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

+ CS(COMM) 490/2017 & IAs No.14390/2017 (of D-1&2 u/O XXXIX R-4 CPC) & 8422/2017 (u/O XXXIX R-1&2 CPC)

SUGANDHI SNUFF KING & ANR Plaintiffs

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Niti Kantawala and Mr. Prakhari
Sharma, Advs.

Versus

YASH KISHORE ENTERPRISES & ORS Defendants

Through: Mr. D.K. Yadav, Adv. for D-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

08.01.2018

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1. The two plaintiffs Sugandhi Snuff King and Sugandhi Snuff King Private Limited have instituted this suit against three defendants namely (i) Yash Kishore Enterprises; (ii) Rupesh Kumar Chaurasia; and, (iii) RE Monarch Enterprises, for permanent injunction restraining the defendants from infringing the plaintiffs' copyright in the original artistic work, colour combination, get-up, writing script and layout used on the packaging/label of the plaintiffs product under the title 'SAGAR' and from thereby passing off their goods as that of the plaintiffs and for ancillary reliefs of recovery of damages, delivery etc.

2. The suit was entertained and vide *ex-parte* ad interim injunction dated 27th July, 2017, the defendants were restrained in terms of prayer paragraph

(a) in IA No.8422/2017, from dealing in chewing tobacco or any other allied and cognate goods under the impugned identical/deceptively similar label/packaging.

3. The defendants No.1&2 filed written statement and to which replication has been filed by the plaintiffs.

4. On 27th November, 2017, the counsel for the defendants No.1&2 stated that Vakalatnama on behalf of the defendant No.3 also shall be filed.

5. However, no such Vakalatnama has been filed till now.

6. On 5th December, 2017, IA No.14390/2017 of defendants No.1&2 under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 was partly heard and hearing adjourned to today and the parties directed to appear in person in the Court today.

7. The counsel for the defendants No.1&2, on enquiry, states that though a message was sent to the defendant No.3 RE Monarch Enterprises to give Vakalatnama in favour of the advocate but it has not done so till now. It is further stated that the defendant No.3 is the distributor of the defendants No.1&2 and would thus in any case be bound by whatsoever order is passed in the present suit.

8. The counsel for the defendants No.1&2 states that the defendant No.2 Rupesh Kumar Chaurasia is present in the Court and is willing to change the colour combination of its product under the title 'PITARA'.

9. However, on enquiry, as to which colour combination the defendants No.1&2 now intend to adopt, the counsel states that the colour combination will have to be chosen after examining the colour combination of all other similar products available in the market. He however assures that in no way

the colour combination of the defendants No.1&2 will be deceptive to the colour combination of the plaintiffs product under the title 'SAGAR'.

10. The senior counsel for the plaintiffs though is satisfied if the suit is disposed of in terms of above but states that the defendants No.1&2 repeatedly cause the plaintiffs to institute litigations and it be clarified that if the defendants No.1&2, in future, cause the plaintiffs to file a litigation, the plaintiffs, if succeed in the said suit, would be entitled to actual costs of that suit incurred by the plaintiffs.

11. The counsel for the defendants No.1&2 has no objection.

12. Accordingly, a decree is passed in favour of the plaintiffs and against the defendants No.1&2 in terms of prayer paragraph 45 (i) & (ii) of the plaint dated 24th July, 2017, leaving the parties to bear their own costs.

13. Decree sheet be drawn up.

14. The date of 28th February, 2018 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J.

JANUARY 08, 2018

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