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

+ CS(OS) 165/2010

Judgment pronounced on December 22, 2011

BENGALI SWEETS CENTRE & OTHERS

..... Plaintiff

Through: Ms.Vidhi Gupta & Mr.Mohit Gupta, Adv.

versus

DELHI KARAMCHRI SANGH(REGD.)

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

% **22.12.2011**

G.S.SISTANI, J.

1. Plaintiff has filed present suit for permanent injunction against the defendant, seeking to restrain defendant, its members, associates, friends, agents, assigns, etc. from holding any demonstration, gate meetings, blockade affecting the ingress and egress of plaintiffs, their customers, other employees, visitors, guests, man and material etc. in any manner whatsoever, staging dharna, slogan, shouting etc. in the building of M/s.Bengali Sweets Centre, G-19, South Extension Part-I, New Delhi-110 049 or anywhere around or outside the building in question.
2. Despite service, none appeared on behalf of the defendant.

Accordingly, by order dated 19.05.2011 defendant was proceeded ex parte. Liberty was granted to the plaintiff to file ex parte evidence and the matter was placed before Joint Registrar for marking exhibits on documents.

3. Necessary facts to be noticed for disposal of this suit are that plaintiff no.1 is stated to be a renowned sweet shop, which is visited by hundreds of customers during the day. Plaintiff no.1 enjoys a high reputation and goodwill in the market. The defendant claimed itself to be a registered trade union and also claimed that all workmen working with the plaintiff are the members of the defendant.
4. Plaintiff has filed two affidavits by way of evidence of Sh.Ravinder Kumar Jain (plaintiff no.2 and partner of plaintiff No.1) and of Sh.Raj Kumar Jain (plaintiff no.3 and a partner of plaintiff no.1).
5. Sh.Ravinder Kumar Jain, has proved the partnership deed of the plaintiff no.1, which is exhibited as Ex.PW-1/1. He has further deposed that on 19.05.2009 about 9 PM a customer complained that chapattis served on him were not properly baked. The chapattis served to the above customer were made by Mr.Ishwar and as such, he was appraised of the said complaint and advised to properly bake the chapattis. Instead of assuring that he would take proper care while making the chapattis and doing the needful in this regard, Mr.Ishwar retorted that he would make chapattis like that only. The plaintiffs no. 3, Mr.Raj Kumar Jain, personally advised Mr.Ishwar to make proper chapattis so that there were no complaints by customers with regard to the quality of the chapattis served. However,

Mr. Ishwar bluntly told to the plaintiffs no. 3, Mr. Raj Kumar Jain, 'MAIN TO AISEI HI CHAPATI BANAOONGA, JO KARNA HAI KAR LO'. The plaintiff no. 3, Mr. Raj Kumar Jain was taken aback at the sheer impudence and rudeness of Mr. Ishwar's conduct. He advised Mr. Ishwar to do his work properly and to do nothing that might annoy and offend the customers. Instead of feeling sorry of his conduct, Mr. Ishwar threw his dustor on the floor and shouted at plaintiffs no. 3, pointing his finger to the plaintiffs no. 3: MAIN TO AISEI HI KAAM KARAOONGA, TUJHEI JO KARNA HAI KAR LE. ZYADA SAMAJHDARI DIKHAIGA TOU ABHI SARA KAAM BAND KARA DOONGA AUR TAALEI LAGVA DOONGA'. Hearing the commotion caused by Mr. Ishwar's outburst, M/s Munna, Ram Gopal, Janak, Tilak Raj, Naveen and Jai Bir Singh came to the Tandoor where Mr. Ishwar was misbehaving with the plaintiffs no. 3. On learning about the factual position mentioned above M/s Munna, Ram Gopal, Janak, Tilak Raj, Naveen and Jai Bir Singh also adopted a totally unreasonable and belligerent stance. M/s Munna, Ram Gopal, Janak Tilak Raj, Naveen and Jai Bir Singh openly said to plaintiffs no. 3 that he was no business to tell Mr. Ishwar to do his work properly and that all of them knew how to work and shall not tolerate any interference whatsoever from anyone, not even from the owners. At this the plaintiffs no. 3 advised M/s Ishwar, Munna, Ram Gopal, Janak Tilak Raj, Naveen and Jai Bir Singh that they should not be unreasonable in their approach. He reminded them that the success of the management depended entirely on customer satisfaction and, as such, customers' complaints had to

