

Travel Food Services Private Limited	...	Applicant/Plaintiff
vs.		
Aroon Food Services Private Limited	...	Respondent/Defendant

WITH
INTERIM APPLICATION (LODGING) NO. 35125 OF 2022

Aroon Food Services Private Limited ... Applicant/Defendant

In the matter between:

Travel Food Services Private Limited ... Plaintiff

vs.

Aroon Food Services Private Limited ... Defendant

IN
COMMERCIAL IP SUIT NO. 323 OF 2022

Mr. Venkatesh Dhond, Senior Advocate, a/w. Mr. Avesh Kayser, Mr. Rashmin Khandekar, Mr. Anand Mohan, Mr. Harish K. Raman, i/by. Avesh Kayser for plaintiff and applicant in IA/3202/2022.

Mr. Kunal Khanna, i/by. Jehangir Gulabbhai and Billimoria and Daruwalla
for defendant and applicant in IAL/35125/2022.

Mr. Sumeet Rane, representative of plaintiff.

CORAM : MANISH PITALE, J
DATE : 3rd APRIL, 2023

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2023.04.11 17:35:04 +0530

P.C. :

. This order shall dispose of Leave Petition No.153/2022, Interim Application No.3202/2022, filed by the plaintiff for grant of interim reliefs, pending the suit and Interim Application (Lodging) No.35125/2022, filed by the defendant, under Order 7 Rule 10 of Code of Civil Procedure, 1908 (CPC), for return of plaint.

2. Since the application filed by the defendant, for return of plaint, challenges the very jurisdiction of this Court, the said application deserves to be disposed of first.

3. Mr. Khanna, learned counsel appearing for the defendant strenuously urged that in the present case, since the plaintiff is carrying on business in Delhi and the cause of action has arisen in Delhi, by proper interpretation of Section 134 of the Trade Marks Act, 1999, Section 62 of the Copyright Act, 1957 and in the backdrop of the relevant provisions of CPC, it ought to be held that the competent Court at Delhi alone has the jurisdiction to entertain the suit filed by the plaintiff. It is urged that the concept of forum convenience ought to be appreciated by this Court, while deciding the said application filed by the defendant, for return of plaint.

4. Learned counsel for the defendant has placed reliance on the judgment of the Supreme Court, in the case of *Indian Performing Rights Society Limited (IPRS) v/s. Sanjay Dalia and another* [(2015) 10 SCC OnLine 161] as also Division Bench judgment of Delhi High Court, in the case of *Indian Performing Rights Society Limited (IPRS) v/s. Sanjay Dalia and another* [(2008) 155 DLT 164 (DB)], to contend that a proper application of the

position of law, explained in the said judgments, would show that the plaintiff in the present case, is not entitled to maintain the present suit before this Court, only because it happens to have its registered office at Mumbai. It is submitted that when the cause of action had admittedly arisen in Delhi and the plaintiff does carry on its business in Delhi also, applying the principle of forum convenience, it ought to be held that the present plaint deserves to be returned, to be filed before the competent Court at Delhi. It is submitted that if the present suit is held to be maintainable before this Court, only because the registered office of the plaintiff is located in Mumbai, it would lead to causing inconvenience and harassment to the defendant, which ought not to be permitted by this Court, by applying the position of law clarified in the aforementioned judgments of the Supreme Court and Division Bench of Delhi High Court.

5. Learned counsel for the defendant further submitted that the view adopted by a learned Single Judge of this Court, in the case of *Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others* (2016 SCC OnLine Bom 5334) and followed by another learned Single Judge of this Court, in the case of *Kalpataru Properties Private Limited v/s. Sri Kalpatharu Housing Private Limited*, [judgment and order dated 5th July, 2017, passed in Commercial Suit (Lodging) No.44/2017], is based on an erroneous application of the judgment of Supreme Court in the case of **IPRS** (*supra*) and it is against the relevant provisions i.e. Section 62 of the Copyright Act and Section 134 of Trade Marks Act. It is submitted that the aforementioned judgment of the learned Single Judge of this Court, in the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*) has been referred to and explained in a subsequent judgment of Madras High Court, in the case of *Hindustan Unilever Limited v/s. Andhra Detergents MAC*

Marketing (judgment and order dated 12th December, 2016, passed in C.S. No.202/2016), indicating that the correct position of law, as laid down by the Supreme Court, in the context of the aforementioned provisions, has been clarified and followed by the Madras High Court.

