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

+ CS(COMM) 668/2017

DABUR INDIA LIMITED

..... Plaintiff

Through: Ms. Mamta Jha and Mr. Manish K.
Mishra, Advs.

Versus

AROGYA FORMULATIONS PVT. LTD. & ANR Defendants

Through: Mr. Rajesh Banati and Mr. Vikram
Bhatia, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.01.2018

**IA No.1229/2018 (of D-2 Obsurge Biotech Limited u/O XXXIX R-4
CPC)**

1. The counsel for the defendant No.2/applicant, on enquiry, states that he is appearing for the defendant No.1 Arogya Formulations Pvt. Ltd. as well.
2. The counsel for the defendants states that the application though titled as under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC), should have been under Section 151 CPC, inasmuch as both the defendants have no objection to a decree, as sought of permanent injunction, being passed. It is further stated that the defendants have already changed the colour scheme of the carton in which the product of the defendants is sold and to which objection is taken in this suit and the changed packaging is annexed as Annexure D-2 to the application.

3. The counsel for the plaintiff states that the advance copy received by her is not accompanied with the changed packaging in colour.

4. The counsel for the defendants states that he will supply a coloured copy of Annexure D-2 to the application to the counsel for the plaintiff within two days hereof.

5. Annexure D-2 as before this Court has been shown to the counsel for the plaintiff and the counsel for the plaintiff states that the plaintiff is satisfied with the said change.

6. In view of the aforesaid, this application becomes infructuous and is disposed of.

CS(COMM) 668/2017

7. As admitted by the counsel for both the defendants, a decree of permanent injunction is passed in favour of the plaintiff and against both the defendants namely Arogya Formulations Pvt. Ltd. and Obsurge Biotech Limited in terms of prayer paragraph 27(i),(ii)&(iii) of the plaint dated 26th September, 2017.

8. The counsel for the defendants states that the defendants, on their own will destroy all the impugned packaging in their custody and possession and will henceforth not use the same. It is also stated that even the goods which were already sold in the impugned packaging have been recalled from the stockists, distributors and retailers of the defendants and the packaging thereof changed.

9. In view of the aforesaid, binding the defendants to their aforesaid statement, there is no need to grant the relief of delivery, as sought in the plaint.

10. The counsel for the plaintiff states that in view of the aforesaid, the plaintiff does not press for the reliefs of rendition of accounts and damages.
11. The parties are left to bear their own costs.
12. Decree sheet be drawn up.
13. The dates of 15th February, 2018 before the Joint Registrar and 24th July, 2018 before the Court are cancelled.

RAJIV SAHAI ENDLAW, J.

JANUARY 30, 2018

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