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

+ EX.P. 33/2013 & EX.APPL.(OS) 95/2013

PANKAJ SALES CORPORATION Decree Holder

Through Mr. Amit Narang with
Mr. Yadminder Lal, Advocates

versus

INDRA JAIN INDUSTRIES Judgement Debtor

Through Ms. Sushmita Chaudhary,
Advocate

% Date of Decision: 23rd October, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present execution petition has been filed seeking execution of the consensual decree dated 14th December, 2011 passed in CS (OS) 2039/2011. It is pertinent to mention that the consensual decree had been passed in accordance with the Settlement Agreement dated 8th December, 2011 executed between the parties before the Delhi High Court Mediation and Conciliation Centre. The relevant portion of the said Settlement Agreement dated 8th December, 2011 is reproduced hereinbelow:-

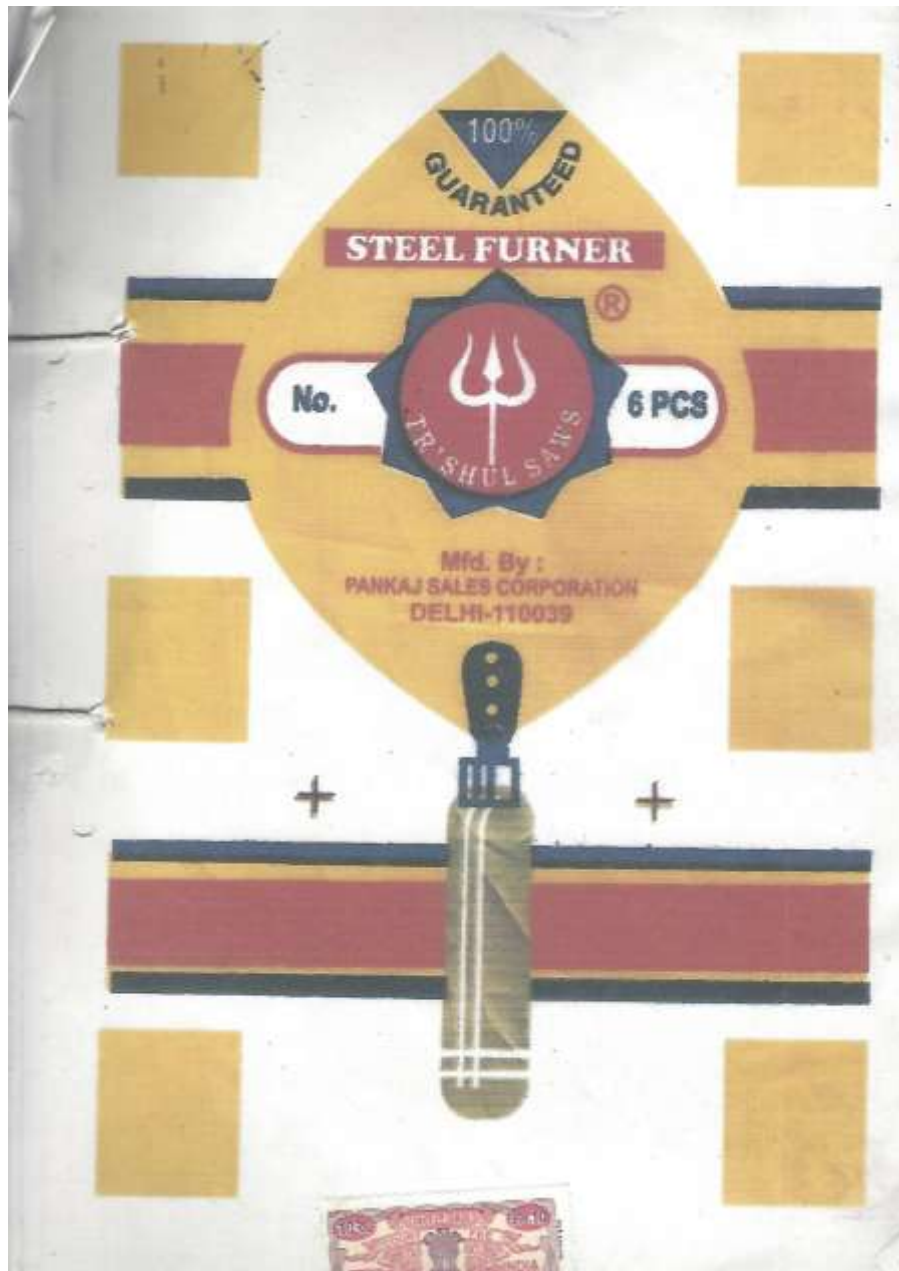
a) The defendant acknowledge the plaintiff to be the registered proprietor of the trade mark TRISHUL with device of TRISHUL/TRIDENT under No. 1335878 as of 02-02-2005 in respect of Hand Saw Blades and Hand

