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

% *Date of Judgment: 24th April, 2018*

\+ RFA(OS)(COMM) 21/2017 and CM Nos. 41960/2017, 41963/2017, 15300/2018

AAR ESS REMEDIES PVT LTD ..... Appellant

Through: Ms Aastha Gupta, Adv for Mr Manish Vashisth, Adv

versus

GLAXO GROUP LTD & ORS ..... Respondents

Through: Ms Shwetasree Majumder and Ms Tanya Varma, Advs

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. ***(ORAL)***

1. With the consent of the parties, the present Regular First Appeal is taken up for final hearing for disposal. The present appeal arises out of a judgment and decree dated 27.07.2017. The respondents had filed a suit for permanent injunction restraining the defendants (appellant being one of the defendants), their partners, proprietors, servants, agents, affiliates, sister concerns, etc. from manufacturing selling, offering for sale, advertising, dealing in products which are identical or deceptively similar to the plaintiff's registered trademarks i.e, FORTUM, FORTAM, ZINACEF, AUGMENTIN AND FORTAZ pertaining to the trademark and trade dress of AUGMENTIN.

2. The *ex-parte* decree was passed in favour of the plaintiff (being respondent herein) against the defendants jointly and severally in terms of prayers (a), (b) and (c). The Court also awarded damages to the tune of Rs. 20 lakhs in favour of the plaintiff and against the defendants jointly and severally. The present appellant was arrayed as defendant No. 1 in the aforesaid suit. The present appeal has been instituted by the appellant primarily on the ground that upon receipt of a legal notice, the appellant had discontinued the trade dress of AUGMENTIN and also informed the respondent (plaintiff in the suit).

3. In this backdrop, the appellant had submitted that the decree as far as it relates to grant of damages should be set aside qua the appellant (being defendant No. 1) in the suit. Ms Shwetasree Majumder, learned counsel appearing for the respondents/plaintiff had submitted that response to the legal notice had not received by her which had somewhat became the bone of contention between the parties. But the controversy has been laid to rest by both the counsel who have acted in a mature manner. After the matter was adjourned for 2 or 3 dates of hearing, parties have agreed to resolve the matter amicably in the peculiar facts of this case. The respondent/plaintiff has agreed to accept damages to the tune of Rs. 1 lakh which have been tendered in Court today and agreed that the decree would stand satisfied qua defendant No. 1 (appellant herein). Ms Majumdar submits that the consequence of arriving at a settlement with defendant No. 1 would require the decree to be modified to the extent that the decree stands satisfied with respect to defendant No. 1 and the amount of damages awarded be reduced from Rs. 20 lakhs to Rs. 13.4 lakhs as a consequence of defendant No. 1 having paid his share as per the settlement.

4. Resultantly we allow the appeal to the extent as stated hereinabove. The concluding paragraph of the decree will be modified to the extent that the plaintiff would be entitled to a decree in its favour against all the defendants including the appellant herein but the damages to the tune of Rs. 20 lakhs would stand reduced to Rs. 13,40,000/- which would be payable by the remaining two defendants jointly and severally. Decree sheet be modified accordingly.

5. Accordingly, the Regular First Appeal and all pending applications stand disposed of in the above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 24, 2018
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