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

+ **CS(COMM) 642/2017 & I.A. 11217/2017**

**M/S. SUPERON SCHWEISSTECHNIK
INDIA LIMITED**

..... Plaintiff

Through **Mr.D.K. Yadav, Advocate.**

versus

M/S. GEETECH INDIA Defendant
Through **None**

% **Date of Decision: 02nd February, 2018**

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J: (Oral)

1. In the order dated 31st January, 2018, it has been recorded that learned counsel for the defendant wished to withdraw his vakalatnama, since he was not receiving any instructions from the defendant.
2. As none appears for the defendant even today, it is proceeded ex-parte.
3. At this stage, learned counsel for the plaintiff gives up prayers (b), (c) and (d) of the prayers to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

4. He further states that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508***, the present suit be decreed qua the relief of injunction. The relevant portion of the said judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

5. The relevant facts of the present case are that the plaintiff Company was incorporated in 2004 and is the registered proprietor of

the trade mark/name/label/packaging/trade dress  in Class 9 and 35, having coined, conceived and adopted the same in 2004 with respect to manufacture of world class industrial consumables such as stainless steel welding electrodes, stainless steel wires, stainless pickling products etc.

6. It is stated that the plaintiff is an ISO 9001:2008 certified company and is manufacturing the aforementioned goods under license from and in collaboration with Indian and foreign companies.

7. It is stated that the plaintiff is the proprietor of the copyright in the artistic work namely the unique get up, lettering style, colour scheme of mustard yellow background, trademark written in black colour with a swirl device engulfing the trademark, i.e.



8. It is averred that the plaintiff has been vigilant in protecting and safeguarding its intellectual property rights with regard to trade

mark/name/label/packageging/trade dress and the same have been recognized by this Court in several suits such as CS(OS) 1414/2013, CS(OS) 2534/2015 and CS(COMM) 583/2015 etc.

9. Learned counsel for the plaintiff states that the defendant has, unauthorisedly and illegally, adopted the trade

mark/name/label/packageging/trade dress in respect of identical goods.

10. Learned counsel for the plaintiff states that the impugned trade mark/name/label/packageging/trade dress is identical with and/or deceptively similar in each and every respect including phonetically, visually, structurally and in its essential features. A pictorial representation of the plaintiff's and defendant's product is reproduced hereinbelow:

Plaintiff's Trademark/label/packaging	Defendant's Trademark/label/packaging
	

11. Learned counsel for plaintiff states that unwary purchasers are bound to be deceived in dealing with and purchasing the defendant's impugned goods and business under the impression that it is emanating from the plaintiff's business and that some vital link exists between the plaintiff and defendant. He states that the defendant's goods are of sub-standard and inferior quality which is tarnishing the hard earned goodwill and reputation of the plaintiff.

12. Order XIII-A of the Act, 2015 empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.

13. In the opinion of this Court, the defendant has no real prospect of defending the claim as they have neither entered appearance nor filed their written statement or denied the documents of the plaintiff. Further, the plaintiff is the prior user of the trade

mark/name/label/packaging/trade dress



14. In view of the above and the Local Commissioner's report dated 25th October, 2017 wherein infringing goods were seized, the present suit is decreed in favour of the plaintiff and against the defendant in terms of prayer clause (a) of the plaint along with the actual costs. The plaintiff is given liberty to file on record the exact

cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit and applications stand disposed of.

MANMOHAN, J

FEBRUARY 02, 2018

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