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

+ **CS(COMM) 378/2016 & IA No.10374/2016 (u/O XXXIX R-2A CPC)**

THE COLOR RUN LLC & ANR Plaintiffs
Through: **Mr. Karan Bajaj, Ms. Kangan Roda**
and Mr. Dhruv Nayar, Advs.

Versus

MOHIT JAIN Defendant
Through: **None.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.04.2018

1. The two plaintiffs, namely (a) The Color Run LLC and (b) TCR IP Holdings, LLC, instituted this suit against the sole defendant namely Mohit Jain for permanent injunction restraining passing off and infringement of copyright and for ancillary reliefs, pleading (i) that the two plaintiffs, both incorporated in and having their offices in United States of America (USA), are the creators/licensees of “THE COLOR RUN”, the world’s first paint race event which was founded in March, 2011 as an event to promote healthiness and happiness by bringing the community together to participate in the race; Plaintiff No.1’s paint race event is also known as “COLOR DASH™”, “THE HAPPIEST 5K ON THE PLANET”, “HAPPIEST 5K” and the “COLOR 5K”; (ii) that the defendant has dishonestly adopted the said marks of the plaintiffs with respect to identical services of organising paint race events; (iii) that a pictorial comparison of the defendant’s mark

with the plaintiffs' mark clearly establishes that the defendant has completely lifted the plaintiffs' mark in its entirety, only to ride upon the goodwill attached with the plaintiffs' mark and thereby infringing the copyright therein of the plaintiffs; (iv) that the plaintiff No.2 has applied for registration of the said mark in Classes 41 and 25; (v) that the plaintiffs host the said event in over 200 cities spread over 40 countries; (vi) that the defendant, while selling its event, also refers to the events hosted by the plaintiffs; and, (vii) that though a cease and desist notice was issued by the plaintiffs, but no response was received thereto.

2. The suit was entertained and while issuing summons thereof, vide *ex-parte* ad interim order dated 21st April, 2016, the defendant was restrained in terms of prayer paragraphs A(i) to A(iv) of the application for interim relief and which order has continued till now.

3. The defendant failed to appear despite service and did not file any response also and was proceeded against *ex-parte* and the *ex-parte* order dated 21st April, 2016 was made absolute till the decision of the suit.

4. The plaintiffs applied under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) and though bailable warrants were issued against the defendant but remained unserved.

5. The counsel for the plaintiffs, on 22nd August, 2017, stated that the plaintiffs will file an application under Order XIII A of the CPC as applicable to commercial suits. No such application also has been filed and the counsel for the plaintiffs today seeks adjournment for the same and seeks issuance of non-bailable warrants against the defendant.

6. The address given by the plaintiffs of the defendant is of Ahmedabad, Gujarat and territorial jurisdiction of this Court was invoked on the plea of the defendant intending to organise his paint race event under the impugned mark at Delhi.

7. The counsel for the plaintiffs, on enquiry, however states that no event has been held in Delhi till now, though the suit is pending for the last two years.

8. On enquiry, it is stated that after the institution of the suit, the events have been held at Gujarat only.

9. Though the same shows the falsity of the plea with which the jurisdiction of this Court was invoked but since the defendant has not contested the suit and the plaintiff, if at all has a cause of action, ought to have gone to the place of the defendant as held by the Division Bench of this Court in ***P.K. Sen Vs. Exxon Mobile Corporation*** (2017) 236 DLT 333 (DB) but since the defendant has not chosen to contest the suit and has thereby conceded to the jurisdiction of this Court, it is not deemed necessary to go into the said question.

10. The plaintiffs otherwise, on the basis of the averments and documents filed have made out a case for grant of *ex-parte* decree insofar as for the relief of permanent injunction. In terms of ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508, the need for relegating the plaintiffs to *ex-parte* evidence, is not felt.

11. A decree is accordingly passed, in favour of the plaintiffs and against the defendant, of permanent injunction in terms of prayer paragraphs A(i) to (iii), B(i) & D of the plaint. However, in view of the above, the plaintiff is

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not found entitled to any of the other reliefs claimed.

12. Decree sheet be drawn up.

13. As far as the application under Order XXXIX Rule 2A of the CPC is concerned, now when a decree has been passed in favour of the plaintiffs and the defendant is located outside Delhi, it is deemed appropriate to not pursue the same. The plaintiffs shall however have liberty to have the decree transferred to the Court of appropriate jurisdiction for execution.

RAJIV SAHAI ENDLAW, J.

APRIL 02, 2018

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