6. It is submitted that by filing the present suit before this Court, the plaintiff has sought to drag the defendant all the way to Mumbai, which is nothing but harassment and against the principle of forum convenience. On this basis, it is submitted that the application deserves to be allowed and the plaint ought to be returned, to be filed before appropriate Court of competent jurisdiction.

7. On the other hand, Mr. Dhond, learned senior counsel appearing for the plaintiff submitted that the learned Single Judge of this Court, in the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*), copiously referred to various paragraphs of the judgment of Supreme Court, in the case of **IPRS** (*supra*) and further appreciating the view taken by Delhi High Court, in the case of *RSPL Limited v/s. Mukesh Sharma* [(2016) 229 DLT 651], specifically clarified the position of law, by interpreting the aforementioned provisions of Copyright Act and Trade Marks Act, as a whole, holding that where the registered office/principal office of the plaintiff is located, it can maintain a suit, notwithstanding the fact that the cause of action has not arisen within the jurisdiction of such a Court. It is submitted that the context in which, the judgment of the Supreme Court was rendered in the case of **IPRS** (*supra*), was properly appreciated and thereupon, the learned Single Judge of this Court in **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*) held that the suit filed by the plaintiff was indeed maintainable. It was submitted that in

Kalpataru Properties Private Limited v/s. Sri Kalpatharu Housing Private Limited (*supra*), the learned Single Judge of this Court followed the decision rendered in **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*).

8. It was emphasized that when the position of law was made abundantly clear by the judgments of this Court, the defendant had failed to make out a case for allowing the application for return of plaint and that the application deserves to be dismissed.

9. This Court has heard learned counsel for the rival parties, in the context of the relevant provisions of law and judgments brought to the notice of this Court.

10. In the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*), the learned Single Judge of this Court considered the factual background in which, the Supreme Court rendered its judgment in the case of **IPRS** (*supra*). The relevant paragraphs of the said judgment of the Supreme Court, were referred to and analysed in detail from paragraph No.17 onwards. Thereupon, the learned Single Judge of this Court, in the said case, referred to the view taken by the learned Single Judge of Delhi High Court, in the case of **RSPL Limited v/s. Mukesh Sharma** (*supra*) and crystallized the position of law in paragraph No.36. Before doing so, it is significant that in the said judgment, the learned Single Judge of this Court expressed regret for being unable to accept the interpretation given by the Division Bench of Delhi High Court, in the case of **IPRS** (*supra*). The relevant portion of the judgment of the learned Single Judge of this Court, in **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*) reads as follows:

- “33. I am, with regret, unable to accept the interpretation of Sanjay Dalia in the decision of the Division Bench of the Delhi High Court. I would ordinarily have been loathe to stray too far from the decision of a Division Bench of another High Court; but this view seems to me to be plainly incorrect. I believe the Division Bench of the Delhi High Court was in error, and that error appears to me to be in the first sentence of paragraph 12 where it said that the deeming provision of Section 20, i.e., the explanation, had been 'read into' Sections 134(2) and 62(2) (for isolating the place where the plaintiff can be said to be carrying on business). As we have seen, that was not the issue before the Supreme Court at all, nor did the Supreme Court read down the provisions of either of these two sections. If we view the provisions of Section 20 as a three-tier structure, then the provisions of Section 134(2) and Section 62(2) must be seen as standing apart. Sanjay Dalia recognizes just this. It does not disrupt this structure at all. There is nothing in that judgment to suggest that the provisions of Section 134(2) or Section 62(2) are in any way curtailed by the provisions of Section 20 of the CPC.
34. Mr. Kane draws my attention to the judgment of another learned Single Judge (Vipin Sanghi J) of the Delhi High Court in *RSPL Limited v. Mukesh Sharma*. Mr. Justice Sanghi was of the view that the case before him was unaffected by the Division Bench's decision in *Ultra Home*, one he came upon after he reserved judgment in *RSPL Ltd.* Yet, as a student of law, he set out his reasons for disagreeing with the view of the Division Bench. Mr. Justice Sanghi's judgment sets out several passages from Sanjay Dalia and he too concludes, as have I, that the Supreme Court recognize that an additional forum had been provided under Section 62(2) and Section 134(2) of the Trade Marks Act, 1999 by including the District Court within whose limits a plaintiff actually and voluntarily resides or carries on business or personally works for gain as a possible place for such a plaintiff to bring a trade mark or copyright action. In paragraph 22 of his decision, Mr. Justice Sanghi summarized the position as it emerges from Sanjay Dalia with admirable precision and concision:

