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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 448/2016 & I.A. 7093-7094/2013

M/S OKAYA POWER LTD

..... Plaintiff

Through

Mr. Rakesh Mukhija with Mr. Rajiv
Singh Pilania, Advocates

versus

M/S AQUA HEALER & ORS

..... Defendants

Through

Mr. Kamal Khurana, Advocate for
D-4 to 9.

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Date of Decision: 12th March, 2018**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)****I.A. 9791/2016**

1. Present application has been filed on behalf of the plaintiff under Order XIII A of Commercial Courts, Common Division and Commercial Appellate Division of High Courts Act, 2015 praying for a summary judgment on the claim. The prayer clause in the present application is reproduced hereinbelow:-

“i. Pass necessary orders and directions thereby issuing the summons for judgment in the suit in terms of Order 13-A C.P.C.

ii. *Pass judgment on the claim of the plaintiff / in favour of the plaintiff and against the defendants thereby permanently injuncting / restraining the defendants, its servants, retailers, stockiest, distributors, representatives, assignees, centers and agents, from using, copying, imitating the design and name i.e. 'MINJET' similar to the trade name of the training of the plaintiff, directly or indirectly advertising the name similar, copied, imitated, having same description, colour, style and designs under no. 232257, similar to the trade name of the plaintiff.*

iii. *Award the cost of the suit in favour of the plaintiff."*

2. Learned counsel for the defendant nos. 4 to 9 states that the said defendants have been unnecessarily impleaded in the present proceedings as they have neither used the mark MINJET nor intended to use the same in future. He further states that defendants nos. 4 to 9 have no objection if the present suit is decreed in accordance with the prayer (ii) of the present application and for prayer (i) of the plaint.

3. It is pertinent to mention that the present suit has been filed for permanent and mandatory injunction, infringement of registered trademark, passing off, unfair competition, design infringement, delivery up, compensation of economic losses / damages and rendition of accounts.

4. The defendant no.1 despite service has not filed any written statement. In fact, the right of the defendant no.1 to file a written statement was closed on 14th December, 2015.

5. Learned counsel for the defendant no.3 had appeared last on 27th April, 2016. Thereafter none has appeared for defendant nos. 1, 2 and 3.

6. The defendant no.2 in response to the pleadings and claim of the plaintiff in his Written Statement has stated / pleaded as under:-

“Para 8-12. It is further submitted that the defendant No. 2 never done any act against the law.

Para 20-28. It is submitted that when the defendant No. 2 has no concern with the defendant No. 1 then there is no possibility to use the brand-name of the plaintiff.”

7. The defendant no. 3 in response to the pleadings and claim of the plaintiff in his Written Statement has stated / pleaded as under:-

“Para 7. It is denied that the answering defendant is manufacturing, distributing and selling the products of the plaintiff. The answering defendant is not using any product which is similar in any way to the products of the plaintiff. The answering defendant has not infringed the plaintiff’s copyright in any manner whatsoever. However it is respectfully submitted that the answering defendant has obtained a certificate from Importer- Exporter code for manufacturing.

Para 13-14. However it is respectfully submitted that the answering defendant have no relation with the name “MINJET” hence no question of using the name “MINJET” arose on the part of answering defendant as it is already mentioned in Para No. 9 that there is no relation between M/S AQUAHEALER RO WATER PURIFIER and trade mark “MINJET”.

Para 16. However it is respectively submitted that the products of M/S AQUAHEALER RO WATER PURIFIER are absolutely different from the products of trade mark “MINJET”

Para 26-27. the answering defendant has not copied or infringed the design or trade name of the plaintiff in any manner as falsely alleged by the plaintiff in the present proceedings. The answering defendant has neither adopted any name deceptively similar to that of the plaintiff nor misrepresents the same in any manner whatsoever. The allegations are false, frivolous and manipulative.

8. From the aforesaid averments in the written statement it is apparent that the case of the defendant nos.2 and 3 is that they are not infringing the rights of the plaintiff and have no objection to the suit being decreed in terms of the prayer in the present application.

9. In view of the pleadings on record, it is apparent that there are no prospects of the defendants defending the claim of the plaintiff and it is a fit case where this Court should pass a summary judgment.

10. Consequently, present application is allowed and the suit is decreed in accordance with prayer (i) of the plaint. Registry is directed to prepare the decree sheet accordingly. Parties to bear their own costs.

MANMOHAN, J

MARCH 12, 2018

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