



\$~42

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 717/2022, I.A. 16836/2022, I.A. 3793/2023 & I.A.  
19803/2023

VEERJI RESTAURANT PRIVATE LIMITED ..... Plaintiff  
Through: Mr. Nishant Mahtta, Adv.

versus

ANKIT KUMAR & ORS. .... Defendants  
Through: Mr. Shekhar Aggarwal, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**  
**01.11.2023**

%

**I.A. 3793/2023 [under Order XXXIX Rule 2A of the CPC]**

1. This is an application by the plaintiff under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC), alleging disobedience, by the defendants, of order dated 19 October 2022, passed by this Court. In the said order, after recording a *prima facie* finding that the defendants had infringed the plaintiff's registered trademark VEER JI MALAI CHAAP WALE, this Court, in para 21, directed thus:

“21. In these circumstances, *the use of an identical mark and logo for identical services is bound to create confusion and deception in the minds of the public and consumers.* Thus, this Court is of the opinion that the Plaintiff has made out a *prima facie* case for grant of interim injunction and that the balance of convenience lies in its favour. Moreover, irreparable injury would be caused to the Plaintiff if the interim injunction is not granted. However, considering the fact that the trademark applications of the Defendant No. 1 bearing no. bearing no. 5132255 and 5132256 dated 15<sup>th</sup> September, 2021 were filed prior to the date of the franchise agreement i.e. 18<sup>th</sup> October, 2021, limited interim



injunction is granted at this stage in the following terms:

(i) The Defendant shall not open any further outlets including restaurants and hotels under the name/logo VEER JI MALAI CHAAP WALE or any other confusingly similar name to the Plaintiff's name and logo till the next date of hearing.

(ii) The Defendants are also stated to be entering into franchise agreements with third parties. No further franchise agreements shall be entered into by Defendant Nos. 1-3 to any third party without permission of this Court.

(iii) *In so far as online listings are concerned, since the defendants are using the name VEER JI MALAI CHAAP WALE which is identical to the Plaintiffs name and registered trademarks, the Defendants shall ensure that the online listings on platforms such as Zomato and Swiggy are removed by 15<sup>th</sup> November, 2022.*

(Emphasis supplied)

2. The tone and texture of para 21 is significant. Insofar as opening of further outlets is concerned, direction (i) restrains the defendant from opening any further outlets including restaurants and hotels using the mark VEER JI MALAI CHAAP WALE or any confusingly or deceptively similar mark. Insofar as listings on Zomato and Swiggy are concerned, direction (iii) directs the defendants to ensure that the online listings of the name VEER JI MALAI CHAAP WALE are removed by 15 November 2022.

3. Mr. Mahtta, to a query from the Court as to the act of the defendant which, in his submission, constitutes wilful disobedience of the aforementioned directions, Mr. Mahtta has drawn my attention to Invoices No. 22DQNVAH00000144 and 22N8HEV000000724 dated 15 February 2023 and which refer to "VEER DI MALAI CHAAP WALE" as the name of the restaurant on which the order was placed



and the addresses of the outlets as 4, 129/6, Nai Sadak, Shastri Nagar, Meerut and A 16, 17, Ground Floor, Meerut Mall, Devpuri, Meerut respectively.

4. Mr. Aggarwal, learned Counsel for the defendant submits that there are, in fact, no physical outlets at 4, 129/6, Nai Sadak, Shastri Nagar, Meerut or A 16, 17, Ground Floor, Meerut Mall, Devpuri, Meerut, with the name VEER DI MALAI CHAAP WALE. The outlets available at the said address are VEER JI MALAI CHAAP WALE, which are continuing as there was no injunction against the continuing of existing outlets bearing the mark VEER JI MALAI CHAAP WALE.

5. To a query from the Court, Mr. Aggarwal has no answer as to why orders are placed through Zomato on outlets which bear the name VEER JI MALAI CHAAP WALE reflecting the names of the outlets on the invoices as VEER DI MALAI CHAAP WALE. It is simple logic that, if the name of the outlets situated at 4, 129/6, Nai Sadak, Shastri Nagar, Meerut and A 16, 17, Ground Floor, Meerut Mall, Devpuri, Meerut are, in fact, VEER JI MALAI CHAAP WALE, it cannot be reflected on the invoice of Zomato as VEER DI MALAI CHAAP WALE.

6. In my *prima facie* opinion, the defendant has devised an ingenious method to subvert the order passed by this Court. Aware of the fact that there is an injunction restraining the defendant from having any online listing on Zomato or Swiggy for the mark VEER JI MALAI CHAAP WALE, the defendant has, even while continuing



the physical restaurants at 4, 129/6, Nai Sadak, Shastri Nagar, Meerut and A 16, 17, Ground Floor, Meerut Mall, Devpuri, Meerut as VEER JI MALAI CHAAP WALE, apparently engineered online listings by Zomato as well as the issuance of tax invoices reflecting the name of the restaurant as VEER DI MALAI CHAAP WALE.

7. If this view is correct, it is worse than contempt as it amounts to fraud on the Court.

8. I have heard Mr. Aggarwal and perused the reply filed by way of response to this application.

9. The answers provided by the defendant to the allegations of the plaintiff are completely unsatisfactory. To my mind, the defendant has played a calculated fraud on the Court with a view to nullify direction (iii), passed by this Court in para 21 of the Order dated 19 October 2022. There was a specific direction to the defendant to remove the online listings from Zomato and Swiggy using the id VEER JI MALAI CHAAP WALE. The defendant has, while removing the said id, engineered a stratagem by which orders can be placed on the same outlet using the new id VEER DI MALAI CHAAP WALE though no such outlet bearing the said name is present at the address.

10. This is, *prima facie*, subversion of process of the justice and a calculated attempt at disobeying the order of this Court. The submissions contained in the reply to this application and advanced at the Bar by Mr. Aggarwal are completely unsatisfactory.



**11.** In view thereof, this Court holds Defendant 1 Mr. Ankit Kumar guilty of having disobeyed direction (iii) contained in para 21 of the Order dated 19 October 2022.

**12.** Mr. Ankit Kumar is directed to place on record details of the entire amounts that have been earned by him through orders placed on the defendant's outlets at 4, 129/6, Nai Sadak, Shastri Nagar, Meerut and A 16, 17, Ground Floor, Meerut Mall, Devpuri, Meerut.

**13.** Defendant 1 is also directed to file an affidavit as to why the Court should not proceed to pass sentence on him for having disobeyed the orders passed by this Court in a calculated fashion.

**14.** Let the affidavit in the above terms be filed within a period of three weeks from today with advance copy to learned Counsel for the plaintiff who may file response thereto within one week thereof.

**15.** Re-notify for hearing and disposal of this application on the aspect of sentence on 7 December 2023.

**C.HARI SHANKAR, J**

**NOVEMBER 1, 2023**

ar

*Click here to check corrigendum, if any*