

* **HIGH COURT OF DELHI: NEW DELHI**

% Judgment pronounced on: 15.11.2011

+ **CS (OS) No. 559/2009**

ROHIT KHATTAR & ANR Plaintiffs
Through: Ms. Tusha Malhotra, Adv.

Versus

COOKIE SINGH Defendant
Through: Defendant already *ex-parte*.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The plaintiffs have filed the instant suit for permanent injunction restraining infringement of trademark, passing off, delivery up, and damages.

2. As per the plaint, plaintiff No.1 is the Managing Director of plaintiff No.2-company. The plaintiffs are engaged in the business of providing hospitality services and operate cultural centers, hotels in Delhi and Gurgaon. The plaintiffs also operate sixteen restaurants in National Capital Region of Delhi and three restaurants in London, U.K. under the trademarks CHOR BIZARRE, SITARE and TAMARI.

3. It is averred in the plaint that CHOR BIZARRE is an iconic restaurant which was launched by the plaintiffs in the year 1990 in one of plaintiff's hotels named Broadway at New Delhi, thereafter in the year 1997 it expanded operations to Myfair, London. In the year 2003, two more branches were started by the plaintiffs, one at Noida, and one at Gurgaon.

4. The plaintiff No.1 is the proprietor of the trade mark CHOR BIZARRE which is registered in India under registration No.490488 in class 30, dated 30.05.1998. The said trademark was initially registered by M/s Broadway Enterprises Pvt. Ltd. and was later assigned to the plaintiff No.1 vide assignment deed dated 28.05.1993 for "*edible articles for human consumption*". Thereafter, the plaintiff No.1 had moved an application under TM-23 with Trademarks Registry to bring the change of proprietorship on record and the same was allowed on 10.03.2003.

5. As per the plaintiffs, for the last 18years the plaintiffs have acquired substantial goodwill and reputation under the trademark CHOR BIZARRE which is clearly evident from the sales figures provided in para-7 of the plaint. It is also stated that the trademark 'CHOR BIZARRE' is an arbitrary and highly distinctive mark for restaurant services and due to prior adoption, registration, extensive use and advertising of the trademark/name CHOR BIZARRE the customers

associate any restaurant named CHOR BIZARRE with the plaintiffs' business.

6. According to the plaintiffs, in February, 2009 they came to know that the defendant was in the process of launching a restaurant under the name CHOR BIZZARE. The plaintiffs sent one of their representatives to visit the defendant's restaurant and learnt that the defendant had substantially copied the theme and décor of the plaintiff's restaurants under the trademark CHOR BIZARRE including a similar staircase. The defendant also copied the theme of having diverse cuisine from different parts of the country. It is further stated that upon enquiry, the General Manager of the of the Defendant's restaurant stated that the said restaurant was connected to the plaintiff's restaurant in London and when the plaintiff's representative followed up this through emails reiterating this claim, the same was not denied by the General Manager of the defendant's restaurant.

7. It is stated by the plaintiffs that the adoption of the trademark 'CHOR BIZZARE' by the defendant which is a mere misspelling of the plaintiff's trademark 'CHOR BIZARRE' for identical goods/services amounts to infringement of the plaintiff's registered trademark.

8. The use of the impugned name CHOR BIZZARE by the defendant gives an impression to the customers that it is one of the

plaintiffs' restaurant connected with them through franchise.

9. It is further stated by the plaintiffs that there have been several instances when people called up to congratulate the plaintiffs on the opening of their Mumbai restaurant named CHOR BIZZARE. Some people called to express their disappointment after visiting CHOR BIZZARE, saying the food there lacked quality of the plaintiffs other restaurants. Several well known publications enquired from the plaintiffs about their relationship with the defendants' Mumbai restaurant under the name CHOR BIZZARE.

10. As per the plaintiffs', they fear lowering of their image in the eyes of their customers as the public perception is bound to suffer due to the association of their trademark with the defendants' poor quality service and food under the trademark CHOR BIZZARE which is just a misspelling of the plaintiff's trademark CHOR BIZARRE. This misrepresentation by the defendant is causing injury to the business, reputation and goodwill of the plaintiffs. Hence, the plaintiffs have filed the instant suit.

