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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 831/2018, IA No.5912/2018 (u/O XXXIX R-1&2 CPC),
IA No.14174/2018 (u/O VII R-10 CPC) and IA No.14176/2018 (u/O
VII R-11 CPC)

DOMS INDUSTRIES PRIVATE LIMITED Plaintiff

Through: Mr. C.M. Lall, Sr. Adv. with Mr.
Ankur Sangal, Ms. Pragya Mishra,
Advs.

Versus

PAMPA RANI AGARWAL & ORS Defendants

Through: Mr. Himanshu Shekhar, Adv. for D-1
to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.11.2018

1. The plaintiff has instituted this suit against four defendants viz. (i) Pampa Rani Agarwal, (ii) Sarswati Group of Industries, (iii) Sarswati Polymer Industries and (iv) Sanjeev Sharma, for permanent injunction restraining the defendants from passing off pencils which the defendants are manufacturing and marketing, as those of the plaintiff and for ancillary reliefs.

2. The suit was entertained and while issuing summons of the suit, vide *ex parte* order, commissions were issued to the premises claimed to be of the defendants at Kolkata and Bihar and also to the premises at Delhi from which the pencils were claimed to be sold.

3. Mr. Atul Kumar, Mr. Himanshu Shekhar and Mr. Jamnesh Kumar, Advocates appeared on 8th August, 2018 in response to the summons issued

and filed vakalatnama and sought time to file written statement / reply. On the next date of hearing i.e. 28th August, 2018, the presence of Mr. Atul Kumar, Mr. Rahul Pandey and Ms. Archana Kumar, Advocates is noted for defendant no.3 only. Thereafter, on 25th September, 2018, Mr. Himanshu Shekhar and Mr. Jamnesh Kumar, Advocates appeared purportedly for all the defendants. On the last date of hearing i.e. 15th October, 2018, Mr. Himanshu Shekhar and Mr. Jamnesh Kumar, Advocates appeared for defendant no.1 only.

4. IA No.14174/2018 under Order VII Rule 10 and IA No.14176/2018 under Order VII Rule 11 CPC of the defendant no.1 are for consideration.

5. Only Mr. Himanshu Shekhar, Advocate appears today and states he is appearing for the defendant no.1.

6. None appears for the defendants no.2 to 4. On enquiry, the Court Master informs that though the plaintiff has filed the affidavit of service of defendants no.2 to 4 also but the summons issued to defendants no.2 to 4 have not been served.

7. The counsel for the defendant no.1, on enquiry states that though the defendant no.1 Pampa Rani Agarwal, for whom he is appearing, is the sole proprietor of defendant no.2 Sarswati Group of Industries as well as the defendant no.3 Sarswati Polymer Industries, but the addresses given of the defendants no.1 and 2 of Kolkata are not of the defendants no.1 and 2 and the address of the defendant no.3 at Nepal is the address of the defendants no.1 and 2 also. He further states that the defendants no.1 to 3 have no trade or other connection with the defendant no.4 Sanjeev Sharma.

8. The appearance of the counsel for the defendant no.1 is thus not only for defendant no.1 but also for defendants no.2 and 3, subject of course to the objection, of the address of the defendants no.1 and 2 being wrong.

9. The counsel for the defendants no.1 to 3 states that this Court, on the averments in the plaint, has no territorial jurisdiction.

10. The senior counsel for the plaintiff contends that the defendants are selling the impugned goods at Delhi and the commission issued at the address of Delhi has also found the impugned goods being sold and the Courts at Delhi thus have territorial jurisdiction.

11. The counsel for the defendants no.1 to 3 states that the defendants no.1 to 3 are carrying on their business, though in the impugned products, but in Nepal only and are not selling or marketing the impugned products in Delhi or anywhere else in India and are willing to make a statement to the said effect and suffer a decree for permanent injunction if the plaintiff gives up the claim for damages.

12. The senior counsel for the plaintiff, under instructions states that if the defendants no.1 to 3 are so willing to suffer a decree for injunction today, the plaintiff will not press for ancillary reliefs. It is also stated that the plaintiff gives up its claim against defendant no.4.

13. The defendant no.4 is deleted from the array of defendants. An endorsement to the said effect be made by the Court Master under his signatures on the memorandum of party in today's date.

14. Accordingly, a decree is passed in favour of the plaintiff and against the defendants no.1 to 3 viz. (i) Pampa Rani Agarwal, (ii) Sarswati Group of Industries and (iii) Sarswati Polymer Industries, of permanent injunction in terms of prayer paragraph 'a', 'b' and 'c' of the plaint dated 24th April, 2018 and with further reference to para no.5 of the said plaint, leaving the parties to bear their own costs.

Decree sheet be drawn up.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 16, 2018

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