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

\+ CS(COMM) 210/2018 & IA No.1645/2018 (u/O XXXIX R-1&2 CPC)

JELLY BELLY CANDY COMPANY ..... Plaintiff
Through: Mr. Pravin Anand and Mr. Manish Biala, Advs.

Versus

SHYAM PLASTIC & ORS ..... Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **27.04.2018**

1. The plaintiff Jelly Belly Candy Company has instituted this suit to restrain the four defendants namely (i) Shyam Plastic; (ii) Abhishek; (iii) Mahender Kumar; and, (iv) Rajeev Kumar from using/infringing the registered trademark 'JELLY BELLY' and trade dress of the plaintiff and for ancillary reliefs of delivery, rendition of accounts and damages.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 5th February, 2018, the defendants were restrained from using the mark 'JELLY BELLY' or any other mark identical or deceptively similar thereto on products comprising of plastic bags or other packaging materials, and allied and cognate goods, and/or any other product, in any manner amounting to infringement of plaintiff's registered trade mark and from using the mark 'JELLY BELLY' or any mark identical or deceptively similar thereto as

well as bean-shaped trade dress of the plaintiff. A Commissioner was also appointed to visit the premises of defendant No.1 of which defendants No.2 to 4 are stated to be partners and to *inter alia* seize and deal the infringing goods.

3. The subsequent order dated 19th March, 2018 records that all the defendants had been served on 22nd February, 2018. On 19th March, 2018, only the defendant No.3 Mahender Kumar appeared in person and on his request the suit was adjourned to today.

4. Today, the defendant No.3 also does not appear and no written statements/replies have been filed.

5. The counsel for the plaintiff states that the defendant No.3, on 19th March, 2018 had informed that he was purchasing the counterfeit products from a certain address but the Investigator of the plaintiff did not find any counterfeit products at the said address.

6. The defendants are proceeded against *ex-parte*.

7. In terms of ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508, the need to relegate the plaintiff to *ex-parte* evidence is not felt.

8. The plaintiff, on the basis of averments made in the plaint and the documents filed therewith had made out a case for grant of a decree of permanent injunction, as claimed.

9. The counsel for the plaintiff, on enquiry, states that the Commissioner found and has reported having recovered 2362 infringing products in the premises of the defendant No.1.

10. The counsel for the plaintiff also states that the plaintiff has already incurred expenses/costs of Rs.7,15,500/- in this suit till date.

11. Considering the said facts, the plaintiff, besides being found entitled to recovery of costs of Rs.7,15,500/- from the defendants, is also found entitled to damages in the sum of Rs.2 lakhs.

12. Accordingly, (I) a decree is passed in favour of the plaintiff and jointly and severally against the defendants (a) of permanent injunction in terms of prayer paragraph 42(a)&(b) of the plaint verified on 29th December, 2017; (b) of delivery in terms of prayer paragraph 42(d) directing the *Superdar*, to whom the Commissioner appointed by this Court had entrusted the goods, to deliver all the said infringing goods and any other counterfeit goods to the plaintiff for destruction; and, (c) of recovery of damages in the sum of Rs.2 lakhs; (II) the plaintiff shall also be entitled to costs of the suit in the sum of Rs.7,15,500/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 27, 2018
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