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

Date of decision: 19th December, 2018

+ **FAO(OS)(COMM) No. 308/2018 & CM APPL. No. 53757-53758/2018**

ARUN CHOPRA

..... Appellant

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with
Ms. Shobhana Takiar, Adv.

versus

KAKA-KA DHABA PRIVATE LIMITED & ORS Respondents

Through: Mr. Akhil Sibal, Sr. Adv. with Mr.
Rahul Vidhani, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL):

This intra-court appeal by Arun Chopra impugns order dated 28.11.2018 passed by the learned Single Judge disposing of the interim applications under Order XXXIX Rules 1 and 2 and Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (IA Nos. 4382/2014 and 9392/2014 respectively).

The impugned order, after recording the different contentions raised, has put into place an interim arrangement, which the Single Judge observed would serve the ends of justice. Operative directions in the impugned order, read :-

“(1) The defendants are permitted to use the name ‘Kaka-Ka Dhaba’, ‘Kaka-Ka Restaurant’ and Kaka-Ka Garden’ for the three restaurants/outlets already operating in Nashik, Maharashtra. However, they will not use the name ‘Kaka-Ka Hotel’.

(2) The Defendants shall not open any further outlet with the name ‘Kaka-Ka’, during the pendency of the suit.

(3) The Defendants shall maintain complete accounts of all sales which they are conducting in their three restaurants/outlets. The company ‘Kaka-Ka Dhaba Pvt. Ltd. shall continue to operate under the said name. However, no fresh company/firm or any other entity shall be commenced by the name ‘Kaka-Ka’.

(4) All the outlets running in Nashik, Maharashtra are stated to be under the control and management of Mr. Jugesh Chaddha and Mr. Mahesh Chaddha Defendant No. 2 and Defendant No. 6 respectively. Both the said individuals shall file their undertakings before this Court that if any order is passed for damages/rendition of accounts, they shall be abide by the same and they shall file the quarterly accounts of their outlets at the end of each quarter by the 10th of the next month.

(5) The Defendants shall change the name ‘Kaka-Ka Hotel’ within 30 days.”

2. It is submitted by the appellant that the name ‘*Kake-Da Hotel*’ was first adopted by them in 1931. After partition, restaurant ‘*Kake-Da Hotel*’

was started, and has been since operating from Shop No. 74, Municipal Market, Connaught Circus, New Delhi. The mark '*Kake-Da Hotel*' was registered on 14.12.1950. Subsequently, trademarks '*K-D-H Kake-Da Hotel*' and '*K-D-H Kake-Da Hotel*', were also registered. Trademark/mark of the respondents, namely '*Kaka-Ka Dhaba*', '*Kaka-Ka Restaurant*' and '*Kaka-Ka Garden*' are similar to the registered marks of the appellant. Reliance is placed upon a judgment of the Division Bench of this court in ***Kirorimal Kashiram Marketing and Agencies Pvt. Ltd vs. Shree Sita Chawal Udyog Mill Tolly Mill*** 2010 (44) PTC 293 (Del) (DB). Therefore, injunction should have been granted.

3. Learned senior counsel appearing for the respondents appearing on advance notice submits that the words '*Kaka-Ka Dhaba*' were adopted by the respondents in 1983. An outlet by the name '*Kaka-Ka Dhaba*' was started in 1993. The respondent No. 1 company, Kaka-Ka Dhaba Pvt. Ltd was incorporated in 1997. It is stated that restaurants operated by the respondents are located in three places, which are in Nashik. The turnover of the restaurants is stated to be substantially more than the annual turnover of the appellant. Thus, there is no possibility of confusion or deception, as the locations are different and people being catered to are also different. The suit for infringement of trademark was filed by the appellant only in 2014. For twenty years, there was no objection. The first respondent is also registered proprietor of the device '*Kaka-Ka*'.

4. We have highlighted the contentions of the parties to bring out the different facets and issues which were duly taken into consideration by the

learned Single Judge while passing directions contained in the impugned order.

5. Contention of the respondents that they had adopted the name '*Kaka-Ka Dhaba*' and had started business with the said name/mark sometime in the mid 1980s, would be a matter requiring scrutiny after evidence is lead. However, there is some evidence that they have been using the mark/name '*Kaka-Ka*' since 1997. Thus, the respondents have been in business for almost 20 years, before the suit for injunction was filed. The respondent No. 1 had applied for registration of the words/mark '*Kaka-Ka*' (device) in 2006, which was granted in 2008. Restaurants of the respondent No. 1 are only located in Nashik and not outside the said city or in Delhi, Mumbai etc. The appellant has restaurant in Delhi. The impugned order has directed that the respondents shall not open any further outlet with the name '*Kaka-Ka*' during the pendency of the suit. Directions have also been issued to the respondents not to use the name '*Kaka-Ka Hotel*' and to change the this name within 30 days from the date of the order *i.e.* 28.11.2018. The respondents are required to maintain the complete accounts of all sales and file them in Court on quarterly basis. Individual undertakings have been directed to be filed by the directors of respondent No. 1 to ensure compliance etc.

6. Given the factual background, the impugned order in our opinion is fair and just. Balance of convenience would not justify directions to close down or change name of the existing restaurants which were running for over 20 years and that too not in Delhi, but in Nashik.

7. The decision in the case of *Kirorimal Kashiram Marketing and Agencies Pvt. Ltd vs. Shree Sita Chawal Udyog Mill Tolly Mill* 2010 (44) PTC 293 (Del) (DB), in our opinion, would not justify interference with the impugned order at this stage. In the said case, packed rice under the two trademarks ‘Golden Deer’ and ‘Double Deer’ was being marketed in the same area, a fact which has been noted in the judgment of the Single Judge. In the present case, the respondents are not located in Delhi, but in Nashik. They are catering to people living and residing in Nashik for more than 20 years.

8. Considering the above facts, we are not inclined to interfere with the impugned order. The appeal and the applications are accordingly dismissed. We clarify that observations and findings recorded above, are for disposal and decision of the present appeal. They would not be treated as final and finding on merits.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 19, 2018/*uj*