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

+ **FAO(OS) (COMM) 177/2017 & CMs. 34485-34487/2017**

THE PROCTER & GAMBLE COMPANYAppellant

Through: Mr. Sudhir Chandra, Senior
Advocate with Mr. Peeyoosh Kalra, Mr. Gaurav
Mukerjee and Mr. Amol Dixit, Advocates

versus

RSPL LTD & ANRRespondents

Through: Nene

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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19.09.2017

The appellant's grievance is that even while issuing notice/summons in the infringement suit, the learned Single Judge did not consider the request for *ex parte* interim relief.

Learned senior counsel for appellant points out that the injury is inherent and writ large in the face of the record in the comparison of the rival marks i.e. plaintiff's registered trademark "*WHISPER*" alongwith "*WINGS*" and "*DRI WEAVE*". The record shows that the defendants use identical expressions in Hindi and English for the identical product. It is, therefore, urged that facially there is resemblance sufficient to warrant a *prima facie* conclusion of infringement under Section 29 (2) & (3) of *the Trade Marks Act, 1999* and to draw a presumption in that regard.

The Court is of the opinion that there is difficulty in maintaining

the present appeal since the learned Single Judge did not decline the relief but merely issued notice/summons. In the circumstances, learned senior counsel for appellant seeks liberty to approach the learned Single Judge with another application seeking *ex parte* relief, but requests that the Court may pass appropriate orders requiring the learned Single Judge to hear it.

This Court is of the opinion that in the event of appellant approaching the learned Single Judge before the date of hearing scheduled, the application may be considered and appropriate orders passed in accordance with law. The appeal is accordingly permitted to be withdrawn with aforesaid liberty. The appeal alongwith the pending applications is accordingly disposed of.

Dasti.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

SEPTEMBER 19, 2017

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