

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 709 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2000 OF 2016

Hotel Bhagat Tarachand	...Applicant /Plaintiff
<i>Versus</i>	
Mumbai Bhagat's Tarachand and Others	...Defendants

Mr. Vinod Bhagat, *with Dhiren Kanania i/b G.S. Hegde and V.A. Bhagat for the Plaintiff.*
Mr. Rahul Singh, *for Defendants Nos. 1 to 3.*

CORAM: G.S. PATEL, J
DATED: 12th August 2016

PC:-

1. The Defendant No. 3 is personally present. He instructs Mr. Singh to state that the Defendants submit to a decree in terms of prayer clauses (a), (b), (c) and (d) of the Suit, which read as follows:

“(a) the Defendants by themselves, their proprietors/partners, franchisees, licensees, agents, servants, assignees and all those connected with the Defendants in their business be restrained by a perpetual order and injunction of this Hon’ble Court from rendering, offering

and/or using in any manner whatsoever in relation to their restaurant services, food catering services or any other like services offered in the hospitality industry, the impugned names and marks MUMBAI BHGAT'S TARACHAND, THE BAGAT'S TARACHAND MUMBAI & BT TARACHAN'S or any mark/s identical with and/or deceptively similar to the Plaintiff's trade mark HOTEL BHAGAT TARACHAND/ BHAGAT TARACHAND, so as to infringe upon the Plaintiff's said trade mark registered under No. 2004042 in class 43;

- (b) the Defendants by themselves, their proprietors/partners, franchisees, licensees, agents, servants, assignees and all those connected with the Defendants in their business be restrained by a perpetual order and injunction of this Hon'ble Court from rendering, offering and/or using in any manner whatsoever in relation to their restaurant services, food catering services or any other like services offered in the hospitality industry, the impugned names and marks MUMBAI BHGAT'S TARACHAND, THE BAGAT'S TARACHAND MUMBAI & BT TARACHAN'S or any mark/s identical with and/or deceptively similar to the Plaintiff's trade mark HOTEL BHAGAT TARACHAND/ BHAGAT TARACHAND, so as to pass off the Defendant's services and business as and for those of the Plaintiff or in some way connected or associated therewith;
- (c) the Defendants by themselves, their proprietors/partners, franchisees, licensees, agents, servants, assignees and all those connected with the Defendants in their business be ordered to deliver up to the Plaintiff all such

materials including menu cards, visiting cards and all the other like materials used in the hospitality industry including containers, glasses, plates, tissue papers, ploy bags, labels, stickers, packing materials, dyes, screens, blocks, moulds, stencils and other material/product bearing the impugned names marks MUMBAI BHGAT'S TARACHAND, THE BAGAT'S TARACHAND MUMBAI & BT TARACHAN'S as complained off;

- (d) the Defendant No. 3 be ordered by a decree of mandatory injunction of this Hon'ble Court directing them to withdraw and/or not to proceed any further with the registration of the applications made for registration of the impugned marks MUMBAI BHGAT'S TARACHAND, THE BAGHAT'S TARACHAND MUMBAI & BT TARACHAND'S pending under Nos. 2913480, 2848115 and 2848116 respectively, all in class 43, and/or any other application/s for any other marks which are identical with or are similar to the Plaintiff's trade mark HOTEL BHAGAT TARACHAND/ BHAGAT TARACHAND;"

2. As regards prayer clause (c), the Defendants will destroy all impugned goods, visiting cards, promotional material, flyers, invitation to others to open franchise outlets, plates, glasses and every other material containing the impugned marks at their own cost. This will be done within a period of four weeks from today in the presence of the Advocates for the Plaintiffs. The goods seized by the Court Receiver will be similarly destroyed by the Defendants at their cost within four weeks from today in the presence of the representatives of the Plaintiffs.

3. The Court Receiver to stand discharged without passing accounts, but on payment of his costs, charges and expenses within four weeks from today by the Plaintiffs.

4. As to the question of damages, Mr. Bhagat on behalf of the Plaintiffs, in fairness, states that the Plaintiffs themselves do not seek any monetary relief. They leave it to the Court to award a suitable figure and direct that this be paid to an appropriate organization.

5. Mr. Singh on behalf of the Defendants also has instructions to state that he leaves the question of damages to the Court, but only submits that it be modest. The Defendants agreed to pay an amount of Rs. 1,00,000/- to “Save the Children” (www.savethechildren.in):

MUMBAI OFFICE 1

Neelam Building, 3rd Floor,
D V Pradhan Marg, Hindu Colony,
Dadar East, Mumbai 400 014
Landline Number: 022 49261000
Contact Person: Jitesh Gala

MUMBAI OFFICE 2

8, Mamta House, 2nd Floor,
183 Waterfield Road,
Bandra West, Mumbai 400 050
Landline Number: 022 67254802
Contact Person: Meena Sriramane

6. The donee, Save the Children, is requested to earmark these funds for use in its children’s nutrition and health initiative. A copy of this order will be forwarded along with the payment.

7. The amount of Rs. 1 lakh is to be paid within six weeks from today. Proof of payment to be forwarded by the Advocates for the Defendants to the Office of the Prothonotary & Senior Master, and to be placed on file.

8. The application for withdrawal of trade marks will be made within two weeks from today. In any event, the Registry of Trade Marks is directed to list these applications for withdrawal on or before 31st August 2016. The Prothonotary & Senior Master will forward an authenticated copy of this order to the Registrar of Trade Marks.

9. While Suit is disposed of in these terms, list the suit high on board on 26th September 2016 to report compliance.

(G. S. PATEL, J.)