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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 332/2017 & IA No.5546/2017 (u/O XXXIX R-1&2 CPC)**
LOTUS HERBALS PRIVATE LIMITED Plaintiff
Through: Mr. Mohan Vidhani, Mr. O.P. Bansal
& Mr. Ashish Singh, Advs.

Versus

LOTUS CERAMICS & ANR Defendants
Through: Mr. Niloy Dasgupta, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.03.2018

1. The plaintiff Lotus Herbals Pvt. Ltd. has instituted this suit against the two defendants viz. i) Lotus Ceramics; and, ii) Gupta Marble, for permanent injunction restraining infringement of trade mark, passing off and for ancillary reliefs.
2. The suit was entertained and vide *ex parte* ad-interim order dated 5th May, 2017, which continues to be in force, the defendants restrained from manufacturing, marketing, advertising and offering for sale the tiles under the trade mark / label 'LOTUS' or any other deceptively similar trade mark / label.
3. The order dated 19th February, 2018 records i) that the defendant no.1 Lotus Ceramics had filed written statement beyond 120 days and which could not be taken on record; ii) that the written statement of the defendant no.1 Lotus Ceramics was thus taken off the record; iii) that the defendant no.2 Gupta Marble was served on 9th June, 2017 and had not filed any written statement; and, iv) that the right of the defendant no.2 to file written statement was also thus closed.

4. Today, only the counsel for defendant no.1 appears and none appears for the defendant no.2.
5. The counsel for the plaintiff states that the same counsel had appeared for both the defendants on one of the dates.
6. Be that as it may, since none appears for the defendant no.2 Gupta Marble, the defendant no.2 is proceeded against *ex parte*.
7. The counsel for the defendant no.1 Lotus Ceramics states that the defendant no.1 has complied with the interim order and is no longer using the word mark or the label 'LOTUS'. It is further stated that the defendant no.1 is / was in the business of manufacturing and marketing of ceramic tiles and the plaintiff is in the business of cosmetics and there is no question of the plaintiff having suffered any loss or damage from use by the defendant no.1 of the said mark.
8. I have heard the counsel for the plaintiff.
9. I am satisfied that no case for awarding any damages to the plaintiff arises as the possibility of somebody going to buy a cosmetic under the name 'LOTUS', returning with a ceramic tile with the mark 'LOTUS' or buying a ceramic tile with the mark 'LOTUS' by associating it with the cosmetics of the plaintiff, does not exist.
10. Admittedly the plaintiff has no registration under the Class in which ceramic tiles are listed in the Schedule IV of the Rules to the Trade Marks Act, 1999.
11. It is thus not deemed appropriate to keep this suit pending for the relief of damages in as much as the defendant no.1 who alone is appearing

has no objection to suffering a decree insofar as claimed of permanent injunction.

12. The defendant no.2 having chosen not to contest the suit, it is not deemed necessary to relegate the plaintiff to evidence against the defendant no.2. Reference if any required can be made to *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC OnLine Del 508.

13. Accordingly a decree is passed in favour of the plaintiff and against both the defendants, of permanent injunction in terms of prayer paragraph 44(a) to 44(d) of the plaint dated 29th April, 2017.

14. The plaintiff is not found entitled to any other reliefs claimed.

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

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 12, 2018

‘gsr’..