



\$~17

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

+ **CS(COMM) 471/2017 & CC(COMM) 55/2017**

M/S HIMGANGA POLYMERS INDIA

.....Plaintiff

Through: Mr. Umesh Mishra and Mr. Amit
Kumar, Advs.
M: 8510062329

versus

M/S ADITYA POLYMER INDUSTRIES & ORS.Defendants

Through: Mr. Roshan Lal Goel, Mr. Bhuvan
Goel and Mr. Shubham Grover, Advs.
for D-5.
M: 9654169406

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
08.10.2024

%

1. The present suit has been filed seeking permanent injunction restraining infringement of trademark 'KISSAN' along with passing off of the trademark 'HIMGANGA' and rendition of accounts, delivery up, etc. against defendants.
2. This Court notes that defendant nos. 2, 3 and 4 have already been deleted from the array of parties.
3. The suit was decreed against defendant no. 5 vide order dated 29th January, 2024.
4. The present suit is pending only with respect to defendant no. 1. This Court notes that defendant no. 1 has not been appearing before this Court



since the last many dates. The last appearance on behalf of defendant no. 1 was on 2nd August, 2023.

5. This Court notes that the defendant no. 1 has also filed a counter claim, i.e., *CC(COMM) 55/2017*.

6. In view of the fact that there is no appearance on behalf of defendant no. 1 and the last appearance on behalf of defendant no. 1 being more than one year ago, the counter claim filed on behalf of defendant no. 1 is dismissed in default and for non-prosecution.

7. Vide order dated 29th January, 2024, learned counsel appearing for the plaintiff had been directed to take instructions if the relief qua defendant no. 1 be confined only to relief of injunction.

8. Today, learned counsel appearing for the plaintiff submits that he has sought instructions and he submits that the suit can be decreed against defendant no. 1 in respect of prayer Clause 31 (a) and 31 (b) of the plaint and that he does not insist for other reliefs against defendant no. 1.

9. This Court notes the written statement filed on behalf of defendant no. 1, wherein, defendant no. 1 has stated as follows:

“xxx xxx xxx

3.....

b. That Def. No. 1 has neither known Def. No. 4 prior to the institution of this suit, nor have they ever entered into any transactions of the goods claimed to be purchased by the plaintiff ever. Def. No. 1 vehemently denies having sold anything ever to Def. No. 4 on the basis of which present suit is relied upon. Hence the material claimed to be purchased by the Plaintiff was not manufactured by Def. No. 1. Therefore there is no cause of action against Def. No. 1 in any manner whatsoever; hence the suit is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure 1908.

.....



10. That Defendant No. 1 believes and declares that it does not use, in any manner whatsoever, the trademarks registered in the name of Mr. Vinay Garg, i.e. 'KISSAN' & 'HGP'.

xxx xxx xxx”

10. Considering the submissions made before this Court and taking into consideration the written statement filed by defendant no. 1, the suit is decreed in favour of the plaintiff and against defendant no. 1 in terms of prayer (a) and (b) of Para 31 of the plaint.

11. Decree sheet be drawn up.

12. The suit is accordingly disposed of.

MINI PUSHKARNA, J

OCTOBER 8, 2024

ak