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

+ CS (COMM) 174/2020

I.A. 4472/2020 (under Order XXXIX Rule 1 and 2 CPC)

M/S TIRATH RAM JAI PRAKASHPlaintiff

Represented by: Mr.Sidhant Goel and Mr.Faizan Mir,
Advocates.
Mr.Piyush Gupta, Mr.Satender Gupta
and Mahender Gupta, partners of
plaintiff, in person through video
conferencing.

versus

TIRATH RAM JAI PRAKASH & CO. Defendant

Represented by: Mr.Akhil Mittal, Advocate.
Mr.Surender Kumar Gupta, sole
proprietor of defendant in person
through video conferencing.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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27.07.2020

The hearing has been conducted through Video Conferencing.

CS (COMM) 174/2020

1. Present suit was filed by the partnership firm M/s Tirath Ram Jai Prakash through its partner Piyush Gupta s/o Satender Gupta whose other partners are Satender Gupta and his elder brother Mahender Gupta.
2. Defendant in the suit is Tirath Ram Jai Prakash & Company which is a sole proprietorship concern of Surender Gupta, the third brother of Satender Gupta and Mahender Gupta.
3. When the suit came up for hearing before this Court on the first date Mr.Mahender Gupta also entered appearance and parties expressed their

desire to settle the matter. Thus the parties were referred to the Delhi High Court Mediation and Conciliation Centre and during the course of mediation the parties have entered into a settlement on 20th July, 2020 on the following terms and conditions:

“6. The following settlement has been arrived at between the Parties hereto:

- a. The Defendant undertakes not to use the mark “POOJA RAKHI” in Class 25 Wrist Band items in terms of the Trade Mark Certificate dated 20.03.2020 and further agrees to record the necessary statement before the Hon'ble Court before the next date of hearing i.e. 27.07.2020.*
- b. No individual partner of the Plaintiff shall have any right to deal with the trade mark “POOJA RAKHI” in any manner whatsoever and the same shall be treated as an ordinary matter connected with the business of the Plaintiff.*
- c. All respective parties including the Partners of the Plaintiff and the brother Sh. Surender Gupta, partner of the Defendant have settled all of their claims and disputes against each other qua the dispute arising out of the present suit w.r.t use of the trademark “POOJA RAKHI” and accordingly the suit may be decreed on basis the present settlement on or before the next date of hearing i.e. 27.07.2020.*
- d. The Plaintiff is entitled to make an appropriate prayer, under Section 16 of the Court Fees Act, 1870 read with Section 89 of CPC, 1908 for refund of the Court Fee deposited by the Plaintiff.*
- e. In consideration of the above undertakings tendered by the Defendant, the Plaintiff foregoes its claim for rendition of account of profits, damages, compensation or any such other mode of compensation or payment (monetary or otherwise)*

in lieu of settlement herein of the instant dispute.

- f. The Parties hereby agree that any breach/default of any condition set forth herein would be a material default/breach of the Settlement Agreement and the Parties would be entitled to remedies as per law.*
- g. The Settlement will be binding on the parties, their successors, servants, agents, licensees, franchisees, representatives, distributors, sister concerns, assignees.*
- 7. The Parties agree that the Parties and their respective counsel and other agents have fully and equally participated in the preparation, negotiation, review and approval of all provisions of this Agreement. In the event that any provision of this Agreement should require interpretation or construction, the Parties agree that this Agreement will be interpreted or construed without any presumption that the provisions of this Agreement are to be strictly construed against any party;*
- 8. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter addressed herein, supersedes any and all prior understandings and/or agreements whether oral or written with respect to the subject matter addressed herein, and is executed as their free act and deed;*
- 9. The failure of one party to insist upon strict performance of any obligation hereunder of the other party, irrespective of the length of time for which such failure may continue, shall not be a waiver of the performing party's right to demand strict compliance therewith in the future;*
- 10. The Parties reserve the right to exercise all other rights they may have, that are not specifically covered by this Agreement;*
- 11. That the Parties undertake before the Hon'ble Court that they are bound by the Settlement Agreement and to abide by the terms and conditions set out in the Settlement*

Agreement and not to dispute the same hereinafter in the future.

12. *That Parties further agree to appear before the Hon'ble Court along with their advocates by way of video conferencing (as that is the practice prevalent due to the Covide-19 pandemic) and record their statement before the Hon'ble Court and do all such acts as may deem necessary by the Hon'ble Court for recording of the present settlement.*

13. *In view of the practice guidelines the consent email which have been sought from the parties are annexed with this Agreement as Annexure-B (of the Plaintiff) and Annexure-C (of the Defendant) respectively and in view of the same their signatures are not being attached with the present Agreement.*

4. The settlement agreement was arrived at by Piyush Gupta, on behalf of the plaintiff firm and by Surender Gupta on behalf of the defendant firm.

5. Today before this Court through video conferencing Mr.Piyush Gupta, Mr.Satender Gupta, Mr.Mahender Gupta and Mr.Surender Gupta are present, who have been identified by both the learned counsels.

6. All four of them, that is, the three partners of the plaintiff firm and the sole proprietor of the defendant firm affirm the settlement arrived at between the parties and pray that the suit be decreed in terms of the settlement.

7. Consequently, the suit is decreed in terms of the settlement arrived at between the parties. Decree sheet will incorporate the terms of the settlement.

8. In view of the suit having been decreed in terms of the settlement arrived at before the Delhi High Court Mediation and Conciliation Centre, the plaintiff who was exempted from filing the court fee within 72 hours of the resumption of the normal functioning of this court, is now exempted

from filing the court fee.

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1. Application is disposed of as infructuous.
2. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 27, 2020
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