"22. From the aforesaid decision in Indian Performing Rights Society Limited (supra), and the decision cited by the Supreme Court therein, in my opinion, the position that emerges is as follows:

- (a) By resort to Section 134 of the Trade Marks Act and 62 of the Copyright Act, the Plaintiff may institute the suit where the Plaintiff voluntarily resides or carries on business or personally works for gain. In the context of corporation, which includes a company incorporated under the Indian Companies Act, 1956, such a place would be the place where the registered office of the company is situated. Thus, a company can maintain a suit under Section 134 of the Trade marks Act, or Section 62 of the Copyright Act, at the place where its registered office is situated, irrespective of the fact, whether or not, cause of action has arisen within the jurisdiction of the Court, within whose jurisdiction the registered office of the company is situated.
- (b) Section 134 of the Trade Marks Act and Section 62 of the Copyright Act do not take away right of the Plaintiff to institute the suit by resort to Section 20 of the CPC, as Section 134 of the Trade marks Act and Section 62 of the Copyright Act provide an additional forum to the Plaintiff alleging infringement of the registered trademark or copyright, as the case may be. This is clear from the inclusive definition of the expression, 'District Court having Jurisdiction' contained in Section 134(2) of the Trade Marks Act and Section 62(2) of the Copyright Act. Thus, the Plaintiff may file a suit for infringement of trademark/copyright either at the place where the Plaintiff voluntarily resides or carries on business or personally works for gain by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, or at the place where, 'the Defendant, or each of the Defendants where there are more than one, at the time of commencement of the suit, actually and

voluntarily resides, or carries on business, or personally works for gain. [Section 20(a)]: or where any of the Defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the Defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution [section 20(b)]; or the cause of action wholly or in part, arises [section 20(c)].

- (c) The Plaintiff cannot file a suit alleging infringement of trademark/copyright at a place where it has a subordinate office, by resort to Section 134 of the Trade Marks Act or Section 62 of the Copyright Act, unless one of the conditions of Section 20 CPC are satisfied."

35. I am in most respectful agreement with the views expressed by Mr. Justice Sanghi. In my view, his reading of *Sanjay Dalia* is correct on all counts.

36. What emerges from this discussion is this:

- (a) a plaintiff suing under the Trade Marks Act or Copyright Act can always file the suit in the jurisdiction where he lives, works for gain or carries on business. In the context of a company, given the view in *Sanjay Dalia*, this would mean where the company has its principal or registered office. All issues of cause of action and situs or location of the defendant or the cause of action are inconsequential. It makes no difference where the defendant resides. It makes no difference where the cause of action arose. It certainly makes no difference that the plaintiff also happens to have a branch office in another location where the cause of action may have arisen or where the defendant may reside or carries on business.
- (b) Where the plaintiff has only one office, it presents no difficulty. Where the plaintiff has multiple

offices, however, he has a limited choice. He may either bring a Suit under Section 134(2) or Section 62(2), i.e., within the jurisdiction where he resides; or he may invoke Section 20 and file a suit where the Defendants reside or work for gain or where the cause of action arose wholly or in part. The fact that the Plaintiff has the choice of bringing a suit based on Section 20 of the CPC does not mean that his rights under Section 134(2) or Section 62 (2) are in any way eroded, curtailed or restricted.

