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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 1602/2016 & I.As. 4643/2015 AND 8734/2015

DHARAM CHAND LADHA MAL Plaintiff

Through: Ms. Aparna Jain, Advocate.

versus

SUBHASH SABUN UDYOG & ORS Defendants

Through: Mr. Naveen Kumar Raheja, Advocate
for defendant No.1.

Mr. Mritunjay Kumar Singh, Advocate
for defendant No.11.

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Date of Decision: 23rd May, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed for permanent injunction, passing off, infringement of trade mark, damages etc. The prayer clause is reproduced hereinbelow:-

“a) Restrain the Defendants, its servants, agents, partner, associates, and all other persons acting for and on their behalf from selling, advertising or marketing its products under the mark NIROKHA SOAP or NIROKHA SABUN or NAROLKALA SOAP OR NAROLKALA SABUN any other

mark similar with that of the Plaintiff's mark to stop infringement of registered trade mark of the Plaintiff.

b) Restrain the Defendants, its servants, agents, partner, associates, and all other persons acting for and on their behalf from selling, advertising or marketing its products under the mark NIROKHA SOAP or NIROKHA SABUN or NAROLKALA SOAP OR NAROLKALA SABUN any other mark similar with that of the Plaintiff's mark to stop passing off its products as that of the Plaintiffs.

c) Direct the Defendants to render accounts of all profits made by the Defendant by use of the deceptively similar mark, which is similar to the registered trade mark of the Plaintiff.

d) Direct the Defendants to pay damages to the Plaintiff for a sum of Rs.25,50,000/- for use of deceptively similar mark on its products similar to that of the registered trade mark of the Plaintiff.

e) Direct the Defendants to hand over the entire stored/ manufactured products, which has the registered trade mark of the Plaintiff, to Plaintiff or any of its authorized representative for destruction.

f) Any other order/directions as this Hon'ble court deems fit and proper in the exigencies of circumstances may also be passed in favour of the Plaintiff and against the Defendants."

2. On 05th March, 2015, this Court passed an injunction order restraining the defendants, their agents and authorised representatives from selling, advertising or marketing its product under the mark 'NIROKHA' or any other mark which is similar to the plaintiff's registered trade mark 'NAULAKHA' in any manner. By the same order, Local Commissioners were also appointed.

3. In one of the Local Commissioner's report dated 25th March, 2015, it has been stated as under:-

"7. That the undersigned conducted a detailed search of the premises and come across these empty 94 "packaging materials" of '20 kg each', bearing the trade-mark infringing 'NIROKHA' mark. That on enquiring on the said packaging, the Commissioner was granted no unambiguous explanation. That the Sole proprietor Mr. Subhash Chander was explained the nature of the findings of the Commissioner. That the Sole Proprietor was further apprised of the nature of the findings and explained how these were in infringement of the Plaintiff Company's Trademark 'NAULAKHA'. That the Commissioner seized the said packaging, sealed it and released the same to the proprietor on 'SUPERDARI'.

4. Thereafter, the defendants No.2 to 9 were proceeded ex parte.

5. Despite a pass over, none is present for the defendant No.10. Consequently, the said defendant No.10 is also proceeded ex parte.

6. Learned counsel for defendants No.1 and 11, who are present in Court, state that they have no objection if the suit is decreed in terms of prayers 'a' and 'b'. They further state that the defendants are small time traders and they cannot afford to pay the damages sought for by the plaintiff in the present case.

7. At this stage, the Court has suggested to the parties that each of the defendants should pay Rs.50,000/- each as compensation/damages to the plaintiff. Learned counsel for defendants No.1 and 11 are agreeable to the same.

8. Consequently, keeping in view the pleadings as well as the documents on record and the reports of the Local Commissioners, this Court is of the view that there is a clear similarity between the trade dress of the defendants and the plaintiff's product.

9. Accordingly, the present suit and applications are decreed in terms of prayers 'a' and 'b' of the amended plaint.

10. Each of the defendants are also directed to pay compensation/damages of Rs.50,000/- to the plaintiff within eight weeks. Registry is directed to prepare the decree sheet accordingly.

MANMOHAN, J

MAY 23, 2017

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