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

+ **CS (COMM) 1270/2018 & I.A. 16699/2018**

MOHAMMAD HIFZULLAH ANSARI Plaintiff

Through: Mr. Rajiv Kumar Choudhry & Ms.
Anjali Gupta, Advocates with
Plaintiff in person. (M:9718792929)

versus

MS. SHAEESTA PRAVEEN & ANR. Defendants

Through: Mr. Satish Kumar, Mr. Umesh Mishra
and Mr. Vishal Patel, Advocates.
(M:9868401295)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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31.01.2019

1. The Plaintiff has filed the present suit claiming rights in the trademarks '*MABU*', '*GEMENI*', '*NEW ERA*' and '*BLACK SEAL*' in respect of automobile tyre seals and other auto parts. The case of the Plaintiff is that Defendant No.2 was an ex-employee of the Plaintiff. After Defendant No.2 parted ways with the Plaintiff, he started using the trademarks of the Plaintiff. A criminal complaint was filed in 2018, pursuant to which the police had seized the products of the Defendants, however, the complaint continued to be pending. The Plaintiff, thus, seeks an injunction restraining the Defendants from using the marks '*MABU*', '*GEMENI*', '*NEW ERA*' and '*BLACK SEAL*'.

2. The case of the Defendants is that Defendant No.2 was a partner of the Plaintiff and after the partnership broke up, Defendant No.2 had entered into a settlement with the Plaintiff, under which two marks were given to

Defendant No.2. In fact, there was no seizure effected from the Defendants' premises but the same was from a third party's premises. In view of the settlement, the Defendants started using the marks '*GEMENI*' and '*NEWERA*'. In fact, it is submitted that the word GEMENI with the accompanying art work is also registered with the copyright office.

3. Submissions were heard from time to time in this matter.

4. Today all the parties are present. During the course of arguments, the parties, in consultation with their counsels, have arrived at a settlement on the following terms and conditions.

- 1) The Defendants undertake not to use the trademarks '*MABU*' and '*BLACK SEAL*' in respect of tyre seals and other auto parts;
- 2) The Defendants further undertake that they are willing to change the other two trademarks and use the trademarks '*SR GEMINI*' and '*SR NEWERA*' for their products including tyre seals, auto parts etc., The prefix "SR" would be used in the same font and size as that of "GEMINI" and "NEWERA."
- 3) The Defendants undertake to exhaust the existing stock bearing trademarks '*MABU*', '*GEMENI*', '*NEW ERA*' and '*BLACK SEAL*' within a period of 3 months i.e. on or before 30th April, 2019.
- 4) The Defendants agree and undertake to pay a sum of Rs.1.5 lakhs as costs to Plaintiff on or before 10th May, 2019.
- 5) The Defendants undertake not to further import products under the marks *MABU*, *BLACKSEAL*, *GEMENI* and *NEWERA*, with immediate effect.
- 6) In view of the above undertakings of the Defendants, the Plaintiff agrees to give up the reliefs of damages, rendition of accounts and

delivery up.

- 7) The Plaintiff further agrees and undertakes not to oppose the registration of the trademarks '*SR GEMINI*' and '*SR NEWERA*' in favour of the Defendants so long as the writing style, colour combination and get up of the arts work is in no way similar to that of the Plaintiff.

5. The statements of Mohd. Hifzullah Ansari, proprietor of the Plaintiff as also the statements of Ms. Shaeesta Parveen and Mr. Mohammad Nazim have been recorded today. Suit is, accordingly, decreed in terms of the settlement terms recorded above as also in terms of sub-paragraphs (i), (ii) and (iii) of paragraph 36 of the plaint subject to the condition that the Defendants would be entitled to use the trademarks '*SR GEMINI*' and '*SR NEWERA*' for the sale of their products. The Defendants shall also modify/withdraw their pending applications qua all the impugned marks under confirmation to Plaintiff on or before 10th May, 2019.

6. Suit is decreed in the above terms. Settlement terms shall form part of the decree.

7. Plaintiff is refunded the court fee to the extent of 50% as per section 16A of the Court Fees Act, 1870. All pending I.As. also stand disposed of.

PRATHIBA M. SINGH, J.

JANUARY 31, 2019/dk