- (c) However, where the plaintiff chooses not to file a Suit at his or its principal business or where his registered office is located, and also chooses not to file a suit in a jurisdiction covered by Section 20 of the CPC but instead attempts to file the suit at some other location where the plaintiff happens to have a subsidiary or satellite office, but where there is absolutely nothing else (neither cause of action nor any of the defendants) the Plaintiff cannot invoke Section 134 (2) or Section 62(2) to drag the Defendant to that distant location. That, following the decision of the Supreme Court, is the abuse that is required to be prevented. That is in fact the only abuse that is required to be prevented.
- (d) The Section 134(2) and Section 62(2) privilege or advantage attaches to the registered office or principal place of work. It is a privilege not to be used by abandoning the registered office situs, abandoning the Section 20 situs options, and travelling to some remote location where there is neither defendant nor cause of action. That is the mischief addressed in Sanjay Dalia. To illustrate the plaintiff has its registered office in Mumbai. The defendant is in Delhi. The cause of action arose in Delhi. The plaintiff also has another branch office in Port Blair.”

11. In the subsequent judgment of the learned Single Judge of this Court in the case of **Kalpataru Properties Private Limited v/s. Sri Kalpatharu Housing Private Limited** (*supra*), the relevant portion of the earlier judgment, in the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*) was quoted and applied, to hold that the suit, in that case, was maintainable.

12. This Court has appreciated the rival contentions and it is found that the registered office of the plaintiff is in Mumbai i.e. within the jurisdiction of this Court. As per the law clarified hereinabove, once it is found that the registered office and the principal place of business of the plaintiff, is within the jurisdiction of this Court, the place where the cause of action arose, becomes irrelevant. The non-obstante clause in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, has been appreciated in the judgment, in the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*) and it has been specifically held that under the said provisions, the ordinary law governing jurisdiction, has been reversed. This is an aspect which goes to the very root of the matter and cannot be ignored. The interpretation sought to be placed on behalf of the defendant, on the aforementioned provisions and the judgment of the Supreme Court, in the case of **IPRS** (*supra*), is found to be unacceptable. If the contentions raised on behalf of the defendant were to be accepted, not only would such an interpretation run counter to the express position of law, but it would also go against the law clarified by the Supreme Court, in the case of **IPRS** (*supra*) and by this Court in the case of **Manugraph India Limited v/s. Simarq Technologies Pvt. Ltd. and others** (*supra*).

13. Therefore, this Court is convinced that there is no merit in the Interim

Application (Lodging) No.35125/2022, filed by the defendant, under Order 7 Rule 10 of Code of Civil Procedure, 1908 (CPC), for return of plaint. Accordingly, the same is rejected.

14. Insofar as the leave petition is concerned, the defendant has been served and hence, the same can be taken up for consideration. Although the defendant has opposed the prayer made in the leave petition, this Court is convinced that in order to avoid multiplicity of proceedings and in the interest of justice, the leave petition deserves to be allowed. This Court, in a number of similar cases, has held that it is necessary and in the interest of justice, that such a prayer, made under Clause 14 of the Letters Patent, is allowed.

15. Accordingly, Leave Petition No.153/2022 is allowed. In the backdrop of the leave petition being allowed, the learned counsel for the plaintiff is pressing for grant of interim relief pertaining to the cause of action of passing off also, while pressing for reliefs in Interim Application No.3202 of 2022.

16. Insofar as the aforementioned application for grant of interim reliefs is concerned, the learned senior counsel for the plaintiff invited attention of this Court to the pleadings in the plaint. Insofar as the trade mark of the plaintiff  is concerned, it is brought to the notice of this Court that the registration of the said trade mark, in favour of the predecessor of the plaintiff, dates back to the year 2009. It is specifically brought to the notice of this Court that by Assignment Deed dated 9th November, 2011, the predecessor of the plaintiff, also a sister concern from the same group of

companies, assigned the trade mark in favour of the plaintiff. On this basis, the plaintiff asserts its proprietary rights in the registered trade mark  in class 43. In paragraph No.15 of the plaint, the plaintiff has given details of the variants of the said trade mark, registered with the Registrar of Trade Marks, showing various dates of registration and the fact that the plaintiff does have registrations in classes 16, 42 and 43.

17. Insofar as the original artistic work concerning the said trade mark is concerned, in paragraph No.7, the plaintiff has specifically pleaded that the said original artistic work was created in-house by an employee in the course of employment and therefore, the plaintiff claims subsisting copyright in the same.

