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

+ **CS(COMM) 177/2017, I.A. 10718/2024 & I.A. 10719/2024.**

DOLPHIN MART PRIVATE LIMITED Plaintiff

Through: Ms. Anuradha Salhotra, Mr. Sumit
Wadhwa, Ms. Sharka Vijn, Advocates.

versus

AVENUE SUPERMARTS LIMITED & ANR.Defendants

Through: Mr. Guruswamy Nataraj, Mr.
Shashikant Yadav and Mr. Rahul,
Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
10.05.2024

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I.A. 10718/2024 (Application of withdrawal of suit)

1. This application has been filed under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (“CPC”) by plaintiff for withdrawal of suit.
2. In view of the facts stated in the application, the suit is dismissed as withdrawn.
3. Accordingly, the application is also allowed and disposed of.

I.A. 10719/2024 (Condonation of delay)

1. This application has been filed under Chapter IV Rule 3 (c) of Delhi High Court Original Side Rules, 2018 by plaintiff seeking condonation of delay of 18 days in re-filing the defective application.
2. In view of the facts stated in the application, the application is allowed



and delay of 18 days is condoned.

3. Application is disposed of.

I.A. 1842/2024 (Application seeking recompense of expenses incurred by defendant no.1 in pursuance of the present litigation).

1. This application has been filed by defendant no.1 seeking recompense of litigation expenses incurred by them in the said matter.

2. Mr. Nataraj, counsel for the defendant no.1, wishes to press this application stating that the withdrawal of the suit itself is a dishonest attempt by plaintiff to not continue a litigation, which they had themselves commenced six years back and which resulted in the defendant expending enormous resources.

3. The said suit has been filed on 06th March, 2017, alleging infringement of trademark registrations of the plaintiff, just two days before the defendant no. 1 was about to launch the IPO on 8th March, 2017. No *ex parte ad interim* relief was granted to the plaintiff on 07th March, 2017 and the suit was subsequently listed on 08th March, 2017.

4. Subsequently the matter was referred to mediation on 12th September, 2018, however, the mediation failed and the matter was reverted to the Court *vide* order dated 07th December, 2018.

5. Thereafter, *vide* common judgment dated 21st August, 2023, the Predecessor Bench disposed I.A. 2928/2017 and I.A. 7668/2022, wherein the application under Order XXXIX Rules 1 & 2, CPC was dismissed and the application under Order XI rule 1 (10) of CPC was allowed to take on record the Annual Report and the Trademark Registration of the defendant.

6. The plaintiff did not prefer any appeal against the said judgment. The



suit, however, has proceeded ahead and costs were imposed *vide* order dated 27th September, 2023 and there was a closure of right to file and lead evidence *vide* order dated 15th December, 2023.

7. Mr. Nataraj contends that they have been unnecessarily dragged to this Court and have expended enormous resources in respect of time and money for defending the said suit, which plaintiff now chooses to withdraw.

8. The litigation expenses as claimed are extracted below:

Litigation Expenses of Counsel on Record (LCGN)	Litigation Expenses of Arguing Counsel (Mr. J. Sai Deepak)
INR 16,01,622/- (Rupees Sixteen Lakh One thousand and Six hundred Twenty-Two Only)	INR 14,98,000/- (Rupees Fourteen Lakh and Ninety-Eight Thousand)

9. Supporting invoices have also been appended.

10. Accordingly, the claim is for a direction of costs in favour of the defendant.

11. It is however, noted that the plaintiff has sought to withdraw the suit on the ground that the Chairman and Founder of plaintiff, Mr. K.V. Rao, passed away on 29th August, 2022 and that has resulted, subsequently, in the halt in functioning of plaintiff company as well as the Dolphin Group of companies.

12. The plaintiff's company management is stated to be undergoing a complete restructuring process and decision making has been delayed.

13. The said averment has been made in application I.A. 10718/2024 and is supported by an affidavit of Mr. Lalit Kumar Sharma, the authorised representative of plaintiff.



14. Even though defendant may have had to spend time and cost to defend the litigation, in the opinion of this Court, a party which is choosing to withdraw its suit, for reasons stated above, cannot be burdened with costs for the mere reason that they instituted the suit presumably on the premise that they had faith in the cause of action that had accrued in their favour.

15. To impose cost at this stage would be discouraging parties to settle/withdraw the litigation during Court proceedings, which is not in consonance with the mandate of law encouraging resolution of disputes between the parties.

16. Not permitting withdrawal of the suit at this stage would result in unnecessary litigation going on ahead when the *dominus litus* itself does not wish to continue the same.

17. In this view of the matter, the claim for costs is not tenable, more so, when the trial has not started and the defendant has had success in avoiding any interim injunction order against them.

18. Therefore, this Court finds no merit in the instant application.

19. The application is accordingly disposed of.

I.A. 1439/2024 (Seeking dismissal of the plaint of plaintiff)

1. This application has been filed under Order XV-A Rule 8 of CPC filed by defendant no.1 is rendered infructuous in light of the above directions.

2. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 10, 2024/RK

Click here to check corrigendum, if any