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

+ **CS(COMM) 440/2019**

INTELLIGENT HOMEWARE & ORS.

.....Plaintiffs

Through: Mr. Abhijeet Rastogi and Ms. Diksha,
Advocates

versus

HIVELOOP TECHNOLOGY PRIVATE LIMITED & ORS.

.....Defendants

Through: Mr. Aditya Gupta and Ms. Aishwarya
Kane, Advocates for D-1
Mr. Sumit Roy and Mr. Sidharth
Mahajan, Advocates for D-2
(Through VC)

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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17.11.2025

I.A. 28463/2025 (Under Order XXIII Rule 1(3) CPC)

1. This is an application filed by the plaintiff under Order XXIII Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908 seeking leave to withdraw the suit with liberty to file a fresh suit vis-à-vis defendant nos. 1 and 2.

2. The relevant contents of the application read as under: -

“4. That during the pendency of the present suit the Plaintiffs examined the website - www.udaan.com/app of Defendant No. 1 to confirm if the Defendants continue to engage in the infringing activities of selling, supplying and distributing MILTON and SPOTZERO branded products. Upon examining the said website/app, the Plaintiffs observed that no listings of MILTON and SPOTZERO products were being offered, advertised or sold by Defendants therein.



5. In light of the above, it is submitted that the immediate cause of action on which the present suit was instituted no longer subsists. Hence, the Plaintiffs do not wish to pursue the present suit at this stage. The Plaintiffs, however, reserve their right to institute fresh proceedings in the event any infringing activity resumes or any new cause of action arises on the same subject matter. Therefore, the Plaintiffs seek liberty to file a fresh suit on the same subject matter upon accrual of a fresh cause of action in the future as permissible under Order XXIII Rule 1(3) CPC in the event the Defendants again commence the activity of selling, supplying and distributing MILTON and SPOTZERO branded products on their website/app or any other platform, either online or offline.

6. It is humbly submitted that since the infringing activities have ceased by the Defendants, the same constitutes sufficient ground to seek withdrawal of the present suit.”

[Emphasis Supplied]

3. Mr. Aditya Gupta, learned counsel for defendant no. 1 states that defendant no. 1 has already filed its written statement and pleaded its defence.

3.1. He states that he relies upon the contents of the written statement; however, defendant no. 1 has no objection to the suit being withdrawn.

4. Mr. Sumit Roy, learned counsel for the defendant no. 2 as well states that defendant no. 2 has already filed its written statement and taken its defence on merits; however, defendant no. 2 has no objection to the suit being withdrawn as prayed for.

5. Mr. Abhijeet Rastogi, learned counsel for the plaintiff states that defendant nos. 3 to 5 had entered appearance; however, they have since stopped appearing in this matter and he has instructions to also withdraw the suit *qua* the said defendants, with liberty in case any future infringing activities come to the attention.

5.1. He also prays that in view of the aforesaid, this Court be pleased to issue directions for refund of Court fees.



6. This Court has considered the submissions of the parties.

7. In view of the submissions made by the learned counsels for the plaintiff, defendant no. 1 and defendant no. 2, the captioned suit is dismissed as withdrawn vis-à-vis defendant nos. 1 to 5 with liberty reserved as prayed for in paragraph no. 5 of the captioned application, to be exercised in accordance with law.

It is clarified that the fresh suit as and when filed, will be decided on its own merits.

8. With respect to the prayer of the plaintiff vis-à-vis refund of Court fees, this Court finds no merit in the said submissions, as the suit was instituted in 2019 and continued to remain pending till date. Moreover, the withdrawal of the suit is also as per the discretion of the plaintiff and not due to any defect in the suit.

9. With the aforesaid directions, the application stands disposed of and the present suit is dismissed as withdrawn. Pending applications, if any, stand disposed of.

10. All future dates are cancelled.

11. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 17, 2025/rhc/MG