



\$~58

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

Date of decision: 19.11.2024

+ RFA(COMM) 493/2024

M/S SAGAR RATNA RESTAURANTS PRIVATE LIMITED

.....APPELLANT

Through: Mr. Aman Vasisth with Ms. Shanjali Gupta, Advs.

versus

HILL VIEW HOTEL AND RESTAURANTRESPONDENT

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE

SAURABH BANERJEE, J (ORAL)

CM APPL. 67289/2024 –Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RFA(COMM) 493/2024 & CM APPL. 67290/2024 –Stay.

3. The present appeal under Section 13 of the Commercial Courts Act, 2015 (hereinafter referred to as 'Act') read with Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'Code') seeks to assail the judgment and decree dated 26.10.2024 passed by the learned District Judge, Commercial Courts, Saket Courts, New Delhi in CS(COMM)477/2024.
4. Briefly put, the appellant/ plaintiff instituted a suit for *injunction*,



recovery, damages and interest against the respondent/ defendant, before the learned Trial Court, inter alia seeking the grant of following reliefs:

“(i) A decree for mandatory injunction restraining the defendants their employees, successors, executors, agents, administrators, representatives from running and operating the restaurant business by using the trademark of the plaintiff i.e. "SAGAR", "RATNA" AND "SAGAR RATNA" on the patterns, format, knowledge, trade secrets etc. or any other similar, identical or deceptively similar mark of the plaintiff; AND/OR

(ii) A decree of permanent injunction restraining the defendants, their employees, successors, executors, agents, administrators, representatives from using, appropriating, exploiting, displaying, dealing with registered trademark and copyright i.e. "SAGAR", "RATNA" AND "SAGAR RATNA", trade secret, confidential data, recipes, technical know-how, business format, etc. in any manner whatsoever of the plaintiff or any other similar, identical or deceptively similar mark of the plaintiff; AND/OR

(iii) A decree of Rs.11,09,471/- (Rupees Eleven Lakh Nine Thousand Four Hundred and Seventy One Only/-) outstanding as on 07.09.2024 in favor of the plaintiff and against the defendants and direct the defendants to pay along with pendent lite and future interest @ 18 % per annum to the Plaintiff; AND/OR

(iv) Pass a decree of damages against the Defendants, jointly and severally thereby directing the defendants to pay 50% of the total sales generated since December, 2022 till the date of actual realization in favor of the plaintiff;”

5. The appellant in the said suit also filed an application under Order XXXIX Rules 1 and 2 of the Code seeking the grant of following reliefs:

“a) Grant an ad-interim & ex-parte injunction restraining the defendants, their employees, agents, and every person in charge of and for the conduct of the business and each of them whether by themselves or by their servants, agents, dealers, or otherwise from using rendering services, selling or offering for sale or advertising the restaurants, goods or services under the trade mark 'SAGAR', 'RATNA', 'SAGAR RATNA' or any other trade mark as well as the artistic (copyright) work belonging to Plaintiff as being similar / identical with and/or deceptively or phonetically or visually similar thereto; AND



b) Grant ad-interim/ex-parte injunction restraining the defendants and all other persons concerned, their agents, employees and every person in charge of and for the conduct of the business and each of them whether by themselves or by their servants, agents, dealers, or otherwise however from infringing the registered trademark, copyright and other intellectual property of the plaintiff; AND

c) Direct the defendants and all other persons responsible to immediately remove: and withdraw all such representation, display, publications, etc., bearing any kind of intellectual property of the Plaintiff from being visible to general public and be restrained to use any 'Such material'

6. When the suit was listed before the learned Trial Court, after hearing the learned counsel for the appellant, the learned Trial Court rejected the plaint under Order VII Rule 11 of the Code on the ground that the same was barred under Section 12A of the Act as the appellant had instituted the suit without availing of the mandatory pre-institution mediation proceedings provided under Section 12A of the Act, therefore being '*barred by any law*'. Additionally, though the learned Trial Court also took note of the appellant's plea that the provision of Section 12A of the Act was not applicable as urgent interim orders were sought to restrain the respondent from using the appellant's trademark, however, the Trial Court did not accede to this prayer of the appellant as it found that the Cease and Desist Notice had been issued by the appellant about five months ago, with no action in the *interregnum*.

7. Being aggrieved, the appellant has preferred the present appeal.

8. We may begin by noting the relevant extract of the impugned judgment, which is as follows:-

"As already observed above, Plaintiff had failed to furnish any reasonable and sufficient explanation as to what prevented it from approaching the court earlier immediately after issuance of cease and desist notice and why he kept on waiting for 5 long months to initiate the present proceedings, hence, I am of the considered view that the compliance of Provisions of Section 12 A of the Commercial Courts Act, was mandatory in the given facts and circumstances of this case and Plaintiff could not be



granted any exemption from invoking the said provision of law. Therefore, Plaintiff is rejected u/o VII rule 11 CPC holding it to be barred by Provisions of Section 12 A of the Commercial Courts Act, with liberty to the plaintiff to file the same again after due compliance of mandatory provisions of Section 12A of the Commercial Courts Act.”

