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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2439/2008 and I.A. 10155-10156/2009

Decided on : 11.02.2015

IN THE MATTER OF:

M/S MOTHER DAIRY FOOD PROCESSING LTD Plaintiff
Through: Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal, Advocate

versus

MOTHER DAIRY FOOD PROCESSING EMPLOYEES UNION AND ORS
..... Defendants
Through: Defendants are *ex parte*.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The present suit has been instituted by the Management of M/s Mother Dairy Food Processing Ltd. against the Mother Dairy Food Processing Employees Union, praying *inter alia* for a decree of permanent injunction against the defendants, its members, associates, etc. restraining them from holding demonstrations, blocking the ingress and egress of the employees, visitors, guests etc., within a radius of 500 meters from the gate of the plaintiff's complex situated in Patparganj.

2. Summons were issued in the suit on 24.11.2008. On the same date, having regard to the facts and circumstances of the case, an *ex parte ad interim* injunction was granted in favour of the plaintiff and restraining the defendants, its members and associates from holding a *Dharna*, demonstration or gate meetings within a radius of 100 meters from the two gates of the plaintiff/company. The defendants were also directed not to obstruct the ingress and egress of the employees, visitors and guests of the plaintiff to its premises situated at Patparganj, Delhi.

3. The plaintiff states that it is a reputed company engaged in the process of manufacturing and selling ice creams, milk and milk products, etc. It is the case of the plaintiff that in the course of its activities, it had engaged a pool of 176 casual workers on its rolls who would work on a rotational basis, with breaks in between. During the summer season, the intake of the casual workers is stated to be the highest whereas in the off season, it virtually reduces to nil, the reason being that in the summer months, the ice cream manufacturing operation is carried out round the clock whereas during winters, it operates only for two shifts as the product is seasonal in nature. Since the requirement of workers is not fixed and it varies from season to season, the casual workers are not engaged by the plaintiff on a regular basis.

4. As per the plaintiff, out of the aforesaid 176 casual workers, it was observed that 77 workers had remained unauthorizedly absent between the years 2003-2006, for almost 1/5th of the year and accordingly, it was decided not to utilize their services w.e.f. 2007. Due to the said decision taken by the management, the casual workers had sat on a *Dharna* near the main gate of the plaintiff for more than one month, w.e.f. 27.3.2008, claiming reinstatement and regularization of their services. The plaintiff management had sought the intervention of the Assistant Labour Commissioner, Jhimmil, to resolve the issue amicably. The said proceedings were concluded before the authority in a positive manner with the plaintiff management agreeing to reinstate the terminated casual workers on duty and the casual workers agreeing that they would withdraw their *Dharna* immediately. The aforesaid conciliation proceedings were duly recorded by the Assistant Labour Commissioner in his order dated 2.6.2008.

5. The plaintiff claims that despite the amicable resolution arrived at between the parties, the workers continued sitting on *Dharna* and members of the defendant union tried to bring disrepute to the plaintiff by distributing pamphlets, seeking the help of media, getting adverse press reports published in the newspaper etc. After the conclusion of the conciliation proceedings, with the management making a statement

that it would reinstate the casual workers on duty and the workers stating that they would immediately withdraw the *Dharna* to the utter surprise of the plaintiff, the workers sent a notice dated 8.11.2008 to the Managing Director of the plaintiff company once again, claiming regularization and warning the management that in the event their services were not regularized, they would be forced to approach the NDDDB, Safdarjung Enclave, New Delhi, with their demands.

6. Further on 20.11.2008, the defendants had once again sent a memorandum titled, "gyapan" threatening that they would go on a hunger strike from 21.11.2008 and the officers of the plaintiff noticed that since the morning of 21.11.2008, the casual workers had started indulging in violent activities such as sitting on a *dharna*, holding demonstrations, instigating other employees, blockading the entrance, sitting on a hunger strike, picketing, holding gate meetings, shouting of slogans etc. This resulted in disruption of the smooth functioning of the plaintiff company and it brought to a grinding halt, the administrative work. The plaintiff states that the casual workers had stopped the employees, executives and managerial staff from attending to their duties, had created hindrance in the manufacturing, sale and distribution of the ice-creams and had paralyzed the functioning of the plaintiff company. Due to the aforesaid activities indulged in by the defendants,

that included holding demonstrations, *Dharnas*, shouting of slogans, blocking the ingress and egress of the officers, staff, visitors etc., the plaintiff was compelled to institute the present suit on the very next day, i.e., on 22.11.2008.

