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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 271/2018 with I.A. 23635/2014

SOCIETE DES PRODUITS NESTLE,S.A & ANR Plaintiffs

Through: Mr. Manish Kumar Mishra, Mr.Abhijeet
Rastogi and Ms.Akansha Singh,
Advocates (M-9438804704)
Versus

MOHD ZAHID AND SONS & ORS Defendants

Through: Mr. Mehmood Pracha and Mr.Prateek
Gupta, Advocates.
Mr. Saket Singh, ASC of Bihar.
Mr. Devesh Singh, ASC GNCTD
(Civil) with Ms. Sukriti Ghai
Mr. Akshay Makhija, Advocate (CGSC)
with Mr. Ankit Tyagi, Advocates.
Mr. Bharat Bhadha, Advocate for D-65,
66, 67, & 116.
Mr. Sunil Dutt Dixit, Advocate for D-76.
Mr. Prateek Gupta, Advocate for
FSSAI.
Mr. Puneet Jain, Advocate for D- No.
123 & 124.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.11.2019

I.A 15560/2019 (under section 151 of the CPC on behalf of defendant Nos.65,66 &67 for depositing a sum of ₹6000/- in compliance of the order passed by the Hon'ble Court on 17.01.2018)

1. Issue notice. Learned counsel for the plaintiffs accepts notice. By consent of the parties, the application is taken up for disposal.



2. This application is filed by the defendant Nos. 65 to 67, pursuant to the decree dated 17.01.2018. It is stated that, in accordance with the decree, the said defendants have filed undertakings to abide by the terms and conditions contained in paragraph 40 (a) to 40 (c) of the plaint. The said defendants have also stated that they have deposited demand drafts of ₹6000/- each with the Registrar General, in compliance with the decree.

3. Taking the aforesaid on record, the application is disposed of.

I.A 15561/2019 *(under Section 151 of the CPC on behalf of defendant No. 116 for depositing a sum of ₹ 6000/- in compliance of the order passed by this Hon'ble Court dated 17.01.2018 alongwith supporting documents.)*

1. Issue notice. Learned counsel for the plaintiffs accepts notice. By consent of the parties, the application is taken up for disposal.

2. The suit concerns several defendants who are alleged to be dealing in counterfeit products representing them to be Nescafe Coffee manufactured by the plaintiffs. In respect of several defendants, the Court passed a summary judgment dated 17.01.2018, on the said defendants' undertaking that they will abide by the terms contained in paragraph 40(a) to 40(c) of the plaint, and depositing costs of ₹6000/- each with the Registrar General of this Court.

3. By this application, counsel for defendant No. 116 states that he is willing to suffer a decree in similar terms. Learned counsel for the plaintiffs states that the plaintiffs are agreeable to the disposal of the suit against the defendant No. 116 on these terms.

4. The application is accompanied by an affidavit of defendant No. 116 *inter alia* recording that he undertakes to abide by the terms and



conditions of paragraph 40(a) to 40(c) of the plaint.

5. Consequently, a decree is passed against the defendant No. 116 in terms of the paragraph 40 (a) to 40 (c) of the plaint. A decree in the sum of ₹6000/- is also passed against the said defendant. Decree sheet shall be prepared accordingly.

6. Learned counsel for defendant No. 116 further states that demand draft of ₹6000/-, in favour of the Registrar General of this Court, will be deposited within one week. Deposit will be on the same terms as contained in the judgment dated 17.01.2018.

7. The application stands disposed of in terms of the above.

I.A. 15411/2019 (Application on behalf of the Plaintiffss Under Order I Rule 10(2) and Order V Rule 9A of the CPC, 1908)

1. This application is for impleadment of additional defendants. It is submitted by Mr. Manish Kumar Mishra, learned counsel for the plaintiffs, that the proposed defendants have been identified by reason of further raids conducted pursuant to the orders dated 28.11.2014 and 10.04.2017. The Local Commissioner appointed by this Court has seized counterfeit Nescafe coffee from the premises of the proposed defendants.

2. Accordingly, the seven persons mentioned in the table, which forms part of paragraph 10 of the application, are impleaded in this suit as defendant Nos. 128 to 134.

3. The application is allowed in the aforesaid terms.

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1. By the order dated 19.08.2019, bailable warrants were issued against Mr. Vishal Gupta (defendant No. 124) and Mr. Anuj Singhal (defendant No. 123), as they were not present despite a specific order of the Court, and were not represented by counsel on that date. Mr. Puneet



Saini, learned counsel appears on their behalf and submits that their non-appearance on 19.08.2019 was due to an inadvertent error in recording the date of hearing. Mr. Vishal Gupta and Mr. Anuj Singhal are also present in person. They undertake that they shall be present in Court as and when directed. The bail bonds are discharged.

