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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (COMM) 67/2015 & I.A. Nos. 26099/2015 & 5378/2016

MONISH GUJRAL & ORS

..... Plaintiffs

Through: Ms. Nancy Roy with Ms. Adya Khanna,
Advocates.

versus

M/S BEST FOOD & ANR

..... Defendants

Through: Ex parte by order dated 10th February
2016.

CORAM: JUSTICE S. MURALIDHAR

ORDER

09.08.2016

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1. Monish Gujral, Rupa Gujral, Ashim Gujral and Moti Mahal Delux Management Services Pvt. Ltd., Plaintiff Nos. 1 to 4 respectively, have filed the present suit against M/s. Best Food and Mr. Vinay Garg, Defendant Nos. 1 and 2 respectively, praying for a permanent injunction and damages for infringement of trademark, passing off and unfair competition.

2. The Plaintiffs state that they are the registered proprietors of the well-known trademarks 'MOTI MAHAL' and MOTI MAHAL Formative marks which are registered in India and in many jurisdictions across the world. Plaintiff No. 4 is stated to be running a chain of Moti Mahal restaurants.

3. It is stated that the Defendants were ex-franchisees of the Plaintiffs and

were into the business of providing hospitality services. The grievance of the Plaintiffs is that the Defendants continued to carry their operations under the said trademark MOTI MAHAL Delux Tandoori Trail despite the franchisee agreement having being terminated on 25th February 2015. The Plaintiffs claimed that such continued unauthorised use of the said trademarks by the Defendants is most likely to cause confusion in the minds of the consuming public that there is some association between the Plaintiffs and the Defendants, when in fact there is none. Consequently, the present suit was filed.

4. On 23rd December 2015 while issuing summons in the suit and notice in the application IA No. 26099 of 2015 under Order XXXIX Rules 1 & 2 CPC, this Court granted an *ex parte* ad-interim injunction restraining the Defendants from using the trademark/trade name MOTI MAHAL/MOTI MAHAL Delux Tandoori Trail or any other trademark which may be deceptively similar to the Plaintiffs' trademarks. Further, a time of two weeks was granted to the Defendants to remove the signboard placed on their restaurant displaying the Plaintiffs' trademark..

5. Subsequently, despite service of summons and notice, the Defendants did not appear. They were proceeded *ex parte* by an order dated 10th February 2016.

6. The Plaintiffs filed the affidavit of evidence of Plaintiff No. 1 Monish Gujral, by way of examination-in-chief enclosing original documents. The deponent of the affidavit has marked the Plaintiffs' documents as exhibits. The Plaintiffs' evidence was closed on 29th July 2016.

7. This Court has heard the submissions of Ms. Nancy Roy, learned counsel for the Plaintiffs.

8. The affidavit of Mr. Monish Gujral, Plaintiff No. 1 has remained uncontested. Plaintiff No. 1 states that he is the authorized representative of Plaintiff No. 4 and is competent to sign, verify and file the present affidavit of evidence. The uncontested facts emerging from the affidavit of Plaintiff No. 1 are as under:

(i) The Plaintiffs are the registered proprietors of the well-known trademark 'MOTI MAHAL' and MOTI MAHAL Formative marks in India and in many jurisdictions of the world.

(ii) The Defendants are ex-franchisees of the Plaintiffs and are into the business of providing hospitality services. The franchisee agreement dated 8th February 2013 entered into between the parties has been marked as Exhibit PW-1/2. The said franchisee agreement was terminated on 21st February 2015. A copy of the termination letter dated 21st February 2015 has been marked as Exhibit PW-1/3.

(iii) The Defendants are aware of the ownership of the trademark 'MOTI MAHAL' MOTI MAHAL Delux Tandoori Trail and MOTI MAHAL Formative marks of the Plaintiffs and the goodwill and reputation enjoyed by the Plaintiffs in and to the said trademarks. The Defendants were aware that they have no right in any manner whatsoever to use the said trademarks and in any event after the termination of the franchisee agreement.

(iv) The photographs of the premises of the Defendants showing the continuous unauthorized use of the trademark 'MOTI MAHAL Delux Tandoori Trail' after the termination of the franchisee agreement has been exhibited as Exhibit PW-1/4.