7. The suit was registered on 24.11.2008 and summons were issued to the defendants, returnable on 19.1.2009. On the said date, an ex-parte ad interim order was passed in IA No. 14270/2008 as below:-

"Issue notice of the application to the defendants, on the plaintiff taking necessary steps Regd. AD post, through ordinary process as also by courier, returnable on 19.1.2009.

The plaintiff has filed the accompanying suit against the defendants for permanent injunction. Counsel for the plaintiff states that the plaintiff is engaged in the process of manufacturing and selling ice creams, milk etc. It has been engaging a pool of about 176 casual workers on a rotational basis from time to time. It is stated that, out of the aforesaid 176 casual workers, it was observed that 77 casual workers remained unauthorizedly absent between the years 2003-2006 and thus it was decided not to utilize their services w.e.f. the year 2007. However, due to the aforesaid decision, the casual workers sat on a dharna near the main gate of the plaintiff for more than one month, since 27.3.2008. Thereafter, with the intervention of the Assistant Labour Commissioner, Jhilmil colony, Delhi, the matter was resolved amicably.

Counsel for the plaintiff submits that despite the conciliation proceeding, which ended on 02.6.2008, aforesaid casual workers again sent a notice dated 08.11.2008, to the Managing Director of the plaintiff stating that, in case they are not regularized, then they shall be forced to approach the NDDB, Safdarjung Enclave, New Delhi for their demands. Further, on 20.11.2008, the plaintiff received another notice

from them threatening that they shall go on an indefinite hunger strike from 21.11.2008. It is submitted that the defendant no. 1 and its members, who are casual workers are indulging in violent activities, such as dharnas, demonstration etc. and thus obstructing the smooth functioning of the plaintiff, apart from preventing the officers, staff and visitors to access the unit of the plaintiff. She further submits that the plaintiff is a public utility service and its business cannot be brought to a grinding halt in such a manner. Thus, the plaintiff seeks an ex-parte interim injunction against the defendants to safeguard its business interests.

Having regard to the facts and circumstances of the present case, this Court is of the opinion that the plaintiff is entitled to an ex-parte ad-interim injunction in its favour, against the defendants. Accordingly, till further orders the defendants, its members, its associates are restrained from holding a dharna, demonstration or gate meetings within a radius of 100 mts. from the main two gates of the plaintiff. They shall also not obstruct the ingress and egress of the employees, visitors, guests of the plaintiff to its premises situated at Patparganj, Delhi. The SHO of the concerned police station shall ensure compliance of the order, if approached by the plaintiff in that regard.

Provisions of Order 39 Rule 3 CPC be complied with two days.

Copy of the order be given **dasti** under the signatures of the Court Master. "

8. Appearance was entered on behalf of the defendants on 19.01.2009, but the written statement was not filed by any of them. Instead, the defendants filed an application under Order VII Rule 11CPC (I.A. 10155/2009) praying *inter alia* that the suit be rejected. However, the said application was not pursued by the defendants diligently and

when they stopped appearing after 14.12.2013, they were proceeded against *ex parte* vide order dated 19.02.2014. Prior thereto, vide order dated 04.09.2013, the right of the defendants to file the written statement was closed and on 6.10.2013, the plaintiff was directed to file its affidavits by way of evidence.

9. Two affidavits-in-chief have been filed by the plaintiff/company, one by Mr. Pradeep Kumar Thapliyal, Senior Officer (Security) and the other by Mr. Shailendra Kumar, Manager-HR. Shri Shailendra Kumar, Manager-HR, has stated in his affidavit that the cause of action for instituting the present suit had arisen on 27.03.2008, when the casual workers engaged by the Management had sat on a *Dharna* for over one month, near the main gate of the plaintiff/company, seeking reinstatement and regularization of service. The said casual workers had shouted slogans, instigated other employees, prevented ingress and egress to the premises of the plaintiff/company, thus adversely affecting its working. As a result, the plaintiff had to seek the intervention of the Assistant Labour Commissioner, Jhilmil to resolve the dispute with the workers amicably and as a goodwill gesture, the Management had even agreed to reinstate the terminated casual workers. In response, the casual workers had agreed that they would withdraw the *Dharna* forthwith. A copy of the order dated 02.06.2008 passed by the Assistant

Labour Commissioner has been filed by the plaintiff with the list of documents and is marked as Ex.PW1/1. The copies of the claim of the workers and the reply of the Management have been marked as Ex.PW1/2 (colly).

