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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 271/2018

SOCIETE DES PRODUITS NESTLE,S.A & ANR

..... Plaintiff

Through: Mr.Manish Kumar Mishra,
Ms.Akansha Singh, Mr.Srinivas
Venkat, Advocate

versus

MOHD ZAHID AND SONS & ORS

..... Defendant

Through: Mr.Saket Singh, Standing Counsel,
Ms.Akanksha Kapoor, Advocates
for State of Bihar
Mr.Rakesh Chaudhary, Mr.Vijay
Jakhwal, Advocate for FSSAI
Mr.Kanishk, Adv.for D-128(VC)
Mr.Pratyush Rao, Adv.for D-133
Mr.Sandeep Vishnu, Ms.Tanvir
Sharma, Advocate for D-134.
Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocates for
UOI / Ministry of Health &
Family Welfare.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. PURSHOTAM
PATHAK (DHJS)**

ORDER

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17.11.2022

**I.A. 18561/2022 filed by plaintiff under Order I Rule 10 (2)
and Order V Rule 9A CPC for impleadment of additional
defendants (D-I35tol42) pursuant to orders dated 28.11.2014
and 10.04.2017 passed by the Hon'ble Court.**

Vide this order, I shall dispose of the present application
filed by plaintiff under Order 1 Rule 10 (2)& Order 5 Rule 9 A
CPC for impleadment.

The learned counsel for plaintiff has submitted that the
Hon'ble Court vide its order dated 28.11.2014 granted an *ex-
parte* ad interim injunction against the Defendants restraining the



Defendants herein and other John Doe Defendants” from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in counterfeit NESCAFÉ products. It is further submitted that the Hon’ble Court *vide* its order dated 28.11.2014 which was further extended by its order dated 05.02.2015 also appointed Local Commissioners to visit the premises of the Defendant nos. 1 to 3 and make shift locations of unnamed and undisclosed persons at Delhi or elsewhere or such other places which may be pointed out by the representatives of the Plaintiffs. It is submitted that *vide* the said order the Hon’ble Court also directed impleadment of such undisclosed persons against whom the commission has been executed and from whose premises the counterfeit NESCAFÉ goods have been seized.

It is submitted that pursuant to the search and seizure operations conducted at various places the parties mentioned in the schedule annexed with the application are ought to be impleaded as the Co-Defendants no. 135-142 in the present suit.

I have heard the arguments and perused the record.

The relevant extracts from the said order dated 28.11.2014 are reproduced herein below:

“...The Local Commissioners shall also visit the premises of defendant Nos. 1 to 3 and make-shift locations of such unnamed and undisclosed persons at any place, which may be pointed out by the representatives of the plaintiff to the Local Commissioners. The Local Commissioners will seize and take into possession the counterfeit NESCAFÉ products bearing the plaintiff’s trade mark NESCAFÉ or RED MUG logo and make a list of particulars of those persons with their identification proof, if possible, found in possession of such counterfeit products.... It is made clear that the moment the goods are seized by the Local Commissioners, the order of injunction passed today would operate upon the said persons, who then be impleaded by name as defendants to the present proceedings.”



The plaintiff has stated that the proposed defendants are persons against whom the commission has been executed and from whose premises the counterfeit NESCAFÉ goods have been seized.

In view of the submissions of learned counsel for applicant and pursuant to order dated 28.11.2014 and order dated 05.02.2015 the application is allowed and the parties mentioned in the application are impleaded as defendants no. 135 to 142.

Amended memo of parties is taken on record.

I.A. stands disposed of.

Registry is directed to do the needful.

Copy of order be given dasti.

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Vide order dated 17.01.2018 the Suit has been decreed against defendant no. 1 to 55, 57, 58, 60 to 62, 64 to 75, 81, 83, 84, 87 to 91, 93, 95 to 97 and vide order dated 07.11.2019 against defendant no. 116.

Ld. Counsel for defendant no. 128 submits that he has still not received the Ld. Local Commissioner's report. Let the same be supplied to him during the course of the day on the e-mail ID provided by him today.

Ld. Counsel for defendant no. 133 submits that he has moved an application vide diary no. 1884480/2022 under section 151 CPC for suffering a decree against defendant no. 133. However, same has not come on record. Let the Ld. Counsel to check with Registry and take steps to bring the same on record.

Ld. Counsel for defendant no. 134 submits that she has already filed the written statement and it has been wrongly



mentioned in the previous order sheet that defendant no. 134 has not filed the written statement. Anomaly in the said order sheet stands rectified.

Written statement not filed by defendant no. 56, 59, 63, 76 to 80, 82, 85, 86, 92, 98 to 127, 128 to 133 despite service. Sufficient opportunity had already been given to the said defendants to file written statement. Hence, the rights of defendant no. 56, 59, 63, 76 to 80, 82, 85, 86, 92, 98 to 127, 128 to 133 to file written statement is hereby closed.

Ld. Counsel for the plaintiff submits that he does not wish to file any replication qua the written statement of defendant no. 134. In view of his submissions, pleadings between plaintiff and defendant no. 134 stands complete.

Let summons be issued to newly added defendant no. 135-144 on filing of PF through all modes excluding dasti service, returnable on 10.01.2022.

**PURSHOTAM PATHAK (DHJS),
JOINT REGISTRAR (JUDICIAL)**

NOVEMBER 17, 2022/sk

[Click here to check corrigendum, if any](#)