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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.07.2017

+ **CS (COMM) 137/2017**

MONISH GUJRAL & ORS

..... Plaintiffs

versus

G.KIRAN KUMAR & ORS

..... Defendants

Advocates who appeared in this case:

For the Plaintiffs : Ms Nancy Roy, Advocate

For the Defendants : None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

05.07.2017

SANJEEV SACHDEVA, J. (ORAL)

CS(COMM) 137/2017

1. The plaintiffs have filed this Suit *inter alia* for permanent injunction thereby restraining the defendant No 1 to 6 from using the trademark/trade name “MOTI MAHAL”/ “MOTI MAHAL Delux Tandoori Trail” or any other Mark / trading name identical or

deceptively similar to the trademark “MOTI MAHAL” and the MOTI MAHAL formative trademark of the plaintiffs and using the



oval devices

and

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

2. Defendant No. 7 is a co-owner of the trademark alongwith the Plaintiffs.

3. Defendants have been served with the summons of the suit. None had appeared for the defendants on 27.03.2017. None appears even today. The Defendants have failed to file Written Statement. The defendants are proceeded *ex-parte*.

4. Learned counsel for the plaintiffs submits that the plaintiffs are willing to give up the reliefs of rendition of accounts and recovery of damages.

5. Learned counsel for the plaintiffs relies on Order VIII Rule 10 of the Code Of Civil Procedure, 1908 (hereinafter referred to as the CPC) as amended by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act , 2015 (hereinafter referred to as the Commercial Courts Act) to contend that

as the defendant 1 to 6 have failed to file Written Statement, they have made themselves liable for a Decree of permanent Injunction.

6. Learned counsel relies upon the Judgment of a Coordinate Bench dated 07.02.2013 in CS(OS) No.1213/2011 titled **SATYA INFRASTRUCTURE LIMITED & OTHERS VERSUS SATYA INFRA & ESTATES PRIVATE LIMITED** wherein even prior to the amendment of the CPC, in a Suit relating to infringement of Trade Mark this court had dispensed with the requirement of the plaintiff to lead *ex parte* evidence and had pronounced judgment on the basis of the affidavit filed in support of the Plaint.

7. The present Suit for infringement has been filed by the Plaintiff after the amendment of the CPC by the Commercial Courts Act.

8. The Suit is a Commercial dispute as defined under the Commercial Courts Act. The provision of the CPC as amended by the Commercial Courts Act are applicable.

9. Order VIII rule 10 as amended and applicable to Commercial disputes reads as under:

“10. Procedure when party fails to present written statement called for by Court.— Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the

pronouncement of such judgment a decree shall be drawn up.

Provided further that no court shall make an order to extend the time provided under Rule 1 of this order for filing of the written statement.”

10. In view of the fact that the defendants 1 to 6 have failed to appear and file their written statement, they are liable to be proceeded with under order VIII rule 10 of CPC.

11. The Plaint is verified and supported by affidavits and statement of truth of the Plaintiffs affirming the contents of the plaint. The Plaintiffs have also filed an affidavit under order XI rule 6(3) of CPC with regard to electronic record.

12. In a Suit for infringement of the same trademarks filed by the Plaintiffs being CS (COMM) 67/2015 titled **MONISH GUJRAL & OTHERS VERSUS BEST FOOD & ANOTHER**, another coordinate Bench of this court by Judgment dated 09.08.2016 has decreed the suit.

13. In view of the above, I am of the opinion that, this is a fit case, where instead of requiring the plaintiffs to lead *ex parte* evidence, judgment can be pronounced forthwith against defendants 1 to 6.

14. The Plaintiffs have pleaded that they 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.

15. The plaintiffs claim to be the owners of the copyright in the

oval devices



and



represented in the stylized manner and artistic impression. The said oval device is an original artistic work and is protected under Section 2 (c) of the Copyright Act, 1957.

16. It is stated that the Plaintiffs' trade mark MOTI MAHAL, MOTI MAHAL Formatives marks and its oval devices are well-known marks as envisaged under the provisions of section 2(1) (zg) of the Trade Marks Act, 1999.

17. It is contended that Defendant Nos. 1 to 6 are ex-franchisee of the Plaintiff No. 3 and are into the business of providing hospitality services. It is contended that the Defendants are continuing to carry on their operations under the trademark MOTI MAHAL DELUX Tandoori Trail despite the Franchisee Agreement having being terminated on 28th October 2015.

18. It is stated that the Defendant Nos. 1 to 6 being the ex-franchisee of the Plaintiffs are clearly aware of the ownership and notoriety of the trademark MOTI MAHAL, MOTI MAHAL DELUX

TANDOORI TRAIL and MOTI MAHAL Formative marks of the Plaintiffs as well as the goodwill and reputation enjoyed by the plaintiffs in and to the said trademarks and being a party to the Franchisee Agreement are aware that they have no rights in any manner whatsoever to use the trademark MOTI MAHAL/ MOTI MAHAL Delux Tandoori Trail.

19. It is contended that such continuous use by the Defendant Nos. 1 to 6 is most likely to cause confusion in the minds of the consuming public that there is some association between the Plaintiffs and the Defendant Nos. 1 to 6, when actually there is none.

