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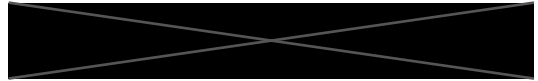
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 1115/2024 & I.A. Nos. 48062/2024, 48063/2024,
48064/2024, 48065/2024 & 48066/2024

MOTI MAHAL DELUX MANAGEMENT SERVICES PVT. LTD.

& ORS..... Plaintiffs

Through: Ms. Shreya Sethi with Mr. Anirudh
Bhatia, Advocates.



versus

M/S. SRMJ BUSINESS PROMOTERS PVT. LTD. &

ANR. Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
12.12.2024

I.A. 48063/2024 (Exemption from filing original and certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing original/certified/clearer/translated copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiffs shall file legible, clear, and translated copies of the documents, on which the plaintiffs may seek to place reliance, before the next date of hearing.

4. Accordingly, the present application is disposed of.

I.A. 48064/2024 (Exemption from filing legal proceeding certificates of its registered trademarks)

5. The present is an application under Section 151 CPC, on behalf of the plaintiffs, seeking exemption from filing legal proceeding certificates of its registered trademarks.

6. Exemption is granted, subject to all just exceptions.

7. Accordingly, the present application is disposed of.

I.A. 48065/2024 (Exemption from instituting Pre-Institution Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382*, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*, exemption from attempting Pre-Institution Mediation, is granted.

10. Accordingly, the application stands disposed of.

I.A. No. 48066/2024 (Application seeking extension of time for filing the Court fees)

11. The present application has been filed under Sections 149 and 151 CPC seeking extension of time for filing the Court fees.

12. Learned counsel appearing for the plaintiffs submits that two weeks time may be granted for this purpose.

13. Liberty is so granted.

14. Noting the aforesaid, the present application is disposed of.

CS(COMM) 1115/2024

15. None appears for the defendants, despite advance service.

16. Let the plaint be registered as suit.

17. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiffs' documents, without which, the written statement shall not be taken on record.

18. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

19. List before the Joint Registrar (Judicial) for marking of exhibits, on 06th February, 2025.

20. List before the Court on 06th May, 2025.

I.A. 48062/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

21. The present suit has been filed for infringement and passing off registered trademarks and copyright, unfair trade practices and damages seeking *inter alia* permanent and mandatory injunction, delivery up, rendition of accounts and payment of the unpaid license fee.

22. Learned counsel appearing for the plaintiffs submits that the plaintiff

nos. 1-3 and the defendant no. 2 are the rightful and exclusive owners and registered proprietors of the trademark “MOTI MAHAL”. The plaintiff no. 1 is the rightful and exclusive owner and registered proprietor of the trademarks “MOTI MAHAL”, “MOTI MAHAL GROUP”, “MOTI MAHAL MANAGEMENT SERVICES” and the plaintiff nos. 1-2 and 4 are the rightful and exclusive owners and registered proprietors of the trademark “TANDOORI TRAIL” which are used in relation to high quality and famous restaurants operating throughout the country and around the globe.

23. It is submitted that the defendant no. 1 is the ex-franchisee of the plaintiff no. 1 and is engaged in the business of providing restaurant, catering and hospitality services, carrying on business. The present suit is a blatant case of infringement and passing off as well as unfair trade practices, wherein, the defendant no. 1 is continuing to carry on its operations under the trademark ‘MOTI MAHAL DELUX TANDOORI TRAIL’/



despite the termination of the Franchise Agreement dated 05th October, 2013 by efflux of time w.e.f. 05th October, 2022, which was brought to the notice of the said defendant *vide* Email and Notice dated 19th April, 2024 and 23rd October, 2024, respectively. The *malafides* of the defendant no. 1 are further evident from the fact that they have in addition to the continued use of ‘MOTI MAHAL DELUX TANDOORI



TRAIL’/ also dishonestly adopted and are using the mark ‘MOTI MAHAL DELUX’, which is deceptively and/or confusingly similar

to the plaintiffs' earlier, well-known and registered trademarks "MOTI MAHAL", "MOTI MAHAL GROUP", "MOTI MAHAL MANAGEMENT SERVICES" and "MOTI MAHAL" formative marks with just the addition of the suffix 'DELUX', which in no way diminishes the deceptive similarity of the same, when compared to the plaintiffs' earlier, well-known and registered trademarks.

