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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 805/2018 & IA No.5169/2018 (u/O XXXIX R-1&2
CPC).
SHIVA TRADERS Plaintiff

Through: Mr. Satish Kumar, Adv.

versus

MOHD. SHAKIL Defendant

Through: none.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.10.2018

1. This suit was filed to restrain infringement of trademark and passing off and for ancillary reliefs.
 2. The suit came up first before this Court on 18th April, 2018 when summons thereof were ordered to be issued and vide *ex parte ad interim* order, the sole defendant was restrained from in any manner selling any electronic goods or any related goods bearing trademark “U-BON” or any other deceptively similar trademark and commission issued to visit the premises of the defendant at Calcutta and to seize the infringing goods if any found.
 3. Summons issued to the defendant remain unserved with the report “address not located”. The counsel for the plaintiff however states that commission issued was executed and report has been filed by the Commissioner. It is urged that the defendant is aware of the suit and is evading to appear.
 4. There is on record a report dated 18th May, 2018 of the Commission issued. A perusal of the said report shows that the Commissioner appointed,
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along with the local police, visited the premises of the defendant at the first address given of the defendant and met one shop assistant named Mr. Ejaz and “four product stating U-BON on label” were found and which were given on *superdari* to the shop assistant found in the premises.

5. The counsel for the plaintiff on enquiry states that Mr. Vishal Patel, Advocate for the plaintiff had also accompanied the Commissioner.

6. The report of the Commissioner also has the signatures of the said Mr. Vishal Patel, Advocate.

7. There is no reason to doubt the report of the Commissioner and wherefrom it is evident that the defendant was aware of the pendency of the present suit and the order therein. The defendant, inspite of such knowledge having failed to appear, is proceeded against *ex parte*.

8. The plaint and the documents filed therewith have been examined to gauge whether the plaintiff is entitled to a decree of permanent injunction forthwith, in terms of ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508 or is required to be relegated to leading *ex-parte* evidence.

9. A perusal of the documents filed along with the suit shows that the registration dated 17th December, 2008 of the trademark is in the name of one Daulat Ram Malik. The counsel for the plaintiff states that the said Daulat Ram Malik, vide Assignment Deed dated 14th July, 2012 at page 32 of the Part-III file, assigned the said trademark to the plaintiff and which assignment was lodged with the Registrar of Trademarks with Form TM-24 on 23rd July, 2012 and copy of which is at page 36 of the Part-III file and thus the plaintiff is entitled to maintain this suit for infringement.

10. However, a perusal of the Assignment Deed and Form TM-24 shows assignment to be in the name of Ravinder Malik and not the plaintiff herein.

11. The counsel for the plaintiff states that the said Ravinder Malik is the proprietor of the plaintiff.

12. However, the assignment being in the name of Ravinder Malik in his individual capacity and not as proprietor of the plaintiff Shiva Traders, this suit should have been filed by the said Ravinder Malik and not by Shiva Traders.

13. The counsel for the plaintiff admits his mistake.

14. On verbal request of the counsel for the plaintiff, the memo of parties in the suit is amended to show Ravinder Malik instead of Shiva Traders as plaintiff in the suit. The Court Master to, under his signatures, in today's date, make an endorsement to the said effect in the memo of parties in the suit.

15. Else, the plaintiff on the basis of documents filed has made out a case for grant of relief of permanent injunction as claimed. However, considering the number of infringing goods found by the Commissioner, plaintiff has not made out any case for grant of any of the other reliefs. Otherwise also the plaintiff has not made out any case for grant of other reliefs.

16. Resultantly, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph 36 (a) to (d) of the plaint dated 16th April, 2018, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

OCTOBER 23, 2018/‘pp’..
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