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

+ **CS(COMM) 881/2017**

**AKTIEBOLAGET VOLVO & ORS ..... Plaintiff**

Through Ms.Vaishali Mittal, Mr.Siddhant  
Chamola and Ms.Prakriti Sharma, Advs.

versus

**PLEXO LUBRICANTS PVT LTD & ORS..... Defendant**

Through Mr.Chirag A.Shah and Mr.Hiren  
U.Trivedi, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **09.01.2019**

1. This suit is filed by the plaintiff seeking a decree of permanent injunction to restrain the defendants, its directors, etc from using the mark/ name VOLVO or any other mark/name similar to the plaintiff's trademark/name VOLVO in any manner which tantamounts to infringement of the plaintiff's registered trademark No.763291. Other consequential reliefs are also sought. Defendants have entered appearance and have filed written statement.

2. Learned counsel appearing for defendant states that he has filed an undertaking on behalf of Mr.Nilesh Shah/defendant No.2 who is said to be the Director of defendant No.1 wherein the said defendant has clearly stated that he does not intend to use the mark VOLVO in the course of trade of the defendants and the ex parte interim injunction order dated 21.12.2018 may be confirmed, till disposal of the suit. The affidavit further states that the defendants will never used the mark VOLVO or any other similar mark. He

has also stated that they are willing to give an undertaking for not using the mark in the course of trade but they are not willing to pay any damages towards the proceedings because there is no infringement of the plaintiff's mark VOLVO in Class 4.

3. This court had on 21.12.2017 appointed a Local Commissioner to visit Plot No. 927, GIDC Highway, Kerala, Opposite Khodayar Bricks, Taluka Bavia, Ahmedabad i.e. premises of the defendant. The Local Commissioner has filed his report dated 20.1.2018 where he stated that he found eight empty barrels and two barrels full of oil which contained the mark VOLVO painted on them.

4. What follows from the above is that the defendant has agreed that they shall not in future in any manner deal with the trademark VOLVO or any other mark deceptively similar to the said trademark of the plaintiff. In view of the submissions made, a decree is passed in favour of the plaintiff and against the defendants in terms of prayer 23(a) and (b) of the plaint.

5. Regarding the damages, learned counsel appearing for the defendant states that they are willing as a token to pay a sum of Rs.2 lacs in full and final payment of the claims.

6. Keeping in view the extent of material found at the site, in my opinion, it would be a fit case to impose damages of Rs.3 lacs on the defendant. Accordingly, a decree is passed in favour of the plaintiff and against the defendants for a sum of Rs.3 lacs. The plaintiff shall also be entitled to costs.

7. Defendants will also physically hand over to the plaintiffs the goods that were given to them on superdari by the Local Commissioner when he had visited the said property and had seized the goods bearing the impugned

trademark. Needful will be done within two weeks through the Authorised Representative of the plaintiff who will visit the premises of the defendants. It is ordered accordingly.

8. Keeping in view the averments made by the defendant, the above order is passed as an element of compromise, is involved. Accordingly, under section 16A of the Court Fees Act the plaintiff shall be entitled to refund of 50% of the Court Fees as per The Court Fees Act, 1870.

9. Suit stands disposed of. All pending applications, if any, also stand disposed of .

**JAYANT NATH, J**

**JANUARY 09, 2019**

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