24. It is submitted that the defendant no. 1 being the ex-franchisee of the plaintiff no. 1 was clearly aware of the ownership and notoriety of the 'MOTI MAHAL', 'MOTI MAHAL DELUX TANDOORI TRAIL', 'TANDOORI TRAIL' and their formative marks as well as the goodwill and reputation enjoyed by the plaintiffs in and to the said trademarks. Further, the defendant no. 1 being a party to the Franchise Agreement was aware that it had no rights in any manner whatsoever in the marks 'MOTI MAHAL', 'MOTI MAHAL DELUX TANDOORI TRAIL', 'TANDOORI TRAIL' or their formatives. Such acts of the defendant no. 1 constitute willful infringement of the plaintiffs' earlier, well-known registered trademarks, passing off and unfair trade practices, in an obvious attempt to mislead the consumers, potential franchisees and public at large and also to ride upon the immense goodwill and reputation earned by the plaintiffs over the last more than 100 years. The same also amounts to violation of Clauses 5.3, 5.4, 5.7(a), 5.8, 5.9 and 5.10 of the said Franchise Agreement.

25. It is argued that a bare perusal of the two trademarks, clearly demonstrate the fraudulent manner in which the defendant no. 1 has imitated the plaintiffs' earlier, well-known and registered trademarks, with a clear intention to create deception and confusion in the market. A tabular comparison of the plaintiffs' earlier, well-known and registered trademarks

and the defendant no. 1's impugned marks, are reproduced as under:

PLAINTIFFS' EARLIER, WELL-KNOWN REGISTERED TRADEMARKS	DEFENDANT NO. 1'S IMPUGNED MARKS
'MOTI MAHAL' 'MOTI MAHAL GROUP' 'MOTI MAHAL MANAGEMENT SERVICES' 'TANDOORI TRAIL'	'MOTI MAHAL DELUX' 'MOTI MAHAL DELUX TANDOORI TRAIL' 

26. It is submitted that the history of MOTI MAHAL dates back to the year 1920 when the first restaurant was opened by the famous chef, Late Mr. Kundan Lal Gujral in Peshawar (now in Pakistan). During his time in Peshawar, Late Chef Mr. Kundan Lal Gujral created the famous dishes tandoori chicken, butter chicken and dal makhani in the middle of his first small eatery at the restaurant. This invention brought a revolution in taste and placed MOTI MAHAL on the International Gourmet Map.

27. It is further submitted that the plaintiffs and defendant no. 2 are the rightful, exclusive owners of their highly distinctive and well-known trademarks in India. The details of the registrations, which are relevant to the present case, in the name of the plaintiff nos. 2-3 and the defendant no. 2 in India, are reproduced as under:

TRADEMARK	NUMBER	DATE / USER CLAIM	CLASS	STATUS AS PER REGISTRY'S ONLINE OFFICIAL RECORDS	CURRENT REGISTRANT
MOTI MAHAL	580007	28.08.1992/ Year 1947	29	Registered and valid till 28.08.2026	Plaintiff Nos. 2-3 and Defendant No. 2

Goods: Meat, fish chicken, poultry, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and other dairy products, edible oils and fats, preserves, pickles.					
MOTI MAHAL	1249495	13.11.2003/ 01.01.1947	42	Registered and valid till 13.11.2033	Plaintiff Nos. 2-3 and Defendant No. 2
Services: Providing of food and drink, temporary accommodation, medical, hygienic and beauty care, veterinary and agricultural services, legal scientific and industrial research, computer programming.					
MOTI MAHAL	2219470	13.10.2011/ 01.01.1947	43	Registered and valid till 13.10.2031	Plaintiff Nos. 2-3 and Defendant No. 2
Services: Providing services of food and drink; restaurant; consultation services relating to food; catering; hospitality services food hygiene services; temporary accommodation included in class 43.					