18. It is brought to the notice of this Court that the plaintiff is in the business of selling food products, alcoholic, non-alcoholic beverages, running multi-cuisine restaurants, food courts, kiosks, bars, lounges, etc. at several airports, railway stations and highways across India. The plaintiff claims to have earned substantial goodwill over a considerable period of time and it is stated that from the years 2011 to 2021, it has earned a revenue of about Rs.4485 crores and spent about Rs.15 crores towards promotion and advertisement of its services. On this basis, the plaintiff submits that its presence in the public domain is sufficiently established and that it has catered to consumers/passengers in about 300 outlets, covering about 134 million passengers since the year 2009.

19. According to the plaintiff, the cause of action in the present case, arose in October, 2021, when the plaintiff came across the infringing mark  of the defendant. It is stated that upon making enquiries, the plaintiff found that the defendant had applied for registration of the said trade mark in class 43 in May, 2021, with user claimed since 2018. In this backdrop, the plaintiff caused a Cease and Desist Notice dated 1st October, 2021, to be issued to the defendant. On 19th October, 2021, the defendant sent its reply, denying the assertions made by the plaintiff and sought to justify the use of the allegedly infringing trade mark. It was claimed on behalf of the defendant that it had adopted the said mark in the year 2018 onwards. In June, 2022, the plaintiff filed the present suit and application for interim reliefs. The defendant was served and has appeared through counsel.

20. The learned senior counsel appearing for the plaintiff compared the rival trade marks and submitted that there is phonetic and structural similarity between the two marks. It is submitted that the defendant is also doing business in the same class and consequently, there is every likelihood of the consumers being confused between the two marks. It is submitted that a bare look at the trade mark of the defendant would show that it is deceptively similar to the trade mark of the plaintiff.

21. It is further urged that the manner in which the trade mark of the plaintiff is depicted, it copies the essential and fundamental features of the trade mark of the plaintiff, including the manner in which, the defendant depicts swoosh-like device running in the middle.

22. It is also submitted that the corporate name of the defendant is stated at the bottom of the trade mark, similar to the trade mark of the plaintiff, beneath its registered trade mark. On this basis, the plaintiff is seeking interim reliefs in the present matter.

23. The learned senior counsel for the plaintiff addressed the defences raised on behalf of the defendant and submitted that there is no substance in such defences. It was submitted that the date of knowledge of the impugned trade mark being attributed to the plaintiff, prior to October, 2021, is not borne out from the record. It is submitted that the user claimed since the year 2018, is also not supported by material on record. It is submitted that delay and acquiescence are irrelevant, when the plaintiff is asserting its proprietary rights in the registered trade mark, which is in the public domain, at least since the year 2009. On this basis, it is submitted that this Court may be pleased to grant interim reliefs in terms of prayer clauses (a) and (b).

24. Learned counsel for the defendant opposed the contentions raised on behalf of the plaintiff and submitted that the statement made in the plaint about the plaintiff having become aware of the trade mark of the defendant in October, 2021, is false. It is stated that the defendant had filed Writ Petition in the High Court of Orissa, challenging the tender awarded to the plaintiff. In the documents filed in the said proceedings, the trade mark of the defendant was boldly stated. This was at least three months prior to October, 2021 and yet the plaintiff failed to take steps in the matter. It was further submitted that the trade mark of the defendant, being in public domain, at least since the year 2018, would show that the plaintiff has approached this Court after substantial delay and that therefore, no case is

made out for grant of interim reliefs. The defence of delay and acquiescence was specifically raised on behalf of the defendant.

25. The learned senior counsel for the defendant then referred to the written statement, wherein reference is made to other trade marks, wherein the swoosh-like device is used. It is stated that the plaintiff itself has copied such a trade mark and therefore, it cannot lie in the mouth of the plaintiff that it is entitled to grant of interim reliefs. On this basis, the application for grant of interim reliefs, deserves to be dismissed.

26. This Court has heard the rival parties in the backdrop of the material placed on record. The comparison of the two marks is as follows:

Said Marks	Impugned Mark
	
	
	

27. This Court finds that there is substance in the contentions raised on behalf of the plaintiff that on the first impression, there appears to be deceptive similarity between the two marks. The placement of the alphabets in the trade mark of the defendant, shows that alphabets F and S are common and the opening alphabet is different in the two marks. But, the manner in which, the swoosh-like device runs across the trade mark of the defendant, shows that it appears to be an attempt on the part of the

defendant to come as close as possible to the registered trade mark of the plaintiff. The manner in which, the corporate name of the defendant is stated at the bottom of the trade mark appears to be similar to the manner in which, the plaintiff has placed its corporate name at the bottom of its trade mark.

