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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 153/2019**
MOTHER DAIRY FRUIT & VEGETABLE PVT. LTD.

..... Plaintiff

Represented by: Mr. Saif Khan, Mr. Shobhit Agarwal,
Mr. Deepank Singhal, Advs.

versus

T PANDEY

..... Defendant

Represented by: Mr. Kushal Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.02.2020**

I.A. 1951/2020 (u/O XXIII R 3 CPC)

1. By this joint application the plaintiff and defendant seeks decree of the suit in terms of the settlement arrived at between the parties.
2. Application is duly supported by the affidavit of Shri Naveen Nischal Rastogi, authorized signatory of the plaintiff authorization in whose favour has already been placed on record and affidavit of Shri T. Pandey, the defendant.
3. Taking the terms of settlement on record and decreeing the suit in terms of the settlement, application is disposed of.

CS(COMM) 153/2019

1. Plaintiff and defendant have entered into a settlement on the following terms and conditions as noted in I.A. 1951/2020.

a) *"The Plaintiff has filed the above-mentioned Suit for permanent injunction restraining infringement of trademark, copyright, trade dress, passing off, dilution of trademarks, trade name, passing off, rendition of accounts of profit, damages, etc. The Plaintiff craves leave of the*

Hon'ble Court to read the contents of the Complaint as part and parcel of this Application and the same are not being repeated for the sake of brevity.

- b) The Defendant, T. Pandey, is authorized partner of M/s MaaVindhya Vasini Industries and authorised on behalf of the firm, which operated under the business name of Mothershree Dairy. The Defendant, agrees and undertakes to perpetually cease use of the trademark MOTHERSHREE DAIRY (word mark or logo) or any other mark identical or deceptively similar to Plaintiff's mark MOTHER DAIRY in respect of selling, advertising, marketing, manufacturing, or for dealing in, any goods or services using the said trademark amounting to infringement of the Plaintiff's mark MOTHER DAIRY;*
- c) The Defendant has already given up the domain/website www.mothershreedairy.com and undertakes to not register or use any domain name which is identically or deceptively similar to the Plaintiff's mark MOTHER DAIRY amounting to infringement of the Plaintiff's mark MOTHER DAIRY;*
- d) The Defendant agrees and undertakes to not use any packaging/trade dress identical or similar to that of the Plaintiff's packaging/trade dress as depicted at Pg. 9 of the list of documents (and also enclosed as Document-A hereto) amounting to infringement of the trade dress of Plaintiff;*
- e) The Defendant agrees and undertakes to not use the get up/layout etc. in respect of his website as depicted at Pg. 8 of the Plaintiff's list of documents (and also enclosed as Document-B hereto) so as to amount to violation of Plaintiff's copyright in the artistic work or any other getup/layout which is identical or deceptively similar to that of the Plaintiff's website;*
- f) The Defendant further agrees and undertakes to not use the National Dairy Development Board ("NDDB")  drop logo.*
- g) The Defendant affirms to this Hon'ble Court that he has adopted a new mark SHAKTI SHRI DAIRY and a new packaging thereof as depicted below, to which the Plaintiff has no objection;*



- h) The Defendant will withdraw his Trademark Application bearing no. 3785835 & 4141265 under class 29, for registration of its mark “MOTHERSHREE DAIRY”, within 1 month from entering into the present settlement. Further, the Defendant agrees and undertakes to not apply for registration of any mark which identically or deceptively similar to that of Plaintiff’s mark “MOTHER DAIRY”.
- i) The Defendant undertakes to deliver up to the Plaintiff for destruction/ensure all the goods, brochures, promotional material, stickers, cartons, packing, dies, articles, papers and any other material of the Defendant’s bearing the trademark MOTHERSHREE DAIRY, and any other infringing material which is at present in the possession of the Defendants to the Plaintiff’s counsel within one week of recordal of the present settlement.”
2. As noted above, the settlement agreement is duly supported by the affidavit of the authorized representative of the plaintiff and the defendant.

3. Consequently, the suit is decreed in favour of plaintiff in terms of prayers i), ii), iii) and iv) of Para 43 of the plaint.
4. Decree sheet will incorporate the terms of settlement. Documents A and B which are enclosed with the settlement agreement will also form part of the decree sheet.
5. Court fee be returned to the authorized representative of the plaintiff under Section 16 of the Court Fees Act. Registry will issue necessary certificate in this regard.

I.A. 4353/2019 (u/O XXXIX R 1&2 CPC)

Application is disposed of as infructuous.

MUKTA GUPTA, J.

FEBRUARY 11, 2020

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