

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 312/2016, CC No.9/2018, CCP(O) No.40/2017 and IAs
No.7579/2016 (u/O XXXIX R-1&2 CPC), 9390/2016 (u/O XXXIX
R-4 CPC), 717/2017 (u/O XII R-6 r/w O-XV R-1 CPC) &
15034/2017 (of the plaintiff for early hearing of CCP)

FOOD CORPORATION OF INDIA Plaintiff

Through: Mr. Rajeev K. Virmani, Sr. Adv. with
Mr. Ajit Pudussery, Mr. Ajeet Singh
Verma & Mr. Rishabh Bhargava,
Advs.

Versus

BHARTIYA KHADYA NIGAM KARAMCHARI
SANGH & ANR. Defendants

Through: Mr. Bahar-U-Barqi, Adv. for D-1.
Mr. Jagat Arora & Mr. Niraj Kumar,
Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.03.2018**

1. Though this suit is listed along with CS(OS) No.411/2016 and in the past also appears to have been listed along with CS(OS) No.411/2016 but for what follows, it is deemed appropriate to pass separate orders in the suits.

2. The plaintiff instituted this suit against Bhartiya Khadya Nigam Karamchari Sangh, impleaded as defendant no.1 and Food Corporation of India Executive Staff Union, impleaded as defendant no.2, for the reliefs of
i) declaration of the proposed strike and agitational programmes called by the defendants during the pendency of conciliation proceedings as illegal,

being contrary to Section 22 of the Industrial Disputes Act, 1947; and, ii) mandatory injunction prohibiting the defendants from indulging in any agitational programme resulting in disruption of normal working of the plaintiff during the pendency of conciliation proceedings, as threatened by the defendants.

3. The suit came up before this Court first on 8th June, 2016 when the advocate for the defendant no.1 appeared on advance notice. While issuing summons of the suit, vide ad-interim orders, the defendant no.2, its members, servants, agents etc. were restrained from resorting to any fast, strike, *dharna* or demonstration within 100 meters of the outer offices or other places of work of the plaintiff and from intimidating or obstructing ingress and egress of employees, visitors and vehicles to the headquarters and other places of work of the plaintiff. As far as defendant no.1 was concerned, the counsel for the defendant no.1 assured that the call for strike had been deferred and assured that no obstruction shall be caused to the working of the plaintiff.

4. The defendant no.1, besides written statement, also filed a Counter-Claim seeking mandatory injunction directing the plaintiff to comply with its commitments made on 4th June, 2016 followed by written assurance on 6th June, 2016. The Counter-Claim was valued for the purpose of court fees and jurisdiction at Rs.200/-.

5. The defendant no.2 also filed written statement and pleadings in the suit and the Counter-Claim were completed.

6. The suit and the Counter-Claim are ripe for framing of issues and IA No.7579/2016 of the plaintiff under Order XXXIX Rules 1&2 CPC, IA No.9390/2016 of the defendant no.2 under Order XXXIX Rule 4 CPC and under Order XII Rule 6 CPC, CCP(O) No.40/2017 filed by the plaintiff averring violation of the interim order by defendant no.2 and IA No.15034/2017 of the plaintiff for early hearing of CCP(O) No.40/2017 are also for consideration.

7. The senior counsel for the plaintiff draws attention to Section 22(1)(d) of the Industrial Disputes Act, 1947 to contend that the same, during the pendency of any conciliation proceedings before a Conciliation Officer and for seven days after the conclusion of such proceedings, prohibits any person employed in the public utility service from going on strike in breach of a contract. It is argued that the conciliation proceedings are still pending before the Conciliation Officer and are listed next on 26th March, 2018.

8. The counsel for the defendant no.2 states that the conciliation proceedings with respect to the defendant no.2 have already culminated and are not pending. It is however stated that in pursuance to a subsequent notice by the defendant no.2, the conciliation proceedings are still pending. It is further stated that if the conciliation fails, the defendant no.2 will approach the appropriate forum for redressal of its grievance.

9. The senior counsel for the plaintiff controverts.

10. The counsel for the defendant no.2 otherwise states that there was no cause of action for the plaintiff to file the present suit and has no objection to the disposal of the suit recording the statement of the counsel for the defendant no.2 that the defendant no.2 and its members shall not indulge in

any of the acts obstructing or disrupting the working of the plaintiff. It is however stated that since the order is with respect to a large number of offices / depots, a uniform prohibition of 100 meters results in a total bar to the demonstration/ *dharna* / protest inasmuch as at a number of sites, the distance of beyond 100 meters takes the members of the defendant no.2 beyond the place from where there can be any effect of holding such *dharna* or protest.

11. The counsel for the defendant no.1 also contends that there is no cause of action and has no objection to the disposal of this suit as aforesaid. Qua his Counter-Claim however I have enquired from the counsel, whether the same is maintainable before the Civil Court and whether not the remedy of the defendant no.1 is before the Industrial Court.

12. The counsel for the defendant no.1 states that the Counter-Claim is for enforcement of the commitments made by the plaintiff.

13. Even if that be so, I fail to see that if the jurisdiction of the Civil Court is otherwise barred, how the Counter-Claim is maintainable before the Civil Court.

14. The counsel for the defendant no.1 states that the Counter-Claim be disposed of with liberty to the defendant no.1 to approach the appropriate forum.

15. In view of the aforesaid, the need to frame issues or to relegate the parties to evidence is not felt.

16. 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) The defendants and their members are directed by a decree of mandatory injunction to comply with the provisions of Section 22(1)(d) of the Industrial Disputes Act, 1947.

(iii) the Counter-Claim is disposed of within liberty aforesaid.

(iv) leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 20, 2018

‘gsr..