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

+ **CS(COMM) No.1356/2016**

TARUN JAIN

..... Plaintiff

Through: Mr. Pravin Anand and Ms. Prachi
Agarwal, Advs. along with plaintiff.

versus

MANOJ JAIN AND ANR.

..... Defendants

Through: Ms. Archana Sahadeva and Mr.
Nikhil Lal, Advs. for D-1&2 along
with Mr. Manoj Jain defendant no.1
and Ms. Mamta Jain defendant no.2
in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.05.2017

1. The suit is listed today upon the counsel for the defendants making an oral mention yesterday informing that the defendants are now agreeable to the proposal for settlement as mooted during the hearing on 9th May, 2017 and as recorded in the order of that date. The counsel for the defendants was also requested to inform the counsel for the plaintiff.
2. The counsel for plaintiff appears. The plaintiff as well as defendants no.1 & 2 are also stated to be present in Court.
3. The counsel for the plaintiff states that it has been agreed that the defendants will suffer a decree for permanent injunction in terms of prayer paragraph 41 (i) (a),(b),(c) and (d) of the plaint and shall in addition also withdraw the trade mark applications no.3210381, 3210382 and 3291268 filed by the defendants as well as opposition made to the trade mark application of the plaintiff. The counsel for the plaintiff further states that

the plaintiff is agreeable to give time of one month to the defendants to effect the change.

4. The counsel for the defendants states that the defendants have agreed to so suffer a decree and to give up their trade mark applications and opposition subject to being granted one year's time to effect the change as was mooted on 9th May, 2017. She otherwise states that once the defendants have to give up the trade mark and effect the change, the defendants themselves would not indulge in any action of expanding or popularising their business under the trade mark which has been agreed to be given up.

5. The counsel for the plaintiff is not agreeable to give time of more than six months.

6. In my opinion once the parties have so arrived at a settlement qua the substantial part of the claim, considering that they are family members and this is a commercial suit, this Court is entitled to intervene and to impose its will regarding the length of time to be granted to effect the change.

7. Accordingly, a decree is passed in favour of the plaintiff and against the defendants:-

- (i) of permanent injunction in terms of prayer paragraph 41 (i) (a), (b), (c) and (d) of the plaint; and,
- (ii) of mandatory injunction directing the defendants to within 15 days hereof withdraw the trade mark applications no.3210381, 3210382 and 3291268 filed by the defendants and the opposition filed by the defendants to the trade mark applications of the plaintiff.

8. The defendants are however granted time till 11th May, 2018 to give up the mark/name from using which they have been enjoined, to inform/familiarise their patrons of/with the new mark/name, but accepting the statement aforesaid made by the counsel for the defendants of the defendants not doing any act further popularising or expanding their operations under the trade marks 'NIKKY FASHION' or 'NIKKY GIRLS WEAR' or using the word 'NIKKY' in conjunction with any other word and further on the condition that the defendants, at their cost, shall on or before 30th June, 2017 publish in newspaper/by handbills / posters, the following:

“THIS IS TO INFORM THE GENERAL PUBLIC THAT ‘NIKKY FASHION’ IS IN NO MANNER ASSOCIATED WITH ‘NIKKY POINT’ AND ANY BUSINESS CONDUCTED BY ‘NIKKY FASHION’ IS NOT ASSOCIATED, CONNECTED, LINKED OR HAS ANY NEXUS WITH THE BUSINESS OF ‘NIKKY POINT’.

THIS IS TO FURTHER INFORM THAT ‘NIKKY FASHION’ IS IN THE PROCESS OF CHANGING ITS NAME AND THE SAME WILL BE INTIMATED TO THE GENERAL PUBLIC SHORTLY.”

If the defendants before the date of publication decide on the new mark/name, the same shall be inserted in aforesaid.

The decree for permanent injunction shall thus come into effect w.e.f. 11th May, 2018.

9. It is further ordered that the amount of Rs.5,00,000/- deposited by the defendants in this Court will be released to the defendants on the defendants filing an affidavit in this Court with advance copy to counsel for plaintiff, to

the effect that thereafter the decree for permanent injunction will be effective. The interest earned on the said amount will be released in favour of the plaintiff.

10. In the facts of the case, a certificate entitling the plaintiff to refund of the court fees paid be issued and handed over to the counsel for the plaintiff.

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

12. Decree sheet be drawn up.

13. It is further clarified that a long time of one year has been given to the defendants in the peculiar facts of this case and owing to the relationship between the parties.

14. The counsel for defendants has, after verifying, informed that defendants have not filed any opposition to any trade mark application of plaintiff.

RAJIV SAHAI ENDLAW, J.

MAY 12, 2017

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