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

% *Date of decision: 27th February, 2025*

+ CS(COMM) 33/2023 and I.A. 49906/2024

CHOTIWALA FOOD AND HOTELS

PRIVATE LIMITED AND ANR.

.....Plaintiffs

Through: Mr. Rahul Ajatshatru, Mr. Piyush
Singhal, Ms. Ishpreet Singh, Mr.
Himanshu Nehra & Mr. Chandrakant
Dahiya, Advocates.

versus

CHOTIWALA & ORS.

.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright of the plaintiffs, passing off, along with other ancillary reliefs.

CASE SETUP IN THE PLAINT

2. Plaintiff No.1 is an Indian company having its registered office in Rishikesh, Uttarakhand and is the founder of the restaurant 'CHOTIWALA' at Rishikesh, Uttarakhand.

3. Plaintiff no.2 is the director of the plaintiff no.1 company. However, during the pendency of the suit, the erstwhile plaintiff no.2 passed away and

the present plaintiffs no.2, 3 and 4 were impleaded as the legal representatives of the plaintiff no.2.

4. In 1958, the predecessor of the plaintiffs established “CHOTIWALA SHUDH GHEE BHOJANALAY” a pure vegetarian restaurant located at Rishikesh, Uttarakhand and in 1961 an original artwork was created by the plaintiffs’ predecessor for its mark depicting a “Brahmin with a bodhi and



serving satvik vegetarian meal”. The said artwork was registered with the copyright office vide registration No. A- 941/64 w.e.f. 20th March 1964.

5. In the year 1983, the name of the plaintiffs’ restaurant was shortened and renamed as ‘CHOTIWALA BHOJANALAY’ and the plaintiffs adopted



another copyright artwork and the same was also registered vide registration no. A- 40299 / 83 in the name of the plaintiffs entity.

6. In and around 1995, the plaintiffs once again rebranded their restaurant and changed its name to ‘CHOTIWALA’ and the plaintiffs created new artworks for their restaurant which are reproduced below:



7. Apart from the aforesaid artistic work, the plaintiffs have also obtained trademark registrations for their CHOTIWALA marks, which are valid and subsisting. The details of registration obtained by the plaintiffs are given in paragraph 8 of the plaint and the same are reproduced below:

S. No.	Registration No	Class	Trade Mark	Type
1	1309409	29		Device
2	1309410	29		Word
3	1309412	30		Device
4	1309413	30		Device

5	1306712	16		Device
6	326320	29		Device
7	1306715	30		Device

8. It is stated that the plaintiffs have been using the abovementioned artistic works and trade marks on the restaurants' menus, signboards and for promotion and publicity as well.

9. In 1995, the plaintiff no.1 company was incorporated and by virtue of a family arrangement, the marks were transferred to the plaintiff no.1 company.

10. It is averred that apart from the above artistic works, the plaintiffs also deploy real-life mascots at the restaurant to attract customers. It is stated that the said mascot welcomes the guests and occasionally checks on them and keeps them in good humour. The said mascot has become an iconic symbol of the restaurant and the plaintiffs also enjoy the goodwill in the same. The photographs of the mascots are also filed along with the plaint and the same are reproduced below:

OLD MASCOT	NEW MASCOT
	

11. It is stated that since the adoption of the CHOTIWALA name in 1958 and its usage at the CHOTIWALA restaurant in Rishikesh, the word ‘Chotiwalā’ has not only become distinctive to the Plaintiffs but given the popularity, immense footfall of customers throughout the world, owing to its simple but excellent food, prominent location and continued and uninterrupted run of the business for more than 65 years, the Plaintiffs’ brand ‘Chotiwalā’ has acquired a secondary meaning.

12. The plaintiffs have provided details of the sales figure of their restaurant for the FY 2010-2011 till FY 2021- 2022. It is pertinent to note that in the FY 2021-2022, the plaintiffs’ annual sale was over Rs. 2 crore.

