 176*** has held as under:-

"4. 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....."

13. Consequently, taking into account the aforesaid mandate of law as well as reports of the Local Commissioners and the lackadaisical attitude adopted by the defendants in not representing themselves and in not filing the written statements, this Court is of the view that as the present plaintiff's case even without any evidence is unimpeachable and the defendants approach is to delay the passing of a decree, it would be appropriate to pass an uncontested decree under Order VIII Rule 10 CPC.

14. Accordingly, the present application is allowed and the suit is decreed against the defendants in accordance with prayers A(i) to (iv) of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

JULY 24, 2017

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