

17-10-2023
Item no.5 & 6 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.492 of 2023
Sankar Basak & Ors.

-VS-

Kreamz Confectionery Pvt. Ltd. & Ors.
with
CAN No.1 of 2023
and
FMAT No.493 of 2023

Mr. Surajit Nath Mitra
Mr. Suddhasatva Banerjee
Mr. Sayantan Chatterjee
Mr. Debayan Ghosh ...for the appellants

Mr. Jishnu Choudhury
Mr. Satadeep Bhattacharyya
Mr. Tanay Agarwal
Mr. Shivam Bhimsaria ...for respondent no.1

Mr. K. Thaker
Mr. C. Gupta
Mr. P. Bandyopadhyay
Mr. N. Banerjee
Mr. D. Thakur ...for respondents no.2, 3 & 4

Mr. Rittick Chowdhury
Mr. Shoham Sanyal ...for respondent no.5

We admit these two appeals.

We propose to hear them out dispensing with all formalities.

The appellants, except the appellant no.2, are the ex retailers and franchisees of the respondent no.1. The respondents no.2, 3 and 4 (the Sahas) are the former directors of the respondent no.1, Kreamz Confectionery Pvt. Ltd.

We shall not go into the details of the facts of the case, save and except that in another proceeding (FMAT No.206 of 2023) between the Sahas and the said company, Kreamz, a terms of settlement was executed on which basis the appeal was disposed of.

Clause 8 of the terms are important and set out below:—

“8. It is agreed by the parties that upon signing this Terms of Settlement, the defendant nos. 1, 2 and 4 shall be enjoined from infringing the registered trade mark of the plaintiff company, “Kreamz”, by using any variation thereof. In terms of the order dated 18th May, 2023, passed by the Hon’ble High Court at Calcutta in FMAT No.161 of 2023 and FMAT No.206 of 2023, the defendants or aides, assigns, men, concerns, employees and/or associates shall be restricted from utilizing the goodwill of the plaintiff company in any manner whatsoever. Further, the defendant nos. 1, 2 and 4 or their aides, assigns, men, concerns, employees and/or associates shall be permanently enjoined from carrying on any similar business within a range of 100 metres from the plaintiff company’s retail stores and/or manufacturing units or from enticing any of the plaintiff company’s vendors, franchisees and employees. A copy of the order dated 18th May, 2023 is annexed hereto and marked as Annexure A.”

According to the said company, their specific case is that the Sahas in breach of the terms of settlement are indirectly carrying on business of the company through the appellants within 100 metres of the company’s shop or outlet and using their trade mark, logo, wrappers labels, boxes etc.

Accepting the prima facie case of the company, the learned court below had granted the impugned order of injunction.

We have heard learned counsel for the parties.

The prima facie case which is before us is this. Admittedly, Madam is the business name of the Sahas.

The appellants as the agents of a franchisees of the Sahas are carrying on business under the name and style of 'Madam' within an area of 100 metres of the said company's shops/outlets.

What is said by Mr Mitra, learned senior advocate appearing for the appellants, is that when this shop by the name of Madam was set up, there was no existence of the company's outlet. The terms of settlement forbidding the appellants from setting up any shop within 100 metres applies to an existing shop of the company and restrains the Sahas from setting up a parallel business within 100 metres. This would not apply in the case of a situation where the Sahas set up shop, there is no existence of the company's shop or outlet within 100 metres, but it is subsequently set up within 100 metres. That would not entitle them to restrain the Sahas from doing business, on an interpretation of the settlement.

This court would not permit breach of a decree on the basis of a terms of settlement by the Sahas by carrying on business within 100 metres of the said company's establishment, shop or outlet.

The appellants are permitted to do so independently.

They shall not use the trade mark of the company 'Kreamz' or any logo, wrapper, label or box which may be similar in shape, size, colour etc. to that of the said company.

For the time being, the appellants may do the business in cakes, confectionery and so on but shall maintain accounts of their business and file it from time to time in the learned court below as directed.

The question of the appellants as the agent of the Sahas enticing the vendors, franchisees etc. of the said company may be gone into detail by the learned court below at the time of hearing of the interim application.

As far as the shops-outlets which have been set up under the name Madam subsequently within 100 metres of the said company's place of business, for the time being it shall be prominently denoted by the appellants on the place of business that they are doing business independently of the Sahas.

The impugned judgement and order is modified to the above extent only.

Let the interim application be heard out by the learned court below.

All observations are prima facie. This order is to be treated as an interim measure.

The appeals – FMAT No.492 of 2023 and FMAT No.493 of 2023 – and the connected application (CAN No.1 of 2023) are disposed of accordingly.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

