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

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Date of decision: 8th July, 2025

+ **CS(COMM) 862/2023 with I.A. 24140/2023 and I.A. 11635/2025**

MS VEERJI RESTAURANT PRIVATE LIMITEDPlaintiff

Through: **Mr. S. Nithin, Advocate.**

versus

YASH RAI & 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 infringement of trade mark and copyright and passing off of their services as those of the plaintiff along with other ancillary reliefs.

CASE SET UP BY THE PLAINTIFF

2. The plaintiff, a company incorporated on 9th November 2020, is one of the leading service providers in the business of food and restaurant and runs a leading restaurant chain under the mark VEERJI MALAI CHAAP WALE (hereinafter 'plaintiff's mark'). Prior to the plaintiff's incorporation, its business was carried out as a proprietorship concern in the name of M/s Veerji Malai Chaap Wale.

3. The plaintiff's predecessor-in-title conceived the Punjabi word



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VEERJI, which is frequently used as a sign of respect for one's brother, in relation to its business and adopted the inherently distinctive trade mark VEERJI MALAI CHAAP WALE in the year 2016 to distinguish its services from those of others.

4. The plaintiff has approximately 70 branches of its restaurant under the plaintiff's mark across India and has achieved considerable sales in a very short span of time. The plaintiff's net sales for the financial years 2018-19 to 2022-23 have been provided in paragraph no.12 of the plaint. Pertinently, the plaintiff recorded net sales of Rs. 3,61,39,658.69/- in the financial year 2022-23.

5. The plaintiff has been providing its services and promoting its business across India through its website, accessible at www.veerjimalaichaapwale.com. The plaintiff is also listed on various food delivery platforms such as Zomato and Swiggy and has an extensive presence on social media platforms such as YouTube, Instagram, Facebook, Twitter, Pinterest, etc., resulting in substantial public exposure.

6. The plaintiff spends a significant amount of time, money and resources to advertise its services under the plaintiff's mark across India through various print media such as newspapers, magazines, trade journals, leaflets, etc. Recently, the plaintiff has also engaged the famous actor and wrestler Mr. Vindu Dara Singh as its brand ambassador. The plaintiff's business has featured on various food blogs and vlogs.

7. The plaintiff's advertisement and sales promotional figures for the financial years 2018-19 to 2022-23 have been provided in paragraph no.13 of the plaint. Pertinently, the plaintiff's sales promotional expenditure in the



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financial year 2022-23 amounts to a total of Rs. 400,986.34/-.

8. By virtue of prior use, immense popularity and sales, and extensive promotions, the plaintiff's mark and other VEERJI-formative marks have acquired substantial goodwill and reputation across India and the members of trade and public associate the same with the plaintiff alone and no one else.

9. In addition to its common law rights over the plaintiff's mark by virtue of the aforesaid, the plaintiff has obtained several registrations for various VEERJI-formative marks including device marks. A list of the plaintiff's trade mark applications and registrations is provided in paragraph no.14 of the plaint.

10. The plaintiff is also the registered owner of the copyright in the



artistic work vested in the label . The details of the plaintiff's copyright registration have been provided in paragraph no.15 of the plaint.

11. The plaintiff, in September 2023, came to know about the defendants who are using trade marks in relation to their respective businesses which are identical with/ deceptively similar to the plaintiff's mark.

12. The defendants no.1, 2, 5 and 6 are engaged in identical businesses of restaurant and food delivery joint under the mark VEER JI MALAI CHAAP WALE in Lalghati (Bhopal), Moti Nagar (Delhi), Raipur, and Haridwar, respectively. The defendant no.3 is engaged in an identical business of restaurant and food delivery joint under the mark THE VEER JI MALAI



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CHAAP WALE in Moradabad (Uttar Pradesh). The defendant no.4 is engaged in an identical business of restaurant and food delivery joint under the mark VEERE DI MALAI CHAAP & KATHI KABAB in Durgapuri (Delhi). The defendant no.1 also maintains a profile on Instagram under the username VEERJI_LALGHATI and the defendants no.2 to 6 are listed on food delivery platforms such as Zomato and/ or Swiggy. The respective trade marks used by the defendants are hereinafter collectively referred to as the 'impugned marks'.

13. The plaintiff also sent a cease-and-desist notice to the defendant no.4, to which no reply was received by the plaintiff.

14. Aggrieved by the aforesaid, the plaintiff instituted the present suit *inter alia* seeking permanent injunction restraining infringement of trade mark and copyright and passing off of the impugned services as those of the plaintiffs.

PROCEEDINGS IN THE SUIT

15. Summons in the suit and notice in the application for interim injunction were issued to the defendants no.1 to 6 on 4th December 2023. On 7th December 2023, an *ex-parte ad interim* injunction in favour of the plaintiff and against the defendants no.1 to 6 was granted.

16. As noted in the order dated 23rd January 2024, the defendants no.1 and 3 were served through speed post on 17th January 2024 and the defendant no.4 was served through ordinary mode on 4th January 2024. The defendants no.2 and 5 were served through speed post on 29th January 2024, and the defendant no.6 was served through speed post on 27th January 2024, and the same is recorded in the order dated 19th November 2024.



