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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 549/2017, IA Nos.9508/2017 (u/O 39 R-1&2 CPC),
11811/17 (u/O 39 R-4 CPC of D1 to D3), 11812/2017 (of D1 to D3 u/O 7
R-11 CPC), 667/2018 (u/O 23 R3 CPC).

FRODO BUSINESS SOLUTIONS PVT LTD Plaintiff
Through: Mr. Neeraj Grover, Mr. Aditya Singh,
Mr. Adesh Kumar Sharma and Ms.
Ragini Anand, Advs.

versus

JAIDEEP PONIA & ORS Defendants
Through: Mr. Ritesh K. Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.02.2018**

1. This order is in continuation of the earlier order dated 19th January, 2018.
2. The counsel for the plaintiff and the counsel for all the three defendants namely (i) Jaideep Ponia, (ii) Ashish Sonane and (iii) Dhanesh Kumar state that mediation has failed and no settlement could be arrived at.
3. The counsel for the defendants states that on his advice the three defendants, who completed their education only two years back and who according to the plaintiff were in the employment of the plaintiff and had developed the SuperSMS App, subject matter of the present suit, have argued to concede to the reliefs of declaration and permanent injunction sought by the plaintiff in the present suit and to move on in life rather than indulging in this litigation and the defendants have agreed to the said advice and are willing to suffer a decree of declaration, permanent injunction and mandatory injunction as claimed in prayer paragraph 40 (a) to (c) of the

plaint dated 17th August,2017.

4. The counsel for the plaintiff states that the plaintiff has paid a sum of about Rs.30,00,000/- to the three defendants for development of the SuperSMS App and owing to the lapse of time in this litigation, the said App has lost its commercial value today owing to several other similar Apps having already been introduced in the market. The counsel for the plaintiff thus states that in addition to the reliefs conceded, the plaintiff be also granted relief of recovery of Rs.30,00,000/- from the three defendants.

5. Needless to state, that the counsel for the defendants controverts and states that the defendants being fresh graduates are without any assets and are at the threshold of their career.

6. The counsel for the plaintiff states that the defendants, as per his instructions, are already carrying on business.

7. I have considered the aforesaid point of controversy between the parties and the need to put the claim of the plaintiff to trial for the relief of recovery of damages.

8. The counsel for the plaintiff agrees that the defendants also have not earned anything from the subject App and it has not been sold. The counsel for the plaintiff also agrees that the amount of Rs.30,00,000/- claimed to have been paid to the defendants was paid according to the plaintiff, by way of salary for employment with plaintiff.

9. Once that is so, I am unable to find any entitlement in the plaintiff to recovery of any damages from the defendants. It is also felt that no useful purpose will be served in putting the suit to trial for the said purpose.

10. The counsel for the plaintiff contends that the defendants have not

filed their written statement and more than 120 days have lapsed since the date of service of summons of the suit on the defendants and the defendants have thus lost the right to file written statement and the plaintiff is entitled to a decree forthwith.

11. Undoubtedly so, but the plaintiff even under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) would not be entitled to a decree of recovery of damages without proving the same and for which purpose the plaintiff will have to lead evidence. The plaintiff having chosen to file the suit as a 'commercial suit', the Court is entitled to, if finds that no purpose would be served in continuing with the suit, put an end to the same. In fact prior to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 also, it was held in ***Zubair Ul Abidin Vs. Sameera Abidin*** (2014) 214 DLT 340 (DB) [SLP (C) No.369-370/2015 was dismissed on 16th January, 2015] and ***Geodis Overseas Pvt. Ltd. Vs. Punjab National Bank*** 2016 SCC OnLine Del 1037 that the Court has such powers and which need to be exercised so that the time of the Court is not wasted and can be utilised for other deserving *lis*.

12. I am therefore of the view that the defendants having conceded to the reliefs of declaration and injunction claimed, the plaintiff is not entitled to any damages and there is no need to put the suit to trial for the said purpose and pendency of which suit, besides to the cost of the defendants, would also be to the cost of the plaintiff.

13. A decree is accordingly passed in favour of the plaintiff and jointly and severally against the defendants in terms of prayer paragraph 40 (a) to (e) of the plaint dated 7th August, 2017 leaving the parties to bear their own costs.

14. Decree sheet be drawn up.
15. A certificate entitling the plaintiff to refund of court fees paid on a value in excess of Rs.1,05,00,000/- be issued and handed over to the counsel for the plaintiff.
16. The counsel for the defendants assures that the decree, insofar as for mandatory injunction, will be complied within two weeks of today.

RAJIV SAHAI ENDLAW, J

FEBRUARY 20, 2018
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