

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 15, 2019

Judgment delivered on: January 28, 2019

+ FAO(OS) 172/2018, CM Nos. 48857/2018 & 48859/2018

M/S SAGU DREAMLAND PRIVATE LIMITED
& ANR

..... Appellants

Through: Mr. Neeraj Kishan Kaul, Sr. Adv. with
Mr. Jai Sahai Endlaw,
Mr. Divyanshu Shrivastava and
Mr. Shivansh Soni, Advs.

versus

M/S JINGAL BELL AMUSEMENT PARK (PVT)
LTD

..... Respondent

Through: Mr. S. Khan and Ms. Jayanti, Advs.

AND

+ FAO(OS) 173/2018, CM Nos. 48874/2018 & 48876/2018

M/S SAGU DREAMLAND PRIVATE LIMITED

..... Appellant

Through: Mr. Neeraj Kishan Kaul, Sr. Adv. with
Mr. Jai Sahai Endlaw,
Mr. Divyanshu Shrivastava and
Mr. Shivansh Soni, Advs.

versus

SPLASH ISLAND PRIVATE LIMITED & ORS

..... Respondents

Through: Mr. Shailen Bhatia and
Ms. Ekta Nayar, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

**CM No. 48859/2018 (for placing additional annexures on record) in
FAO(OS) 172/2018**

**CM No. 48876/2018 in FAO(OS) 173/2018 (for taking additional
documents on record)**

For the reasons stated in the applications, the same are allowed and disposed of.

FAO(OS) 172/2018 & FAO(OS) 173/2018

1. These two appeals have been filed by the appellant challenging the common order dated 8th October, 2018 passed by the learned Single Judge whereby the two applications filed by the appellant being IA No. 13958/2018 in CS(OS) 2041/2013 and IA. No. 13957/2018 in CS(OS) 1592/2014 seeking modification of order dated 12th July, 2018 were dismissed.

2. The facts as noted from the appeals are that Civil Suit bearing no. 2041/2013 was filed by the respondent M/s. Jingle Bell Amusement Park (Pvt.) Ltd. against the appellant herein seeking permanent injunction, possession and for recovery of rent and damages / mesne profit till recovery of possession in respect of

property bearing no. 41/24, 25, 42/20, 50/1, 51/4 min at Village Alipur, Tehsil-Delhi against the appellant herein. This court issued summons in the Suit on 25th October, 2013. Another Suit being CS (OS) 1592/2014 was filed by the appellant herein against the Splash Island Pvt. Ltd. and Ors. seeking permanent injunction against them restraining them from infringing trade mark acquired by the appellant.

3. During the pendency of the Suit, the matter was settled between the parties and in furtherance to the same a settlement agreement was executed between the parties. The Suits were disposed of by this Court in terms of the Settlement on 30th June, 2015. It is the case of the appellant that as the respondent has not complied with the terms of settlement and violated the same, the appellant had filed a Contempt Petition bearing no. 225/2017 against the Directors of Splash Island Pvt. Ltd. The said petition was disposed of on 20th March, 2017 giving liberty to the appellant to seek compliance of the order of which the Contempt is alleged by way of execution proceedings. The appellant preferred an application bearing no. 14331/2017 in CS(OS) 1592/2014 for recall of order dated 30th May, 2015. On 12th July, 2018, this Court ordered for implementation of the settlement agreement from 12th July, 2018 in the said application.

4. It appears that the appellant approached this court by way of

applications bearing IA No. 13958/2018 and IA No. 13957/2018 in Suit Nos. 2041/2013 and 1592/20147 seeking intervention of this court for modification of order dated 12th July, 2018 and for implementing the agreement dated 28th May, 2015 in equitable manner. It is this application, which was dismissed by the learned Single Judge. Mr. Neeraj Kishan Kaul, learned Senior Counsel for the appellant submit that the respondent(s) cannot take advantage of their own wrong inasmuch as on one hand, they violate the terms of settlement by continuing to use the word 'Splash' and on the other, make the appellant herein vacate the property. It is his submission that continued usage of the word 'Splash' in the trade name of the respondent is inequitable. According to him, the appellant, with a view, to mitigate the loss suffered by it because of continuous use of the word 'Splash' is seeking further time to vacate the property in question beyond December 31, 2018.

5. We are not impressed by the said submission of Mr. Kaul for the simple reason that the Suits were disposed of in terms of the settlement entered between the parties. If there is a violation of the settlement / decree, it is for the appellant to seek execution of the decree or any other relief as permissible in law rather than seeking a benefit of further time on the premise that the respondent has violated

the terms of agreement. This is clearly impermissible as any direction by us, shall also be at variance with the order disposing of the suits. We find that the learned Single Judge has rightly dismissed the applications seeking modification of the order dated 12th July, 2018.

We do not find any merit in the appeals. The same are dismissed.

CM No. 48857/2018 (for stay) in FAO(OS) 172/2018
CM No. 48874/2018 (for stay) in FAO(OS) 173/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 28, 2019/jg