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

Date of decision: 30th August, 2018.

+ **CS (COMM) 365/2016 & I.A. 19499/2014**

M/S VRS FOODS LTD Plaintiff

Through: Mr. S. K. Bansal, Mr. Pankaj Kumar
and Mr. Vinay K. Shukla, Advocates.
(M:9810017859)

versus

PREM CHAND Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present suit has been filed by the Plaintiff seeking permanent injunction and damages in respect of the trademark 'PARAS'. The case of the Plaintiff is that the Plaintiff is the registered proprietor of the trademark 'PARAS'. It adopted the said mark in 1987 in respect of milk and milk products. The details of adoption have been pleaded in the paragraphs 5 & 6 of the plaint. The trademark 'PARAS' as a word mark and the label are registered under the provisions of the Trademarks Act, 1999 and the Copyright Act, 1956. Mr. Bansal, learned counsel for Plaintiff submits that the Defendant adopted the mark 'PARAS' AND 'PARAS GOLD' for manufacturing, marketing and trade of fats, milk and dairy products, vanaspathi and edible oil etc.,

2. When the Plaintiff acquired knowledge of the same, the present suit was filed and a perusal of the trademark application of the Defendant reveals that he filed the application on 19th May, 2010 claiming user since 22nd August, 2000. He submits that the Local Commissioner, who had visited the

premises of the Defendant in Kota, Rajasthan, had recorded that the Defendant had stopped using the mark 'PARAS' for over six months. Subsequently, according to the learned counsel for Plaintiff, the Defendant has also abandoned trademark application bearing no.1968306 pursuant to the opposition proceedings filed by the Plaintiff. Under these circumstances, learned counsel for the Plaintiff prays for permanent injunction and damages.

3. This Court on 30th September, 2014, when the matter was listed for the first time, granted an ex-parte injunction in the following terms.

“.....

7. I am satisfied that the Plaintiff has been able to make out a case of grant of ex parte injunction. The Defendant is hereby restrained through its agents, stockists from using, selling, exporting, displaying the goods with the impugned trade mark/label PARAS GOLD or any other word/mark/label which are identical or deceptively similar to the Plaintiffs trade mark/label; PARAS in relation to the impugned goods, i.e. milk, milk products, dairy products, fats, vanaspati edible oil and other allied edible oil and allied products till further orders.

.....”

4. The Local Commissioner had also been appointed to visit the premises. The Local Commissioner met with one Mr. Rishab, who claimed to be the son of the Defendant. In the report of the Local Commissioner, it is recorded as under:

“.....

8. During the said meeting, Mr. Rishab informed us that though the Defendants were carrying on business in the name of "Paras" selling non-edible oil, they had stopped the business about 6 months – 1 year ago.

Pertinently, during the said meeting, Mr. Rishab handed over a visiting card of "Rishab Enterprises" which surprisingly still showed the address of the proprietorship concern of the Defendant at "Narendra Kothi, Narendra Marg, Arya Samaj Road, Gulab Bari, Kota, Rajasthan" i.e. the address stated in the Court's order.

.....”

5. Thereafter, the Defendant, having not appeared in the matter, was proceeded ex-parte on 20th September, 2017.

6. It is the settled position that when the Defendant is *ex-parte*, the formality of filing of evidence can be dispensed with as laid down by this Court in ***Everstone Capital Advisors Pvt. Ltd. & Anr. v Akansha Sharma & Ors.***, CS(COMM) 1028/2016, (judgment dated 17th July, 2018). Thereafter, it was recorded by the Joint Registrar that the learned counsel for the Plaintiff wishes to withdraw the suit. However, on the last date, learned counsel for the Plaintiff had sought time to take instructions from the Plaintiff. Learned counsel for the Plaintiff, upon instructions, now submits that since the Defendant had adopted the mark illegally and had used the mark for some time, the interim injunction should be made absolute and a permanent injunction ought to be granted.

7. The plaint and the documents filed clearly reveal that the word ‘PARAS’ has acquired distinctiveness as being associated with the products and business of the Plaintiff. The Plaintiff’s mark being well known in the area of milk and milk products, use of the same in respect of edible oil, fats, milk and other products used in the kitchen, results in violation of the Plaintiff’s rights and the same would constitute passing off. Edible oil fats, milk and dairy products, vanaspati edible oil are identical as also allied and

cognate to milk and milk products. The Defendant had also claimed user of the mark since 2000 as per the trademark application, which was filed, though, the same has now been abandoned pursuant to the opposition proceedings filed by the Plaintiff. The report of the Local Commissioner also reveals that the Defendant was in fact using the mark until six months prior to the execution of the commission.

8. Thus, the Plaintiff has clearly made out a case for violation of its statutory and common law rights in the mark '*PARAS*'. The marks '*PARAS*' and '*PARAS GOLD*' which were applied for and used by the Defendant are identical to the Plaintiff's mark. The goods for which the marks are being used are identical as also cognate and allied. Under these circumstances, the permanent injunction as prayed is liable to be granted. Paragraphs 32 (b) to 32 (d) are not pressed by learned counsel for Plaintiff.

9. Insofar as the relief of costs is concerned, since the suit was filed in 2016 and thereby having the knowledge of the same, the Defendant has neither put in appearance nor contested the matter but the Plaintiff had to incur the legal costs, costs of Rs.2 Lakhs is awarded to the Plaintiff, which includes the court fee, the Local Commissioner's fee and other expenses, which the Plaintiff had incurred.

10. The suit is decreed in terms of paragraph 32 (a) and costs of Rs.2 Lakhs granted in favour of the Plaintiff and against the Defendant. No further orders are called for. Decree sheet be drawn up. All pending applications also stand disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 30, 2018/dk