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

+ **CS(COMM) 943/2016**

MONSANTO TECHNOLOGY LLC & ORS Plaintiffs

Through: Ms. Nancy Roy, Advocate with
Mr. Rupin Bahl, Adv.

versus

M/S AXIS SEED AND CROP TECHNOLOGY & ORS

..... Defendant

Through: Mr. M.S. Vishnu Sankar, Adv. with
Ms. Athira G. Nair, Adv. for
Mr. David Rao, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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21.03.2017

IA No.11722/2016 (under Order XXIII Rule 3 read with Section 151 CPC)
moved by both the parties

The learned counsel for the plaintiff submits that in view of the observations recorded in the order dated 22.09.2016, a fresh application (IA No.2795/2017) for similar relief having been filed, this application is not pressed. The application is thus disposed of as not pressed.

IA No.2795/2017 (under Order XXIII Rule 3 read with Section 151 CPC)
moved jointly by the plaintiffs and defendants no.1 and 2

1. The civil suit, since converted into a commercial suit, was instituted in May, 2014 impleading eight named defendants including M/s. Axis Seed & Corp. Technology, 25, Dada Estate, Sarkhej-Sanand Cross Road, Sarkhej, Ahmedabad -382 210, Gujarat, India, (the first defendant) and Akshay Seed Technolgoy Gompany, 26-31, Dada Estate, Sarkhej-Sanand Road, Sarkhej, Ahmedabad -382 210 (the second defendant), seeking the following reliefs:-

“(i) An order and decree of permanent injunction restraining the defendants, their partners or proprietors, their officers, servants, agents and all persons, firms, corporations and associations in active concert or participation with the defendants from, manufacturing, offering/stocking for sale, selling, marketing, advertising, distributing, printing, supplying and otherwise dealing, directly or indirectly in any manner with hybrid seeds or any other goods, under the plaintiff No.1’s registered trademarks BOLLGARD II, or any other deceptive variant including but not limited to BOLLGARD or BG II in any fashion, which amount to infringement of the plaintiff No.1’s trade marks as detailed hereinbefore;’

(ii) An order of permanent injunction restraining the defendants, their partners or proprietors, their officers, servants, agents and all persons, firms, corporations and associations in active concert or participation with the defendants from, manufacturing, offering/stocking for sale, selling, marketing, advertising, distributing, printing, supplying and otherwise dealing, directly or indirectly in any manner whatsoever, hybrid seeds or any other goods, under the plaintiff No.1’s label and trademark BOLLGARD II, or any other deceptive variant including but not limited to BOLLGARD or BG II in any fashion, which amount to passing off their goods as those of the plaintiffs’ or in any way which suggests a connection or association with the plaintiff;

(iii) An order of rendition of accounts of profits, directly or indirectly earned by the defendants from their infringing activities and wrongful conduct and a decree for the amount so found due to be passed in favour of the plaintiff;

(iv) An order for delivery up by the defendants of all finished and unfinished goods, materials, advertising material, blocks, dies, etc. bearing the marks/label/trade dress which is in likenesses of the plaintiff’s trade marks /label / trade dress or any other mark identical with or deceptively similar to that of the plaintiff’s, or any other

material infringing the trade marks of the plaintiff, lying in the possession of the defendants and their principal officers, directors, agents, franchisees, servants, etc.;

- (v) *A sum of Rs.20,00,200 for a decree of damages as valued for the purposes of this suit in the preceding paragraphs for the purposes of loss of sales, reputation and goodwill of the plaintiff's trade mark caused by the activities of the defendants;*
- (vi) *An order as to the costs of the proceedings;*

Any other and further orders, as this Hon'ble Court deems fit, proper and just in the facts and circumstances of the present case, may be passed in favour of the plaintiff companies and against the defendants."

2. The plaintiffs and the first and second defendant have entered into a settlement and have come up with this joint application seeking the undertakings offered by the first and the second defendant to be taken on record and the suit to be disposed of in its terms. The relevant portion of the application may be extracted, it reading as under:-

"2. Without going into the merits of the case and without prejudice to the rights and contentions of the parties, during the pendency of the present suit, the plaintiffs and the defendants have agreed to settle their dispute, which are the subject matter of the instant suit, and are entering into a settlement on terms set hereinafter:

A. The defendants undertakes to this Hon'ble Court that the defendants including their agents, distributors, suppliers, affiliates, subsidiaries, licensees, representatives and assigns shall refrain from:

- (i) *using the trademark BOLLGARD and the proprietary rights in the inherently distinctive trade dress of the plaintiff no.1's product BOLLGARD and/or any other trade mark/trade dress which is*

confusing and deceptively similar to the plaintiff's trademark BOLLGARD and the inherently distinctive trade dress of the plaintiff no.1's product BOLLGARD which is deceptively and/or confusingly similar to the plaintiff's registered BOLLGARD mark, either as a trade mark or part of a trade mark, trading style, Company/Corporate name/or trademark/service mark or in any other manner whatsoever, which would amount to infringement of the registered trademarks of the plaintiff and/or in any other manner whatsoever passing off their goods as and for the goods of the plaintiff without authorization from the plaintiffs or their agents, distributors, suppliers, affiliates, subsidiaries, licensees, representatives;

(ii) using any other indicia whatsoever to show any association or affiliation or connection of the defendants or its goods with the plaintiffs and/or their goods without authorization from the plaintiffs or their agents, distributors, suppliers, affiliates, subsidiaries, licensees, representatives;

(iii) manufacturing, selling offering for sale, marketing, advertising and/or in any manner deal in any agricultural products under the mark BOLLGARD, and/or any other mark/s, which is identical to or deceptively and confusingly similar to the plaintiff no.1's trademark BOLLGARD without authorisation from the plaintiffs or their agents, distributors, suppliers, affiliates, subsidiaries, licensees, representatives;

B. The defendants further undertake to this Hon'ble Court that they shall destroy the goods seized by the Local Commissioner under intimation to the plaintiffs.

C. The defendants have further agreed and undertaken to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as legal costs. The said amount has been tendered by way of a cheque No.280332 dated 15-08-2016 and handed over to

the plaintiff.

xxx”

3. The application has been signed by the authorized representatives of the plaintiffs on one hand and that of the defendants no.1 and 2 on the other, supported by their respective affidavits.

4. Having gone through the above noted settlement terms, in the light of facts and circumstances of the case, the same being lawful, the prayer made in the application is granted. The suit in so far as it sought relief against the first and the second defendant stands disposed of in terms of the averments made and the undertakings given in the application at hand, leaving the parties to bear their own costs. The parties shall remain bound by their respective undertakings.

IA No.3413/2017 (Order XXIII Rule 1 read with Section 151 CPC) moved by the plaintiffs.

By this application, the plaintiff seeks to withdraw the suit against defendants no.3 to 8, primarily in view of the amicable resolution of dispute with other defendants, *i.e.*, defendants no.1 and 2. The prayer is granted. The suit in so far as it sought relief against defendants no.3 to 8 stands dismissed as withdrawn.

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Nothing further survives. All other pending applications are rendered infructuous and stand disposed of accordingly.

R.K.GAUBA, J.

MARCH 21, 2017

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