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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 704/2016 & IA No. 7242/2016 (u/O XXXIX R-1&2
CPC)

AAKASH EDUCATIONAL SERVICES

PRIVATE LIMITED

..... Plaintiff

Through : Mr. Manish Singhal, Adv.

versus

UJJALA VERMA

..... Defendant

Through : Mr. Jairaj, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.05.2018

1. The plaintiff instituted this suit for permanent injunction restraining the defendant from infringing the mark 'AAKASH' of the plaintiff and for ancillary reliefs.
2. The suit has been filed against Ujjala Verma as sole proprietor of 'Akash Institute of Information Technology', opposite Hero Honda Showroom, Baluatal Motihari, East Champaran, Bihar.
3. The suit was entertained and vide *ex parte* ad interim order dated 2nd June, 2016, while issuing summons of the suit, the defendant was restrained from infringing the trade mark of the plaintiff.
4. The defendant has filed a written statement and to which a replication has been filed by the plaintiff and the suit is ripe for

framing of issues, though it is stated that admission/denial has not been conducted.

5. If the parties till now have not conducted admission/denial, framing of issues cannot be deferred.

6. Though neither counsel has proposed any issues, but the counsel for the defendant states that it is the stand of the defendant that the defendant Ujjala Verma till 2015, was the Secretary of Akash Educational and Welfare Society, a society registered under the Societies Registration Act, 1860 and is now only a member of the Society and is not in the Managing Committee of the Society.

7. I have enquired from the counsel for the defendant, the name of the institute of the said Akash Educational and Welfare Society and whether the said institute is operating from the address given in the title of the plaint.

8. The counsel for the defendant states that he is not aware of the name of the institute.

9. The counsel for the plaintiff draws attention to page 436 of the documents filed by the plaintiff, being a copy of the reply stated to have been received from the defendant to the legal notice given prior to the institution of this suit and in which the defendant is purported to have described herself as proprietor of 'Akash Institute of Information Technology'. It is stated that the plaintiff instituted this suit against the defendant on the basis of the said communication.

10. The counsel for the defendant states that the defendant, in the written statement, has denied the said document and denied having sent the same.

11. The counsel for the defendant, on further enquiry, states that the defendant is not using the name 'Akash Institute of Information Technology' or any other name with the word 'Akash' in it and has no objection to suffering a decree for permanent injunction in this regard as claimed by the plaintiff.

12. The counsel for the plaintiff states that the suit be so decreed against the defendant with liberty to the plaintiff to institute appropriate proceedings against the said Akash Educational and Welfare Society.

13. A decree is accordingly passed in favour of the plaintiff and against the defendant, of permanent injunction in terms of prayer paragraph 38 (a), (b) and (c) of the plaint dated 30th May, 2016.

14. It is, however, clarified that the aforesaid decree will not require the defendant, as a member of the Akash Educational and Welfare Society, to make the said Akash Educational and Welfare Society stop use of the name 'Akash' and it is further clarified that it will be open to the plaintiff to take appropriate proceedings if so desires against the said Akash Educational and Welfare Society or against any other person running the 'Akash Institute of Information Technology'.

15. The parties are left to bear their own costs.

Decree sheet be drawn up.

MAY 07, 2018
SRwt..

RAJIV SAHAI ENDLAW, J