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

+ **FAO (OS) (COMM) 103/2016**

DART INDUSTRIES INC & ANR

..... Appellants

Through: Mr. Hemant Singh, Advocate with
Ms. Mamta R. Jha, Ms. Sakshi
Jhalani and Ms. Shruttima Ehersa,
Advocates.

versus

VIJAY KUMAR BANSAL & ORS

..... Respondents

Through: Mr. Rohan Alva, Advocate with Mr.
Sushant Singh, Mr. Kunal Khanna
and Mr. Reshabh Bajaj, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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18.01.2019

1. The challenge in the present appeal is to an order dated 4th October, 2016 passed by the learned Single Judge in CS(COMM) No. 37/2016 holding the Appellant's suit, which was for a permanent injunction restraining infringement of its registered design and for passing off as being not maintainable in view of the Full Bench of this Court in ***Mohan Lal Proprietor of Mourya Industries v. Sona Pain & Hardwares 2013 (55) PTC 61 (Del)***. It was further held that in view of the order dated 9th September 2016 passed in CS(OS) 1149/2013 (Steelbird Hi Tech India Ltd. v. Asia Fibre Glass Products), the Plaintiff would have to elect "whether the plaintiffs should maintain the suit as one of infringement of design or one

for passing off. The plaintiffs are granted four weeks time to file the appropriate amendment application failing which, the suit is liable to be dismissed.”

2. In light of the said order, the Appellant/Plaintiff was, by an order dated 18th October 2016 of the learned Single Judge, permitted to amend the plaint in the said suit to delete all averments relating to infringement of design. The written statement of the Defendants too was permitted to be correspondingly amended. The suit is pending.

3. Notice was issued in the present appeal on 4th November 2016, when this Court directed that:

“In the meanwhile the learned Single Judge is requested not to take the impugned order dated October 04, 2016 to its logical conclusion till the appeal is decided.”

4. During the pendency of the present appeal, a larger Bench of five Judges of this Court has rendered a judgment on 14th December, 2018 in C.S. (Comm) 690/2018 in **Carlsberg Breweries A/S v. Som Distilleries and Breweries Ltd**, holding, specific to the point in issue, that “a composite suit that joins two causes of action-one for infringement of a registered design and the other for passing off, of the plaintiff’s goods-is maintainable”. In coming to the above conclusion, the Bench of five learned Judges has overruled, on above point the earlier Full Bench decision in **Mohan Lal (supra)**.

5. In that view of the matter, the impugned order of the learned Single Judge

holding the Appellant's composite suit being is not maintainable is hereby set aside.

6. On the strength of the present order, it would be open to the Plaintiff/Appellant to approach the learned Single Judge for further reliefs.

7. The appeal is accordingly disposed of.

S.MURALIDHAR, J

SANJEEV NARULA, J

JANUARY 18, 2019

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