28. It is submitted that the plaintiff no. 1 is also the rightful, exclusive and prior owners of the trademarks, reproduced as under:

TRADEMARK	NUMBER	DATE/ USER CLAIM	CLASS	STATUS AS PER REGISTRY'S WEBSITE	CURRENT REGISTRANT
MOTI MAHAL GROUP	2673704	06.02.2014/ 31.12.2003	43	Registered and valid till 06.02.2034	Plaintiff No. 1
SERVICES: services for providing food and drink, temporary accommodation.					
MOTI MAHAL GROUP	2673702	06.02.2014/ 31.12.2003	35	Registered and valid till 06.02.2034	Plaintiff No. 1
SERVICES: advertising business management, business administration and office functions.					
MOTI MAHAL	2673703	06.02.2014/ 31.12.2003	41	Registered and valid till 06.02.2034	Plaintiff No. 1
SERVICES: education providing of training, sporting and cultural activities.					
MOTI MAHAL MANAGEMENT SERVICES	1246463	29.10.2003	35	Registered and valid till 29.10.2033	Plaintiff No. 1
SERVICES: Advertising business management, business administration and office function.					
TANDOORI TRAIL	2445621	20.12.2012/ 19.11.2003	43	Registered and valid till 20.12.2032	Plaintiff No. 1
SERVICES: Providing food and drink, restaurant, consultation services relating to food, catering, hospitality services, food hygienic services, temporary accommodation included in class 43.					
TANDOORI TRAIL	2704541	24.03.2014/ 19.11.2003	43	Registered and valid till 24.03.2034	Plaintiff No. 1
SERVICES: services for providing food and drink, temporary accommodation.					

29. It is further submitted that the plaintiff nos. 2 and 4 are also the rightful, exclusive and prior owners of the following trademarks, which are reproduced as under:

TRADEMARK	NUMBER	DATE/ USER CLAIM	CLASS	STATUS AS PER REGISTRY'S WEBSITE	CURRENT REGISTRANT
TANDOORI TRAIL	1255343	15.12.2003/ 19/11/2003	29	Registered and valid till 15.12.2033	Plaintiff Nos. 2 and 4
Goods: Meat, Fish, Poultry and Game, Meat Extracts, Preserved, Dried and Cooked Fruits and Vegetables, Jellies, Jams, Fruit Sauces, Eggs, Milk and Milk Products, Edible Oils and Fats.					
TANDOORI TRAIL	1255341	15.12.2003/ 19/11/2003	42	Registered and valid till 15.12.2033	Plaintiff Nos. 2 and 4
Services: Providing food and drink, temporary accommodation, agricultural services, legal scientific and industrial research, computer programming.					

30. It is submitted that in addition to securing registrations in India, the plaintiff nos. 1-2 have also obtained registrations and/or applied for registrations for its trademarks in various other countries, including, but not limited to United States of America, Kingdom of Saudi Arabia, United Arab Emirates, Bahrain, Kuwait, Oman, Qatar, Japan, Singapore, Malaysia, Thailand, China and Turkey etc.

31. It is further submitted that the plaintiffs and the defendant no. 2 are the first adopters and proprietors of the earlier, well-known registered trademarks and they have acquired exclusive rights in the said trademarks. As per the provisions of the Trade Marks Act, 1999, no person, firm or company is entitled to use the said trademark/name containing and consisting of the trademark 'MOTI MAHAL', 'TANDOORI TRAIL' or their formative marks which may be identical with or deceptively and/or confusingly similar to the earlier, well-known registered trademarks and if

any person, firm or company uses any such mark, it will amount to breach of the plaintiffs' rights under the earlier, well-known registered trademarks. Therefore, any unauthorized use of marks which are identical with or deceptively similar to the earlier, well-known registered trademarks, is bound to cause confusion as to the source or origin of the services offered as the consumers and the members of the relevant trade will assume an immediate association with the plaintiffs and defendant no. 2, besides leading to dilution of their exclusivity in the said trademarks, which is impermissible in law. The plaintiffs and the defendant no. 2, in view of its aforesaid priority of adoption coupled with long, continuous and exclusive use of the earlier, well-known registered trademarks, are entitled, in common law, to restrain any unauthorized use of the said marks by any third party.

