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

+ **CS(COMM) 700/2019**

XIAOMI TECHNOLOGY INDIA PRIVATE

LIMITED & ANR.

..... Plaintiffs

Through: Mr. Peeyoosh Kalra, Mr. C.A. Brijesh
& Mr. Dhruv Grover, Advs.

Versus

WWW.XIAOMI-INDIA.XYZ & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.12.2019

IA No.17947/2019 & 17948/2019 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CS(COMM) 700/2019, IA No.17945/2019 (under Order XXXIX Rules 1&2 CPC and IA No.17946/2019 (under Section 80(2) read with Section 151 of the CPC).

1. The plaintiffs have instituted this suit titled "Xiaomi Technology India Pvt. Ltd. & Anr. Vs. www.xiaomi-india.xyz & Ors." seeking to restrain as many as 33 defendants, besides defendants no.34-63 Ashok Kumars from infringing the trade marks "XIAOMI", "MI" and "REDMI" and for ancillary reliefs.
2. It is the contention of the plaintiffs that the defendants are rogue websites / domain names and their registrant(s) are under-selling the plaintiffs' products, recruiting dealers for the plaintiffs and not even delivering the goods after receiving the payments.

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3. The counsel for the plaintiffs agrees that there can be no restraint against the defendants re-selling the goods of the plaintiffs or even under-selling the same.
4. For the grievance of non-delivery and for falsely portraying entitlement to be recruiting dealers for products of the plaintiffs, action for infringement of trade mark and ancillary reliefs, as sought, does not lie.
5. Attention of the counsel for the plaintiffs has also been drawn to the fact that a seller of plaintiffs' goods, to market the said goods, has to necessarily use the trade marks of the plaintiffs to let the prospective consumers know of the goods offered being of the plaintiffs.
6. The counsel for the plaintiffs contends that the defendants in their domain name are however not entitled to use the trade marks/trade name of the plaintiffs and even if re-selling the goods of the plaintiffs or giving information relating to enrolment as dealers of the plaintiffs, are required to have a domain name minus the trade names of the plaintiffs.
7. The counsel for the plaintiffs seeks time to show the **Yahoo** judgment.
8. As far as the contention, of the defendants representing themselves to be the authorized dealers of the plaintiffs is concerned, the same would also not fall in the domain of infringement of trade mark.
9. The counsel for the plaintiffs to show law on the said aspect also.
10. List on 23rd December, 2019.

RAJIV SAHAI ENDLAW, J

DECEMBER 18, 2019

'gsr'..

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