be resolved to the satisfaction of the customers. However, M/s Ishwar, Munna, Ram Gopal, Janak Tilak Raj, Naveen and Jai Bir Singh refused to see any reason. They shouted at the plaintiffs no. 3 that he had no business to teach them how to work. They openly said that they would work as per their own wishes and if the management would interfere in their work, they would not hesitate to get the entire work stopped. When the plaintiffs no. 3 again tried to reason with them, Mr. Ishwar, Munna, Ram Gopal, Janak, Tilak Raj, Naveen and Jai Bir Singh said to him : ‘AB TUM DEKHO HUM KYA KARTE HAI. AISA SABAK SIKHAINEGEI KI YAAD RAKHOGEI’. Having, thus, threatened the plaintiffs No. 3, all of them left their duties and walked out of the Establishment without any authorization. While walking out of the Establishment , they instigated M/s Sameer, Anand, Narinder, Ram Kishore and Ram Bir who were there still on their duties, to come out of the Establishment and as a result , M/s Sameer, Anand, Narinder, Ram Kishore and Ram Bir also left their duties without any authorization and followed M/s Ishwar, Munna, Ram Gopal, Janak, Tilak Raj, Naveen and Jai Bir Singh out of the Establishment. All of them then assembled out of the Establishment and held a meeting. After some time M/s Inder Pal Singh, Durga Dutt, Mukesh, Roshan, Brijesh Kumar, Mohan, Prem Chand, Manish, Ram Pal Singh, Suresh and Arvind were also seen arriving outside the Establishment and they also joined the gang of M/s Ishwar, Munna, Ram Gopal, Janak, Tilak Raj, Naveen, Jai Bir Singh, Sameer, Anand, Narinder, Ram Kishore and Ram Bir. On 20.05.2009 none of the above employees that is, M/s Ishwar, Munna,

Ram Gopal, Janak, Tilak Raj, Naveen, Jai Bir Singh, Sameer, Anand, Narinder, Ram Kishore, Ram Bir, Inder Pal Singh, Durga Dutt, Mukesh, Roshan, Brijesh Kumar, Mohan, Prem Chand, Manish, Ram Pal Singh, Suresh, Arvind reported for duties. All of them have since been absenting from duties without any authorization whatsoever. The aforesaid acts reported against the above employees constituted a gross misconduct and, as such, the same if proved shall render them liable for strict disciplinary action. M/s Ishwar, Munna, Ram Gopal, Janak, Tilak Raj, Naveen, Jai Bir Singh, Sameer, Anand, Narinder, Ram Kishore, Ram Bir, Inder Pal Singh, Durga Dutt, Mukesh, Roshan, Brijesh Kumar, Mohan, Prem Chand, Manish, Ram Pal Singh, Suresh, Arvind were therefore issued a charge sheet on 21.5.2009 advising them to submit their explanation within 48 hours of the receipt of the same as to why disciplinary action should not be taken against them. It was further stated in the said charge sheet that if they fail to submit their explanation within stipulated period, it shall be inferred that they have nothing to say in this regard. In that event the plaintiff No. 1 management is free to take such action, as it deems fit without any further reference to them. In the meanwhile, all the above employees were also advised to report for duties immediately. It a matter of great regret that none of the above workers reported for duties. All the above workers are/were, thus, absenting from duties without any authorization continuously with effect from 20.05.2009. Instead of reporting for duties and submit their explanation as required vide letter/charge sheet dated 21.05.2009, the above workers/Hotel Mazdoor Union filed a false

and baseless complaint against the Management before the Labour Officer, alleging falsely that they have been refused duties or that their services have been terminated illegally. Whereas the fact remains that neither the plaintiff no.1 management terminated the services of any of the above workers, nor refused duties to any of them at any point of time. In view of the above, the plaintiff no.1 Management issued another charge sheet dated 3.6.2009 to the said workers.

