

\$~25

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

+ CS(COMM) 62/2023 & I.A. 2128/2023, I.A. 2129/2023, I.A. 2130/2023, I.A. 2131/2023

GUPTA AND GUPTA PVT LTD Plaintiff

Through: Mr. Sudhanshu Batra, Sr. Adv.
with Mr. Gurinder Pal Singh, Mr. Gaurav
Barathi, Mr. Sidharth Borah, Ms. Jaya
Bajpai, Mr. Bakshinder Singh, Mr. Vishal
Shrivastava and Ms. Muskan Arora, Advs.

versus

KHAN CHACHA HYDRABADI BIRYANI AND ORS

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **06.02.2023**

I.A. 2129/2023 (under Order XI Rule 1(4) of CPC)

1. The plaintiff is permitted to file additional documents in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015, within four weeks from today.

2. The application stands allowed accordingly.

I.A. 2130/2023 (under Section 151 of CPC)

3. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

4. The application is disposed of.

I.A. 2131/2023 (under Section 151 of CPC)

5. For the reasons stated in the application, the plaintiff is exempted from the requirement of serving an advance notice on the defendants.

6. This application stands allowed accordingly.

7. Though no separate application has been filed for the said purpose, given the position of the law enunciated by the Division Bench of this Court in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd¹*, the plaintiff is also exempted from the requirement of compliance with the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

CS(COMM) 62/2023

8. The plaintiff holds trade mark registrations under (i) Class 29, which covers “Meat, Fish, Poultry & Game, Meat Extracts, Preserved, Dried And Cooked Fruits And Vegetables, Milk And Other Dairy Products, Edible Oils And Fats, Pickles, Hydrogenated Vegetable Oil (Vanaspati), Groundnut Oil, Cotton Seed Oil, Cheese, Butter, Ghee, Artificial Butter, Milk Powder, Refined Vegetable Oil, Rasogulla, Frozen Boneless Meat, Jellies, Jams, Eggs, marmalades, Snopextracts and Tablets”, w.e.f. 23rd October 2009, and (ii) Class 43, which covers "Restaurants, Catering, Canteens, Cafes, Cafeterias, Accommodation (Rental of Temporary), Accommodation Bureaux (Hotels Hoarding House), Bath for Hygiene Purposes (Public-), Beauty Salons, Camp Services (Holiday-) [Lodging], Cocktail Lounge Services, Flower Arranging, Healthcare, Homes (Tourist-), Hotel Reservations, Hotels,

houses (Boarding-) information (fashion-), Tourist Homes, Salons (Hairdressing)”, w.e.f. 23rd October 2009. In each case, the plaintiff claims user of the mark since 1st April 1972.

9. The plaintiff submits that it has been using the “KHAN CHACHA” trademark continuously since 1972 for food items as well as for providing restaurants services, which are also enlisted on various websites which provide online catering services. It is further asserted in the plaint that the mark “KHAN CHACHA” is inventive and arbitrary with respect to the nature of services for which the mark is listed and in respect of which it is used.

10. The plaint alleges that Defendants 1 to 24 are entities who are providing services similar to those provided by the plaintiff using marks/names which include the appellation “KHAN CHACHA”, without any authority whatsoever. The plaint has also annexed documents which evidence such user.

11. The plaint alleges that the usage of “KHAN CHACHA” by Defendants 1 to 24 infringes the aforementioned registration held by the plaintiff. Defendants 1 to 24 are entities which, according to the plaintiff, are using “KHAN CHACHA” as the names of their respective establishments, thereby infringing the plaintiff’s registered trademarks. Defendants 25 to 26 are entities which provide online services for supply of food and other such items, namely, Zomato Ltd. and Bundl Technologies Private Limited, which functions under the name Swiggy.

12. The plaintiff has also impleaded, as “John Does”, unnamed

Defendant 27 who may also be engaged in similar infringing activities.

13. In these circumstances, the plaintiff has sought a decree of injunction against Defendants 1 to 24 from using, advertising or promoting, directly or indirectly, the mark “KHAN CHACHA”. Additionally, the plaintiff prays that Defendants 25 and 26 be directed to delist/take down the listings bearing “KHAN CHACHA”.

14. The plaintiff also seeks, in addition, delivery-up, rendition of accounts and costs.

15. The plaintiff has clearly made out a *prima facie* case.

16. Accordingly, let the plaintiff be registered as a suit.

17. Issue summons.

18. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendants within 30 days thereof.

19. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission/denial of the documents and marking of exhibits on 21st March 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 2128/2023 (under Order XXXIX Rules 1 and 2 of CPC)

20. This application, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeks interlocutory injunctive reliefs.

21. The plaintiff has made out a clear *prima facie* case of infringement, inasmuch as the word mark “KHAN CHACHA” has been registered in the plaintiff’s favour both in class 29 as well as in class 43, with user claim since 1972. Usage of the “KHAN CHACHA” moniker, by any other entities for similar services, would, therefore, clearly infringe the plaintiff’s registered mark within the meaning of Section 29(1) of the Trade Marks Act, 1999.

22. In view thereof, issue notice, returnable on 11th April 2023.

23. Reply, if any, be filed within a period of four weeks with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, within a period of four weeks thereof.

24. Given the position of law as enunciated in para 5 of *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*² and in para 14 of the report in *Laxmikant V. Patel v. Chetanbhai Shah*³, an injunction has necessary to follow.

25. As such, till the next date of hearing, the following *ad interim* injunctive reliefs are granted at this stage:

² (2004) 3 SCC 90

³ (2002) 3 SCC 65

(i) Defendants 1 to 24 are restrained from using or advertising, directly or indirectly, any mark which includes the words “KHAN CHACHA”, for services identical or allied to the services covered by classes 29 and 43 of the classification of goods and services for trade mark purposes.

(ii) Defendants 25 and 26 are directed to block access to the websites and Mobile app of Defendants 1 to 24.

26. As this order has been passed *ex parte*, the plaintiff is directed to comply with the provision of Order XXXIX Rule 3 of the CPC within one week from today.

27. *Dasti.*

28. Let this order be uploaded on the website of this Court within 24 hours.

C. HARI SHANKAR, J

FEBRUARY 6, 2023

dsn