Tools in Class-08 and registered trade mark TRISHUL (word per se) under No. 1335879 as of 02-02-2005 in respect of the same goods. The defendant has agreed that he will not claim any copy right in the label of TRIPHUL and device of TRISHUL/TRIDENT style and arrangement etc.

- b) The defendant state that he had also started using the device similar to the trademark of the plaintiff, with the Trade Name "JAIN". Now the defendant has come to know that the device used by the defendant is a registered trade mark of the plaintiff. The defendant now undertakes that he will not manufacture, sell, offer for sale, advertise, directly or indirectly deal in Hand Tools included Karni, Garden Tools, Masonary Tools, Khurpy, Hand Saw, Purnins implements (hand operated). Cutlery, Side Arms and Razors under the device mark TRISHUL/TRIDENT with conjunction of the word JAIN and/or any other trade mark and its copyright, as may be identical with and/or deceptively and confusingly similar to Plaintiff's registered trade mark and its copyright in the artistic work of TRISHUL device TRISHUL/TRIDENT and/or from committing any such act or acts, which is likely to cause confusion and deception amounts to passing off the goods and business as that of the Plaintiff.*
- c) The Defendant further undertakes that he will withdraw the application No. 1976531 in class-08 for the registration of trade mark TRISHUL device TRISHUL/TRIDENT from the Trade Mark Registry, Ahmedabad and receipt of the same will be given to the Plaintiff.*
- d) The Defendant further agreed to destroy all of the offending counterfeited goods and all the of the cartons, wrappers, labels, stickers, blocks and dies under the trade mark TRIPHUL device TRISHUL/TRIDENT and device TRISHUL/ TRIDENT with conjunction of the words JAIN, which are those in possession and control of the Defendant."*

2. Learned counsel for the decree holder contends that the judgment debtor is still using a label which is identical and/or deceptively similar to the decree holder's label in violation of the consensual decree. The decree holder's label and the judgment debtor's label post the decree are reproduced hereinbelow:-

A) Decree Holder's label` (Annexure P-1) :-



B) Judgment Debtor's label (Annexure D-1):-



3. Per contra, learned counsel for judgment debtor states that only the device and word mark TRISHUL/TRIDENT as well as the mark

4. However, this Court upon a perusal of the Settlement Agreement dated 8th December, 2011 is of the view that the decree dated 14th December, 2011 does not incorporate Annexure P-1. It incorporates the decree holder's trade marks bearing registration No. 1335878 and 1335879. The device/label mark registration bearing No. 1335878 is reproduced herienbelow:-

EX.P. 33/2013

5. Consequently, this Court is of the view that the judgment debtor had been restrained from using the device/label mark bearing registration No.1335878 as well as word mark TRISHUL bearing registration No.1335879 and the word mark JAIN only. Further, the judgment debtor had to withdraw its application for registration of the trade mark TRIPHUL, device TRISHUL/TRIDENT from the Trade Mark Registry.

6. However, under the guise of the aforesaid injunction, decree holder cannot claim any exclusive right in either Annexure P-1 or shape of Steel Furner. In fact, the Annexure P-1 was neither referred to nor incorporated in the Settlement Agreement dated 08th December, 2011 and consensual decree dated 14th December, 2011.

7. Consequently, this Court is of the view that the present execution petition is without any merit and accordingly, the same is dismissed.

OCTOBER 23, 2018

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MANMOHAN, J