28. It cannot be ignored that the plaintiff is asserting its proprietary rights in the registered trade mark, dating back to 2009. Even if the case of the defendant is accepted that it started using its trade mark somewhere in 2018, that, in itself, cannot help the defendant to escape from the consequence of using the trade mark, which *prima facie* appears to be deceptively similar to the registered trade mark of the plaintiff. The question of delay at the interlocutory stage, cannot be of much significance in the face of the fact that the registration of the plaintiff's trade mark dates back to the year 2009. The aspect of acquiescence also becomes irrelevant at this stage, particularly for the reason that the defendant has failed to place on record sufficient material, for this Court to accept the contentions regarding acquiescence, raised on behalf of the defendant.

29. As regards the consistent use of the trade mark of the defendant from the year 2018, at present, there does not appear to be sufficient material on record and in any case, the defendant took a risk in using such a deceptively similar trade mark. As per the law laid down by this Court, in the case of *Bal Pharma Limited v/s. Centaur Laboratories Private Limited and another* [2002 (24) PTC 226 (Bom)(DB)], by failing to make proper enquiries, the defendant itself took risk of using such a trade mark, which this Court *prima facie* finds to be deceptively similar to the registered trademark of the plaintiff.

30. As regards reference to other trade marks, which the plaintiff has allegedly copied, it appears that the defendant is seeking to indicate that the adoption of the trade mark of the plaintiff and its registration itself is *prima facie* unsustainable or can be said to be fraudulent. In that regard, the high standard laid down by full bench of this Court in the case of *Lupin v/s. Johnson & Johnson* (AIR 2015 Bom. 50) has to be met. In the present case, this Court is not convinced that the defendant, by placing the aforesaid material on record in its written statement, has been able to create any doubt about the registration of the trade mark of the plaintiff and the said position of law cannot accrue to the benefit of the defendant for grant of interim reliefs.

31. At this stage, the learned senior counsel appearing for the plaintiff, on instructions, submitted that the interim relief pertaining to the aspect of subsisting copyright, is not being pressed, for the present.

32. In view of the above, there shall be ad-interim reliefs in favour of the plaintiff, during the pendency of the suit, in terms of prayer clauses (a) and (b), which read as follows:

“(a) pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the Defendant by themselves through their servants, agents, licensees, franchisees, partners, proprietors, directors, and/or otherwise howsoever by order and injunction of this Hon'ble Court from in any manner using and/or causing to be used the word, expression name and impugned mark depicted at Exhibit-'J' and/or any other word, mark or expression which is identical with and/or deceptively similar in any manner whatsoever to the Plaintiff's mark TFS either as a part of the trading name, restaurant's name or otherwise in any manner, whatsoever in relation to food

products, drinks, and/or restaurant services of providing food, drinks or any other services or goods of allied nature and/or of cognate class to the Plaintiff's restaurant and services of providing foods, drinks, etc. so as to infringe the Plaintiff's registered trademarks annexed at Exhibit-'H-H8';

- (b) pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the Defendant servants, by themselves through their agents, licensees, franchisees, partners, proprietors, directors and/ or otherwise howsoever by an order and injunction of this Hon'ble Court from in any manner using and/or causing to be used the impugned mark and/or any other word, mark or expression which is identical with and/or deceptively similar in any manner whatsoever to the Plaintiff's mark TFS, in relation to a restaurant, restaurant services, food outlets, offering food and beverages, catering services, food and beverage products and the like goods and services connected therewith and business relating thereto either as a name or name or as a part of its restaurant's name, name and/or in relation to any other goods or services which are of allied nature and/or of cognate class to the goods and/or services offered by the Plaintiff, so as to pass off and/or enable others to pass off, the Defendant goods and/or business of restaurant, restaurant services, food outlets offering foods and beverages/catering services and the like goods and/or services as and for that of the Plaintiff or in some way connected with the Plaintiff;"

33. The application and the leave petition stands disposed of, in above terms.

(MANISH PITALE, J)

Priya Kambli