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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 271/2018, I.As. 23635/2014, 10880/2015, 716/2018 & 12272/2018**

SOCIETE DES PRODUITS NESTLE,S.A & ANR Plaintiffs

Through: Mr. Hemant Singh, Ms. Mamta Jha,
Mr. Manish K. Mishra and Ms.
Akansha Singh, Advocates.
(M:9438804704)

versus

MOHD ZAHID AND SONS & ORS Defendants

Through: Mr. Madhu Mukul Tripathi, Advocate
for D-96. (M:9650001599)
Mr. Ajay Kumar Chopra, Advocate
for D-105 to 108. (M:9811104015)
Mr. Bharat Chadha proxy counsel for
Mr. Shankar Kumar Sen, Advocate
for D-116. (M:7217631427)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% 03.10.2018

I.A. 12271/2018

1. The present application has been filed on behalf of Defendant No.96, M/s. Aggarwal Brothers, Shop No.2206/7, Moti Chowk, Rewari, Haryana. The applicant submits that they are small shopkeepers and had no knowledge that the products found in his shop were counterfeit. He has submitted in the application as under: -

“2. That the Applicant is a small trader and had been selling the goods in good faith having no knowledge of them being counterfeit. The goods were being supplied by a wholesaler whom the Applicant believed to be the



Plaintiffs authorised stockist/agent.

3. That upon coming to know of the goods being counterfeit, the Applicant not only immediately stopped selling the goods but also fully cooperated with the Plaintiff in taking action against the real culprits.

4. That by its order dated 17th January 2018, this Hon'ble Court accepted the apology of some of the similarly situated Defendants subject to such defendants filing an affidavit undertaking to abide by the terms and conditions of paragraph 40 (a) to (c) of the plaint and also paying a sum of Rs.6000 as damages."

2. Learned counsel for the Plaintiffs has no objection if a similar order as was passed on 17th January, 2018, in respect of other defendants, is passed even in respect of the present applicant. Accordingly, the Applicant's undertaking that it would not sell any counterfeit NESCAFE products is accepted by the Court. The suit is decreed in terms of paragraph 40(a) to (c). The applicant shall pay a sum of Rs.6,000/- within six weeks with the Registrar General of this Court, in the same terms, as directed in order dated 17th January, 2018. Decree sheet be drawn.

I.A. 12018/2018 (u/O I RULE 10 (2) & u/O V Rule 9A CPC)

3. All the parties mentioned in this application are impleaded as Defendants in the suit. Let summons and notices be issued to them, returnable on 14th November, 2018. I.A. is disposed of.

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4. Learned counsel appearing for Defendant Nos. 105 to 108 submits that repeated notices and summons are being issued despite the fact that they have already complied with the order dated 17th January, 2018. Registry to



ensure that no further summons/notices issued to any of the Defendants who have already submitted their undertakings and deposited Rs.6,000/-. Since the Defendants have agreed to abide by the same terms as contained in the order dated 17th January, 2018 and also submit that they have deposited Rs.6,000/- for each of the same with the Registrar General, a decree would be passed in respect of the said Defendants as well in terms of order dated 17th January, 2018. Decree sheet be drawn as per paragraph 40(a) to (c) in the plaint in respect of Defendant Nos.105 to 108.

5. Mr. Bharat Chadha, on behalf of Defendant No.116 has put in appearance and submits that he would be taking steps on behalf of his client shortly for filing affidavits and vakalatnama. Defendant No.116 to file an affidavit explaining the source of the products which were recovered from his shop before the next date of hearing.

6. Learned counsel for the Plaintiff may prepare a chart in order to show as to what was the recovery made from each of the Defendants as per the amended memo of parties annexed with I.A. 12018/2018.

7. Defendants Nos.56, 59, 63, 76 to 80, 82, 85, 86, 92, 98 to 112, **113 to 117 (newly added defendants)** are directed to file an affidavit disclosing the source of the Nescafe Coffee products which were recovered from their premises by the Local Commissioner within four weeks.

8. List on 14th November, 2018. Interim orders to continue.

PRATHIBA M. SINGH, J.

OCTOBER 03, 2018

Rekha