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

+ **CS(COMM) 238/2018**

VARUN GEMS Plaintiff

Through: Mr. Aditya Madan, Adv.

Versus

PRECIOUS JEWELS & ANR. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.04.2018**

1. This suit for permanent injunction restraining the defendants from infringing the trade mark of the plaintiff is ripe for *ex parte* hearing. However, Mr. Aditya Madan, Advocate who appears for the plaintiff states that he has not even read the file and is appearing for taking adjournment.
2. I have perused the file.
3. The suit was entertained and summons thereof issued and vide *ex parte* ad-interim order dated 1st June, 2012, the defendants viz. Precious Jewels and Mr. Ravi Rakyan were restrained from using the name 'RAKYAN' and / or any other mark which is identical or deceptively similar to the plaintiff's registered trade mark 'RAKYAN'S FINE JEWELLERY'.
4. The counsel for the defendants appeared in response to the summons and filed written statement. The defendants also preferred FAO(OS) No.609/2012 against the *ex parte* ad-interim injunction dated 1st June, 2012 and which was disposed of vide detailed judgment running into as many as 34 pages on 16th January, 2013 and the defendants were held not entitled to

use the name 'RAKYAN' in relation to similar business in any manner whatsoever, on the signboard as well as advertisement material. However, it was clarified that the defendants are not precluded to use the name 'NEENA AND RAVI RAKYAN' in their invoices, account books, stationary and packing materials but on the condition that they shall use the same as an expression only i.e. "A Unit of Neena and Ravi Rakyan".

5. The defendants are found to have preferred SLP(C) No.9942/2013 which was granted and Civil Appeal No.7191/2014 decided vide judgment dated 4th August, 2014 vide which the injunction granted by the Division Bench was vacated.

6. Vide order dated 6th August, 2015 on the application of the defendant, the proceedings in this suit were adjourned *sine die* in exercise of powers under Section 124 of the Trade Marks Act, 1999.

7. However, vide order dated 19th February, 2016 in FAO(OS) No.600/2015, with the consent of the counsels, stay of proceedings in the suit was vacated.

8. The counsel who had been appearing for the defendants sought discharge and was discharged on 22nd February, 2016 and thereafter none appeared for the defendants and vide order dated 11th July, 2017, the defendants were proceeded against *ex parte* and the plaintiff relegated to leading its *ex parte* evidence.

9. The plaintiff, in its *ex parte* evidence, has examined Mr. Jitender Kumar Rakyan and closed its evidence.

10. The reason which prevailed with the Supreme Court for vacating the interim injunction granted in the suit and affirmed by the Division Bench

was, that the plaintiff was not entitled to injunction in view of Section 35 of the Trade Marks Act which permits anyone to do business in his own name in a *bona fide* manner and that it was not in dispute that the defendants were doing their business in their own name and the *bona fides* of the defendants was not in dispute; it was also not in dispute that both parties belong to the same family and the entire family is in the business of jewellery. No similarity was also found in the hoardings of the shops from where the plaintiff and the defendants were doing their businesses.

11. I have perused the *ex parte* evidence and do not find the same to be dislodging the reasons which prevailed with the Supreme Court for vacating the interim injunction granted by this Court.

12. Though the Supreme Court in the aforesaid judgment observed, as is ordinarily the rule in relation to judgments pertaining to interim orders, that ‘nothing contained therein shall have a bearing on the final adjudication of the lis’ but in the facts of the present case, the principles laid down by the Supreme Court in the judgment against the interim order would continue to apply at the final stage as well and in view whereof, the plaintiff is not found entitled to any injunction. Resultantly, the question of the plaintiff being entitled to any other relief also does not arise.

Dismissed.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

APRIL 06, 2018/‘gsr’..