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

+ **RFA(COMM) 287/2024**

SHIV SHAKTI INTER GLOBE EXPORTS PVT LTD.....Appellant

Through: Ms. Rajeshwari Hariharan & Ms.
Nupur Goswami, Advs.

Versus

SULSON OVERSEAS PVT LTD

.....Respondent

Through: Mr. Samir Sagar Vasistha, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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25.07.2024

CM No.39827/2024 (for condonation of delay)

1. This is an application seeking condonation of delay of fifty-four days in filing the rejoinder.
2. The learned counsel appearing for the respondent stoutly contests the same. He submits that the signatures of the person who has affirmed the rejoinder is materially different from the signatures appearing in the application.
3. In view of the above, we allow the present application with the clarification that all rights and contentions of the respondent, as regards the merits of CM No.43239/2023 are reserved.
4. The application is disposed of.

CM No.43239/2023

5. This is an application filed on behalf of the applicant/appellant, *inter alia*, praying as under:



- “(a) Recall the present appeal;
- (b) pass any other further order as this Hon’ble Court may deem fit and proper.”

6. The applicant/appellant essentially seeks recall of the order dated 25.03.2021, whereby the applicant / appellant’s application (CM No.12183/2021) for withdrawal of the appeal was allowed and the above-captioned appeal was dismissed as withdrawn.

7. The learned counsel appearing for the applicant / appellant submits that the applicant / appellant had withdrawn the above-captioned appeal on the basis of a settlement arrived at with the respondent. She further states that the respondent has now resiled from the said settlement. The said contention is stoutly disputed by the learned counsel for the respondent.

8. It is material to refer to the contents of the application (CM No.12183/2021) filed by the applicant / appellant for withdrawal of the above-captioned appeal. The same are set out below:

“1. That the Appellant herein had preferred the above-mentioned Appeal under Order XLI read with Section 96 of the C.P.C. against the judgment and decree dated 07.02.2020 passed by the Hon’ble District Judge (Commercial Court), Rohini, Delhi in CS(Comm) 293/2019 filed by the Respondent herein. By way of this judgment and decree, the Hon’ble Trial court has decreed the suit for permanent injunction from infringement of copyright and trademark, passing off etc. The appeal suit is pending adjudication before this Hon’ble Court.

2. That the Appellant has changed the impugned mark hence does not wish to pursue the matter any further against the Respondent and wishes to withdraw the present Appeal. Hence, the application.”

9. It is apparent from the above that the applicant / appellant had withdrawn the appeal on the ground that it had changed the mark and therefore did not wish to pursue the same. It is material to note that there was no reference in the aforesaid application of any settlement or of any



understanding on the basis of which the applicant / appellant had sought to withdraw the present appeal.

10. In view of the above, we find no ground to entertain the present application. The same is accordingly dismissed.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 25, 2024
'gsr'

Click here to check corrigendum, if any