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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 85/2019
KISHAN CHAND GUPTA TRADING AS O.K. MASALA
COMPANY

..... Plaintiff

Represented by: Mr. S.S. Dahiya, Adv.

versus

KAMLESH TEA ESTATE PVT. LTD.

..... Defendant

Represented by: Mr. S.K. Bansal, Mr. Pankaj Kumar,
Adv.

+ CS(COMM) 95/2019
M/S KAMLESH TEA ESTATE PVT. LTD.

..... Plaintiff

Represented by: Mr. S.K. Bansal, Mr. Pankaj Kumar,
Adv.

versus

KISHAN CHAND GUPTA AND ANR.

..... Defendant

Represented by: Mr. S.S. Dahiya, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
29.11.2019

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1. The two suits are cross-suits by the parties each claiming injunction against the other and are listed for settling the issues. Learned counsels for the parties state that the talks of negotiated settlement between the parties did not fructify into a settlement and hence the suits are required to be



proceeded with.

2. On perusal of record and with consent of learned counsels for the parties, the issues in the two suits are settled as under:

- “i) Whether the plaintiff is the owner and proprietor of trademark OK for spices? (OPP)*
- ii) Whether the defendant is the owner and proprietor of the trademark OK for tea and spices? (OPD)*
- iii) Whether the plaintiff is infringing the trademark OK registered in favour of defendants under No. 621499 in class 30 and No. 1369886 in class 35? (OPD)*
- iv) Whether the defendant is passing off their spices as that of the plaintiff? (OPP)*
- v) Whether the plaintiff is passing off their species as that of the defendant? (OPD)*
- vi) Relief.”*

3. CS(COMM) 85/2019 is treated as the lead suit wherein evidence will be recorded and thus wherever the word plaintiff and defendant are used, it would relate to the plaintiff and defendant in CS(COMM) 85/2019.

4. List of witnesses and evidence by way of affidavit of the plaintiff's witnesses be filed within four weeks.

5. List of witnesses and evidence by way of affidavit of defendant's witnesses be filed within four weeks thereafter.

5. Learned counsel for the parties state that the evidence be directed to be recorded before the learned Local Commissioner to expedite the recording of evidence and each party will bear the expenses of recording of their witnesses.

6. Mr. H.S. Sharma (Retd. District Judge, Mob: 9910384647) is appointed as the Local Commissioner. The learned Local Commissioner



will be paid ₹20,000/- for examination per witness to be borne by the respective party, whose witness is to be examined plus the other expenses to be borne by the respective parties. Learned Local Commissioner is requested to expedite the recording of the evidence.

7. List before the learned Local Commissioner for fixing the dates of trial on 7th January, 2020.

8. List before the Court for monitoring the progress in recording of the evidence on 24th April, 2020.

I.A. 2310/2019 (u/O XXVI R 9 CPC) in CS(COMM) 85/2019

1. Learned counsel for the plaintiff seeks leave to withdraw the application as the same has rendered infructuous.

2. Application is dismissed as withdrawn.

I.A. 2311/2019 & I.A. 2312/2019 (u/S 151 CPC) in CS(COMM) 85/2019

Since the time for filing the original documents or legible copies is over, the applications are dismissed as infructuous.

I.A. 3484/2019 (u/S 151 CPC by D) in CS(COMM) 85/2019

1. By this application the defendant has pleaded that he is not filing the documents which have already been filed by the plaintiff, he be thus exempted. Learned counsel for the defendant states that the defendant relies upon the document of the plaintiff which have been admitted by the defendant. Learned counsel for defendant further states that since he has filed the document along with the suit CS(COMM) 95/2019 he is not filing the document along with the written statement and thus be exempted from filing.

2. The defendant would thus be permitted to rely upon the documents filed by the defendant in CS(COMM) 95/2019. Since both the suits are



cross-suits, parties are permitted to rely upon the documents filed by each of the parties in the two suits for decisions in the two suits.

I.A. 2309/2019 (u/O XXXIX R 1&2 CPC) in CS(COMM) 85/2019

I.A. 2645/2019 (u/O XXXIX R 1&2 CPC) in CS(COMM) 95/2019

List on 28th April, 2020.

MUKTA GUPTA, J.

NOVEMBER 29, 2019

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