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

% *Date of Judgment: 23rd May, 2018*

+ RFA(OS)(COMM) 10/2018
ESCOBAR TAPAS BAR & ANR Appellants

Through Mr. Sudhanshu Batra, Sr. Advocate
with Ms. Anusuya Nigam, Ms. Sahiba
Pantel, Ms. Arushi Lohia, Mr.
Lakshay Kaushik, Mr. Aditya Mishra
& Ms. Isha Tyagi, Advocates.

versus

IMPRESARIO ENTERTAINMENT & HOSPITALITY PVT LTD
..... Respondent

Through Mr. Darpan Wadhwa, Sr. Advocate
with Mr. Manish Dhir, Mr. Prabhat
Kalia & Ms. Mugdha Palsule,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CAV 502/2018 in RFA(OS)(COMM) 10/2018

1. Mr. Darpan Wadhwa, learned Senior Counsel, on instructions, appears on behalf of the caveator.

2. Accordingly, the Caveat Petition stands disposed of.

CM APPLS. 21999/2018 & 22001/2018 (exemption) in RFA(OS)(COMM) 10/2018

3. Exemptions are allowed subject to all just exceptions.

4. Applications stand disposed of.

CM APPL. 22002/2018

5. This is an application filed by the appellants seeking enlargement of time in making up the deficiency in the Court fee.
6. Learned counsel for the appellants submits that the appellants have already deposited the amount and time be extended to file the court fee.
7. Heard. Having regard to the submission made, present application is allowed. Let deficiency in Court fee be made up within seven days from today.
8. Application stands disposed of.

RFA(OS)(COMM) 10/2018

9. This is an appeal under Order 41 read with Section 151 of the Code of Civil Procedure (CPC), 1908, Section 10 of Delhi High Court Act, 1911 and Section 13 of Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act, 2015 against the order dated 14.05.2018 passed by the learned Single Judge of this Court.
10. The respondent herein had filed a suit for permanent and mandatory injunction for passing off and damages. An ex-parte injunction was granted on 06.12.2017 restraining the defendants (appellants herein) from opening a restaurant with the trademark "SOCIAL HOUSE or SOCIAL".
11. Two applications were filed by the appellants herein (defendants in the suit) being I.A. no.15630/2017 under Order VII Rule 10 CPC and I.A. no.15629/2017 under Order XXXIX Rule 4 CPC. Upon hearing, the

suit was disposed of by the impugned order dated 14.05.2018, the operative portion of which, reads as under :

“Today, learned counsel for the plaintiff states that without going into the merits of the case, she has no objection if I.A.No.15630/2017 filed by the defendants under Order VII Rule 10 CPC is allowed.

Consequently, the aforesaid application is allowed and the plaint along with pending applications are directed to be returned under Order VII Rule 10 CPC.

However, to facilitate filing of the present suit in a court having the territorial jurisdiction, this Court directs that the interim order dated 06th December, 2017 shall continue to operate for a period of eight weeks. The plaint as well as the documents filed by the plaintiff are directed to be returned to the plaintiff by the Registry of this Court within a period of one week. For this purpose, list the matter before the Joint Registrar on 21st May, 2018.

It is made clear that in the event either the plaint is not filed in the court of competent jurisdiction within the stipulated period or if no interim order is passed by the competent court within a period of eight weeks, the interim injunction order shall stand vacated.

With the aforesaid directions, the present suit and pending applications stand disposed of.”

12. The appellants are aggrieved by the concession granted by the Court in extending the interim order for a period of eight weeks. Mr. Batra, learned senior counsel for the appellants submits that once the Court had reached a conclusion that this Court has no territorial jurisdiction in the matter, the interim order could not have been extended for eight

weeks.

13. Mr. Wadhwa, learned senior counsel for respondent submits that the order dated 14.05.2018 was in fact in the form of a consent order, which is evident from the fact that the respondent herein (plaintiff in the suit) had agreed that the plaint be returned and the application under Order VII Rule 10 CPC be allowed. He further submits that there was no opposition at the time of passing of the order for extension of the interim order as a concession. The submissions made by Mr. Wadhwa are vehemently denied by counsel for the appellants, who submits that extending the stay for a period of eight weeks was strongly opposed by counsel for the appellants (defendants in the suit) but the same is not reflected in the order dated 14.05.2018. At this stage, Mr. Batra, learned senior counsel, on instruction, submits that the appellants would make an application seeking review of the order dated 14.05.2018. Consequently, the appeal is dismissed as not pressed.

CM APPLS. 21998/2018 (Stay) & 22000/2018 (O XIII R 10 CPC) For summoning of Court record)

14. The applications stand dismissed as not pressed in view of the order passed in the appeal.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 23, 2018 ck