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

+ RFA(OS) 64/2018, C.M.Nos.36132/2018 & 36133/2018

FOOD CORPORATION OF INDIA WORKERS UNION

..... Appellant

Through: Mr.Rana Mukherjee, Sr.Adv. with
Mr.R.R.Kumar, Mr.Vishal Gupta and
Ms.Sreoshi Chatterjee, Advts.

versus

FOOD CORPORATION OF INDIA

..... Respondent

Through: Mr.Ajit Pudussery and Mr.Ajeet Singh
Verma, Advts.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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27.09.2018

C.M.36133/2018 (delay)

The present application has been filed by the appellant for condonation of delay of 42 days in filing the present appeal.

There is no opposition to the prayer made in the application. Accordingly, the delay in filing the present appeal is condoned.

The application stands disposed of.

RFA(OS) 64/2018, C.M.36132/2018 (stay)

The present appeal is directed against the order dated 20.03.2018 in CS (OS) 411/2016 passed by learned Single Judge of this Court.

Mr.Rana Mukherjee, learned Senior Counsel appearing for the appellant, submits that a call for strike made on 29.07.2016 for a strike proposed for 19.08.2016 had forced the respondent to file the aforesaid suit. On 19.08.2016, while issuing summons in the suit, an interim order was passed. Upon service of summons, the appellant herein filed applications being I.A.12296/2016 under

Order VII rule 11 of the Code of Civil Procedure (CPC) and I.A.12297/2016 under Order XXXIX Rule 4 of CPC for modification/vacation of the interim order dated 19.08.2016. Meanwhile, the written statement was also filed. Learned Senior Counsel submits that the suit was decreed in favour of the respondent on the date when the suit was listed for framing of issues. Para 19 of the order dated 20.03.2018 reads as under:

- “19. This suit is disposed of,
- (i) by restraining the defendants and their members by a decree of permanent injunction from:
 - (a) resorting to any protest, strike, dharna or demonstration within any of the premises of the plaintiff or from disrupting or interfering with the works / activities of the plaintiff therefrom; and,
 - (b) holding the said protest, dharna, demonstration and strike within a radius of 100 mtrs. of the outside boundary of any premises of plaintiff or from interfering with the egress and ingress of the visitors, workers and vehicles desiring to enter or egress the premises of the plaintiff or from disrupting or interfering with the works being carried on in the said premises of the plaintiff; if however holding such demonstration / dharna / protest beyond a distance of 100 meters from the outer boundary of the premises makes it invisible to the workers and visitors to the premises of the plaintiff, it may be so held at a distance within 100 meters but ensuring that the same does not disturb the peace and tranquillity of the working in the premises of plaintiff or interfere with the ingress and egress of any person to in such premises.
 - (ii) leaving the parties to bear their own costs.”

The counsel for the appellant submits that while passing the order of decree, learned Single Judge has exceeded his jurisdiction as reading of the order dated 20.03.2018 would show that the same has been passed in perpetuity whereas the suit only pertains to the call of strike for 19.08.2016.

Notice was issued in the appeal. Learned counsel for the respondent agrees that the order of the learned Single Judge be modified to the extent that the relief claimed in the suit would be restricted for the call of strike for 19.08.2016 alone clarifying that should the appellant resort to strike/dharna or

disrupt or interfere with the work activities of the respondent in future, the respondent would be well within its rights to seek such remedy as available in accordance with law. Counsel for the appellant agrees to the same.

Accordingly, para 19 of order dated 20.03.2018 is modified to the extent that the order is only restricted to the call of strike for 19.08.2016 alone and in case, call for strike is given in future, it would be open for the respondent to seek such remedy as available in accordance with law.

Rights and contentions of both the parties are kept open.

With the aforesaid modification, the appeal and C.M. 36132/2018 stand disposed of. Decree sheet be prepared accordingly.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 27, 2018

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