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

+ CS(COMM) 110/2016

LOTUS HERBALS LIMITED Plaintiff
Through Mr.Mohan Vidhani with
Mr.O.P.Bansal and Mr.Ashish
Singh, Advocates.
versus

THE CHIEF COMMISSIONER
OF CUSTOM & ORS Defendants
Through Ms.K.Enatoli Sema, Advocate for
D-1.
Ms.Anjali J.Manish with
Ms.Nidhi Saini, Advocates for
D-2.

% Date of Decision: 02nd February, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trade mark, copyright, passing off, rendition of accounts, directions etc.
2. Learned predecessor of this Court vide order dated 19th September, 2013 had restrained the defendants from selling any goods under the trademark LOTUS or any mark bearing the word LOTUS either as a suffix or prefix.

3. Today learned counsel for defendant no.2 reiterates that defendant no.2 had placed an order for unbranded goods with defendant no.3. She admits that in the import consignment, certain branded goods bearing the marks LAKME, MAC and LOTUS have been found. She however states that the defendant no.2 has not got any branded goods released from the customs. She points out that the goods bearing the marks LAKME and MAC have been confiscated by the custom authorities. In support of her contentions, she has handed over a copy of the order dated 29th October, 2014 passed by the Commissioner of Customs (Preventive).
4. Learned counsel for defendant no.2 further states that defendant no.2 is not interested in taking delivery of the LOTUS goods and has no objection if the same are confiscated and/or destroyed by the custom authorities in accordance with law.
5. She emphasis that defendant no.2 has not imported any goods bearing the mark LOTUS and she undertakes that even in future no goods bearing the said mark shall be imported without taking specific permission/authorization of the plaintiff.
6. In view of the aforesaid statements/undertakings, learned counsel for the plaintiff does not wish to press for any other relief qua defendant no.2 from this Court.
7. The statements/undertakings given by learned counsel for the defendant no.2 are accepted by this Court and the plaintiff and defendant no.2 are held bound by the same.
8. Consequently, the suit is decreed qua defendant no.2 in accordance with the aforesaid statements. Registry is directed to prepare

a decree sheet accordingly. Defendant no.1 is permitted to confiscate and/or destroy the seized goods bearing the mark LOTUS.

9. A perusal of the file reveals that defendant no.3 has already been proceeded *ex parte* vide order dated 17th August, 2015.

10. At this stage, learned counsel for the plaintiff states that he is confining his relief to prayer 30(ii) and 30(iii) of the plaint against defendant no.3.

11. A Coordinate Bench of this Court ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508,*** has held as under:-

“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

12. Keeping in view the aforesaid mandate of law and the fact that the defendant no. 3 has no real prospect of defending the claim as it has neither entered appearance nor filed its written statement or denied the documents of the plaintiff, this Court is of the view that there is no need to relegate the plaintiff to lead *ex parte* evidence.

13. Accordingly, the present suit is decreed qua defendant no.3 in accordance with prayer 30(ii) and 30(iii) of the plaint along with actual costs. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly.

14. Consequently, the present suit stands disposed of.

FEBRUARY 02, 2018
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MANMOHAN, J