9. Having considered the submissions of learned counsel for the appellant and perused the impugned judgment, we find that the moot question arising for our consideration is as to whether the suit instituted before the learned Trial Court was per se maintainable without the appellant having taken recourse to Section 12A of the Act, which provides that prior to any party approaching a Court by way of a suit, other than where any urgent interim relief is sought, resorting to pre-litigation mediation in terms of the Act by such a party is mandatory. The same therefore carves out an exception by providing that a suit, which contemplates any urgent relief under this Act, can be instituted even without exhausting the remedy of pre-litigation mediation.

10. Learned counsel for the appellant has contended that the learned Trial Court has gravely erred in holding that since the suit was filed five months after issuance of the cease and desist notice, the appellant's plea for urgent interim relief could not be accepted. He submits that this presumption drawn by the learned Trial Court was contrary to the settled legal position as emerging from the decisions of the Supreme Court, as also this Court, wherein it has been consistently held that mere delay in approaching the Court after issuance of the Cease and Desist Notice cannot take away the right of the plaintiff to pray for an interim injunction. He, therefore, prays that the impugned judgment be set aside and the suit be remanded back to the learned Trial Court for consideration on merits.



11. After hearing learned counsel for the appellant as also having carefully perused the documents on record, we note that the suit instituted by the appellant was rejected under Order VII Rule 11 of the Code even without summons being issued to the respondent and consequently we do not deem it necessary to call for any response from the respondent. Accordingly, we are taking up the appeal for consideration today itself without issuance of any notice to the respondent.

12. Now coming to the facts of the present case, we find that the plaintiff had instituted a suit for *injunction, recovery, damages and interest*, claiming relief in suits relating to intellectual property rights, especially trade mark as involved herein, this cause of action for instituting a suit was in our considered opinion continuous and recurring cause of action on each and every occasion of infringement. Since the suit of the appellant was premised

on its trade mark "SAGAR" "SAGAR RATNA"  qua which it had by virtue of franchise agreement dated 04.01.2021 issued a license to the defendant which has since expired way back in May, 2024 but, the respondent is still alleged to be using the same, the cause of action for institution of the suit by the appellant before the Trial Court was/ is continuous and recurring. Under these circumstances, merely sending the cease and desist almost five months ago couldn't be a ground to hold that the appellant could not approach the Court for seeking an *ex parte ad interim* relief against the respondent.

13. In these circumstances, we are of the considered view that in a case like the present where the appellant sought the reliefs of *injunction, recovery, damages and interest*, qua the impugned trade marks by way of an



accompanying application under Order XXXIX Rules 1 and 2 of the Code alongwith the main suit instituted before the learned Trial Court, the appellant was justified in approaching the learned Trial Court without taking recourse to the proceedings under Section 12A of the Act.

14. Similar was the position in decision of a Co-ordinate Bench of this Court in ***Yamini Manohar vs. T.K.D. Keerthi***, 2023 SCC OnLine Del 2653, wherein it was held as under:-

“A reading of the aforesaid observations makes it abundantly clear that whether a suit involves any urgent interim relief has to be determined solely on the basis of pleadings and the reliefs sought by the plaintiff. If a plaintiff seeks urgent interim relief, the suit cannot be dismissed on the ground of non-compliance with provisions of Section 12A of the Commercial Courts Act. The Division Bench goes on to hold that whether a suit involves any urgent interim relief is not contingent on whether the Court accedes to the request of the plaintiff for interim relief or not. Therefore, what has to be seen are the pleadings in the plaint and the reliefs sought by the plaintiff.”

15. Interestingly, the same view was upheld by the Hon’ble Supreme Court in ***Yamini Manohar vs. T.K.D. Keerthi*** (2024) 5 SCC 815 which has also held that *“urgent interim relief has been prayed for and the condition that the plaint “contemplates” an urgent interim relief is satisfied”*. Therefore, the mandatory compliance of Section 12A of the Act was exempted.

16. Considering the aforesaid situation, especially wherein the appellant had filed the accompanying application under Order XXXIX Rules 1 and 2 of the Code seeking *ex parte ad-interim* urgent reliefs against the respondent and in view of the dicta passed recently by the Hon’ble Supreme Court in ***Yamini Manohar*** (supra) we find merit in the contention raised by the appellant. We are, therefore, of the considered view that the learned Trial Court has erred in holding that the mandate of Section 12A of the Act was



2024:DHC:8985-DB



applicable to the facts of the present case.

17. For the aforesaid reasons, we, accordingly, set aside the impugned order and remand the matter back to the learned Trial Court for adjudication of the suit along with interim application for urgent relief on merits as per law.

18. List the suit before the learned Trial Court on 02.12.2024.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

NOVEMBER 19, 2024/rr