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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 114/2016, IA No.2171/2016 (u/O XXXIX R-1&2 CPC)
& IA No.2172/2016 (u/O XXVI R-9 CPC)

MARICO LIMITED

..... Plaintiff

Through: Ms. Kripa Pandit, Adv.

versus

GAYATRI SEVASHRAM PRIVATE LIMITED & ORS. Defendants

Through: Mohd. Sazid Rayeen, Adv. for D-1 to
4 and 8 to 12.

Mr. Neeraj Grover, Adv. for D-5 to 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.01.2018

1. The plaintiff instituted this suit against as many as fourteen defendants viz. i) Gayatri Sevashram Pvt. Ltd., ii) Sh. Khema Ram Sharma, iii) Sh. Dinesh Sharma, iv) Sh. Rahul Joshi, v) Sh. Rajendra @ Raju, vi) M/s Suresh Kumar Dwarkad, vii) Sh. Rajesh, viii) M/s Jodawat, ix) Sh. Bharat Shah, x) Sh. Kapil Shah, xi) Sh. Babulal Shah, xii) Sh. Rohit, xiii) Sh. Jeetu; and, (xiv) Sh. Ashok Kumar, for permanent injunction restraining infringement of trade mark and copyright and for ancillary reliefs.

2. The suit was entertained and vide *ex parte* order dated 15th February, 2016, the defendants restrained from in any manner manufacturing, selling, storing or using, advertising or promoting any labels which are in any manner a violation of the copyrights which the plaintiff has with respect to its hair oils and edible oil products being sold under the word marks and trademarks namely "PARACHUTE", "PARACHUTE ADVANSED JASMINE", "PARACHUTE ADVANSED TENDER COCONUT HAIR

OIL”, “Marico’s HAIR & CARE”, “NIHAR NATURALS SHANTI Badam Amla”.

3. As per the last amended memo of parties dated 16th February, 2016, the defendant no.5 Sh. Rajendra @ Raju was deleted from the array of parties.

4. Vide order dated 13th July, 2017, the plaintiff, the defendants no.1 to 4 and 8 to 12 and the defendants no.6 and 7 were referred to the Mediation Cell of this Court.

5. Mediation has been successful with the efforts of Mr. Rakesh Munjal, Senior Advocate / Mediator and a Settlement Agreement dated 12th December, 2017 between the plaintiff on the one hand and the defendant no.1 Gayatri Sevashram Pvt. Ltd., defendant no.2 Sh. Khema Ram Sharma, defendant no.3 Dinesh Sharma, defendant no.4 Sh. Rahul Joshi, defendant no.8 M/s Bharat Shah, defendant no.9 Sh. Kapil Shah, defendant no.10, Sh. Babulal Shah, defendant no.11 Sh. Rohit and defendant no.12 Sh. Jeetu on the other hand and purported to be signed by the said parties, their advocates and the Mediator has been received in this Court.

6. The counsel for the plaintiff and the counsel for the defendants no.1 to 4 and 8 to 12 support the Settlement Agreement dated 12th December, 2017 and seek a decree in terms thereof.

7. The counsel for the said defendants however states that the task of finalising the Settlement Agreement was left to the counsel for the plaintiff and it has now been realized that the plaintiff, in the description of defendant no.2 Sh. Khema Ram Sharma, defendant no.3 Sh. Dinesh Sharma and defendant no.4 Sh. Rahul Joshi in the Settlement Agreement has described

them as described in the plaint and shown the defendant no.2 to be partner of M/s Meghmala Industries also known as M/s Hitesh Enterprises also known as M/s Aastha Products, the defendant no.3 Sh. Dinesh Sharma as partners of M/s Meghmala Industries also known as M/s Hitesh Enterprises also known as M/s Astha Products and defendant no.4 Sh. Rahul Joshi, trading as M/s Tiger Cosmetics also known as M/s Mamta Cosmetics. It is stated that the defendants no.2 and 3 have no concern with M/s Meghmala Industries also known as M/s Hitesh Enterprises also known as M/s Aastha Products and the defendant no.4 has no concern with Tiger Cosmetics also known as M/s Mamta Cosmetics.

8. Though the counsel for the plaintiff states that the said defendants were found to be carrying on business in the said names and impugned goods were also found in the market but the plaintiff has no objection to a decree being passed in terms of the Settlement Agreement dated 12th December, 2017 with the said clarification.

9. I have gone through the compromise as recorded in the Settlement Agreement dated 12th December, 2017 and find the same to be lawful, save for Clauses E(v),(vii) and (viii) thereof and have enquired from the counsel for the plaintiff as to how the said Clauses if not complied with by the compromising defendants are to be implemented and whether the plaintiff will file execution of the decree if any passed in terms of the Settlement Agreement dated 12th December, 2017 and how such a decree can be executed.

10. The counsel for the plaintiff agrees that there can be no execution of the said part of the compromise and states that if need be, the plaintiff will file a separate suit.

11. Subject to the aforesaid, the compromise is found to be lawful and is allowed.
12. A decree is passed in favour of the plaintiff and against the defendants no.1 to 4 and 8 to 12 in terms of the Settlement Agreement dated 12th December, 2017 and subject to above and which Settlement Agreement along with this order shall form part of the decree sheet.
13. The undertakings of the defendant no.2 Sh. Khema Ram Sharma for self and on behalf of other defendants are also accepted and the defendant no.2 Sh. Khema Ram Sharma and the other defendants ordered to be bound therewith.
14. The counsel for the plaintiff states that now the suit, as per the amended memo of parties, survives against defendant no.5 M/s Suresh Kumar Dwarkad, defendant no.6 Sh. Rajesh and defendant no.7 M/s Jodawat.
15. The counsel for the said defendants states that the said defendants also have no objection to a decree for permanent injunction as sought by the plaintiff being passed. It is stated that the Commissioner appointed by this Court also did not find any impugned goods in the premises of defendant no.7 M/s Jodawat though few impugned products were found from the premises of defendant no.5 M/s Suresh Kumar Dwarkad and defendant no.6 Sh. Rajesh. It is however stated that the defendant no.5 M/s Suresh Kumar Dwarkad and defendant no.6 Sh. Rajesh are small retailers with no means.
16. The counsel for the plaintiff states that though the plaintiff is not pressing for damages against the defendant no.5 M/s Suresh Kumar Dwarkad, defendant no.6 Sh. Rajesh and defendant no.7 M/s Jodawat but

some nominal costs may be imposed on defendant no.5 M/s Suresh Kumar Dwarkad and defendant no.6 Sh. Rajesh from whose premises the goods were found, to serve as a deterrent.

17. Accordingly, a decree is passed in favour of the plaintiff and against the defendant no.5 M/s Suresh Kumar Dwarkad, defendant no.6 Sh. Rajesh and defendant no.7 M/s Jodawat in terms of prayer paragraph A(i) to (iv) of the plaint dated 12th February, 2016 and the defendant no.5 M/s Suresh Kumar Dwarkad and defendant no.6 Sh. Rajesh are also directed to pay costs of Rs.10,000/- each to the plaintiff.

18. The representative of the plaintiff to visit the premises of the said defendants within 15 days of today and in the presence of the said representative of the plaintiff, the Superdar, to whom goods were entrusted, shall remove the seal from the seized goods and the infringing material shall be destroyed.

19. Decree sheet be drawn up.

20. The date of 19th February, 2018 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J

JANUARY 31, 2018

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