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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 953/2016 & I.As. 7055/2014, 10161/2014, 14925/2017, 11304/2018**
BIBA APPARELS PVT LTD Plaintiff

Through: Mr. Jagjit Mehata & Ms. Roopa Dayal, Advocates (M-9871106370).

versus

KHURANA KNITWEARS Defendant
Through: Mr. Shailen Bhatia, Ms. Ekta Nayar Saini, Ms. Neelam Pathak, Mr. Nitin Sharma & Ms. Vidhushi, Advocates (M-9818558690).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **31.08.2018**

1. The matter was listed for case management and for framing of additional issues on 27th August, 2018 on which date, some arguments were heard in the applications and there appeared to be a possibility of settlement between the parties. Thereafter, the matter was adjourned to 29th August, 2018 and it is has again been listed today.
2. The present suit has been filed by the Plaintiff seeking an injunction against use of the Plaintiff's trademark '*BIBA*'. The Plaintiff claims to be the registered owner of the trademark '*BIBA*' in several classes including 16, 25, 31, 9, 14, 12 and 30. The application of the Plaintiff is pending registration in various other classes. The Plaintiff's mark '*BIBA*' has been used by the Plaintiff for ladies ethnic wear and various other readymade garments. The

Plaintiff also claims to have advertised the mark extensively in the papers and in electronic media.

3. The suit has been filed against the Defendant - Khurana Knitwears, which is a sole proprietary of Mr. Avtar Singh Khurana. The said Defendant is carrying on the business of readymade garments and hosiery, etc. under the trademark '*KHURANA BIBA*'. The Defendant has a registered trademark being number 711879 dated 1st August, 1996 and 2334513 filed on 19th May, 2012 and subsequently registered on 26th April, 2018. The Defendant also had registered two other marks '*BIBA BOY*' and '*BIBA GIRL*'. The logo which was registered by the Defendant under Trademark No. 711879 is set out herein below:



4. During the course of arguments, the parties and Ld. Counsels having interacted with each other and have settled their disputes on the following terms:

i) the Defendant shall use the trademark '*KHURANA BIBA*' in the manner depicted above in respect of children, boys and men's jackets, jerseys and blazers. The manner of usage shall be as '*KHURANA KNITWEARS BIBA*' as depicted in trademark registration number 711879;

ii) the Defendant shall not use the mark '*BIBA BOY*' or '*BIBA GIRL*' or any other trademark consisting of the word '*BIBA*' except in the manner as permitted herein above;

iii) the Defendant also undertakes not to use the mark '*KHURANA BIBA*' for any other garments, clothing or readymade hosiery except for the

products permitted herein above.

5. The Plaintiff has sought cancellation of Defendant's mark 1018183 and 1018184 and has also filed rectification for the mark 2334513. Insofar as registration no. 2334513 is concerned, the mark shall continue to be registered in the name of the Defendant, however, the manner of use shall be as depicted in 711879. The remaining two registrations for the trademark '*BIBA BOY*' and '*BIBA GIRL*' shall be allowed to be rectified, in the petitions already filed by the Plaintiff.

6. The Defendant also undertakes to withdraw the following pending applications being numbers:

(a) 2450321 filed on 27th December, 2012 for '*BIBA BOY*'

(b) 2450322 filed on 27th December, 2012 for '*BIBA GIRL*'

7. The Defendant also undertakes not to seek any further trademark registration in respect of any mark consisting of the word '*BIBA*'.

8. The Defendant shall be the owner of the mark as depicted in trademark registration number 711879 and would be entitled to exercise all rights in respect of the said mark. In case of the said mark being licensed or assigned or used in partnership with any third party, the said licensee, assignee or third party would be continue to be bound by the terms of this settlement.

9. The opposition filed by the Defendant to the Plaintiff's trademark applications shall be withdrawn within a period of four weeks.

10. Insofar as damages and rendition of accounts is concerned, the same are not pressed by learned counsel for the Plaintiff.

11. On behalf of the Plaintiff, the counsels shall append their signatures

below and on behalf of the Defendant, Mr. Avtar Singh Khurana, who is present in Court shall append his signature.

12. Since, the cancellation petition in respect of trademark registration nos.1018183 and 1018184 are pending before the Registrar of Trademarks, it is directed that the Registrar of Trademarks shall cancel the said trademarks of the Defendant within a period of four weeks from receipt of this order.

13. The suit is decreed in the settlement terms recorded in paras 4 to 9 herein above. All pending I.As are disposed of.

PRATHIBA M. SINGH, J.

AUGUST 31, 2018

Rahul