10. Counsel for the plaintiff states that despite the orders dated 2.6.2008, passed by the Assistant Labour Commissioner during the conciliation proceedings, the workers continued sitting on a Dharna. She particularly refers to the letter dated 07.04.2008 addressed by the Assistant Labour Commissioner to Shri Vijay Singh, one of the members of the defendant/Union, calling upon the defendants to maintain industrial peace and harmony. However, the working atmosphere of the plaintiff/company kept deteriorating due to the resistance on the part of the members of the defendants/Union. A copy of the letter dated 07.04.2008 addressed by the Assistant Labour Commissioner to the defendant No.4 has been marked as Ex.PW1/3. A letter addressed by the plaintiff/Management to the Assistant Labour Commissioner on the said issue has been marked as Ex.PW1/4.

11. Shri Shailendra Kumar, Manager-HR has further stated in his affidavit that he was also a part of the conciliation proceedings initiated before the Assistant Labour Commissioner. Subsequently, as the members of the defendant/Union kept trying to instigate the workers

and went on obstructing the working of the plaintiff/company, news articles of those incidents were published in the press at the instance of the defendants, including the Hindi daily, Kamgar Samaj dated 08.05.2008, Amar Ujala dated 02.05.2008, Star Blue News dated 26.04.2008 and Aaj Samaj dated 8.5.2008 and 17.04.2008 etc. collectively marked as Ex.PW1/5. It has been averred that though the conciliation proceedings had ended with an assurance given by the plaintiff/Management that it would reinstate the casual workers and the workers had responded by stating that they would withdraw the Dharna, they had again sent a notice dated 08.11.2008 to the Managing Director of the plaintiff/company for claiming regularization of services. A copy of the said notice has been marked as Ex.PW1/6. The affidavit filed by Shri Shailendra Kumar has been signed by him at points A and B and marked as Ex.PW2/X.

12. The second affidavit filed by the plaintiff company is that of Mr. Pradeep Kumar Thapliyal, Senior Officer (Security). Mr. Thapliyal has also sworn the affidavit on the same lines as sworn by Shri Shailendra Kumar, sequentially setting out the narration of the events that had led to the filing of the present suit by the plaintiff. The said affidavit bears the signatures of Mr.Thapliyal at points A and B and is marked as Ex.PW1/A.

13. Learned counsel for the plaintiff/company submits that in view of the persistent violent activities of the members of the defendant No.1/Union who had been indulging in holding demonstrations and gate meetings, instigating the workers, shouting slogans and blocking the ingress and egress of visitors, employees and guests into its factory complex, the plaintiff had to institute the present suit for seeking restraint orders against the defendant No.1/Union and its members.

14. As the defendants have failed to approach the court for setting aside the interim order dated 24.11.2008 and the plaintiff's witnesses were not cross-examined by them, the contents of the affidavits filed by the plaintiff stand un-rebutted and the documents filed and accepted along with the said affidavits are deemed to be admitted. The defendants have not filed the written statement and have not led any evidence to rebut the contentions of the plaintiff.

15. The main relief sought by the plaintiff is for a decree of permanent injunction against the defendants, restraining them from holding *Dharnas*, demonstrations, blockading, picketing, indulging in hunger strikes, gate meetings, shouting slogans, causing damage to the property and assets of the plaintiff company and blocking the ingress

and egress of the employees, visitors, guests of the plaintiff, within a radius of 500 meters from the gate of the plaintiff's complex.

16. Before making any observations on the merits of the case, it is relevant to take a note of the precedents in cases where reliefs of the nature mentioned hereinabove have been prayed for by the management against its employees. It is settled law that while trade unions have the right to peacefully ventilate their grievances, they cannot be permitted to disrupt the functioning of the management or damage its property by resorting to demonstrations, *gherao*, etc. Nor can the unions and their members prevent the employees, visitors, etc. from visiting the premises of the management, by indulging in disruptive activities. Therefore, imposition of reasonable restrictions on the freedom granted to the employees has remained an integral part of the judicial pronouncements. Decisions on the aforesaid lines include those in the cases of Rail India Technical and Economic Services Ltd. Vs. Bhartiya General Mazdoor Congress & Ors. **97(2002) DLT 521**, Standing Conference of Public Enterprises Vs. Delhi Office & Est.Employee Union & Ors. **104(2003) DLT 112**, and Escorts Heart Institute & Research Vs. Delhi Mazdoor Sangathan Regd. & Ors. **132(2006) DLT 308.**

17. In the case of Railway Board representing the Union of India Vs. Niranjan Singh reported as **(1969) 1 SCC 502**, the Supreme Court had observed as below:-

"12. It is true that the freedoms guaranteed under our Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. **The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form- associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes.** Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged by the tests prescribed by Sub-Arts. (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others. **If Mr. Garg is right in his contentions then a citizen of this country in the exercise of his right under Clauses (d) and (e) of Article 19(1) could move about freely in a public-office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights.**" (emphasis added)

18. In the case of M/s Asian Hotels Ltd. Vs. Asian Hotels Employees Union & Ors., reported as **82(1999) DLT 91**, it was held that running a five-state hotel required a high degree of efficiency and that any unsavoury incident or obstruction of the ingress or egress or holding of a demonstration which has the potential to turn violent or create a nuisance, could scare away customers or mar the image of the hotel. The aforesaid decision was reinforced in the case of ITC Ltd. Vs. Maurya Sheraton Hotel Kamgar Congress & Ors. reported as **95 (2002) DLT 133**.

