

\$~10

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

%

Judgment delivered on: 09.12.2019

+ FAO 325/2016 & CM APPL. Nos.25744/2016, 25746-47/2016

TUSAJ LIFESTYLE PVT LTD Appellant

versus

SKB FOOD PRODUCTS PVT LTD Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Tanmay Mehta, Adv.

For the Respondent: Mr.Sushant Mahapatra, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 15.12.2016 whereby an application of the respondent/petitioner under Order 39 Rule 1 and 2 CPC was allowed and the appellant its agents were restrained from infringing the registered trademark of the respondent "Yum Yum" or passing of either in respect of restaurant or package food items or from using "Yum Yum Tree" or any other trademark identical or deceptively similar, phonetically or visually, with or without prefix or suffix to the trade mark of the respondent and from passing of their business.

2. Appellant is also aggrieved by order dated 09.06.2016 whereby the review petition filed by the petitioner was dismissed. However, by the said order, the interim injunction granted by order dated 15.12.2015 was suspended.

3. In the subject appeal, by order dated 22.07.2016, the suspension of interim injunction was continued and the same has continued till date.

4. Learned counsel for the respondent submits that the effect of the interim order passed by the Trial Court and also by this Court is that the injunction order passed in favour of the respondent is not in force. He further submits that in view of expeditious disposal of the Suit he has no objection to the interim order being modified with a direction to the Trial Court to expedite the Suit and in the meantime, the appellant be directed to maintain and furnish regular accounts.

5. In view of the above and with the consent of learned counsel for the parties, the subject appeal is disposed of in the following terms:-

- (i) The injunction granted by the Trial Court *vide* order dated 15.12.2016 is vacated and it is directed that the appellant shall maintain and furnish regular accounts to the Trial Court every quarter of the turnover and business under the names and styles of *YUM YUM, YUM YUM TREE AND YUM YUM CHA*.
- (ii) Trial Court shall expedite the Suit and endeavour to conclude

the same within one year from the next date of hearing before the Trial Court.

6. Learned counsel for the appellant submits that there are certain subsequent development/events which have occurred and the appellant is in the process of filing an application seeking amendment of his written statement and for permission to file additional documents.

7. It is directed that if any application for amendment is filed, the Trial Court is at liberty to deal with the same in accordance with law. The Trial Court would also be at liberty to re-visit the order dated 09.06.2016, whereby the appellant was not permitted to file additional documents, and ascertain if the additional documents are necessary for determining the real question in issue and also germane for deciding the amended pleas.

8. Learned counsel for the appellant submits that there are certain observations/findings in the impugned order which may prejudice the appellant in the final disposal of the suit.

9. It is settled position of law that the observation made while disposing of the application under Order 39 Rule 1 and 2 CPC are only *prima facie* in nature and do not bind the Trial Court at the stage of disposal of the Suit post trial. It is accordingly clarified that the observations/findings returned in the impugned orders would be

treated as *prima facie* and the Trial Court would not take them into consideration at the final stage post trial.

10. The appeal and pending applications are disposed of in the above terms.

11. Order *dasti* under the signature of the Court Master.

DECEMBER 09, 2019
neelam

SANJEEV SACHDEVA, J.