6. This witness has further deposed that on account of deemed denial of the charges by the workers, domestic enquiries were conducted against the said workers. The said workers participated in the said domestic enquiries and in the enquiry report it has been found by the enquiry officer that the charges leveled against the said charge sheeted employees vide charge sheet dated 21.5.2009 and 3.6.2009 are duly proved and established. Copy of one of such enquiry report dated 16.1.2010 has been exhibited as **Ex Pw1/2**.
7. As per this witness, after receiving of the enquiry reports by the said charge sheeted employees, the said charge sheeted employees started giving threats to the plaintiffs that they with the assistance of some trade union, friends etc. will cause hindrance and disruption in the affairs and activities of the plaintiff No.1 leading to total chaos.
8. On 26.1.2010 the plaintiffs received one envelop through speed post. On its opening it was found that the said envelop was containing a single page print out with a cartoon purporting to be of MID DAY with caption "Stress break" and "make work fun". The plaintiffs on smelling some mischief on the part of the defendant to create false

evidence of having sent some letter or communication to the management, immediately send a letter dated 27.1.2010 through speed post requiring the defendant desist from indulging in such practices. The said envelop sent by the defendant is exhibited as **“Ex PW 1/3**. The single page print out with a cartoon purporting to be of MID DAY with caption ”Stress break” and “make work fun received by the plaintiff inside the said envelop Ex PW 1/3 is exhibited as **Ex PW 1/4**. The letter dated 27.1.2010 sent by the plaintiff through speed post requiring the defendant desist from indulging in wrong practices is exhibited as **Ex PW 1/5**.

9. PW-1 has further deposed that a person/clerk from the office of the Deputy Labour Commissioner (District South) who had come to the plaintiff No.1 on 27.1.2010 to serve/deliver a notice requiring to appear in his office on 28.1.2010, also handed over to the plaintiffs the letter dated 25.1.2010 issued by the defendant thereby threatening the plaintiffs that the defendant its members, associates, friends, agents, assigns etc. shall hold demonstration, gate meetings, blockade etc. on 1.2.2010 at 1.00 PM and shall continue their activities till the time the plaintiffs does not accept their demands. A copy of the notice dated 25.1.2010 of the Dy. Labour Commissioner (south District) is exhibited as **Ex PW 1/6** and the letter dated 25.1.2010 issued by the defendant but handed over by a person/clerk from the office of the Deputy Labour Commissioner (District South) to the plaintiff is exhibited as **Ex PW 1/7**.
10. PW-1 has also deposed that the intention of the defendants was to cause total disruption of the activities of the plaintiffs, apart from

seriously affecting the reputation of the plaintiffs, ingress and egress of plaintiffs, their customers, other employees, visitors, guests, man and material etc. so as to cause heavy losses to the plaintiffs, while the plaintiffs have a right to manage, run and organize its affairs and to do business. The plaintiff also has a fundamental right under Article 19 of the Constitution of India to carry on its trade, business and to do activities uninterrupted by any one in any manner without any hindrance or disturbance by any person including the defendant.

11. PW-1 also deposed that they apprehended grave and serious prejudice would be caused to the activities of the plaintiffs as well as to its reputation if the defendants succeed in their illegal, malafide, unfair and unjust motive of disturbing and disrupting the business activities of the plaintiffs in the building of M/s Bengali Sweets Centre, G-19, South Extension Part-I, New Delhi 110049 or anywhere around or outside the building in question, which is situated in between the thick market of South Exn. Part I, New Delhi and is surrounded by various other shops and establishment. The road leading to the plaintiff no.1 from one side is also very narrow and there is a parking of vehicles on the other side of it and as such it will cause immense disturbance to the other nearby/adjoining occupants, shop and establishment owners and if any thing as threatened happens, the same would also have a bad effect on the relationship of the plaintiffs with the other nearby/adjoining occupants, shop and establishment owners and it would lower the reputation of the plaintiffs.
12. Plaintiff has also filed affidavit by way of evidence of one Sh.Raj

Kumar Jain, who has deposed on identical lines, as that of Sh.Ravinder Kumar Jain.

13. Counsel for the plaintiff submits that fearing threats at the hands of the workers of defendant, plaintiff has filed present suit. While issuing summons in the suit, this court had restrained defendants, its members, associates, friends, agents, assigns etc. from holding any demonstration within 50 meters area of the plaintiff i.e. within 50 meters of G-19, South Extension Part-I, New Delhi.
14. I have heard counsel for the plaintiff and also considered the evidence of Sh. Ravinder Kumar Jain and Sh. Raj Kumar Jain. Both the witnesses have deposed on identical lines. The evidence of the plaintiffs have gone un rebutted. Taking into consideration evidence of the plaintiffs, present suit is decreed in terms of interim order passed by this court on 01.02.2010, leaving the parties to bear their own costs.

G.S.SISTANI,J

DECEMBER 22, 2011

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