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

% *Date of Judgment: 19<sup>th</sup> February, 2018*

+ **FAO(OS) (COMM) 31/2018**

**GCMC GAAY CHHAP MASALA COMPANY** ..... Appellant

Through Mr. S.K. Bansal, Mr. Pankaj Kumar,  
Mr. Kapil Kumar Giri & Mr. Vinay  
Kumar Shukla, Advocates.

versus

**M/S RADHA KISHAN GOBIND RAM LTD** ..... Respondent

Through Mr. Sanjeev Singh with Mr. Vikas  
Aggarwal, Director.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J. (ORAL)**

**CM.APPL 6329/2018 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

**FAO(OS) (COMM) 31/2018**

3. Present appeal is directed against the order dated 12.01.2018, passed by a learned Single Judge of this Court in CS (Comm) 28/2018, by which an *ex-parte ad interim injunction* was granted in favour of the respondent herein (plaintiff in the suit). While passing the impugned order, a local Commissioner was also appointed for search and seizure of the impugned goods.
4. The appellant is also aggrieved by the order dated 31.01.2018 by which the application filed by the appellant under Order XXXIX Rule 4 CPC was adjourned for 13.03.2018, however, a leave was granted to the appellant for removal of spices from the seized packaging.
5. The brief facts of the case are that the respondent herein has filed a suit, being CS (Comm) No.28/2018, seeking permanent injunction

restraining infringement of trademark and copyright, passing-off of trademark, damages and renditions of accounts, etc., with respect to the trade mark GAI CHAAP in relation to all types of spices, edible oils, flour and/or related goods. The bone of contention between the parties is the use of the word 'GAI CHHAP' and the device of a cow.

6. By the impugned order dated 12.01.2018, while appointing a local Commissioner, the appellant herein (defendant before the learned Single Judge) was restrained from using, marketing, selling, offering for sale, advertising or displaying directly or indirectly or dealing in any other manner or mode in relation to trade and business of all types of spices, edible oils, flour and related goods/products under the impugned trade mark GCMC and GCMC GAAY CHAAP LABEL and the trade mark/label/packaging/trade dress GCMC and GCMC GAAY CHAAP and trade name Gai Chhap Masala Co. or any other trade mark/trade name/label/packaging/trade dress similar to the plaintiff's trade mark/label/packaging/trade dress GAI CHAAP in any manner whatsoever.
7. Today, after some hearing in the matter, counsel for the parties, on instructions, had expressed a desire to enter into an amicable settlement. The matter was passed over once to enable the counsel for the parties to discuss the terms of settlement with their respective parties.
8. At the second call, we are informed that the parties have arrived at an amicable settlement. Mr.Sachin Gupta, Constituted Attorney of appellant company, is present in Court, who submits that he is duly authorised and competent to enter into an amicable settlement. One of

the Directors of the respondent (plaintiff in the suit), Mr. Vikas Aggarwal, is also present in Court, who submits that he is duly authorised and competent to enter into an amicable settlement. Both the parties submit that they have carefully understood the terms of settlement and they have arrived at the settlement out of their own free will and without any coercion or duress of any kind. As per the parties, the agreed terms of settlement are as under:

- (i) The appellant (defendant in the suit) shall not use the word 'GAI CHHAP' in any form whether as 'GAI' or 'GAAY' on their packaging material and part of the trade name.
- (ii) It is, however, agreed that the appellant-defendant in the suit would continue to use 'the device of cow' as depicted in the present packaging.
- (iii) The appellant submits that all the materials containing the word 'GAI CHHAP' would be destroyed but the appellant/defendant would be free to remove the spices from the packaging within a period of two weeks in the presence of a representative of the respondent herein.
- (iv) The rectification petition filed by the respondent/plaintiff in IP Appellate Board for the removal/cancellation of the trademark 'GCMC LABEL' with device of cow registered under no.3531286 in class 30 would be withdrawn within two weeks.
- (v) CS (COMM) 28/2018 be decreed in terms of the settlement.

9. The Constituted Attorney of the appellant and the Director of the respondent pray that CS (Comm) No.28/2018 may be decreed as per the above agreed terms of settlement arrived at between them and they shall be bound by the terms of settlement.
10. Accordingly, having regard to the facts that the parties have arrived at an amicable settlement, CS (Comm) No.28/2018 filed by the respondent herein stands decreed in view of above agreed terms of settlement. The date fixed for 13.03.2018 also stands cancelled. Parties shall be bound by the above terms of settlement. Let a decree sheet be drawn up accordingly.
11. Since the matter has been settled through mediation, the respondent herein (plaintiff in CS (Comm) No.28/2018) would be entitled for refund of Court fee. Let a necessary certificate be issued in this regard.
12. In view of above, no further orders are required to be passed in the present appeal and the same stands disposed of.
13. Parties shall append their signatures on each page of the order as token of acceptance.

**CM APPL 6328/2018 (stay)**

14. The application stands disposed of in view of the order passed in the appeal.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**FEBRUARY 19, 2018/ck/**