32. It is submitted that in addition to the above, the plaintiffs have also been using the oval devices



represented in the stylized manner and artistic impression. The said oval device is an original artistic work and is liable to be protected under Section 2(c) of the Copyright Act, 1957. The aforesaid labels were created at the behest of the said plaintiffs, therefore, by virtue of Section 17 of the Copyright Act, 1957, the said plaintiffs are the first owners of copyrights in the said labels and have the exclusive right to use or reproduce the same in any material form. Any unauthorized use or reproduction or dealing in any

goods bearing the characteristics of the aforesaid artistic works not only amounts to infringement of copyrights of the said plaintiffs' artistic works, but also constitute cognizable criminal offence under the provisions of the Copyright Act, 1957.

33. It is further submitted that the popularity of the plaintiffs' restaurants can be further gauged from the number of restaurants being operated and managed under the brands MOTI MAHAL and 'TANDOORI TRAIL'. In particular, the plaintiffs' restaurants under the said brands operate in the states of Delhi-NCR, Gujarat, Jammu & Kashmir, Haryana, Punjab, Uttarakhand, Uttar Pradesh, Bihar, Jharkhand, Odisha, West Bengal, Arunachal Pradesh, Maharashtra, Karnataka, Madhya Pradesh and Assam. A screenshot from the website of plaintiffs showcasing an illustrious 100 years' old history of famous Late Chef Kundan Lal Gujral and the brand 'MOTI MAHAL', which eventually became the face of North Indian cuisine across continents is reproduced as under:



34. It is submitted that the MOTI MAHAL business today is run by Late Chef Kundan Lal Gujral's grandsons, the plaintiff no. 2 and the defendant

no. 2 and are comprised of restaurants in over 100 locations in India and the Middle Eastern countries, Europe, USA, New Zealand, Africa, Maldives, Colombo, USA including many outlets in Delhi-NCR itself.

35. It is further submitted that to commemorate plaintiffs' predecessor's Tandoori Trail from Peshawar to Delhi, the plaintiff no. 2 launched a new line of MOTI MAHAL restaurants, called 'MOTI MAHAL DELUX TANDOORI TRAIL', to bring the MOTI MAHAL brand of cuisine, the original butter chicken and dal makhani to countries around the world. The first 'MOTI MAHAL DELUX TANDOORI TRAIL' restaurant opened in India in 2003 and various countries in the Middle East in 2012 and in United States of America in 2022.

36. It is submitted that the plaintiff nos. 1-2 are also the owners of the domain names www.motimahal.in and www.tandooritrail.com. The said websites are extensively advertising and promoting the brands 'MOTI MAHAL' 'MOTI MAHAL DELUX TANDOORI TRAIL' and contain extensive information on the 'MOTI MAHAL' and 'MOTI MAHAL DELUX TANDOORI TRAIL' restaurants, their products and services marketed under the earlier, well-known registered trademarks, locations of various 'MOTI MAHAL' and 'MOTI MAHAL DELUX TANDOORI TRAIL' restaurants, franchise models, history of the brand etc. The said websites can be accessed by the customers and/or intending customers of the plaintiffs from all over the world, including, from various parts of the country, thereby, exponentially expanding the goodwill and reputation of the plaintiff's goods/services bearing the earlier, well-known and registered trademarks.

