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

+ **CS(COMM) 1090/2016**

DHARAMPAL PREMCHAND LTD. Plaintiff

Through: Mr. N.K. Anand & Mr. Achuthan
Sreekumar, Advs.

Versus

HIRA ENTERPRISES Defendant

Through: Mr. N.K. Bhardwaj & Mr. Bikash
Ghorai, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.01.2017**

1. The plaintiff instituted this suit for permanent injunction to restrain the defendant from using the mark “BAOBA”/ “BABA” averring the same to be substantial reproduction of the plaintiff’s trademark “BABA” and amounting to infringement of plaintiff’s registered trademark and passing off its goods as that of the plaintiff and for ancillary reliefs.
2. Though summons of the suit were issued on 9th September, 2002 but no *ex parte* relief sought granted.
3. Pleadings were completed and the suit continued to languish, mostly on the ground that the parties were attempting to amicably settle their disputes.
4. On 20th January, 2005 the following order was passed:
“CS(OS) No.1400/2002
Learned counsel for the plaintiff submits that learned counsel for the defendant is agreeing that the defendant would give up the use of the trade mark ‘BAOBA’ or ‘BABA’, which is objected to by the plaintiff and would

confine his trade mark to 'IBRAHIM BABA' only registered as No.534934. Counsel for the parties pray for time for moving an application under Order 23 Rule 3 CPC."

5. However no application under Order XXIII Rule 3 of the CPC was filed inspite of repeated adjournments. Finally, when the suit came up before this Court on 5th September, 2005, upon the counsels for the parties again seeking time to file application under Order XXIII Rule 3 of the CPC, the matter was adjourned *sine die* with the direction that as and when such an application is moved, it be listed.

6. No application was filed thereafter also and neither party sought to revive the suit.

7. The Registry of this Court on its own listed the matter on 8th November, 2015 when Court Notice was issued to the parties.

8. Thereafter the matter has again been adjourned from time to time and is posted today for framing of issues.

9. The counsel for the plaintiff and the counsel for the defendant today state that the suit be disposed of in terms of order dated 20th January, 2005 reproduced hereinabove.

10. Not finding the document of registration of the trademark of the defendant, enquiry in this regard has been made from the counsel for the defendant.

11. The counsel for the defendant has today in Court handed over photocopies of Certificate of Registration of trademarks bearing Nos.896128 and 534934 and states that he has instructions from the registrants of the said

trademarks and who are the partners of the defendant Hira Enterprises to state that the defendant shall, with respect to pan masala manufactured by it use the trademark strictly as per the registration and shall not use any variation thereof to make the same similar or deceptively similar to the plaintiff's registered trademark.

12. The counsel for the plaintiff states that if the defendant suffers an injunction to the said effect, the plaintiff does not press for the other reliefs.

13. The compromise as aforesaid arrived at between the parties is found to be lawful and is allowed.

14. A decree is accordingly passed in favour of the plaintiff and against the defendant in terms of prayer paragraphs (a) and (b) of the plaint but subject to the clarification that the defendant shall be entitled to use the mark strictly as per the Certificate of Registration of trademarks bearing Nos.896128 and 534934 handed over in Court and taken on record but without any variation thereof to make it deceptively similar to the plaintiff's registered trademark.

15. The parties are left to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JANUARY 18, 2017

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