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

+ CS(COMM) 733/2017 & I.A. 21714/2015, 15026/2018

**IMPRESARIO ENTERTAINMENT  
& HOSPITALITY PVT LTD**

..... Plaintiff

Through: Ms. Shikha Sachdeva,  
Advocate with Ms. Mugdha  
Palsule and Mr. Vivian Mathur,  
Advocates.

versus

**MOCHA BLU COFFEE SHOP**

..... Defendant

Through: None.

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Date of Decision: 30<sup>th</sup> October, 2018

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

#### **I.A. 15026/2018**

1. Present application under Order VIII Rule 10 read with Section 151 CPC read with Order XIII-A of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 has been handed over in Court. The Registry has numbered the said application and the same is taken on record.

2. It is pertinent to mention that the present suit has been filed seeking permanent and mandatory injunction restraining infringement of trade mark MOCHA against the defendant. At the outset, learned

counsel for plaintiff stated that she is pressing only prayer A of the plaint. The said prayer is reproduced hereinbelow:-

*“A. The Defendant, its directors, principals, proprietor, partners, employees, agents, distributors, franchisees, representatives and assigns be restrained by a permanent injunction from:*

- i) manufacturing, selling, marketing, advertising and/or offering its services and/or in any other manner using and/or allowing or permitting third parties to manufacture, market, advertise or use, MOCHA and/or any other trade mark or name similar to the Plaintiff's registered trade mark MOCHA either as, a trade mark or part of a trade mark, a trade name or corporate name or as a part of a domain name, or in any other manner whatsoever so as to infringe the registered trade mark of the Plaintiff;*
- ii) manufacturing, selling, marketing, advertising and/or offering its services and/or in any other manner using and/or allowing or permitting third parties to manufacture, market, advertise or use, MOCHA and/or any other trade mark or name similar to the Plaintiff's registered trade mark MOCHA either as, a trade mark or part of a trade mark, a trade name or corporate name or as a part of a domain name, or in any other manner whatsoever so as to pass off its goods and services as and for the goods and services of the Plaintiff;*

3. On 14<sup>th</sup> July, 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiff and against the defendant. The relevant portion of the said order is reproduced hereinbelow:-

*“I have heard the learned counsel and perused the plaint along with documents annexed therewith and am of the view that plaintiff has succeeded in making a, prima facie, case in its favour to grant ex-parte injunction. In case defendant is not restrained from using the trade mark ‘Mocha’, plaintiff shall suffer irreparable loss and injury, inasmuch as, balance of convenience is in favour of the plaintiff and against the defendant. Accordingly, till next date of hearing, defendant is restrained from using the mark ‘Mocha’ or any other deceptively similar mark as that of plaintiff for running its coffee shop/restaurant.”*

4. Since despite service by way of publication in the newspapers ‘THE HINDU’ on 06<sup>th</sup> February, 2018 and ‘DINA TANTHI’ on 21<sup>st</sup> February, 2018, the defendant has neither appeared nor filed its written statement, it is proceeded *ex-parte*.

5. The contentions and submissions advanced by learned counsel for the plaintiff are as under:-

- i. The plaintiff adopted the trademark MOCHA in 2001 in respect of coffee shops and uses the trademark ‘MOCHA coffees and conversations’ as a tag line in respect of its coffee shops. The plaintiff also uses variants of its trademark MOCHA being MOCHA ARTHOUSE and MOCHA BAKERY.
- ii. The plaintiff’s trademark MOCHA (word) is registered in classes 9 and 30 and the said registrations stand renewed till 14<sup>th</sup> August, 2022 and 25<sup>th</sup> April, 2021 respectively.
- iii. The plaintiff’s coffee shop MOCHA has won various awards in the hospitality industry and due to extensive use by the plaintiff, the said trademark is exclusively associated with the plaintiff.

- iv. In March, 2015, the plaintiff acquired knowledge of the defendant's use of the plaintiff's trademark MOCHA in the following manner:



- v. The defendant was operating a coffee shop using the trademark MOCHA BLU with emphasis on the plaintiff's trademark MOCHA. The manner in which the word 'mocha' is written and the coffee cup image is identical to the manner in which the plaintiff represents 'mocha' with the coffee cup on the side.
- vi. On 05<sup>th</sup> March, 2015, the plaintiff's attorney sent a cease and desist notice to the defendant requesting the defendant from using the plaintiff's trademark. However, the said notice was refused by the defendant. The plaintiff thereafter resent the notice to the defendant, which was received by the defendant on 10<sup>th</sup> March, 2015.
- vii. Since no response was received by the plaintiff, the plaintiff sent a follow up notice on 22<sup>nd</sup> April, 2015. However, the notice was not received by the defendant.

- viii. The defendant has illegally adopted the plaintiff's mark in an attempt to take undue advantage of the plaintiff's reputation and recognition and the use of the same constitutes infringement of the plaintiff's registered trademark MOCHA as well as its variants.
- ix. The defendant's failure to file its written statement till date demonstrates its lack of justification or defence of its infringing activities involving the plaintiff's trade mark.

6. This Court while dealing with a similar application under Order VIII Rule 10 CPC in **CS(OS) 873/2015 Samsung Electronics Company Limited & Anr. Vs. Mohammed Zaheer Trading As M/s. Gujarat Mobiles & Ors.** has culled out the relevant law as under:-

*"10. The Supreme Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:-*

*"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that*

*even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.*

*26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."*

**11. A Coordinate Bench of this Court in *Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta and Ors.*, 235 (2016) DLT 354 has held as under:-**

*"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.*

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*28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to persue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."*

**12. Another Coordinate Bench of this Court in *Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd.*, 2013 III AD (Delhi) 176 has held as under:-**

*"4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record....."*

7. This Court is further of the view that the plaintiff is entitled to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, as the said provision empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.

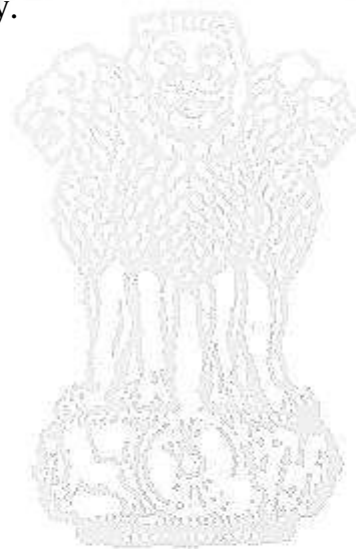
8. Considering the fact that the plaintiff is the registered owner of the mark MOCHA and none has entered appearance for the defendant, this Court is of the opinion that the defendant has no justification for the adoption and use of virtually identical trade mark as that of the plaintiff in relation to identical services.

9. Accordingly, the present application is allowed and the suit is decreed against the defendant in accordance with prayer A of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

**OCTOBER 30, 2018**

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**MANMOHAN, J**



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