

\$~13

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

+ **FAO 557/2016**

M/S K C J & COMPANY

..... Appellant

Through: Mr. S.K.Bansal, Mr. Ajay Amitabh
Suman and Mr. Kapil Kumar Giri,
Advocates.

versus

M/S EVERPLUS COSMETICS INDIA

..... Respondent

Through: Mr. Jayant Mehta and Mr. Gaurav
Miglani and Mr. Jithin M. George,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **02.11.2017**

1. Disputes between the parties pertain to use of the trademark 'EVEREST' which is used with respect to Hair Dye and Kali Mehendi. It is undisputed that the trademark is registered in the name of the partnership firm M/s K.C.J.& Co. It is also undisputed that the partnership firm had two partners namely Sh. Kuldeep Chand Jain and Sh. Sunil Kumar Jain. It is further undisputed that partnership business is no longer being carried on and there is no complete dissolution process in terms of Section 48 of the Partnership Act though Sh. Sunil Kumar Jain pleads existence of a particular family settlement.

2. Before this Court, it is not disputed that both the partners of M/s K.C.J.& Co. i.e Sh. Kuldeep Chand Jain and Sh. Sunil Kumar Jain are entitled to use the trademark 'EVEREST' with respect to Hair Dye and Kali Mehendi or any other products for which the trademark was registered.

3. Accordingly, the present appeal as also the suit shall stand disposed of by recording the entitlement of both the partners Sh. Kuldeep Chand Jain and Sh. Sunil Kumar Jain to use the trademark 'EVEREST' with respect to Hair Dye and Kali Mehendi as also for the goods for which the subject trademark is registered, and which position will continue till there is a decree of a civil court determining the rights of the parties in the subject trademark and which has an effect of derogating from the present order.

4. Both the parties are entitled to act on the basis of the consent order with the appropriate statutory authorities.

5. Costs imposed in terms of the order dated 3.10.2016 of Rs.1,00,000/- upon the appellant is reduced to a sum of Rs.65,000/- and this amount of Rs.65,000/- is agreed by the appellant to be deposited with the website of www.bharatkeveer.gov.in within a period of four weeks from today.

6. The appeal accordingly is disposed of with the aforesaid observations.

VALMIKI J. MEHTA, J

NOVEMBER 02, 2017

ib