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

+ CS(COMM) 88/2018 & IAs No.2856/2017 (u/O XXII R-10 r/w O-I R-10 CPC) & 7466/2017 (of defendants u/O VII R-10&11 CPC)

ARCOR S.A.I.C. Plaintiff

Through: Mr. Sushant Singh, Adv.

Versus

MOHAN BAJAJ AND ORS. Defendants

Through: Mr. Nauroop Singh and Mr. H.P. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.03.2018

1. The plaintiff instituted this suit, as far back as in the year 2009, against five defendants namely (i) Mohan Bajaj; (ii) Naresh Bajaj; (iii) Anand Products/Anand Agency; (iv) Asha Food Products; and, (v) A.D.R. Foods Pvt. Ltd., for perpetual injunction restraining passing off of the goods namely toffees, candies under the trade mark 'PARCOR' or any other mark deceptively similar to the plaintiff's trade mark 'ARCOR/ARCOR BUTTER TOFFEES' and for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 11th August, 2009, which continues to be in force, the defendant No.3 Anand Products/Anand Agency restrained from dealing in goods/toffees/candies under the trade mark 'PARCOR' or any other mark deceptively similar to the plaintiff's trade mark 'ARCOR/ARCOR BUTTER TOFFEES'.

3. The suit, inspite of being of 2009 vintage, is still at an initial stage.
4. The counsel for the plaintiff informs (i) that the defendants No.1&2 Mohan Bajaj and Naresh Bajaj, on appearing in the suit, took a stand that they had nothing to do with the business of defendant No.3 Anand Products/Anand Agency which was marketing goods/toffees/candies under the impugned mark and that in fact it was Raj Kumar Bajaj who was the proprietor of the said business; (ii) accordingly, Mohan Bajaj and Naresh Bajaj, Asha Food Products and A.D.R. Foods Pvt. Ltd. defendants in the suit as originally filed were deleted and Raj Kumar Bajaj and Deepak Daryani impleaded as defendants in the suit and an amended Memorandum of Parties dated 26th August, 2014 at pages 169-170 of Part I file showing (a) Raj Kumar Bajaj; (b) Anand Products/Anand Agency; and, (c) Deepak Daryani as defendants was filed; (iii) that subsequently it was discovered that Raj Kumar Bajaj has vide Deed dated 2nd January, 2012 assigned the business of Anand Products/Anand Agency to his sister namely Kavita Bajaj; (iv) that the plaintiff has filed IA No.2856/2017 under Order XXII Rule 10 read with Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for substitution of Raj Kumar Bajaj by the said Kavita Bajaj.
5. The counsel for the plaintiff at this stage states that though the application is under Order XXII Rule 10 read with Order I Rule 10 of CPC but for impleadment of Kavita Bajaj as proprietor of Lal Sai Industries located at Indore, Madhya Pradesh, along with with Raj Kumar Bajaj.
6. Notice of the aforesaid application was ordered to be issued to Kavita Bajaj. However, the said Kavita Bajaj remained unserved. Raj Kumar Bajaj was directed to furnish the address of Kavita Bajaj and filed an affidavit in

that regard in this Court disclosing the address of Kavita Bajaj as of Lal Sai Industries located at 36-B, Sanwer Road, Industrial Estate, Sector C, Indore, Madhya Pradesh but the plaintiff has been unsuccessful in serving Kavita Bajaj at the said address also.

7. The counsel for the plaintiff states that a further direction be issued to Raj Kumar Bajaj to accept notice on behalf of Kavita Bajaj.

8. Needless to state, the counsel for Raj Kumar Bajaj is not agreeable and states that Kavita Bajaj though sister of Raj Kumar Bajaj is separate and distinct from Raj Kumar Bajaj and Raj Kumar Bajaj is not authorised to accept summons or notice on behalf of Kavita Bajaj. It is also contended that IA No.7466/2017 of Raj Kumar Bajaj under Order VII Rules 10 & 11 of CPC is pending consideration.

9. It is for the aforesaid reasons recorded above, that the suit, inspite of pending for nine years, is at the initial stage only.

10. I have enquired from the counsel for the plaintiff, the date when Raj Kumar Bajaj was impleaded as a party to the suit.

11. The counsel for the plaintiff gives the said date as 26th November, 2013.

12. The assignment by Raj Kumar Bajaj in favour of Kavita Bajaj being of 2nd January, 2012 i.e. of a date prior to impleadment of Raj Kumar Bajaj as a defendant, I have enquired from the counsel for the plaintiff, as to how it can be said that Kavita Bajaj is liable to be substituted in place of Raj Kumar Bajaj or is to be impleaded as defendant in this suit. The plaintiff will have to sue Kavita Bajaj by way of a separate suit.

13. The counsel for the plaintiff states that the suit is pending since the year 2009.

14. Undoubtedly so but admittedly not against Raj Kumar Bajaj but against others against whom the plaintiff has withdrawn the suit finding the same to have been filed against the wrong persons. The plaintiff, for the purpose of substitution of the assignee of Raj Kumar Bajaj cannot take advantage of the period for which the suit was pending against the wrong persons and/or prior to the date when Raj Kumar Bajaj, who is stated to be the assignor, became a party to the suit. The suit insofar as against Raj Kumar Baja, under Section 21 of the Limitation Act, 1963 would be deemed to have been instituted on 26th November, 2013 only.

15. The counsel for the plaintiff has then contended that a decree against Raj Kumar Bajaj would bind Kavita Bajaj as well.

16. Though I am unable to accept the said proposition in law but if the plaintiff desires so, the suit insofar as against Raj Kumar Bajaj and Anand Products/Anand Agency can be considered.

17. As far as the only other defendant namely Deepak Daryani is concerned, the counsel who is appearing for Raj Kumar Bajaj and Anand Products/Anand Agency states that he is also appearing for Deepak Daryani who is the proprietor of Asha Foods Pvt. Ltd. (which is not found to be a defendant as per the last amended Memorandum of Parties dated 26th August, 2014 on record). As far as Anand Products/Anand Agency is concerned, it is stated that Raj Kumar Bajaj is the proprietor thereof.

18. The counsel for the defendants also states that Deepak Daryani has nothing to do with the products or the marks subject matter of the present

suit.

19. The counsel for the defendants, as per the amended Memorandum of Parties dated 26th August, 2014, namely (a) Raj Kumar Bajaj; (b) Anand Products/Anand Agency; and, (c) Deepak Daryani, states that he is willing to make a statement that the said defendants will not deal in goods/toffees/candies in the name of 'PARCOR' or under any other mark which is similar or deceptively similar to the mark 'ARCOR/ARCOR BUTTER TOFFEES' claimed by the plaintiff.

20. Accordingly, the suit is disposed of binding the defendants i.e. Raj Kumar Bajaj; (b) Anand Products/Anand Agency; and, (c) Deepak Daryani to their statements aforesaid and by granting liberty to the plaintiff to take appropriate proceedings as the plaintiff may deem fit, against Kavita Bajaj and Lal Sai Industries.

21. A decree in terms of above is passed.

22. No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 07, 2018

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