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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 195/2018 [Old CS(OS) No.2902/2012] & IA
No.17587/2012 (u/O XXXIX R-1&2 CPC)
MARICO LIMITED Plaintiff

Through: Ms. Anuradha Salhotra & Ms. Nitya
Thakur, Advs.

Versus

GURCHARAN SINGH VIDYARTHI & ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.02.2018

1. The plaintiff instituted this suit against Mr. Gurcharan Singh Vidyarthi and Mr. Bal Krishan Chauhan, both partners of M/s J.S.B. Agro, for i) permanent injunction restraining infringement of trade mark 'PARACHUTE' of the plaintiff by adopting the mark 'PARAFIT' for the same goods; ii) permanent injunction from using a packaging deceptively similar to the plaintiff's packaging / label of its edible coconut oil sold under the trade mark 'PARACHUTE'; iii) permanent injunction from using the similar shape, size, design and configuration of the registered designs of one litre container or any other designs deceptively similar to the said designs in relation to the goods manufactured and / or marketed by plaintiff in any manner whatsoever; and, iv) ancillary reliefs of rendition of accounts and delivery.

2. The suit was entertained and vide *ex parte* ad-interim order dated 21st September, 2012, corrected on 25th September, 2012, the defendants were restrained from selling, marketing or advertising coconut oil to be sold in the bottles shown at pages 381 and 382 of the Documents File.

3. The defendants, in response to the summons issued, appeared before this Court on 31st October, 2012 and filed a written statement. However, on 15th April, 2013, the counsel for the plaintiff took objection that the written statement had not been filed within the prescribed time and was not accompanied by any application for condonation of delay. The defendants thereafter took time to amicably settle with the plaintiff and the suit was adjourned from time to time on the request of counsels that the parties were negotiating settlement. Vide order dated 28th January, 2015, subject to the defendants paying costs of Rs.5,000/- to the counsel for the plaintiff, the delay in filing the written statement was condoned and the written statement taken on record. The defendants however did not pay the costs subject to which the written statement of the defendants was taken on record. The counsel for the defendants on 18th February, 2016 sought discharge and court notice was ordered to be issued to the defendants. The said court notice, per order dated 11th July, 2016, was returned unserved with the report that there were no persons by the names of the defendants at the address given. Since none else appeared for the defendants and the written statement of the defendants had also not been taken on record, the defendants, vide order dated 22nd August, 2016 were proceeded against *ex parte* and the plaintiff relegated to leading *ex parte* evidence.

4. The plaintiff, in its *ex parte* evidence has examined its employee Ms. Ekta Sarin and closed its evidence.

5. The counsel for the plaintiff has been heard.

6. Having gone through the unrebutted pleas and evidence of the plaintiff, the plaintiff is found entitled to the reliefs of permanent injunction as claimed in prayer paragraphs (a), (b) and (c) of the plaint dated 20th

September, 2012. Though the counsel for the plaintiff has also cited a large number of judgments and which are taken on record but the need to burden this order therewith is not felt.

7. The plaintiff has not claimed any damages and no evidence also on that aspect has been led. I may however notice that the Commissioner appointed in this suit to visit premises of defendants found goods with the infringing mark / design; considering the volume thereof, the need to issue any direction for delivery is not felt necessary.

8. A decree is accordingly passed, in favour of the plaintiff and jointly and severally against the two defendants, of permanent injunction in terms of prayer paragraphs (a), (b) and (c) of the plaint dated 20th September, 2012 and of recovery of costs of the suit. Counsels fee assessed at Rs.1 lac.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 06, 2018

‘gsr’..