20. Tracing the History of the Trademarks, it is stated that, in the year 1920 the first restaurant was opened by Mr. Kundan Lal Gujral, the grandfather of the Plaintiff No. 1 and Defendant No. 7 and the father – in – law of the Plaintiff No. 2 in Peshawar (now in Pakistan). In 1947, after the partition of India and Pakistan, he moved to the Daryaganj area of Delhi and opened the first restaurant MOTI MAHAL of Darya Ganj. In and around 1948, Mr. Kundan Lal Gujral also opened a Hotel by the name MOTI MAHAL Hotel in Darya Ganj.

21. Mr. Kundan Lal Gujral, it is stated, entered into a partnership agreement dated 5th September 1951 with Mr. Thakar Das Maggo, Mr. Kundan Lal Jaggi, Mr. Karam Chand Sarwal and Mr. Dharam

Singh Uberoi by virtue of which the partners agreed to run the business in the name of MOTI MAHAL HOTEL. As per the partnership agreement Mr. Karam Chand Sarwal and Mr. Dharam Singh were to 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 retired 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.

22. It is pleaded that, whilst the MOTI MAHAL restaurant continued to bloom, the hotel business did not do very well and was eventually closed. On 16th February 1959 Mr. Kundan Lal Gujral became the absolute owner of the property at Darya Ganj.

23. Mr. Kundan Lal Gujral and Mr. Nand Lal Gujral (father of the Plaintiff No. 1 and Defendant No. 7 and husband of the Plaintiff No. 2) with an intention to expand their restaurant business started a restaurant in South Extension Part II, New Delhi under the name and style of MOTI MAHAL DELUX and entered into a Partnership agreement dated 18th August 1975 with one Mr. Sanjiv Kohli and Ms. Manorma 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.

24. Mr. Kundan Lal Gujral and Mr. Nand Lal Gujral further entered into other partnerships and opened other restaurant at Shop No. M-30 and M-30A in partnership with others by the name of MOTI MAHAL DELUXE – II in the year 1977.

25. The 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 partnership. The Plaintiffs' family relinquished their shares in the said partnership to one Mr. Yoginder Nath Chaddha, Mr. Avinash Chander Chaddha, Mr. Kushal Deep and Mr. Vinod Chaddha and permitted them to use the mark MOTI MAHAL only with respect to the restaurant at Netaji Subhash Place, Darya Ganj.

26. It is contended that though the Gujral family transferred its shares in the MOTI MAHAL Restaurant at Netaji Subhash Place, Darya Ganj, they retained the exclusive right to use the trademark MOTI MAHAL and precluded the transferees from using their trademark MOTI MAHAL for any other restaurant. After relinquishing their shares in the Darya Ganj restaurant, the Jaggi family ceased to have any concern with the restaurant business at Darya Ganj or indeed MOTI MAHAL brand. The Gujral family continued to expand the business and diligently protecting its trademark rights in MOTI MAHAL.

27. It is pleaded that the Plaintiffs also permitted the Sarwal family and the Kohli family to continue use of MOTI MAHAL. However, such use could only be undertaken till the Sarwal family acknowledged exclusive rights of the Plaintiffs to the trade mark MOTI MAHAL and such use was considered permitted use. To draw a distinction between the original MOTI MAHAL restaurant started by Mr. Kundan Lal Gujral and other restaurants run as permitted users the Sarwal family were only permitted to use the trademark MOTI MAHAL with the suffix DELUX and never MOTI MAHAL per se.

28. Mr. Kundan Lal Gujral passed away in the year 1997 and all rights in the trademark MOTI MAHAL devolved on his heirs, i.e. the Plaintiffs and the Defendant No. 7 herein.

29. It is asserted that the name MOTI MAHAL is not just a name but in the food industry has become a brand in inasmuch as a mere mention of the name 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.

30. 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 details of which are given herein under:

Trade Mark	Number	Date	Cls	Goods
MOTI MAHAL	580007	28.08.92	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	13.11.03	42	Providing of food and drink, temporary accommodation, medical, hygienic and beauty care, veterinary and agricultural services, legal scientific and industrial research, computer programming.

31. Apart from the above mentioned registrations the Plaintiffs have also obtained the following registration:

Trade Mark	Number	Date	Cls	Goods
MOTI MAHAL MANAGEMENT SERVICES	1246463	29.10.03	35	Advertising business management, business administration and office function

32. It is stated that the Plaintiffs have also opened over 100 restaurants in India and abroad. The said restaurants have been opened 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.

33. Several awards have been won by the MOTI MAHAL brand and the restaurants have become a major attraction for Indian tourism.

34. MOTI MAHAL business today is claimed to be run by the Plaintiff No. 1, and is comprised of over 100 locations in India and Middle Eastern countries including 33 outlets in Delhi-NCR itself.

35. To commemorate his grandfather's Tandoori trail from Peshawar to Delhi, the Plaintiff No. 1 launched a new line of MOTI MAHAL restaurants, called MOTI MAHAL DELUX TANDOORI TRAIL, to bring the MOTI MAHAL brand of cuisine to countries around the world. The first MOTI MAHAL DELUX TANDOORI TRAIL restaurants opened in India in 2003 and various countries in the Middle East in 2012.