11. On 19.02.2010, the defendant was proceeded ex-parte due to non appearance.

12. According to the plaintiffs, during the pendency of this suit the plaintiffs came to know through an article published in the MID-DAY newspaper, that the defendant has changed the name of his yet-to-

be launched restaurant THE CHOR BIZZARE to another deceptively similar name FORT BIZARRE.

13. The plaintiffs filed the affidavit of Shri Sandeep Tandon, who proved the following documents:

Ex. PW-1/1- Original Minutes Book of the Board Resolution dated 12.02.2009 whereby, Shri Sandeep Tandon was authorized to depose on behalf of the plaintiff No.2.

Ex. PW-1/2- Board Resolution dated 12.02.2009 whereby, Shri Sandeep Tandon was authorized to depose on behalf of the plaintiff No.1.

Ex. PW-1/3- The Certificate of the plaintiffs trademark CHOR BIZARRE under No.490488 in class 30.

Ex. PW-1/4- A certified copy of the plaintiff's registration in the U.K. for trademark CHOR BIZARRE.

Ex. PW-1/5 (colly)- Some news paper articles about the plaintiff's restaurant under trademark CHOR BIZARRE.

Ex. PW-1/6 (colly) - Promotional materials, brochures and advertisements for the plaintiff's restaurant under the trademark CHOR BIZARRE.

Ex. PW-1/7 (colly) - Photocopies of the awards received by the plaintiffs' restaurant under the trademark CHOR BIZARRE.

Ex. PW-1/8 (colly) - Printouts from www.chorbizarre.com and www.chorbizarrerestaurant.com.

Ex. PW-1/9- Printouts from the homepage of www.google.com showing search results for CHOR BIZARRE.

Ex. PW-1/10 (colly) - Sample invoices of sale of plaintiff's services under the said trademark.

Ex. PW-1/11(A-I) - Digital photographs of the décor of the plaintiff's restaurants under the trademark CHOR BIZARRE.

Ex. PW-1/12- the article dated 10.02.2009, about the launch of defendants' restaurant in Hindustan Times.

Ex. PW-1/13- copy of the online article dated 11.02.2009, about the launch of defendants' restaurant in DNA.

Ex. PW-1/14(A-E) - Digital photographs of the defendants' sign board bearing the infringing mark CHOR BIZZARE.

Ex. PW-1/15- Visiting card of the defendant bearing the infringing mark CHOR BIZZARE.

Ex. PW-1/16 (colly) - Photographs of the décor of the defendant's restaurant under the infringing mark CHOR BIZZARE.

Ex. PW-1/17 - The defendant's menu for its restaurant under the infringing mark CHOR BIZZARE.

Ex. PW-1/18 – Printouts of the email correspondence between the plaintiffs' representative and the General Manager of the defendant's restaurant.

14. The evidence of the plaintiffs has gone un rebutted as the defendant has failed to cross-examine the witness of the plaintiffs. Therefore, the said has been taken as correct.

15. As already stated, the contention of the plaintiffs is that after passing of the interim order, the plaintiffs learnt from article published in MID DAY, Mumbai Edition dated 25.08.2010 that the defendant had

changed the name of his yet to be launched restaurant THE CHORE BIZZARE to FORT BIZARRE. Copy of the newspaper is also placed on record.

16. There is sufficient material on record to show that the plaintiffs are the proprietor of the trademark in question which has been infringed by the defendant. The defendant was also passing off his business as that of the plaintiffs.

17. However, I am clear in my mind that if the defendant will use the name of its restaurant as FORT BAZAR in different script, there may not be confusion and deception but the defendant would not be entitled to use the mark BIZARRE which is being used by the plaintiffs for the last number of years earlier than the defendant, otherwise the same would create confusion and deception. Therefore, the defendant is restrained from using the said mark BIZARRE.

18. Under these circumstances, I am of the considered view that the plaintiffs are entitled to the decree for permanent injunction. The suit of the plaintiff is decreed in terms of paras 20 (i), (ii) & (iv) of the plaint. As far as prayer (iii) of para-20 of the plaint is concerned, I am of the view that the plaintiffs are entitled to damages to the tune of Rs. 1 lac in their favour. The plaintiffs are also entitled to the costs. Ordered

accordingly. Decree be drawn accordingly. The suit as well as all pending applications stands disposed of.

MANMOHAN SINGH, J.

NOVEMBER 15, 2011

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