(v) Tracing the history of the trademark 'MOTI MAHAL', it is pointed out that Mr. Kundan Lal Gujral, the grandfather of Plaintiff Nos. 1 and 3 and the father-in-law of Plaintiff No. 2 opened the first Moti Mahal restaurant way back in 1920 in Peshawar (now in Pakistan). After the partition in 1947, he shifted to Darya Ganj in Delhi. Around 1948, Mr. Kundan Lal Gujral also opened a hotel in the name of Moti Mahal in Darya Ganj.

(vi) Mr. Kundan Lai Gujral entered into a partnership agreement dated 5th September 1951 with Mr. Thakar Das Maggo, Mr. Kundan Lai Jaggi, Mr. Karam Chand Sarwal and Mr. Dharam Singh Uberoi by virtue of which the above named partners agreed to run the business in the name of MOTI MAHAL HOTEL. It was further agreed upon by the parties to the said partnership agreement that Mr. Karam Chand Sarwal and Mr. Dharam Singh shall have no concern with or interest in the restaurant business of MOTI MAHAL Restaurant and further if, at any time in future, Mr. Karam Chand Sarwal or Mr. Dharam Singh retire from the said partnership, or the partnership is dissolved, they shall have no right to use the name MOTI MAHAL in any business which they start jointly or severally.

(vii) The MOTI Mahal restaurant continued to do well and established itself as an iconic landmark of Delhi. However, the hotel business did not do very well and was eventually closed.

(viii) It is stated that on 16th February 1959 Mr. Kundan Lal Gujral become the absolute owner of the property at Darya Ganj. He and Mr. Nand Lal Gujral (father of Plaintiff Nos. 1 and 3 and husband of Plaintiff No. 2), with a view to expanding their restaurant business started a restaurant in South Extension Part-II, New Delhi under the name and style of Moti Mahal Delux. They had entered into a partnership agreement on 18th August 1975 with Mr. Sanjiv Kohli and Ms. Manorama Kohli, Mr. Kailash Chander Sarwal and Ms. Nirmala Chadha. The word 'DELUX' was added to the name to distinguish it from the main MOTI MAHAL restaurant in Darya Ganj.

(ix) Other partnerships were entered into between Mr. Kundan Lal Gujral and Mr. Nand Lal Gujral and they opened other restaurants at Shop No. M-30 and M-30A in partnership with others by the name of MOTI MAHAL Delux-II in the year 1977. Moti Mahal restaurant at Darya Ganj was not doing good business on account of which the family of the Plaintiffs decided to retire from the said ownership. The Plaintiffs' family relinquished their shares in the said partnership to Mr. Yoginder Nath Chadha, Mr. Avinash Chander Chaddha, Mr. Kushal Deep and Mr. Vinod Chadha and permitted them to use the mark MOTI MAHAL with respect to restaurant at Netaji Subhash Place, Darya Ganj.

(x) It is asserted that despite transfer of its shares in Darya Ganj restaurant,

the Plaintiffs' family retained the exclusive right to use the trademark MOTI MAHAL and precluded the transferees from using their trademark MOTI MAHAL for any other restaurant. It is stated that Gujral family continued to expand the business and diligently protected its trademark rights in MOTI MAHAL. The Sarwal family was only permitted to use the trademark MOTI MAHAL with the suffix DELUX and never MOTI MAHAL *per se*.

(xi) It is asserted that the name MOTI MAHAL is just not a name but in the food industry has become a brand inasmuch as a mere mention of the name of MOTI MAHAL depicts the source which has now come to have been exclusively associated with the Plaintiffs and none else. The trademark MOTI MAHAL has acquired a secondary meaning for excellence in food and service in the hospitality business.

