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

+ CS(COMM) 645/2019 & IA No.16653/2019 (u/O XXXIX R-1&2 CPC)

SUNIL MITTAL & ANR. Plaintiffs

Through: Mr. Amit Tomar, Mr. Sudhir Balyan
and Mr. Chirag Rathor, Advs.

Versus

ANUP GUPTA & ANR. Defendants

Through: Ms. Shalini, Adv. for Mr. Ashish Rai,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.01.2020**

1. The plaintiffs have sued the two defendants, namely (i) Anup Gupta; and, (ii) M/s. DA'DARZEE for permanent injunction to restrain the defendants from infringing the trade mark 'THE DARZI' of the plaintiff and from passing off their tailoring services and tailored goods as that of the plaintiffs by using the word 'DA'DARZEE' or the mark DZINES AUF' DARZEE (DA'DARZEE).

2. The suit was entertained and while issuing the summons of the suit and notice of the application for interim relief, vide *ex-parte* order dated 18th December, 2019, the defendants restrained from using the trade name/trade mark 'DA'DARZEE', DZINES AUF DARZEE or any other mark similar or

deceptively similar to the trade mark/ trade mark 'THE DARZI' of the plaintiffs, including by use in web portal <https://da-darzee.business.site>.

3. Mr. Nikhil Bhardwaj, Advocate appeared for both the defendants before this Court on 29th January, 2020 and stated that Mr. Ashish Rai, Advocate is the Advocate for the defendants and had informed him that the matter can be resolved. Accordingly, the matter was posted for today.

4. Today, Ms. Shalini, Advocate appears on behalf of Mr. Ashish Rai, Advocate and states that Mr. Ashish Rai, Advocate is in Varansi, Uttar Pradesh and seeks an adjournment.

5. The defendants cannot be permitted to so make a mockery of the process of this Court. Mr. Ashish Rai, Advocate cannot practice in this Court by engaging proxy advocates and never appearing himself.

6. In any case, Mr. Nikhil Bhardwaj, Advocate on 29th January, 2020 stated that the matter can be resolved.

7. The defendants have not filed written statement till date.

8. The need to keep this suit pending is not felt.

9. The plaintiffs, on the pleadings and documents filed, are found entitled to the reliefs claimed of permanent and mandatory injunctions and of delivery, and in the face of the defendants not filing written statement, need to relegate plaintiffs to *ex-parte* evidence is not felt; the plaint is accompanied with affidavit of plaintiffs. The defendants having not opposed, need to proceed with suit for relief of damages, is not felt.

10. A decree is accordingly passed, in favour of the plaintiffs and jointly and severally against the defendants, (i) of permanent injunction in terms of prayer paragraph 36(A) of the plaint dated 13th December, 2019; (ii) of

delivery, in terms of prayer paragraph 36(B) of the plaint dated 13th December, 2019 including by directing the defendants to, within fifteen days hereof destroy all hoardings, labels, stationary and other materials containing the name/mark 'DZINES AUF DARZEE' or 'DA'DARZEE' or any other mark similar or deceptively similar to the mark 'THE DARZI' of the plaintiffs and by either changing the name of the web portal to some other name/address not containing any word similar or deceptively similar to the registered trade mark 'THE DARZI' of the plaintiffs or by surrendering the domain name of the said web portal and if the defendants fail to do so, the plaintiffs shall be entitled to communicate this order to the Registrar of Domain Names with whom the said web portal is registered, to block the said domain name/portal; and, (iii) by directing the defendants to withdraw Application No.4132702 filed for registration in Class 35 of 'DZINES AUF' DARZEE (DA'DARZEE)' and if the defendants fail to do so, by empowering the plaintiffs to apply to the Registrar of Trade Marks for dismissal of the said application.

11. The parties, in the circumstances, are left to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 31, 2020

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