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

+ **CS(COMM) 132/2020**

EMAAR PROPERTIES PJSC

..... Plaintiff

Represented by: Mr.Pravin Anand, Mr.Dhruv Anand,
Ms.Udita Patro, Ms.Kavya Mammen
and Ms.Sampurnaa Sanyal,
Advocates.

versus

EMAAR INDIA ENTERPRISES

..... Defendant

Represented by: Mr.Abhijeet Sinha and Mr.Surjendu
Sankar Dass, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.07.2020

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The hearing has been conducted through Video Conferencing.

I.A. 5650/2020 (exemption from filing notarised affidavit)

1. Plaintiff is exempted from filing the duly notarised affidavits in support of the applications at this stage, however, the same be filed within one week of the resumption of the normal functioning the court.

2. Application is disposed of.

I.A. 5651/2020 (under Order I Rule 10 (2) CPC-impleadment of M/s M.R. Enterprises)

I.A. 5652/2020 (under Order VI Rule 17 CPC)

1. When the suit came up before this court on 21st May, 2020, learned counsel for the defendant entered appearance and informed that the defendant was actually M/s M.R. Enterprises and earlier they had worked

under the firm named M/s EMMAAR India Enterprises on the basis of which there were some uploading with the Indiamart wherein it was inadvertently mentioned EMAAR due to the typographical error however, now no entity with the name EMMAAR exists. In view of this statement of learned counsel for the defendant the plaintiff has filed these applications seeking impleadment of M/s M.R. Enterprises and deletion of M/s EMMAAR India Enterprises and correspondingly amendment to the plaint.

2. Considering the case of the defendant itself, the two applications are allowed and the amendment to the plaint and impleadment of M/s M.R. Enterprises is permitted.

3. Applications are disposed of.

CS(COMM) 132/2020

I.A. 3929/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Amended plaint is taken on record.

2. Learned counsel for the defendant states that the defendant has already filed reply to I.A. No.3929/2020, under Order XXXIX Rule 1 and 2 CPC, undertaking the facts as noted in the statement made by learned counsel on 21st May, 2020.

3. The affidavit of undertaking in terms of order dated 21st May, 2020 has been filed before this Court by Ms.Rajeswari Chakraborty and Ms.Mita Jha along with the vakalatnama of learned counsel for the defendant which states as under:

**"AFFIDAVIT OF UNDERTAKING IN TERMS OF ORDER
DATED 21 MAY 2020 PASSED BY THIS HON'BLE
COURT**

*We, (i) Rajeswari Chakraborty, aged about 37 years, w/o Shri
Tanmoy Datta, r/o Fiat No.303, Plot No.B-20-B, Joshi Colony,*

I.P. Extension, Delhi - 110092, and (ii) Mita Jha, aged about 41 years, w/o Shri Shubhabrata Jha, r/o House No.A-416, 2nd Floor, Kalkaji, Delhi 110019, do hereby solemnly affirm and state as under:

- 1. That we are the Partners of "M/s. **M R Enterprises**" having its registered office at Flat No.303, Plot No. B-20-B, Joshi Colony, I.P. Extension, Delhi - 110092 registered on 13 August 2019.*
- 2. That our contact details are as under:
Smt. Rajeswari Chakraborty:
Email: rajeswaridatta@gmail.com; Mobile: 9818005598
Smt. Mita Jha:
Email: mitabaisakhi@gmail.com; Mobile: 9999843342*
- 3. That we are not aware of any firm presently carrying on business in the name "Emaar India Enterprises" and, in any case, we are neither concerned with nor the partners of any such firm. That we are not the partners of the firm arrayed as Defendant in the present Suit. For the sake of clarity, it may be mentioned that we were earlier partners of an unregistered firm "Emmaar India Enterprises" which name was changed to present M/s. M R Enterprises on 13 August 2019.*
- 4. That Indiamart had misspelled the name as "**EMAAR** India Enterprises" on their website. We wrote to them on 24 May 2020 requesting them to immediately remove, delete, take down, disable all accesses to all such listing in their website, the name of "EMAAR INDIA ENTERPRISES" which relates to either of us. This request was made, by way of abundant caution, despite the fact that Indiamart already confirmed over phone deletion of such listing on 20 May 2020.*
- 5. That we are filing the present Affidavit of undertaking in compliance with the direction contained in para 12 of the Order dated 21 May 2020 passed by this Hon'ble Court in the above Suit.*
- 6. **We hereby undertake that we are not using and do not intend to use the name 'EMMAAR' much less the***

alleged name 'EMAAR' for any trade or business whatsoever.

7. *That we are filing the present undertaking without prejudice all the rights and contentions available in law to contest the Suit.*

SOLEMNLY AFFIRMED AT DELHI)

ON THIS THE 2nd DAY OF JUNE 2020)

Rajeswari Chakraborty

Mita Jha
DEPONENTS

VERIFICATION:

We, the deponents above-named, do hereby verify and state that the contents of my above affidavit are true to our knowledge and belief and nothing material has been concealed therefrom.

VERIFIED AT NEW DELHI ON THIS THE

2ND OF JUNE 2020.

Rajeswari Chakraborty

Mita Jha

DEPONENTS''

4. Considering the fact that the defendant has admitted that initially it was carrying on the business in the name of EMMAAR India Enterprises, which was deceptively similar to the plaintiff's mark, though they have changed the same to M/s M.R. Enterprises on 13th August, 2019, learned counsel for the plaintiff states that in view of the undertaking of defendant as submitted before this Court a decree in terms of the undertaking be passed and the plaintiff would give up the prayer seeking decree of damages, delivery up etc.

5. Considering the undertaking filed by the two partners of the

defendant, a decree for permanent injunction restraining the defendant, its partners, officers, agents from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in either through physical shops or online through social media, products including tea bearing the plaintiff's registered trademark 'EMAAR' or any trademark/trade name similar to the same including 'EMMAAR' and deceptively similar thereto amounting to infringement and passing off the defendant's products as that of the plaintiff is passed in favour of the plaintiff and against the defendant.

6. Learned counsel for the plaintiff gives up prayers (d), (e), (f), (g) and (h) of the suit. Decree sheet be drawn accordingly.

7. Application under Order XXXIX Rule 1 and 2 CPC, i.e. I.A. No.3929/2020 is disposed of as infructuous.

8. Learned counsel for the plaintiff submits that plaintiff has already deposited the court fee by transferring the money through RTGS and the same be refunded.

9. Court fee be refunded to the authorised representative of the plaintiff under Section 16A of the Court Fee Act. Registry is directed to issue necessary certificate in this regard.

10. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 15, 2020
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