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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 383/2019**
FENA PRIVATE LIMITED

..... Plaintiff

Represented by: Mr. Manish K. Mishra, Mr. Abhijeet
Rastogi, Advs.

versus

SAJU PATROS & ANR.

..... Defendant

Represented by: Mr. Anubhav Anand Pandey, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
31.01.2020

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1. The present suit has been filed by the plaintiff, inter alia, seeking a decree of permanent injunction against the defendants, their agents, dealers etc. from dealing in any hospitality service/ business or service or any goods/ service under the impugned trademark FENA or its logo/ domain name or any other trademark/ logo/ domain name which may be deceptively similar to the trademark FENA and logo and domain of the plaintiff's besides rendition of accounts, damages, etc.
2. During the pendency of the present suit parties have entered into a settlement before the Delhi High Court Mediation and Conciliation Centre. Copy of the settlement agreement dated 29th January, 2020 is taken on record.
3. Along with the settlement agreement James Veliyath the authorized representative of defendant No.1 has filed an affidavit indicating that

defendant No.2 Biju Peter is the younger brother of defendant No.1 Saju Peter and is not the owner of M/s. Fena Holiday Inn situated at Anaviratty Kochi Munnar State Highway, Kerala and the said hotel is owned by defendant No.1.

4. Parties have entered into a settlement on the following terms and conditions as noted in the settlement agreement as under:

- a) *The Second Party acknowledges that the First Party is the proprietor of the trade mark FENA and its logos and has acquired significant reputation and goodwill and also acknowledges the validity of the First Party's trade mark registrations mentioned in the plaint. The Second Party undertakes not to challenge the said right of the First Party in future.*
- b) *The Second Party undertakes that he has stopped using the trade mark/trade name FENA HOLIDAY INN as depicted in ANNEXURE-D and has changed the name of its hotel to 'ZYAIR INNRESIDENCY' as depicted in ANNEXURE-E.*
- c) *The Second Party undertakes that he and anyone acting for and on his behalf will not use or advertise the trade mark FENA of the First Party for any goods or services in any manner whatsoever or any other trade mark that may be deceptively similar to the trade mark FENA amounting to infringement of trade mark and passing off.*
- d) *The Second Party undertakes that no trade mark or copyright application has been filed for the registration of the mark FENA or any other mark deceptively similar to trade mark FENA. The Second Party further undertakes that he shall not apply for the registration of the trade mark FENA or any other trade mark/copyright deceptively similar to First Party's trade mark FENA and its logo and further undertakes to communicate to all the third party websites to remove any advertisement/ promotion for any goods and services bearing the trade mark FENA.*

- e) *All the aforesaid undertakings shall be binding on the Second Party and his officers, partners, assigns in business, legal heirs, successors, representatives, agents etc. and upon any business in which he is directly or indirectly involved.*
- f) *In view of the aforesaid settlement terms, the First Party agrees to forego its claims of damage, rendition of accounts, profits etc. against the Second Party in the instant suit as prayed in the prayer clause of the Plaint.*
- g) *The First Party shall pray before the Hon'ble Court to dispose of the present matter bearing CS (COMM) No. 383/2019 and pass decree on the terms of this present settlement agreement.*
- h) *The Hon'ble Court may be pleased to pass appropriate orders in view of this Settlement Agreement including refund of court fee under section 16 of the Court Fees Act, 1870.*

5. The settlement agreement is duly signed by Mr. Sachin Kumar, authorized representative of the plaintiff and Mr. James Veliyath, authorized representative of defendant No.1; authorization in whose favour is enclosed with the settlement agreement who are also present in Court and identified by the learned counsel and affirm the settlement.

6. The special power of attorney in favour of the two authorized representatives is also enclosed with the settlement agreement along with the photos of the hotel of the defendant No.1, name whereof has been changed to Zyair Inn Residency.

7. Consequently, the suit is decreed in terms of the settlement as noted above. The decree sheet will incorporate the terms of settlement

8. Court fees be returned to the authorized representative of the plaintiff. Registry will issue necessary certificate in this regard.

I.A. 10152/2019 (u/O XXXIX R 1&2 CPC)

Application is disposed of as infructuous.

MUKTA GUPTA, J.

JANUARY 31, 2020
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