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

+ CS(COMM) 258/2017 & IAs No.4313/2017 (u/O XXXIX R-1&2 CPC) & 4314/2017 (u/O XXVI R-9 CPC)

JAY PLASTIC COMPANY & ANR Plaintiffs
Through: Mr. Sachin Gupta and Mr. Divyesh
Srivastava, Advs.

Versus

PARVEEN AGGARWAL & ORS Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.04.2017

1. This order is in continuation of yesterday's order.
2. The counsel for the plaintiffs has drawn attention to para 62 of *Colgate Palmolive Company Vs. Anchor Health and Beauty Care Pvt. Ltd.* 2003 (27) PTC 478 Del where it has *inter alia* been observed that in some cases even single colour has been taken to be a trademark to be protected from passing off action.
3. I have enquired from the counsel for the plaintiffs as to since when is the defendants packaging available in the market.
4. The counsel for the plaintiffs states that the plaintiffs learnt of it only in the third week of March, 2017.
5. That does not answer the question.

6. The counsel for the plaintiffs has then drawn attention to the Trade Mark Application of the defendant No.1 for 'MAKSON' where the defendant No.1 has claimed user since 2005.
7. It appears that if the defendant No.1's packaging has been in existence for long, that may also disentitle the plaintiffs from any relief on account of passing off to which the relief is now confined.
8. Issue summons of the suit and notice of the application for interim relief by all modes including *dasti* and electronic, returnable before the Joint Registrar.
9. In the circumstances, no case for grant of any *ex-parte* injunction is made out.
10. Similarly, no case for appointment of a Court Commissioner also is made out.
11. IA No.4314/2017 is dismissed.
12. At this stage, the counsel for the plaintiffs seeks to withdraw the suit.
13. Dismissed as withdrawn.
14. The counsel for the plaintiffs seeks refund of the court fees.
15. Out of the court fees reported to have been paid of Rs.1,01,000/-, a certificate in the name of plaintiff No.1 M/s Jay Plastic Company to get refund of Rs.75,000/- be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J.

APRIL 12, 2017

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