36. It is pleaded that due to this extensive use around the world in connection with high quality Indian cuisine, the MOTI MAHAL mark today is recognized globally by the consuming public as indicating

that the goods and services offered under it originate from the Gujral family and their restaurants.

37. It is contended that by virtue of the registrations and owing to the extensive use and publicity given to the trademark MOTI MAHAL and its other formative marks in India since 1947, the trademarks have acquired distinctiveness and the public at large associates MOTI MAHAL with the Plaintiffs.

38. Over the years, the Plaintiffs claim to have spent large sums of money on advertising, promoting, and marketing their services under the MOTI MAHAL mark and the MOTI MAHAL brand has received extensive coverage by the press in India and around the world.

39. It is contended that the sales figures of the last few years are as 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
2014-2015	35,65,89,654.00

40. The Plaintiffs claim to have also undertaken various marketing and sales promotional activities for its services rendered under the trademark/name containing and consisting trademark MOTI MAHAL and its Formative marks. The details of the costs for the last few years are given herein below:

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
2014-2015	2,19,169.00

41. It is pleaded that Defendant Nos. 1 to 4 approached the Plaintiff No. 1 for entering into a franchise agreement for the purpose of managing and running a restaurant under the name MOTI MAHAL Delux Tandoori Trail at their premises. Pursuant to discussions between the parties, the Plaintiff No. 3 entered into a franchisee agreement with the Defendant Nos. 1 to 4 on 4th November 2014.

42. As per the agreement the Defendant Nos. 1 to 4 being the Franchisee were permitted to use the brand MOTI MAHAL Delux Tandoori Trail in accordance with the terms of the agreement. The said agreement specially contained a clause being Clause 5.3 whereby the said Defendants acknowledged that the Defendants shall have no right on the name of MOTI MAHAL Delux Tandoori Trail or any other brand of the Plaintiffs during the term of the agreement or thereafter and on termination of the agreement, the Defendants shall not use the same and shall be also required to remove all sign boards bearing the name MOTI MAHAL Delux Tandoori Trail and shall be completely debarred from using the said mark/name.

43. It is contended that there was a change in the constitution of the partnership concern M/s Manal Restaurants with effect from 1st July 2015 and that the Defendant No. 2 was alone to be responsible for all payments and legal actions, due payments to be made to Vendors including the franchise royalty. However, neither copy of the partnership deed was not provided to the plaintiffs nor payment of the franchisee fee was made. It is contended that Defendants continued to violate the Agreement.

44. The Plaintiffs terminated the Franchisee Agreement *vide* letter dated 28th October 2015. Pursuant to the termination of the Franchisee Agreement by the Plaintiffs, the license for the use of the

mark MOTI MAHAL/ MOTI MAHAL Formative marks for their goods/services granted to the Defendants by way of the Franchisee Agreement was also terminated. The defendants confirmed that they had discontinued the use of the trademarks of the plaintiffs. However, the Plaintiffs found that the Defendant Nos. 1 to 6 had recommenced use of the trade mark/ trade name MOTI MAHAL DELUX TANDOORI TRAIL in an attempt to mislead the customers into believing that they are still the Franchisees of the Plaintiffs and that there exists an association between the Plaintiffs and Defendants.

45. The Plaintiff has also placed on record photographs to show that the defendants are continuing to use the trademarks of the plaintiffs.

46. In view of the above uncontroverted facts, I am satisfied that 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.

47. The Plaintiffs have been able to show that the substantial section of the public associates and knows that the said mark belongs to the Plaintiffs.

48. The Defendants have unauthorizedly used the said marks despite the termination of the franchisee agreement entered into with them and 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.

49. 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, when in fact it does not.

50. 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.

51. The Plaintiffs are thus entitled to permanent injunction restraining from using the trademarks by the Defendants.

52. The suit is accordingly decreed in favour of the plaintiffs and against Defendant Nos. 1 to 6 and accordingly Defendant Nos. 1 to 6,

their partners, franchisees, servants, agents, representatives and assignees are restrained by a permanent injunction from:

- (i) 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 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;

- (ii) 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;

- (iii) 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;

53. Further a decree of a mandatory injunction is passed in favour of the Plaintiffs and against the Defendant No. 1 to 6 thereby directing Defendant Nos. 1 to 6, their partners, franchisees, employees, agents, distributors, franchisees, representatives and assignees to:

- (i) hand over to the Plaintiffs or their nominated representative all goods, packaging and promotional materials, catalogues, stationery 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.
- (ii) 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 which has been manufactured, distributed, sold by the Defendants and hand over to the representatives of the Plaintiffs;
- (iii) 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.

54. In view of the fact that learned counsel for the Plaintiffs has given up the relief of damages, the prayer with regard to inspection of records and award of damages is rejected.

55. The suit is accordingly decreed in the above terms. Decree sheet be drawn up. No order as to costs.

SANJEEV SACHDEVA, J

JULY 05, 2017/'Sn'