

\$~26

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

+ CS(COMM) 426/2017 & IAs No.7044/2017 (u/O XXXIX R-1&2 CPC) & 226/2018 (u/O XXIII R-3 CPC)

WESTERN DIGITAL TECHNOLOGIES, INC. & ANR ...Petitioners
Through: Mr. Prithvi Singh and Mr. Utkarsh
Joshi, Advs.

Versus

G. SURESH & ANR Respondents
Through: Mr. Prashant Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

08.01.2018

1. The two plaintiffs instituted this suit against the two defendants and of which defendant No.1 is proprietor of the defendant No.2 Lakshi Vinayak Traders, for permanent injunction restraining infringement of trade mark and passing off and for ancillary reliefs.

2. Vide *ex-parte* ad-interim order dated 31st May, 2017, the defendants were restrained from importing/selling/offering for sale/advertising or otherwise dealing in second hand and refurbished goods bearing the plaintiffs' registered trade mark 'WESTERN DIGITAL/WD' and a Commissioner appointed to seize the infringing goods.

3. The parties, before filing of the written statement, have compromised all their disputes and differences and have filed IA No.226/2018 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 and both the counsels support the compromise and state that the compromise application

is signed by the parties/their authorised representatives and is supported by their affidavits.

4. I have perused the compromise application and find the compromise to be lawful, save to the extent the same provides for payment by the defendants to the plaintiffs of Rs.30,000/- for each infringing article found in future.

5. The counsel for the plaintiffs however states that for such claim, the plaintiffs will file a fresh suit and not seek execution of the decree sought.

6. Subject to the aforesaid, the compromise is found to be lawful and is allowed.

7. A decree is passed in favour of the plaintiffs and jointly and severally against the defendants (i) of permanent injunction in terms of para 42(A) & (B) of the plaint dated 30th May, 2017; (ii) of recovery of Rs.50,000/-; (iii) of delivery/destruction of infringing goods in terms of the compromise application along with this order shall form part of the decree sheet.

8. The counsel for the plaintiffs states that the defendants claim to have sent the pay order for Rs.50,000/- to the plaintiffs by post, which has not been received as yet.

9. The counsel for the defendants states that if the said pay order is not received by the plaintiffs latest by Wednesday i.e.10th January, 2018, the defendants will have the same cancelled and pay the said sum of Rs.50,000/- to the plaintiffs through the counsel for the plaintiffs.

10. The undertaking of the counsel for the defendants to the said extent is accepted and the defendant No.1, through counsel, cautioned of consequences of breach of undertaking given to the Court.
11. Decree sheet be drawn up.
12. The date of 16th January, 2018 is cancelled.

RAJIV SAHAI ENDLAW, J.

JANUARY 08, 2018
'bs'..