19. In the case of Delhi Public School through its Principal & Anr. Vs. The Delhi State School Karamchari Union(Regd.) & Ors. reported as **AIR 2002 Delhi 36**, it was held that Unions/employees do not have the right to hold a demonstration at the residence of the employer as the same is specifically prohibited under the Industrial Disputes Act and it would amount to unfair labour practices on the part of the Union.

20. The nature of demonstrations held are also of some relevance as was pointed out in the case of G4S Security Services(India) Pvt. Ltd. Vs. Group-4 Securicor Employees Welfare Association & Ors. CS(OS) No.833/2009, where it was held as below:

"6. It is well known that tempers run high when demonstrations of such nature are organized by a union of workers. **It becomes really difficult to control the**

mob and there is a serious apprehension of breach of peace and law and order in case such demonstrations/dharnas are allowed to be held in the vicinity of the factory where the workers are employed. The property of the employer is usually made a target during such demonstrations. The visitors and the employees who do not support such demonstrations are also targeted and manhandled, in order to prevent them from entering to premises of its employer. The obvious purpose is to put pressure on to employer, by resort to unlawful and violent means, to give in to demand of the union. There is a strong likelihood of the property being damages, the visitors and those employees who do not side with the Union being manhandled and obstructed during their ingress to and egress from the premises of the employer, if such unlawful activities are allowed to be undertaken. **In fact the business of the employer and functioning of its office and factory may come to a standstill, unless appropriate preventive directions are issued to a Union taking recourse to such methods.** The personal safety of the visitors, managers and other workers may also be in jeopardy unless unlawful activities of this nature are appropriate curbed.” (emphasis added)

21. Regarding the fixation of the distance within which the agitating employees should be restrained from agitating, it was held in the case of Asian Hotels Ltd.(supra) as follows:

“9. Plaintiffs have the fundamental right to carry on their business activity without obstruction and hindrance by violent demonstrations. At the same time, defendants cannot be denied the freedom to ventilate their grievances. **A balance has to be struck in the exercise of legitimate trade union activity and preventing any obstruction in the**

right to carry on business. Defendants ought not to be prevented from a peaceful mechanism to display group feelings towards a cause and for redressal of their grievances. Towards this end, they have a right to peacefully demonstrate and to have their presence felt. Such a presence may even act as a catalyst and is conducive in bringing the parties to the negotiating table, leading to a settlement of disputes.

10. There cannot be a strait jacket formula for fixing the distance within which the agitating employees should be restrained from demonstrating. The distance would depend upon a variety of factors, such as the topography of the area, the approach and exit from the building, the proximity and existence of other establishments, the nature of the industry, etc. and finally the individually facts and circumstances of the case."
(emphasis added)

22. In the case in hand, the stand taken by the plaintiff has remained un-rebutted by the defendants who have failed to appear after 14.12.2013, or cross-examine the plaintiff's witnesses.

23. Having perused the averments made in the plaint that have been duly supported by the affidavits of two senior officers of the plaintiff/company and upon examining the documents placed on record and considering the fact that the plaintiff's evidence has gone un-rebutted, this Court is satisfied that the plaintiff has made out a case for grant of a decree of permanent and mandatory injunction in its favour. Accordingly, the suit is decreed in favour of the plaintiff and against the

defendants by issuing a decree of mandatory injunction restraining the defendants, its members, associates etc. as below:

- (a) holding *Dharna*, demonstration, blockade, picketing, conducting gate meetings shouting slogans etc. within a radius of 100 meters from the two main gates of the plaintiff at its premises situated in Patparganj, Delhi.
- (b) obstructing/preventing/intimidating and/or blocking the ingress and egress of the employees, visitors, guests etc. of the plaintiff.
- (c) obstructing any other person from visiting the premises of the plaintiff company or carrying out the normal functioning and duties within the subject premises.

24. The suit is disposed of, while leaving the parties to bear their own costs. Decree sheet be prepared accordingly.

FEBRUARY 11, 2015
rkb/mk/sk

(HIMA KOHLI)
JUDGE