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

+ **CM (M) 1430/2019**

M/S V. K. HOME SOLUTIONS PVT. LTD. Petitioner
Through: Mr. Amit Tomar, Advocate.
(M:8800442587)
versus

OM PRAKASH Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **04.03.2020**

1. The costs imposed on the Petitioner/Plaintiff (*hereinafter* “Plaintiff”) vide order dated 31st October, 2019 are stated to have been deposited. Issue notice to the Respondent/Defendant (*hereinafter*, “Defendant”), returnable on 8th July, 2020.
2. The Plaintiff is aggrieved by the order dated 16th August, 2019 by which, while granting an *ex-parte* ad-interim injunction protecting the Plaintiff’s mark/label, the Trial Court has refused to appoint a Local Commissioner.
3. On 9th October, 2019, this Court had directed the Plaintiff to produce the original packagings. Today, the original packagings have been produced in Court. After seeing the original packagings, this Court is of the view that a case is made out for appointment of a Local Commissioner in order to make an inventory of the infringing goods of the Defendant, which are almost identical in get-up, colour combination, trade dress etc., to the

Plaintiff's product mark/label.

4. The suit for permanent injunction restraining infringement, passing off, damages and rendition of accounts etc. has been filed by the Plaintiff claiming rights in the mark/label "*PARI DAL MAKHANI*" and the product packaging thereof. The Plaintiff's case is that it has been selling these products since 2013. Registration in respect of the said mark/label in class 30 is stated to still be pending. As per the plaint, sales of the Plaintiff's namkeen product for the year 2018-19 are approximately Rs.86 crores. The Defendant recently started selling identical products in an identical colour combination, get-up, trade dress etc., which led to filing of the suit. The Trial Court, vide order dated 16th August, 2019 has granted an interim injunction in the suit on the following terms:

"The suit filed by the plaintiff is seeking permanent injunction, restraining infringement, passing off, damages and rendition of accounts etc. It is alleged that plaintiff company is engaged in trade and business of manufacturing, processing, buying, selling, distributing and dealing in all types of Namkeen and Bakery items. Plaintiff is an old established business concern and is engaged in the said trade and business under the trademark/label/package/trade-dress PARI DAL MAKHANI.

Plaintiff has also obtained a copyright in this regard and with regard to a specific packaging contained on its goods sold under the name of PARI DAL MAKHANI. The plaintiff has also applied for registration of trademark for the name PARI DAL MAKHANI which is pending before the concerned registrar. It is alleged that defendant has been violating the copyright of the plaintiff by selling similar product using similar copyright as that of the plaintiff under the name MOJ MASTI MAKHANI DAL.

Plaintiff is engaged in the said business since 2013 and in para No.15 of its plaint has furnished details of his gross turn-over for the last 5 years. It is prayed that defendant be restrained from using the said mark till the NDOH and a local commissioner may be appointed ex-parte who can take into possession the counterfeited goods sold by the defendant which are violating the copyrights of the plaintiff.

Heard. Record perused.

The allegations of the plaintiff are duly supported with an affidavit and has been filed strongly in compliance as per Commercial Court Act. The facts as alleged by the plaintiff necessitate that an ex-parte interim protection is required, therefore, the defendant is restrained from using the said mark in violation of the copyright of the plaintiff till the NDOH.

Submissions with regard to the appointment of an LC heard.

It is reflected that for a similar product the plaintiff has applied for obtaining trademark under the name PARI DAL MAKHANI which is pending before concerned registrar. As on date the plaintiff is having only copyright with regard to a particular packaging of their product. I deem it appropriate that, it would be in the interest of justice that, defendant be served before appointment of any local commissioner ex-parte in this case and their reply to this effect is necessary for disposal of the case on merits as well as this application. Hence, the prayer to appoint local commissioner ex-parte is declined.

Plaintiff is further directed to make compliance of Order XXXIX Rule 3 CPC. Copy of this order be given dasti to the plaintiff, as per rules.

Let summons of the suit be served upon the defendant on filing of PF/RC/Speed-post/Courier. Steps be taken within a week.

Be put up for further proceedings on”

5. An application under Order XXVI Rule 9 CPC was also filed by the Plaintiff, which was declined by the Trial Court vide the impugned order dated 16th August, 2019 on the ground that the mark/label of the Plaintiff is not registered.

6. A perusal of the packagings of the parties shows that the Defendant's packaging is a colourable imitation of the Plaintiff's product packaging. The get-up, colour combination, various features, including the rainbow, placement of various artistic elements etc., are all identical. Considering these are namkeen products sold across urban, semi-urban and rural areas, there is no doubt that confusion will abound. The trial court has already granted an interim injunction restraining the defendants from infringing the rights of the Plaintiff in the label/product packaging. Considering the near identity in the colour combination, get-up and placement of various features, of the Plaintiff's and the Defendant's products, it is deemed appropriate to appoint a Local Commissioner. Accordingly, **Mr. Rohan Dewan, Advocate (M:9651562744)**, who is present in Court today, is appointed as the Local Commissioner to visit the premises of the Defendant at M/s Balaji Food Product, Kacha Camp, Purewal Colony, Panipat, Haryana – 132103 within the next ten days and to prepare an inventory of the infringing products bearing the logo "*PAWAN PUTRA*" and the mark/label "*MOJ MASTI MAKHANI DAL*". Two representatives/counsels on behalf of the Plaintiff are permitted to accompany the Local Commissioner.

7. The Local Commissioner is directed to prepare an inventory of the infringing products, either fully packed or empty packaging, any advertisement material, display board, foils, packaging rolls etc., bearing the

infringing mark/label. After preparing the inventory, the infringing products/packages shall be sealed and returned to the Defendant on *superdari*. The Local Commissioner may take photographs and videograph the proceedings, if required.

8. The Local Commissioner is permitted to inspect the books of accounts and obtain the copies thereof. The Defendant shall also provide the Local Commissioner access to its computer server(s) so that the accounting records, sale/purchase records and sources of the infringing goods can be ascertained. The Defendant shall render all cooperation to the Local Commissioner for execution of the commission. The data on the computer system(s) of the Defendant, if required, shall be copied by the Local Commissioner on a hard disk, the expense of which shall be duly reimbursed by the Plaintiff. After obtaining access to the computer system(s), the same shall be released to the Defendant without too much delay. The commission shall be executed without much disruption to the working/business activities of the Defendant.

9. The SHO of the area concerned shall provide assistance to the Local Commissioner for execution of the commission if a request in that regard is made by the Local Commissioner. If the premises is found to be locked, permission is granted to break open the locks. If, during the proceedings, the Local Commissioner becomes aware of any other godown or warehouse of the Defendant, he is permitted to visit the said premises as well.

10. At the time of execution of the commission, the Local Commissioner shall serve a copy of this order along with a complete set of pleadings and documents upon the Defendant along with the copy of the injunction order and the present order. Upon the service being effected, time for filing the

written statement shall commence.

11. The Local Commissioner shall file his Report within a period of two weeks from the execution of the commission. The Report shall be filed before the Trial Court itself. The fee of the Local Commissioner is fixed at Rs.1 lakh to be paid by the Plaintiff. The same shall be considered as costs in the suit.

12. Compliance of Order XXXIX Rule 3 CPC be made within three days.
Dasti.

PRATHIBA M. SINGH, J.

MARCH 04, 2020

dk/T