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17. *Vide* order dated 25th April 2024, the plaintiff and the defendants no.1 and 4 were referred for mediation.
18. The matter was settled between the plaintiff and the defendant no.1 in terms of the Settlement Agreement dated 22nd July 2024 and the suit was decreed *qua* the defendant no.1 on 18th September 2024.
19. *Vide* order dated 19th November 2024, the right of the defendants no.2 to 6 to file the written statement was closed by the Joint Registrar.
20. Despite service, none entered appearance on behalf of the defendants no.2, 3, 5 and 6 and the defendants no.2 to 6 were proceeded against *ex-parte vide* order dated 23rd December 2024.
21. Thereafter, an application under Order XIII-A of the Code of Civil procedure, 1908 (hereinafter 'CPC') seeking a summary judgment against the defendants no.2 to 6 has been filed on behalf of the plaintiff and notice was issued therein to the defendants on 8th May 2025.

ANALYSIS AND FINDINGS

22. I have heard counsel for the plaintiff and perused the material on record.
23. The plaint has been duly verified and is also supported by the affidavit of the authorized signatory of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendants no.2 to 6, all the averments made against them in the plaint are deemed to have been admitted. Further, since no affidavit of admission/ denial has been filed on behalf of the aforesaid defendants in respect of the documents filed with the plaint, the same are deemed to have been admitted in terms of Rule 3 of the Delhi High Court (Original Side) Rules, 2018.



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24. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex-parte* evidence by filing an affidavit of examination-in-chief and the plaintiff is entitled to a summary judgment.

25. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it has been continuously and extensively rendering their services under the plaintiff's mark in India since 2016.

26. The plaintiff, through its extensive and continuous use of the plaintiff's mark in India, significant sales made thereunder and promotion thereof, has been able to establish its goodwill and reputation under the plaintiff's mark in India.

27. A comparison between the a few of the plaintiff's marks and the impugned marks of the defendants no.2 to 6 is reproduced below:

| Plaintiff's Marks | Impugned Marks |
|---|---|
| VEERJI MALAI CHAAP WALE    | <u>Defendant No.2</u>  |
| | <u>Defendant No.3</u>  |
| | <u>Defendant No.4</u> |
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| | <p><u>Defendant No.5</u></p>  |
| | <p><u>Defendant No.6</u></p>  |

28. A bare perusal of the comparison above and the material on record shows that the defendants no.2 to 6 have adopted and are using the impugned marks, which are identical with/ similar to the plaintiff's mark, in relation to the impugned services, which are also identical with the plaintiff's services under the plaintiff's marks.

29. Therefore, the defendants no.2 to 6 have been taking unfair advantage of the reputation and goodwill of the plaintiff under the plaintiff's marks. The aforesaid defendants have deceived the unwary consumers by dishonestly adopting the impugned marks in relation to the impugned services without any plausible explanation.

30. The *mala fide* adoption and use of the impugned marks by the defendants no.2 to 6 is evident from the fact that the said defendants have



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also copied the device of  in the impugned marks.

31. In view of the above, the plaintiff has established a clear case of infringement of trade mark and copyright as well as passing off of the impugned services as those of the plaintiff.

32. At this stage, it is relevant to note that despite service of summons, the defendants no.2, 3, 5 and 6 did not appear before the Court. The defendant no.4 also did not appear after 25th April 2024, *i.e.*, when the plaintiff and the defendant no.4 were referred for mediation. Further, neither a written statement nor any communication in respect of the plaintiff's allegations has been placed on record on behalf of the aforesaid defendants.

33. Since the aforesaid defendants have failed to take any requisite steps to contest the present suit despite having suffered an interim injunction, it is evident that the defendants no.2 to 6 have no defence to put forth on merits.

34. In ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev***, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for



trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

35. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants no.2 to 6 have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the aforesaid defendants have not set up any defence, there is no compelling reason for the recording of oral evidence.

36. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiffs and against the defendants no.2 to 6.

37. In view of the foregoing analysis, the present suit is decreed in terms of prayer clause contained in paragraph no.73(a) to 73(f) of the plaint.

38. Counsel for the plaintiff presses for the reliefs of damages and costs.

39. Insofar as the reliefs of damages and costs sought in prayer clause contained in paragraphs no.73(i) and 73(j) are concerned, reference may be made to the judgment in ***M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr***, 2016 SCC OnLine Del 6717. The relevant observations are set out below:

“21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant



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who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright.”

[Emphasis Supplied]

40. In light of the foregoing analysis, this Court concludes that the conduct of the defendants no.2 to 6 not only warrants but also necessitates the imposition of both costs and damages. Thus, in addition to the decree passed in the terms already mentioned above and taking into account the entire facts and circumstances of this case, this Court also awards damages and costs of Rs. 5,00,000/- in favour of the plaintiff. Each of the defendants no.2 to 6 shall pay damages and costs amounting to Rs. 1,00,000/- to the plaintiff.

41. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

42. Let the decree sheet be drawn up accordingly.

43. All pending applications stand disposed of.

AMIT BANSAL, J

JULY 8, 2025

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