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

+ **CS(COMM) 87/2019, I.A. 2333/2019 & I.A. 3492/2019**

ITC LIMITED

..... Plaintiff

Through: Mr. Rohan Swarup and Mr.
Sanyam Suri, Advs.

versus

AJIT TRADERS & ORS

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

04.10.2023

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1. The present suit stands decreed against all defendants except Defendant 18(C).

2. Defendant 18(C) has repeatedly been defaulting in appearance. On 28 March 2023, Defendant 18(C) was represented by one Mr. Keshav Singhal, Counsel. Mr. Singhal sought discharge from the proceedings, whereupon this Court directed him to file an appropriate application to that effect. No such application has been filed. Accordingly, by the order passed on 22 September 2023, this Court has proceeded on the premise that Mr. Singhal continues to represent Defendant 18(C).

3. As Defendant 18(C) was unrepresented either in person or through Counsel on 22 September 2023, this Court proceeded against



Defendant 18(C) *ex parte*.

4. The suit already stands decreed qua all the remaining defendants. Defendant 18(C) is stated to be a shopkeeper selling counterfeit “atta”, using the trademarks/logos “AASHIRVAAD” and “ITC” which stands registered as trademarks in favour of the plaintiff.

5. The prayer clause in the plaint reads thus:

“42. The Plaintiff above named therefore most respectfully prays that this Hon'ble Court be pleased to:

a. Pass a decree of permanent injunction restraining the Defendants, their proprietors, partners, directors, manufacturers, licensees, servants, agents, franchisees, dealers, retailers, distributors, or any one acting for and on their behalf in any manner from manufacturing or getting manufactured, selling, offering for sale, advertising "atta" or any other product under the impugned packaging (as depicted on Pg. No 10-13 of documents filed along with the plaint vide index dated 12.2.2019) or any other deceptively similar variant thereof, including by using the trademarks/logos "AASHIRVAAD", "ITC" and/or their derivatives/formatives, so as to result in violation of Plaintiffs statutory and common law rights thereby resulting in infringement, passing off, dilution etc.

b. Pass an order of seizure/ confiscation/ delivery up of all the infringing/counterfeit material (as depicted on Pg. No 10 - 13 of documents filed along with the plaint vide index dated 12.02.2019) or any other deceptively similar variant thereof, including by using the trademarks/logos "AASHIRVAAD", "ITC" and/or their derivatives/formatives and/or nearly identical/ deceptively similar trade-dress/ get-up/ lay-out of the Plaintiffs AASHIRVAAD Atta, including packaging material, bags, stationery, brochures, pamphlets, signboards, moulds, dyes, advertising materials, printing drums and any other material or printed matter bearing the impugned mark, or machinery used in manufacture of the counterfeit product



or the Impugned Packaging, for the purposes of destruction and erasure;

c. Pass an order restraining the Defendants from disposing of or dealing with their assets during the pendency of the present proceedings, until the damages claimed are recovered;

d. Pass a decree of damages at least to the tune of Rs. 5 crores payable by the Defendants;

e. An order for rendition of accounts of profits directly or indirectly earned by the Defendants, their partners, proprietors, servants, agents and all others in active concert or participation with them, from their infringing activities and wrongful conduct, in favour of the Plaintiff. The Plaintiff undertake to file additional court fee if any, on appropriate rendition of accounts by the Defendants, a higher amount is found to be due;

f. In respect of Defendants Nos. 7 to 10, Local Commissioners be appointed by this Hon'ble Court and be empowered to identify with the assistance of the Plaintiff, such manufacturers /wholesale traders /retailers who are manufacturing and/or selling counterfeit products (as depicted on Pg. No 10 - 13 of documents filed along with the plaint vide index dated 12.02.2019) or any other deceptively similar variant thereof, including by using the trademarks /logos "AASHIRVAAD", "ITC". On the basis of the report of the Local Commissioners, such Defendants, as identified by the Local Commissioners, in respect of whom the seizure has been effected, be served with the complete set of documents and pleadings filed before this Hon'ble Court along with the summons bearing only the heading "M/s _____" Such defendants may be allowed to defend the present suit just as any other named Defendants in accordance with law

g. Costs of the suit and damages be awarded;

h. Any such further order as this Court may deem fit and appropriate in the present facts and circumstances of the present case be passed in favour of the Plaintiff and against the Defendants."

6. Mr. Rohan Swarup, learned Counsel for the plaintiff does not



press for damages, but pleads that the suit may be decreed *qua* the prayer for injunction and that actual costs as incurred by the plaintiff may be awarded.

7. In the circumstances, the suit shall stand decreed, *qua* Defendant 18(C), in the following terms:

(i) There shall be a decree of permanent injunction restraining Defendant 18(C) as well as all others acting on its behalf from manufacturing, selling, offering for sale or advertising “atta” or any other product bearing the following packaging, or any other deceptively similar variant thereof, or from using the trademarks/logos “AASHIRVAAD”, “ITC” or any derivative thereof:



(ii) The plaintiff shall also be entitled to actual costs as incurred *vis-à-vis* Defendant 18(C).

8. Mr. Rohan Swarup submits that he has prepared a statement of costs which represents the costs incurred by his client to prosecute the



litigation against Defendant 18(C). I do not deem it necessary to enter into the examination of the said statement. Let this matter be listed before the Taxation Officer of this Court on 31 October 2023 in order to enable the plaintiff to satisfy the Taxation Officer regarding the actual costs incurred by the plaintiff *vis-à-vis* Defendant 18(C). If any such amount is determined, the plaintiff shall be entitled to a decree for payment of the said amount by Defendant 18(C) which shall be paid within a period of four weeks from the determination of the amount by the Taxation Officer.

9. No other relief is pressed by Mr. Rohan Swarup.
10. The suit stands decreed in the aforesaid terms *qua* Defendant 18(C).
11. Let a decree sheet be drawn up accordingly.

C.HARI SHANKAR, J

OCTOBER 4, 2023

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