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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 38/2017 & IA No.6991/2018 (of defendants no.1,8&9
u/S 151 CPC).

E.I DU PONT DE NEMOURS AND COMPANY
& ANR

..... Plaintiffs

Through: Mr. Karan Bajaj, Ms. Kangan Roda
and Mr. Anirudh Bhatia, Advs.

versus

ATLAS AGRITECH PRIVATE LIMITED & ORS Defendants

Through: Mr. Lakshay Swahney and Mr.
Vaibhav Mishra, Advs. for D-1,8&9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.05.2018

1. The two plaintiffs instituted this suit against as many as 12 defendants namely (i) Atlas Agritech Private Limited; (ii) Hitesh Parghi; (iii) Apple Organics Private Limited; (iv) Jayesh M. Borisagar; (v) Dilip Joshi; (vi) Vipul Joshi; (vii) Sardar Agri Private Limited; (viii) Alvish Ramani; (ix) M/s. Fengel Crop Science; (x) Pratik Ramparlya; (xi) Kishore Dholariya; and, (xii) Subhash T. Dholariya, for permanent injunction restraining the defendants from using a mark identical and / or deceptively or confusingly similar to the registered trade mark of the plaintiffs and from imitating the labels / trade dress / packaging of the plaintiffs and for ancillary reliefs.
2. This suit was entertained and while issuing summons thereof, vide *ex parte* order dated 16th January, 2017, interim injunction was granted against the defendants and which continues till date.
3. The defendants no.2 to 7 and 10 to 12 were vide order dated 16th

August, 2017 proceeded against *ex parte*. The defendants no.1,8&9 only were contesting the suit.

4. IA No.6991/2018 has been filed by the defendants no.1,8&9 offering undertakings as contained in the affidavits of the defendant no.1 and defendants no.8&9 and the counsel for the plaintiffs states that the suit insofar as against the defendant no.1 Atlas Agritech Private Limited, defendant no.8 Alvish Ramani and defendant no.9 M/s. Fengel Crop Science, be disposed of accepting the undertakings of the said defendants and no decree is required against the defendants no.1,8&9.

5. The counsel for the defendants no.1,8&9 states that he has explained to the defendants no.1,8&9 effect of giving undertaking to the Court and the consequences of breach of undertaking given to the Court.

6. Once of the undertakings given is that in the event of breach of other undertakings, liquidated damages in the sum of Rs.10,00,000/- will be paid to the plaintiffs in the first instance, without prejudice to the other claims of the plaintiffs.

7. I have enquired from the appearing counsels, whether in the event of the plaintiffs pleading breach of undertaking, the defendants no.1,8&9, irrespective of whether agreeing to have committed breach or not, will pay the said amount.

8. No clear answer is forthcoming.

9. It appears that the plaintiffs, for enforcement of the said clause, will have to institute a suit.

10. Else, the undertakings of the defendants no.1,8&9 as contained in the affidavits accompanying IA No.6991/2018 are accepted and the defendants

no.1,8&9 are ordered to be bound by the undertakings contained therein and informed through counsel of the consequences of breach of undertaking given to the Court.

11. In terms of the above, the suit against the defendants no.1,8&9 is disposed of.

12. As far as the defendants no.2 to 7 and 10 to 12 who are *ex parte* are concerned, the plaintiffs, on the basis of averments in the plaint and the documents filed therewith, has made out a case for grant of permanent injunction as claimed in prayer clause A (i) to (v) of the plaint dated 13th January, 2017 and no need for *ex parte* evidence against the said defendants is felt in view of *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC OnLine Del 508.

13. The counsel for the plaintiffs states that he does not claim other reliefs against the said defendants.

14. Accordingly, a decree is passed, in favour of the plaintiffs and against the defendants no.2 to 7 and 10 to 12, of permanent injunction in terms of prayer clause A (i) to (v) of the plaint dated 13th January, 2017 leaving the parties to bear their own costs.

15. Decree sheet be drawn up.

16. The counsel for the defendants no.1,8&9 has handed over to the counsel for the plaintiffs, the cheque for the amount in terms of undertakings.

RAJIV SAHAI ENDLAW, J

MAY 23, 2018/‘pp’..