(xii) The mark/name MOTI MAHAL being a coveted intellectual property of the Plaintiffs, registrations were also obtained for the trademarks MOTI MAHAL and MOTI MAHAL DELUX, the details of which are given as under:

Trade Mark	Number	Date	Class	Goods
MOTI MAHAL	580007	28.8.1992	29	Meat, fish chicken, poultry, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and other dairy products, edible oils and fats, preserves, pickles.
MOTI MAHAL	1249495	13.11.2003	42	Providing of food and drink, temporary accommodation, medical,

				hygienic and beauty care, veterinary and agricultural services, legal scientific and industrial research, computer programming.
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(xiii) Apart from the above registrations, the Plaintiffs have also obtained the following registrations:

Trade Mark	Number	Date	Class	Goods
MOTI MAHAL Management Services	1246463	29.10.2003	35	Advertising business management, business administration and office function.

The certified copies of the registration certificates are marked and exhibited as Ex.PW-1/6 to Ex.PW-1/8 respectively.

(xiv) The Plaintiffs are also the owner of the copyright in the oval devices including MOTI MAHAL, MOTI MAHAL Tandoori Trail, represented in the stylized manner and artistic impression. The said over device is an original artistic work and is protected under Section 2 (c) of the Copyright Act, 1957.

(xv) The Plaintiffs have also opened over 100 restaurants in India and abroad under diverse brand names such as MOTI MAHAL, MOTI MAHAL DELUX, MOTI MAHAL DELUX TANDOORI TRAIL, MOTI MAHAL KABAB TRAIL and MOTI MAHAL CHAT TRAIL, MOTI MAHAL DOSA TRAIL to name a few. List of such restaurants under the name

MOTI MAHAL is marked and exhibited as PW-1/10.

(xvi) The list of awards won by the MOTI MAHAL brands and the restaurants run under the said brand are listed in para 22 of the affidavit.

(xvii) It is stated that Plaintiff No. 1 also incorporated Plaintiff No.4 company on 23rd November 2004 to carry on business under the famous MOTI MAHAL brand.

(xviii) In paras 30 and 31 of the affidavit, the amounts spent by the Plaintiffs in advertising, promoting and marketing their services under the trade name had been set out. The sales figures of the various franchised outlets the last five years are reproduced under:

Year	Sales Figures (Rs.)
2008-2009	1,71,76,588.28
2010-2011	24,40,36,019.00
2011-2012	34,45,20,893.50
2012-2013	32,48,98,146.20
2013-2014	33,75,95,125.36

(xix) In para 32 of the affidavit, the advertisement expenses for the last five years from 2008-09 to 2013-14 have been set out, as under:

Year	Advertisement expenses (Rs.)
2008-2009	5,09,661.52
2010-2011	8,76,184.00

2011-2012	6,46,345.00
2012-2013	3,01,772.00
2013-2014	2,87,258.13

(xx) It is stated that the Plaintiffs are also the owner of the website, the details of which have been set out in para 36 of the affidavit.

(xxi) It is stated that the Plaintiffs are the first proprietors of the said trade mark/name, MOTI MAHAL and MOTI MAHAL Formative marks and have acquired exclusive proprietary rights and that no person, firm or company is entitled to print, publish, advertise and use of the said trademark in any manner, which may be identical and deceptively similar to the Plaintiff's trade mark/name.

(xxii) It is stated that the Plaintiffs' trade mark MOTI MAHAL, MOTI MAHAL Formatives marks and oval devices  and



are well-known marks as envisaged under the provisions of Section 2 (1) (zg) of the Trade Marks Act, 1999.

9. The Court is satisfied that from the uncontested affidavit of Plaintiff No. 1 filed on behalf of the Plaintiffs and that

(a) the mark MOTI MAHAL, MOTI MAHAL Formatives marks and its oval devices are inherently distinctive of the products and business of the Plaintiffs and have been continuously and extensively used by the Plaintiffs for the past several decades in India;

(b) in view of the extensive promotional, advertising and marketing activities, the Plaintiffs have been able to show that the substantial section of the public associates and knows that the said mark belonging to the Plaintiffs;

(c) the Plaintiffs are entitled to permanent injunction restraining from using the trademarks by the Defendants.

(d) The Plaintiffs came to know that the Defendants have unauthorizedly use the said marks despite the franchisee agreement entered into with them having been terminated and that such unauthorized use amounts to infringement within the meaning of Section 29 (6) of the Trademarks Act, 1999 entitling the Plaintiffs to the reliefs sought in the suit.

