



\$~5(Original Side)

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

+ **CS(COMM) 647/2019, I.A. 3380/2020 & 10540/2020**

ITC LIMITED

..... Plaintiff

Through: Mr. Sudeep Chatterjee, Ms. Nupur
Lamba, Mr. Kiratraj Sadana, Ms.
Siddhi Gautam, Advs.

versus

RAJ KUMAR MITTAL & ORS.

..... Defendants

Through: Ms. Kruttika Vijay, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **09.02.2021**

(Video-Conferencing)

I.A. 10540/2020 (Under Section 151 of CPC - for allowing the Defendant No. 1 to use the new design/label for the purpose of selling the products in compliance of the order dated 28.11.2019)

1. This application essentially concerns the plaintiff and does not affect Defendant Nos. 3,4 & 5.

2. No reply, to this application, has been filed by the plaintiff till date.

3. Accordingly, the right of the plaintiff to file a reply to this application stands forfeited in accordance with the order dated 10th December, 2020.

4. In as much as the prayer in the application, at the instance of Defendant No. 1, is to allow Defendant No. 1 to manufacture and market its products in packages which, according to Defendant No. 1, are non-CS(COMM) 647/2019

Page 1 of 3



infringing in nature, Mr. Chatterjee, learned counsel for the plaintiff, requests learned Counsel for Defendant No. 1 to email to him a clearer copy of the new packaging, in which Defendant No. 1 proposes to manufacture its goods, before addressing submissions on this application.

5. Mr. Rustagi, learned counsel for Defendant No. 1, fairly, agrees to e-mail to Mr Chatterjee, immediately, a clear copy of the allegedly non-infringing new package in which it proposes to manufacture and clear its product.

6. Accordingly, re-notify for hearing and disposal of the application on 17th February, 2021.

7. The Registry is directed to list CCP (O) 9/2020 on the next date of hearing, i.e. 17th February, 2021.

I.A. 3380/2020(Under Order I, Rule 10 read with Section 35 & 151of CPC)

1. Mr. Sudeep Chatterjee , learned counsel for the plaintiff, submits that this application could be decided without requiring any reply to the said I.A..

2. This is an application by Defendant No. 5 in the suit, seeking deletion from the array of parties.

3. Ms. Kruttika Vijay, learned counsel for the applicant / Defendant No. 5, sets out that Defendant No. 5 has, even as per the averments in the plaint, been impleaded only so as to ensure implementation of the directions sought
CS(COMM) 647/2019



by the plaintiff, in as much as one of the reliefs in the plaint is for issuance of “an order directing Defendant No. 5 to take-down any listing of Impugned Products or deceptive variants thereof, which are identical/similar to the plaintiffs “AASHIRVAD atta”, within 48 hours of so being notified by the plaintiff.”

4. Ms. Vijay, undertakes, on behalf of her client, that her client would abide by any order which this court may pass in this matter and that there is no necessity for her client to continue to remain a party in this case, as there is no *lis* between the plaintiff and her client.

5. Mr. Chatterjee, learned counsel for the plaintiff, in view of the said undertaking by Ms. Vijay, has no objection to the deletion of Defendant No. 5 from the array of parties, subject to Defendant No. 5 complying with any directions that this court may pass in the present proceedings.

6. Recording the aforesaid undertaking given on behalf of Defendant No. 5 by Ms. Vijay, I am of the opinion that the prayer for deletion of Defendant No. 5 from the array of parties is justified.

7. Accordingly, Defendant No. 5 stands deleted from the array of parties in the suit. The application is accordingly allowed.

8. The plaintiff is directed to file an amended memo of parties, within a period of one week from today.

C.HARI SHANKAR, J

FEBRUARY 9, 2021^{ss}

CS(COMM) 647/2019

Page 3 of 3