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

+ **CS(COMM) 1121/2018 & I.A.12606/2018**

CUREWELL DRUGS & PHARMACEUTICALS

PVT. LTD. & ANR.

..... Plaintiffs

Through **Mr. Sagar Chandra, Ms.Srijan Uppal,**
Advocates.

versus

ESHMUN BIOTECH PVT. LTD.

..... Defendant

Through **Mr.Gagan Kumar Gupta, Mr.Gautam**
Panjwani, Advocates along with
Mr.Umesh Mehta, Director

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **01.11.2018**

1. After some hearing, this Court considers it necessary to examine Director of the defendant present in Court under Section 165 of the Indian Evidence Act.
2. Mr.Umesh Mehta, one of the Director of the defendant has been examined on oath separately and has admitted the infringement of the trademark and has no objection to the passing of the decree in terms of prayer (i) to (v). The suit is decreed in terms of the prayers (i) to (v).
3. With respect to prayer (vi), the defendant shall destroy the stocks in the presence of the plaintiff's representative within four weeks as undertaken by the Director in his statement.
4. Learned counsel for the plaintiff does not press the prayers (vii) and (viii) in view of the undertakings of the defendant. Learned counsel, however, presses for the cost of litigation. It is submitted that the plaintiff

has spent Rs.5 lakhs on litigation including the fees of the Local Commissioner.

5. Learned counsel for the defendant submits that a lenient view be taken against the defendant with respect to the cost. It is submitted that the defendants are not in a position to pay the cost incurred by the plaintiff.

6. In the facts and circumstances of this case, cost of Rs.2,50,000/- is awarded to the plaintiff. The defendant undertakes to pay the same within four weeks from today at the time of destruction of the stocks.

7. The suit is disposed of on the above terms. The pending application is disposed of.

8. Learned counsel for the plaintiff seeks refund of the Court fees. The Registry is directed to issue a certificate to the plaintiff for refund of 50% of the Court fees under Section 16A of the Court Fees Act.

9. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

NOVEMBER 01, 2018

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CS(COMM) 1121/2018

Statement of Mr.Umesh Mehta, S/o Suresh Mehta, aged 30 years, R/o Near Chungi School, Colony Road, Mandi Dabwali, Distt. Sirsa on S.A.:

I am one of the Directors of the defendant company. I have studied up to 12th standard. The defendant company started manufacturing medicines about 1½ years ago. I have 25% shareholding and I was the Director when the business of medicines commenced. I and other Directors of the defendant company took the decision to keep the name “Conmun” as the name of the medicine. We decided to adopt the name of “Conmun” because similar name “Colam” was already there in the medicine market. I was aware that the plaintiff had their medicines with the name of “Comon” when we adopted the name “Conmun”. The design and the packing was designed by a printer. The design was prepared by K.K. Nandi at Ludhiana. I was not aware of the plaintiff’s design at that time. I am not aware whether the printer was aware of the plaintiff’s design. It is correct that an illiterate person who goes to buy the medicine will get confused and may buy our product thinking it to be plaintiff’s product but there was no intention on our part to do this. The defendant has stopped manufacturing the medicines with the name “Conmun” after the receipt of the stay order. I undertake that the defendant will never use the plaintiff’s name in future and have no objection the decree being passed in respect of prayers (i) to (v).

The defendant will destroy all the stocks as on the date of the receipt of the stay order in the presence of the plaintiff’s representative within four weeks from today. The defendant has a turnover of about Rs.2 crore per annum.

RO&AC

**J.R. MIDHA, J.
01.11.2018**