13. Defendant No. 1 is a restaurant styled as CHOTIWALA, located at N-12/5, Outer Circle, Connaught Place, Barakhamba Road, New Delhi – 110001.
14. Defendant No. 2 is a restaurant styled as CHOTIWALA, situated at Plot 17/1, Ambrai Extension, Sector 19, Dwarka, New Delhi.
15. Defendant No. 3 is a restaurant styled as CHOTIWALA PANDIT, located at Shop Number L-12, Ground Floor, Main Road, Kalkaji, New Delhi – 110019.
16. Defendant No. 4 is a restaurant styled as CHOTIWALA THE FAMOUS FOODIES, operating at Block BU, Jal Board Colony, Pitampura, Prashant Vihar, Delhi.
17. Defendant No. 5 is a restaurant styled as CHOTI WALE PANDIT JI KE PARATHE, located at B-95/8, Street 8, Tomar Colony, Burari, New Delhi.
18. Defendant No. 6 is a restaurant styled as CHOTIWALAS PARANTHA, located at C-104, DLF Colony, Dilshad Garden, New Delhi.
19. Defendant No. 7 is a restaurant styled as TAU CHOTIWALA HARYANA DHABA, situated at Shop No. 01, B Block, Rangpuri, New Delhi.
20. Defendants No. 8 and 9 are unidentified parties (John Doe) whose identities were not known to the plaintiffs.
21. Since the plaintiffs were unaware about composition and ownership of the defendants, the defendants sought leave of the court to amend the pleadings.
22. In and around October and November, 2022, the plaintiffs started

receiving complaints from their customers visiting from New Delhi that they ordered from Chotiwalla's Delhi branch but found the food to be substandard. Immediately the plaintiffs made inquiries and discovered that various persons in New Delhi especially, during and after the Covid-19 pandemic lockdowns, have set up restaurants in various parts of New Delhi and have dishonestly incorporated the word CHOTIWALA in their name in order to misappropriate the goodwill of the plaintiffs' brand and to pull customers to their doorstep by misleading them that they are related to the plaintiffs' restaurants.

23. In December 2022, the plaintiffs instituted the present suit against seven restaurants operating in New Delhi, which, without the Plaintiffs' authorization or consent, had unlawfully incorporated the term CHOTIWALA in their trade names. Given the nature of the unauthorized adoption and infringement of their trademark(s), the plaintiffs also impleaded unidentified defendants, referred to as Ashok Kumars (John Does), in the array of parties. The plaintiffs sought urgent ad-interim and interim injunctive reliefs against these unidentified entities until their identities were ascertained and they were formally arrayed as defendants in the suit.

24. On the first date of hearing on 18th January, 2023, this court issued summons in the suit and notice in the interim application to the defendants.

25. On 8th February, 2023, this court allowed impleadment of pro-forma parties Zomato Limited as the defendant no. 10, Samast Technologies Private Limited that owns and operates the online platform www.magicpin.com as Defendant No. 11, and Just Dial Limited that owns

and operates the online platform www.justdial.com as defendant no. 12 in the suit.

26. Defendant No. 12 entered appearance on 8th February 2023 upon advance notice and conceded to the plaintiffs' claims. The defendant no.12 submitted that they do not intend to file a written statement in the suit and undertook to remove the impugned listings from their website. In view of the submissions and binding undertakings made on behalf of defendant No. 12, the Court ordered the deletion of defendant no.12 from the array of parties.

27. On 23rd August 2023, this court directed the defendants no.10 and 11 to furnish details of the defendants no. 1 to 7, including their personal details. Upon receiving the details from the platforms, fresh summons were issued to the defendants.

28. On 13th September 2023, the court directed the defendants no.10 and 11 to take down the impugned listings of the defendants no.1 to 7 from their platform.

29. On 12th January 2024, the Joint Registrar allowed the impleadment of Legal Representatives of the plaintiff no.2 as parties in the suit.

30. Since none entered appearance on behalf of defendants no. 2, 4, 6, and 11, this court, vide order 3rd October 2024, directed that the defendants no. 2, 4, 6, and 11 be proceeded against ex-parte. Further, the counsel sought time to take instructions qua defendants no.1, 3, and 7 as the plaintiffs did not have the present addresses of the said defendants.

31. On 10th January, 2025, the defendants no. 1, 3, 7, 8 and 9 were deleted from the array of parties.

32. In the order dated 6th February 2025, it was recorded that in terms of the amended memo of parties, the relief is sought only *qua* defendants no. 1, 2, 3 and 4 (earlier defendants no. 2, 4, 6 and 11).

ANALYSIS AND FINDINGS

33. I have heard the submissions of the counsel and also perused the material on record.

34. The plaint has been duly verified and is supported by the affidavit of the plaintiffs. . In view of the fact that the no written statement has been filed on behalf of the defendants, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendants in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion, this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

35. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that they are the registered proprietor of the mark 'CHOTIWALA' and its formative marks and has copyright over their artistic work.

