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

Date of decision: 8th May, 2019

+ **CS(COMM) 213/2019**

PARVEEN KUMAR JAIN Plaintiff
Through: Mr. S.K. Bansal, Mr. Vinay Kumar
Shukla and Mr. Kapil Kumar,
Advocates (M:9899739391)

versus

RAJAN SETH & ORS. Defendant
Through: Mr. Mandeep Kalra, Mr. Srijan
Uppal, Mr. Nishant Shankar, Mr
Nikhil Jain and Mrs. Isha Khurana
Advocates for D1 and D2
(M:9278780313)
Mr. Mr. Satyavrat Sharma, employee
of D4.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

I.A. 5942/2019 (u/O XXXIX R 1 and 2)

1. The delicacies in the streets of Delhi are legendary. Whether it is Chandni chowk for its paranthe wali gali, Paharganj and Karol Bagh for their eateries, Kamla Nagar for its chaat, Connaught Place and Pandara road for their restaurants, Jama Masjid and Nizamuddin areas for their Mughlai cuisine, regional food at the various bhavans - these food outlets have been catering to consumers from all walks of life – from the connoisseurs to the common man.

2. The present case involves two outlets based in Paharganj which sell Naan and other food items. The Plaintiff claims exclusive rights in the expression 'Chur Chur Naan' against the defendant who uses a similar expression for its outlet. The question is whether there can be any monopoly in the expression '*CHUR CHUR NAAN*' or '*AMRITSARI CHUR CHUR NAAN*'.

3. The Plaintiff has filed the present suit for permanent injunction restraining infringement of trade mark, copyright passing off, rendition of accounts etc. The trade marks over which the Plaintiff seeks injunction are '*CHUR CHUR NAAN*', '*AMRITSARI CHUR CHUR NAAN*' and '*PAHARGANJ KE MASHOOR AMRITSARI NAAN*'.

4. The Plaintiff's case is that it has applied for/ obtained registration of various trademarks including '*CHUR CHUR NAAN*' and derivatives thereof. Two marks applied for by the Plaintiff namely '*CHUR CHUR NAAN*' and '*AMRITSARI CHUR CHUR NAAN*' are registered. The Plaintiff seeks an injunction against the Defendant Nos.1 and 2 from using the name '*PAHARGANJ KE CHUR CHUR NAAN*' and '*AMRITSARI CHUR CHUR NAAN*'.

5. The suit was listed on 25th April, 2019 on which date this Court had appointed a Local Commissioner to submit a report as to the user of the Defendant Nos. 1 and 2 as also any other third-party user of the said expressions. The Local Commissioner has since, submitted her report. Defendant Nos. 1 and 2 have filed a reply to the injunction application and oppose the grant of any *ad interim* relief.

6. The submission of Mr. Bansal appearing for the Plaintiff is that the trademarks of the Plaintiff being registered, the Plaintiff enjoys exclusive

rights under Sections 28 and 29 of the Trade Marks Act, 1999 ('Act'). It is further submitted that the Defendant Nos. 1 and 2 themselves having applied for the registration of the mark '*PAHARGANJ KE MASHOOR CHUR CHUR NAAN*', they are estopped from claiming that the expression '*CHUR CHUR NAAN*' is generic and descriptive. He relies on the judgment of this Court in *Automatic Electric Limited vs. R.K. Dhawan & Anr.* 77(1999) DLT 292 (hereinafter, '*Automatic Electric*') and *The Indian Hotels Company Ltd and Ors. vs. Jiva Institute of Vedic Science and Culture* 2008 (37) PTC 468 (Del) (hereinafter, '*Jiva Institute*'). The further submission of Mr. Bansal is that the Plaintiff enjoys enormous reputation and this is evident from the fact that the Plaintiff has been covered on television channels as *Paharganj Ke Mashoor Chur Chur Naan* and the said fact shows that the Plaintiff is entitled to an injunction owing to the extensive goodwill which it enjoys. It is his submission that various marks such as '*EENADU*' and '*PAKWAN*' which are also descriptive have already been protected by Courts.

7. On the other hand, counsel for the Defendant Nos. 1 and 2 relying on the reply filed on behalf Defendant Nos. 1 & 2 submits that there are a large number of outlets which use the name '*CHUR CHUR NAAN*'. A list of such outlets has been mentioned at pages 7 to 9 of the reply. It is submitted that the trademarks of the Plaintiff are liable to be rectified as they lack basic distinctiveness. Further, it is submitted by the learned counsel for the Defendant Nos. 1 and 2 that '*PAHARGANJ KE MASHOOR CHUR CHUR NAAN*' is completely descriptive. In order to buttress this submission, he relies upon the chart mentioned at pages 13 and 14 of the reply. It is his

submission that no monopoly can be granted to such descriptive/generic expressions.

8. The Court today is considering the question of whether any *interim* relief is liable to be granted in favour of the Plaintiff. There is no doubt that the Plaintiff does have registrations for the marks '*CHUR CHUR NAAN*' and '*AMRITSARI CHUR CHUR NAAN*'. The registrations thus confer exclusive rights as per Section 28 of the Act. However, the rights of a registered trademark holder are not absolute inasmuch as both Section 28 & 29 are subject to the exceptions carved out to infringement of registered trademarks. Under section 35 of the Act if there is **bona fide description of the character or the quality of the goods or services**, there cannot be infringement of a registered trademark.

