

(2006) 01 DEL CK 0038

In the Delhi High Court

Case No : CS (OS) No. 310 of 2004 and is No. 822 of 2006

Hindustan Pencils Ltd.

APPELLANT

Vs

Zebra Industries

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (2006) 01 DEL CK 0038

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant; P.K. Jain, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

IA No. 822/2006 (O-XXIII, R-3 CPC) IN CS (OS) No. 310/2004

1. The plaintiff has filed a suit for permanent injunction, infringement of copyright, passing off, delivery up, rendition of accounts, etc. in respect of the packaging (Annexure - X), which is stated to be a substantial reproduction of the plaintiff's packaging (Annexure - E). The packaging is known as ZEBRA SCALE 15 CM.

2. The parties have now settled their disputes and have filed a compromise application.

3. In terms of the application, the defendant has admitted and confirmed that plaintiff is the owner of the packaging carton of NATRAJ SCALE 15 CM (Annexure - E) and that he will not use packaging Annexure - X or any packaging deceptively similar to Annexure - E. The defendant also confirms that no application for registration of the carton like Annexure - X is pending. The defendant has agreed to suffer a decree in terms of prayer (a) and (b) of para 27 of the plaint and the plaintiff has given up the reliefs claimed in paras (c) and (d) of para 27 of the plaint. The application is duly signed and supported by

affidavits. The application is accordingly allowed. CS (OS) No. 310/2004

4. The parties to the suit have settled their disputes in terms of the compromise application being is No. 822/2006, which is exhibited as Exhibit - Z. In terms of the settlement, the defendant has agreed to suffer a decree in terms of prayers (a) and (b) of para 27 of the plaint, while the plaintiff has given up reliefs in terms of prayers (c) and (d) of para 27 of the plaint.

5. A decree is passed in favor of the plaintiff and against the defendant in terms of prayers (a) and (b) of para 27 of the plaint. The two relevant cartons are marked as Exhibit - E and Exhibit - X being Annexure - E and Annexure - X to the plaint respectively. The application, Annexure - E and Annexure - X shall form a part of the decree-sheet. Parties are left to bear their own costs.

6. Decree-sheet be drawn up accordingly.

7. A perusal of the plaint shows that the plaint has been deficiently stamped for the purposes of court fee in view of the judgment of this Court in CS (OS) No. 1165/2001 titled "Pfizer Products, Inc. v. B.L. and Co. and Ors." and Connected Matters decided on 03.10.2005. Learned counsel for the plaintiff undertakes to make up the deficiency of court fee within 15 days and the decree-sheet shall be drawn up only thereafter.