36. The marks and artistic work have been used by the plaintiffs for promotion of their restaurants for more than sixty five (65) years and following the popularity it has acquired a secondary meaning, and the word 'CHOTIWALA' by default (in its ordinary sense), refers to the restaurant of the plaintiffs in Rishikesh, Uttarakhand. The plaintiffs have also been able to demonstrate and prove their goodwill and reputation in respect of the same

based on the clientele and the sales figures placed by them before this court.

37. The plaintiffs have also placed on record the orders passed by this court in earlier suits filed by the plaintiffs wherein this court has recognised the rights of the plaintiffs in their 'CHOTIWALA' marks and artistic works.

38. The plaintiffs have placed on record the listing of the restaurants on online platforms to show that customers are mistaking the defendants' restaurants for the plaintiffs and as a result of the substandard quality of food offered by the defendants, the plaintiffs' reputation and goodwill have suffered.

39. Clearly, in the present case, the plaintiffs' name, trade mark and copyrights have been used by the defendants with the clear intent to deceive the public. It is apparent that the defendants are attempting to defraud the public by falsely claiming to be associated with the plaintiffs. The unauthorized actions of the defendants, including the creation and adoption of the plaintiffs' name, and creating delivery pages on the food delivery platform and other social media platforms have given rise to substantial confusion, leading individuals to falsely believe that the impugned listings are authorized, associated, and affiliated with the plaintiff.

40. At this stage, it may be relevant to note that defendants have not appeared before this court despite service of summons. Since the defendants have failed to take any requisite steps to contest the present suit, despite having suffered an ad-interim injunction order, it is evident that they have no defence to put forth on merits.

41. Counsel for the plaintiff presses for a decree on the aspect of damages and costs.

42. One of the factors that could be considered by the Court while considering the aspect of damages is the degree of intention of a party.

43. It is a settled law that while awarding damages, the court has to adopt stringent approach in awarding damages where the infringement is deliberate and *malafide*. In the present case, the defendants have clearly adopted the CHOTIWALA name and marks as part of their business. The *mala-fide* intent of the defendants is also evident from the screen shot of the listings of the defendants on the various platforms where the defendants are mistaking the defendants' restaurants with the plaintiffs' and no steps have been taken by the defendants to rectify the same.

44. Further, defendant no.2, "Chotiwalla The Famous Foodies" (earlier defendant no. 4), upon becoming aware of the present suit and the plaintiffs' claims, changed its address from Pitampura to Malviya Nagar and still continues to operate as a cloud kitchen. Clearly, the aforesaid *malafide* acts of the defendants not only warrant but necessitate the imposition of damages in favour of the plaintiff against the defendants as the defendants are trying to ruin the goodwill established by the plaintiffs in their CHOTIWALA trademarks and artistic works.

45. Accordingly, the plaintiffs are entitled to restrain the defendants from using the plaintiff's name, marks and artistic work without authorization from the plaintiffs.

RELIEF

46. In view of the foregoing analysis, a decree of permanent injunction is

passed in favour of the plaintiffs and against the defendants no. 1, 2 and 3 in terms of prayer clauses 30 (a) to (c) of the plaint.

47. Insofar as the relief of damages as sought in prayer clause 30 (d) is concerned, this Court awards damages in favour of the plaintiffs and against the defendants no.1 to 3. Accordingly, each of the aforesaid defendants is directed to pay damages of Rs. 1,00,000/- to the plaintiffs.

48. Further, a decree of mandatory injunction is passed in favour of the plaintiffs and against the defendant no.4, directing the defendant no.4 to remove all businesses from its platform www.magicpin.com, that use "CHOTIWALA" or any other deceptively similar name in their trade name.

49. Plaintiffs are also entitled to actual costs incurred by the plaintiffs in the present suit. The plaintiffs shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within four weeks. For this purpose, the representatives of the plaintiffs shall appear before the Joint Registrar, who shall determine the actual costs incurred by the plaintiffs in the present litigation.

50. Counsel for the plaintiffs do not press for the remaining reliefs claimed in the suit.

51. Let the decree sheet be drawn up.

52. All pending applications stand disposed of

AMIT BANSAL, J

FEBRUARY 27, 2025

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