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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 411/2016, IAs No.10012/2016 (u/O XXXIX R-1&2 CPC),
12296/2016 (u/O VII R-11 CPC), 12297/2016 (u/O XXXIX R-4
CPC), 381/2017 (u/O XXXIX R-4 CPC), 382/2017 (u/O VII R-11
CPC) and 471/2017 (u/O VIII R-10 CPC)

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

FOOD CORPORATION OF INDIA HANDLING
WORKERS UNION & ORS

..... Defendants

Through: Ms. Anupradha Singh, Adv. for D-1.
Mr. Anirudh Sharma, Adv. for D-2.
Mr. Arvind Nayar, Sr. Adv. with Mr.
Sushant Kumar, Advs. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.03.2018

1. Though this suit is listed along with CS(OS) No.312/2016 and in the past also appears to have been listed along with CS(OS) No.312/2016 but for what follows, it is deemed appropriate to pass separate orders in the suits.

2. The plaintiff instituted this suit against Food Corporation of India Handling Workers Union, impleaded as defendant no.1, Food Corporation of India Shramik Union, impleaded as defendant no.2 and Food Corporation of India Workers Union, impleaded as defendant no.3, for the reliefs of i) declaration as illegal of the proposed strike and agitational programmes

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

3. The suit came up before this Court first on 19th August, 2016 when the same was entertained and while issuing summons/notice thereof, vide *ex-parte* ad-interim order, the defendants restrained from holding any strike, *dharna*, go-slow, work to rule, fast, *hunkar* rally etc. within the premises or within 100 meters of the outer walls of the places of work of plaintiff and from creating any hindrance in the ingress or egress of staff or visitors or their vehicles to the work places of the plaintiff.

4. The defendant No.3 Food Corporation of India Workers Union preferred FAO(OS) No.317/2016 against the *ex-parte* order dated 19th August, 2016 as well as the subsequent order dated 3rd October, 2016 refusing to hear the application of the said defendant under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC) that day itself but which appeal was disposed of vide order dated 2nd January, 2017 by directing this Bench to take up the application of the plaintiff under Order XXXIX Rules 1&2 CPC and application of the defendant No.3 under Order XXXIX Rule 4 of CPC on 16th January, 2017 itself.

5. The proceedings were adjourned from time to time. Separate written statements have been filed by the defendants No.1&2.

6. The defendant No.2 has also filed an application under Order XXXIX Rule 4 of the CPC. The defendant No.2 as well as the defendant No.3 have also filed the applications under Order VII Rule 11 of the CPC.

7. Vide separate orders passed today, CS(OS) No.312/2016 *supra* has been disposed of.

8. However, the counsel for each of the three defendants in the present suit deny that any conciliation proceedings are pending.

9. Per contra, the counsel for the plaintiff has handed over in the Court a communication dated 20th February, 2018 of the Conciliation Officer to the plaintiff and to the defendant No.1, informing of conciliation proceedings.

10. The counsels for the defendants state that pending conciliation proceedings may be qua other disputes.

11. I have enquired from the counsel for the defendants, the need to go into the aspect of pendency of conciliation proceedings. It has been put to the counsels, that since it is not open in any case to the defendants to resort to any protest, strike, *dharna* or demonstration within the premises of the plaintiff or from disrupting or interfering with the works/activities of the plaintiff therefrom, why should the present suit be not disposed of by directing so and by restraining the defendants from holding the said protest, *dharna*, demonstration and strike within a radius of 100 meters of the outside boundary of the premises of the plaintiff save in places where holding of such demonstration, *dharna*, protest and strike beyond a distance of 100 meters would make it invisible to the workers and visitors to the premises of the plaintiff.

12. The counsel for the defendant no.2 refers ***Rajasthan State Road Transport Corporation Vs. Krishna Kant*** (1995) 5 SCC 75 and ***O.K. Ghosh Vs. E.X. Joseph*** AIR 1963 SC 812 to contend that the defendant no.2 has a right to demonstrate, held *dharna* within the premises of the plaintiff also.

13. I have gone through the paragraphs of the judgments referred to by the counsel but I am unable to find the judgments to be holding so.

14. The senior counsel for the defendant no.3 has referred to Section 18 of the Trade Unions Act, 1926 to contend that the suit is not maintainable and has relied upon ***Bharat Petroleum Corporation Ltd. Vs. Petroleum Employees Union*** MANU/MH/0101/2001.

15. The senior counsel for the plaintiff has referred to ***Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. T.M. Nagarajan*** 1988 Lab IC 1067 holding the jurisdiction of the Court to be not barred by Section 18 of the Trade Unions Act, 1926.

16. The senior counsel for the plaintiff has also referred to ***Vidya Sagar Institute of Mental Health and Neuro Sciences Vs. Vidya Sagar Hospital Employees Union*** 124 (2005) DLT 640 and ***Superior Crafts Vs. Centre of Indian Trade Unions*** 149 (2008) DLT 190.

17. In view of the three judgments aforesaid of this Court, the view taken by the Bombay High Court cannot be followed by this Court and Section 18 of the Trade Unions Act, 1926 cannot be a bar to passing off of the orders as are deemed appropriate.

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

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.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 20, 2018/‘gsr/bs’..
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