(e) By their continued unauthorised use of the Plaintiffs' aforementioned trademarks, the Defendants will undoubtedly cause harm to the reputation and goodwill created by the Plaintiffs and is bound to cause confusion and deception in the minds of the public and members of the trade misleading them into believing that there exists a connection between the Defendants and the Plaintiffs, whe in fact it does not;

(f) The Plaintiffs have also been able to prove that the Defendants, being fully aware of the proprietorship of the Plaintiffs in the trademarks in question, have continued to unauthorizedly use the said

marks with a view to exploit the goodwill and reputation of the Plaintiffs and in particular their trademarks.

(g) Further the use of the Plaintiffs' registered trademark and artistic works by the Defendants amounts to infringement of the said trademarks in terms of Section 29 (6) of the Trademarks Act, 1999.

10. The Court accordingly decrees the suit and restrains the Defendants, their directors, franchisees, partners, servants, agents, representatives and assignees

(a) from using the trademark/trade name MOTI MAHAL/MOTI MAHAL Delux Tandoori Trail and/or any other trademark deceptively or confusingly similar to the Plaintiffs' trademarks MOTI MAHAL and the MOTI MAHAL Formative marks or any other trade mark mentioned in proceeding paragraphs of the plaint as a trademark or part of a trademark, trade name or part of a trade name, domain name or part of a domain name or in any other manner whatsoever which would result in infringement, passing off, unfair competition and dilution of the Plaintiffs' trademarks'

(b) from using the oval devices including



or any other mark/label/device which is identical/deceptively similar to the Plaintiffs' oval device which would result in infringement of Plaintiffs' copyright;

(c) using any other indicia whatsoever to show any association or affiliation or connection of the Defendants or their services with the Plaintiffs or their services.

11. The Court further issues a mandatory injunction directing the Defendants, their directors, franchisees, partners, employees, agents, distributors, representatives and assign to:

(a) hand over to the Plaintiffs or their nominated representative all goods, packaging and promotional materials, catalogues, stationary and any other material whatsoever bearing the trademark MOTI MAHAL/MOTI MAHAL Delux Tandoori trail and/or any other trademark deceptively or confusingly similar to the Plaintiffs' trademarks MOTI MAHAL and MOTI MAHAL Formative marks or any other trademark mentioned in the preceding paragraphs of the plaint;

(b) recall all the marketing, promotional and advertising materials bearing the trademark MOTI MAHAL/MOTI MAHAL Delux Tandoori Trail, and/or any other trademark deceptively or confusingly similar to the Plaintiffs' trademarks MOTI MAHAL and MOTI MAHAL Formative marks or any other trademark mentioned in the preceding paragraphs of the plaint which has been manufactured, distributed, sold by the Defendants and hand over to the representatives of the Plaintiffs;

(c) deliver to the Plaintiffs' attorneys or representatives for destruction all products, labels, signs, prints, packages, moulds, plates, dies, wrappers, receptacles and advertisements in its possession or under their control bearing the trademarks MOTI MAHAL/MOTI MAHAL Delux Tandoori Trail and/or any other packaging/label/marks deceptively or confusingly similar to the Plaintiffs' trademarks MOTI MAHAL and MOTI MAHAL

Formative marks.

(d) allow inspection of their accounts by the Plaintiffs to assist in ascertaining the amount of profits made by them and/or damages suffered by the Plaintiffs as a result of the Defendants' use of the Plaintiffs' trademarks/devices.

12. In the absence of sufficient evidence at this stage, the prayer of the Plaintiffs for exemplary and punitive damages against the Defendants is declined. However, such right of the Plaintiffs to claim damages including exemplary and punitive damages against the Defendants is left open to be agitated in separate proceedings in accordance with law.

13. The suit is decreed in the above terms with costs of Rs. 20,000 which will be paid by the Defendants to the Plaintiffs within a period of four weeks. The decree sheet be drawn up accordingly. The applications are disposed of.

AUGUST 09, 2016
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S.MURALIDHAR, J