9. Expressions such as '*NAAN, CHUR CHUR NAAN, AMRITSARI CHUR CHUR NAAN*' are similar to expressions such as *Amritsari Kulcha, Malabar Parantha, Hyderabadi Biryani, Kashmiri Dum Aloo, Chettinad Chicken, Murthal ke Paranthe, Mangalore idli, etc.*, and such other food products which are used in common parlance by the general public. The word '*CHUR CHUR*' merely means 'crushed' and 'Chur Chur Naan' means 'Crushed Naan' and nothing more. It is incapable of acquiring trade mark signification. '*CHUR CHUR*' is a terminology which is used in normal conversational language and there cannot be any monopoly in respect of an expression such as '*CHUR CHUR*'. The Plaintiff has obtained registration of the marks '*CHUR CHUR NAAN, AMRITSARI CHUR CHUR NAAN*', but the same would not in any manner prevent the *bonafide* description of the character of the naan which is crushed i.e. '*CHUR CHUR NAAN*'. Section 35 reads as under: -

“35. Saving for use of name, address or description of goods or services.—Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any bona fide use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods or services.”

10. The Defendant Nos. 1 and 2 have been able to show at least at the *prima facie* stage, entries on various third party websites such as *zomato.com*, *justdial.com*, *eattreat.in*, that various third parties are using ‘*CHUR CHUR NAAN*’ and ‘*AMRITSARI CHUR CHUR NAAN*’ with various prefixes and suffixes. The Defendant Nos. 1 and 2 have also shown on record that it is the common practice in the trade for food outlets to use names such ‘*Chandni Chowk Ke Mashoor*, *Dilli Ke Mashoor*, *Delhi Walo Ki Mashoor*’ etc.,. The same are very common to the trade and are used by a large number of parties as is evident from the entries from third party websites which are placed on record. Thus, there cannot be any monopoly on the terms ‘*CHUR CHUR NAAN*’ and ‘*AMRITSARI CHUR CHUR NAAN*’ as the same are generic.

11. Insofar as the judgements in *Jiva Institute (supra)* and *Automatic Electric (supra)* are concerned, the same are distinguishable on facts. The trade mark applications filed by the Defendants are for a device mark in which the expressions ‘*PAHARGANJ KE MASHOOR CHUR CHUR NAAN*, ‘*AMRITSARI CHUR CHUR NAAN*’ are mentioned as part of a logo consisting of a chef in a circular device. The same is extracted below:



12. The said expressions, at a later stage, could even be disclaimed as they are so generic. Moreover, both in *Jiva Institute (supra)* and *Automatic Electric (supra)* the argument of the Defendants therein was that the marks were descriptive. In the present case, the issue is that the expressions are completely generic. If registrations are wrongly granted or applied for in respect of completely generic expressions, the Court cannot ignore the generic nature of the marks and confer monopoly on the same in favour of any party.

13. However, a perusal of the chart filed by the Defendant Nos. 1 and 2 shows that most of the entities are distinguishing themselves from each other by using prefixes which are distinctive in nature for example '*Sanjay Chur Chur Naan, Vijay Chur Chur Naan, N.S. Chur Chur Naan, Chawla de Mashoor Chur Chur Naan*' etc. In view of the fact that the Plaintiff claims that it is using '*PAHARGANJ KE MASHOOR CHUR CHUR NAAN*', in order to avoid any consumer deception and confusion, though the Defendant Nos. 1 and 2 are permitted to use the marks '*CHUR CHUR NAAN*' and

'AMRITSARI CHUR CHUR NAAN', the Defendant Nos. 1 and 2 ought to distinguish themselves from the Plaintiff's outlet. Accordingly, the Defendant Nos. 1 and 2, who are present in Court, have agreed to change the name of their outlets to 'PAHARGANJ SETH KE MASHOOR CHUR CHUR NAAN' and 'PAHARGANJ SETH KE MASHOOR AMRITSARI NAAN'. The entire name shall be used in the same font, colour and in the same style without giving any undue prominence 'CHUR CHUR NAAN' or 'AMRITSARI CHUR CHUR NAAN'. The Defendant Nos. 1 and 2 are permitted 30 days time to change over to the new names. The present order is *prima facie* in nature and is not an expression on the merits of the suit.

14. Defendant No.4 - Swiggy to file an affidavit as to the names of the outlets listed on their platform using 'CHUR CHUR NAAN' and 'AMRITSARI CHUR CHUR NAAN'. Upon filing of the said affidavit within 2 weeks, Swiggy shall be deleted from the array of parties.

15. The I.A. is disposed of in the above terms.

I.A. 5943/2019 (for appointment of Local Commissioner)

16. The matter was first listed on 25th April, 2019, whereby the Court appointed a Local Commissioner to visit the premises of the Defendants. The report of the Local Commissioner is already on record. Thus, no further orders are called for in the present application.

17. I.A. is accordingly, disposed of.

CS(COMM) 213/2019

18. Let written statement and the affidavit of admission/denial be filed within four weeks. Liberty is granted to the Plaintiff to file replication along with affidavit of admission/denial, within four weeks, thereafter. List before

the Joint Registrar on 1st August, 2019 for marking of exhibits. Any unjustifiable denial of documents would be liable to be burdened with costs.

19. List before Court on 11th September, 2019.

**PRATHIBA M. SINGH
JUDGE**

MAY 08, 2019/da

