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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(COMM) 500/2016 & IA No.5728/2016 (u/O XXXIX R-1&2
CPC) & CC(COMM) 64/2017
BLUE STAR ADVERTISERS Plaintiff

Through: Ms. Arpan Wadhawan, Adv.

Versus

ADITYA BIRLA NUVO LIMITED Defendant

Through: Mr. S.K. Bansal, Mr. Pankaj Kumar
and Mr. Kapil Giri, Adv.

AND

+ CS(COMM) 1688/2016
PVH CORP Plaintiff

Through: Mr. S.K. Bansal, Mr. Pankaj Kumar
and Mr. Kapil Giri, Adv.

Versus

SUNIL KHANNA & ORS Defendants

Through: Ms. Arpan Wadhawan, Adv.

AND

CS(COMM) 1689/2016
ADITYA BIRLA NUVO LIMITED Plaintiff

Through: Mr. S.K. Bansal, Mr. Pankaj Kumar
and Mr. Kapil Giri, Adv.

Versus

SUNIL KHANNA & ORS Defendants

Through: Ms. Arpan Wadhawan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.01.2019

1. This order is in continuation of the earlier order dated 6th December, 2018.

2. The counsel for all the defendants in CS(COMM) 1688/2016 & CS(COMM) 1689/2016, on enquiry, states that the defendants have no

objection to a decree for permanent injunction as claimed in CS(COMM) 1688/2016 & CS(COMM) 1689/2016 being passed.

3. Accordingly, a decree is passed in favour of the plaintiff in CS(COMM) 1688/2016 & CS(COMM) 1689/2016 and against the defendants therein, of permanent injunction in terms of prayer paragraph 32(a)&(b) of the plaint dated 14th March, 2015 in CS(COMM) 1688/2016 and in terms of prayer paragraph 46(a)&(b) of plaint dated 14th March, 2015 in CS(COMM) 1689/2016.

4. Decree sheets be drawn up.

5. The claim of the plaintiff in CS(COMM) 1688/2016 & CS(COMM) 1689/2016, for rendition of accounts from the defendants therein, of infringement of the trade marks of the plaintiff in the past remains.

6. The defendant no.3 Blue Star Advertisers in CS(COMM) 1688/2016 as well as CS(COMM) 1689/2016 has filed CS(COMM) 500/2016 for recovery of money from the plaintiff in CS(COMM) 1689/2016 of dues arising out of vendor and vendee relationship, for the period from 2012 to 2015. The plaintiff in CS(COMM) 1689/2016 (who is defendant in CS(COMM) 500/2016) has filed a Counter-Claim in CS(COMM) 500/2016 on account of dip in business and loss of sales on account of infringement subject matter of CS(COMM) No.1688/2016 and CS(COMM) No.1689/2019.

7. I have enquired from the counsel for the plaintiffs in CS(COMM) 1688/2016 & CS(COMM) 1689/2016, whether not the Counter-Claim in CS(COMM) 500/2016 is for the same relief which the plaintiff in CS(COMM) No.1688/2016 and CS(COMM) No.1689/2016 will be entitled

to in the event of rendition of accounts sought in CS(COMM) 1688/2016 & CS(COMM) 1689/2016.

8. The counsel for the plaintiff in CS(COMM) 1688/2016 & CS(COMM) 1689/2016 agrees.

9. There is thus no need to keep CS(COMM) 1688/2016 & CS(COMM) 1689/2016 pending for the remaining relief of rendition of accounts.

10. CS(COMM) 1688/2016 & CS(COMM) 1689/2016 are disposed of.

11. It is found that the claim of the plaintiff in CS(COMM) 500/2016 for the principal amount of Rs.85,45,811/- is admitted by the defendant/counter-claimant therein in its letter dated 6th April, 2015. The defendant/counter-claimant however is denying the said liability on account of its Counter-Claim.

12. On the pleadings of the parties in CS(COMM) 500/2016, the following issues are framed in the suit and the Counter-Claim:

(I) Whether the plaintiff had manufactured goods as per the orders placed by the defendant/counter-claimant and has incurred a sum of Rs.5 lakhs for maintaining the said finished goods and is entitled to recover the same from the defendant/counter-claimant? OPP

(II) Whether the plaintiff is entitled to Rs.50,69,918/- from the defendant/counter-claimant towards the price of goods manufactured by the plaintiff as per the orders of the defendant/counter-claimant? OPP

(III) Whether the plaintiff has sold goods under the trade mark of the defendant/counter-claimant, without authority from the defendant/counter-claimant and profited therefrom and if so, in what

amount? OPD

(IV) Whether there was any dip in the sales of the defendant/counter-claimant of goods under the subject mark on account of the plaintiff's misuse of the said mark? OPD

(V) Whether the defendant/counter-claimant has suffered any loss of goodwill on account of the actions of the plaintiff and if so, to what amount, if any is the defendant/counter-claimant entitled to from the plaintiff on this account? OPD

(VI) If any amounts are found due from the plaintiff to the defendant/counter-claimant, whether the defendant/counter-claimant is entitled to any interest thereon and if so, with effect from what date and at what rate? OPPr

(VII) Relief.

13. It is made clear that no issue with respect to the claim of the plaintiff for Rs.85,45,811/- has been framed, inasmuch as in the event of no money being found due to the defendant/counter-claimant from the plaintiff, the plaintiff, on the basis of admission of the defendant/counter-claimant of the said liability, will be entitled to a decree therefor.

14. No other issue arises or is pressed.

15. Though onus of most of the issues is on the defendant/counter-claimant but since the onus of the issue qua the claim of the plaintiff for Rs.5 lacs and Rs.50,69,918/- from the defendant/counter-claimant is on the plaintiff, the plaintiff to lead evidence first.

16. The parties to file their list of witnesses within fifteen days.

17. The plaintiff to file affidavits by way of examination-in-chief of its witnesses within six weeks.
18. On request, Mr. Pradeep Chaddah, District Judge (Retd.) (Mob.9910384665) is appointed as the Commissioner for recording evidence in the suit and the Counter-Claim. He is requested to record the evidence within the Court Complex. He is granted liberty to have the matter placed before the Court, if any of the parties are found delaying recording of evidence.
19. The fee of the Court Commissioner is tentatively fixed at Rs.1 lakh, besides out of pocket expenses and to be paid equally by the plaintiff as well as the defendant/counter-claimant.
20. The Registry is directed to send the file of the suit at the place and time fixed by the Commissioner for recording of evidence.
21. The parties to appear before the Commissioner with prior appointment within eight weeks herefrom for commencing the recording of evidence.
22. List after the recording of evidence is completed.
23. IA No.5728/2016 in CS(COMM) 500/2016 is disposed of as not pressed.

RAJIV SAHAI ENDLAW, J.

JANUARY 31, 2019
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