2. Against several defendants, a decree was passed by way of a summary judgment dated 17.01.2018. Those defendants were to file undertakings stating that they will not deal in the counterfeit products of the plaintiffs, and also pay damages of ₹6000/- each. Mr.Saini submits that defendant nos. 123 and 124 are also willing to suffer a decree in the same terms. However, Mr. Mishra, learned counsel for the plaintiffs, submits that as far as these defendants are concerned, the plaintiffs apprehend that they are, in fact, involved in manufacturing/wholesale dealing of the infringing product, unlike the small retailers, in respect of which the summary judgment was rendered. The plaintiffs therefore wish to proceed to trial against defendants Nos. 123 & 124. Written statements have already been filed. In such an event, there is no necessity of recording their statements at this stage, as the plaintiffs are not inclined to disposal of the suit on a summary basis against these defendants.

3. Mr. Saket Singh, learned Additional Standing Counsel for the State of Bihar, has produced a status report dated 05.11.2019 pursuant to the order dated 19.08.2019. Mr. Kaushal Kishore, Additional Secretary (Health), Government of Bihar, who is also the Nodal Officer [Food Safety Programme] Bihar, has signed the status report, and is also present in the Court.

4. In the order dated 19.08.2019, this Court noted that the Local

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Commissioner had reported that two persons Mohd. Sonu and Mohd. Shauket had been identified and taken into custody by the local Police. A complaint dated 10.12.2016 by Anjani Kumar, Field Officer of Brand Protection Services Pvt. Ltd., was annexed to the Local Commissioner's report, which contained an endorsement to the effect that Case No. 572/2016 had been registered against the said defendants on 10.12.2016 under Sections 420/467/468/120(b) of the Indian Penal Code, 1860, Sections 103 and 104 of the Trade Marks Act, 1999, and Section 63 of the Copyright Act, 1957, in Agamkuan Police Station. The endorsement was purportedly signed by the SHO of Agamkuan Police Station and also bears a stamp of the said Police Station. In the status report, however, a report of the SSP, Patna, has been annexed, from which it appears that no such case was in fact registered in Agamkuan Police Station on that day. It has been stated that on 10.12.2016, only two FIRs were registered, being Nos. 430/2016 and 431/2016. In fact, according to the said report, a total of only 456 FIRs were registered in the said Police Station in the entire year 2016. It is further stated that SI Bhanu Pratap Singh, who was entrusted with the investigation in terms of the endorsement on the complaint, was not posted at the said Police Station. The SHO, as on 10.12.2016, was one Inspector Kamakhya Narayan Singh. Learned ASC states that the concerned authorities of the State of Bihar will be investigating the matter further, and that they will take necessary action, in accordance with law, pursuant to their investigation.

5. Although Mohd. Sonu and Mohd. Shauket are arrayed in the suit as defendants No.102 and 103, there is no appearance on their behalf. The



State of Bihar will take necessary actions in terms of the aforesaid submission of learned ASC for the State of Bihar. The status report may be filed in the registry within one week alongwith translated copies of the documents which are in Hindi. Further, the personal presence of Mr. Kaushal Kishore is dispensed with on his undertaking that shall remain present as and when required by the Court.

6. In accordance with the order dated 19.08.2019, an affidavit has also been filed by the Deputy Secretary, Ministry of Health and Family Welfare, dated 04.11.2019. It is stated that a meeting was held by the Secretary and other senior officers of Ministry of Health and Family Welfare, the Food Safety Standards Authority of India (FSSAI) and the Ministry of Home Affairs on 23.10.2019, with the concerned Principal Secretaries of the States and Union Territories. Issue of counterfeit food products was discussed and an advisory dated 25.10.2019 has also been issued to the States and Union Territories in this regard. Learned counsel for the Union of India and the FSSAI assure the Court that the concerned authorities continue to take active measures in this regard. Mr. Mishra states that the plaintiffs wish to make further suggestions to the FSSAI in this regard, which the plaintiffs are at liberty to do.

7. The amended memo of parties filed with I.A.15411/2019 having been taken on record, summons be issued to the newly impleaded defendant Nos. 128 to 134.

8. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiffs, failing which the written statements shall not be



taken on record.

9. The plaintiffs are at liberty to file a replication thereto within fifteen days after filing of the written statements. The replication shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replication shall not be taken on record.

10. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

11. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

12. List before the Joint Registrar for completion of service and pleadings between the remaining defendants on 17.01.2020.

13. List before the Court on 19.03.2020.

14. Interim orders to continue.

PRATEEK JALAN, J

NOVEMBER 07, 2019

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