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

+ CS(OS) 269/2013

SANDEEP TANDON & ANR Plaintiffs
Through : Ms. Isha Malhotra, Advocate

versus

PUSHPANJALI N RAWAT & ANR Defendants
Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **21.07.2015**

IA No.14324/2015 (u/O XXIII R-3 r/w Order XII R-6 CPC)

1. The plaintiffs have filed the accompanying suit against the defendants praying *inter alia* that they be restrained from adapting the plaintiffs' literary work as depicted on their website "www.indianaccent.com" or infringing the plaintiffs' copyright in the said literary work. Further, the plaintiff has prayed that the defendants be restrained from using the plaintiff's mark "INDIAN ACCENT" by adopting the same as a part of their corporate name/trade name/trade style/domain name in any manner, including opening a restaurant under the trade name, "INDIAN ACCENT".

2. On a perusal of the order sheets, it transpires that the plaint was registered as a suit on 12.2.2013 and summons were issued to the defendants and on the same day, an *ex parte ad interim* injunction

was granted in favour of the plaintiffs restraining the defendants from reproducing, issuing copies, communicating to the public or making any adaption of the plaintiffs' literary work as depicted on their website www.indianaccent.com, including its source code or any literary work substantially similar thereto or to do any other act which infringe the plaintiffs' copyright in such literary work.

3. Vide order dated 1.5.2013, it was noted that summons sent to both the defendants had been received back with a report of refusal. Accordingly, the defendants were deemed to be served and as they had failed to appear, the case was placed before the Court on 30.8.2013. On 30.8.2013, as the defendants had failed to file their written statements, they were proceeded against *ex parte* and the plaintiffs were directed to file their *ex parte* evidence on affidavit. However, the affidavits have not been filed by the plaintiffs so far.

4. Counsel for the plaintiffs draws the attention of the Court to the order dated 28.10.2013 passed by the learned Joint Registrar. On the said date, the learned Joint Registrar had noted that a written communication had been received from defendants No.1 & 2 by post, wherein they had stated that they are residents of Australia since the year 2008 and "have no plan, motive or intention to ever start any business in India by contravening any laws being in force at that

time.” The said communication was directed to be placed before the Court for appropriate orders. Vide order dated 16.12.2013, the aforesaid communication addressed by the defendants directly to the Court was taken note of and the following order was passed :

16.12.2013

“The matter has been placed before the Court in view of the fact that a response has been received from the defendants directly by the Court within 30 days of service. In this response, the defendants have, inter alia, stated that they are residents of Australia since 2008 and *“have no plan, motive or intention to ever start any business in India by contravening any laws being in force at that time”*. They have also stated that they cannot pay for legal advice as they are in Australia and certainly cannot afford to come to India to fight this battle. They have also to make their submissions in this response.

Learned counsel for the plaintiff submits that in view of the said response, the plaintiff will try to get in touch with the defendants to arrive at an amicable settlement. Adjourned to 27.03.2014.

Considering the aforesaid, the plaintiffs need not file the affidavit by way of evidence till further orders.”

5. Counsel for the plaintiffs states that pursuant thereto, efforts were made by the plaintiffs to send e-mails to the defendant to settle the dispute, including an e-mail dated 27.11.2014, and finally, vide e-mail dated 25.8.2014, the defendants had informed the counsel for the plaintiffs as below :

"We have unwillingly closed the restaurant Indian Accent, Pelican Waters, Qld-4551 and don't intend to open any other restaurant with same name in Australia or outside. We would like to be left alone as all these correspondence regarding this case since 2013 has caused us and our extended family in India, lot of stress, trauma and related health issues."

6. The aforesaid communication makes it apparent that the defendants have shut down the restaurant that was being run by them under the name "Indian Accent" and they are no longer infringing the plaintiffs' mark "INDIAN ACCENT", which is subject matter of the present suit.

7. Counsel for the plaintiffs adds that when the defendants had sent an e-mail dated 27.11.2014 to the plaintiff, they had enclosed therewith a copy of the 'Contract Business Sale' dated 4.5.2014, which indicates that the defendants have sold the restaurant business known as "Indian Accent" at Brisbane to a third party. She submits that on the basis of the aforesaid documents enclosed with the present application, the plaintiffs are satisfied that the defendants are no longer infringing the their mark "Indian Accent". It is further stated that the defendants have already shut down their website and therefore the first relief prayed for in para 49 of the plaint stands satisfied. It is in this background that the present application has been filed.

8. In the course of arguments, counsel for the plaintiffs states that instead of pressing the present application, the suit may be disposed of as the plaintiffs are satisfied that no useful purpose will be served by pursuing the suit against the defendants any further. However, the plaintiffs reserve their right to seek their remedies against the defendants in the future, if they are found to be violating/infringing their mark, subject matter of the present suit.

9. In view of the aforesaid submission, the suit is disposed of along with the present application, with liberty granted, as prayed for.

10. File be consigned to the record room.

JULY 21, 2015

sk/ap

HIMA KOHLI, J