37. It is submitted that after the Franchise Agreement expired by efflux of

time on 05th October, 2022, the plaintiff no. 1 issued Email dated 19th April, 2024 calling upon the defendant no. 1 to renew the said Franchise Agreement under Clause 6.1 for an additional period of one hundred and eight (108) months. The said defendant was called upon to give their consent by replying to the said Email within a period of seven (7) days from the receipt of the same and depositing a sum of INR 20,00,000 (Rupees Twenty Lakhs Only) + GST into the plaintiff no. 1's bank account, failing which the Franchise Agreement dated 05th October, 2013 was to expire automatically by efflux of time without any further intimation whatsoever and the provisions of Clauses 5.7-6.2 of the Franchise Agreement were to come into immediate effect. However, the defendant no. 1 failed and/or neglected to reply to the aforesaid Email or comply with the requisition contained therein, thereby, necessitating the plaintiff no. 1 to issue a Cease and Desist Notice dated 23rd October, 2024, categorically informing the defendant no. 1 that the franchise agreement has expired by efflux of time w.e.f. 05th October, 2022. The said defendant was also called upon to *inter alia*, within seven (7) days of the said notice, cease the operation of the restaurant in question and cease all use of the marks "MOTI MAHAL", "MOTI MAHAL DELUX", 'MOTI MAHAL DELUX TANDOORI TRAIL'/'




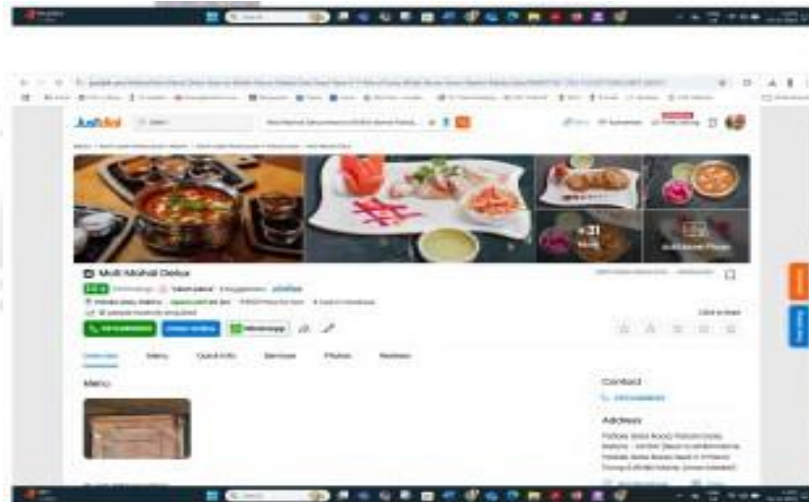
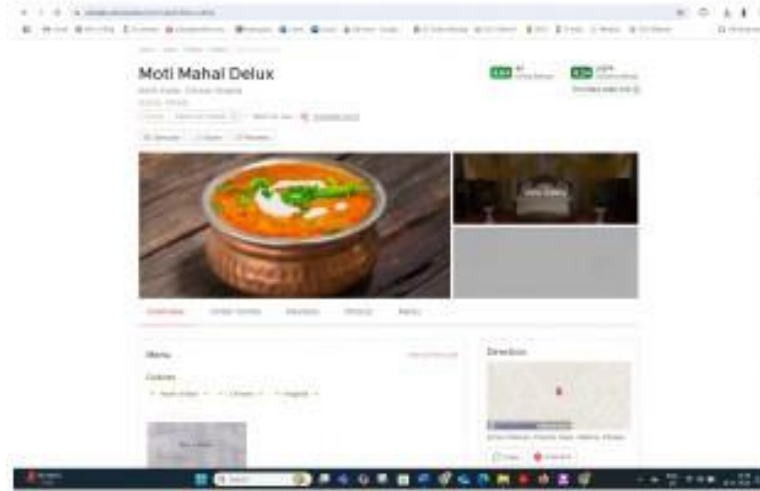
and/or "TANDOORI TRAIL" and remove all references including from the addresses (both offline and online), digital advertisement, signage, neon signs, billboards, letter heads, brochures/website material, packaging, promotional material, catalogues, stationery and any other material whatsoever bearing the said marks.

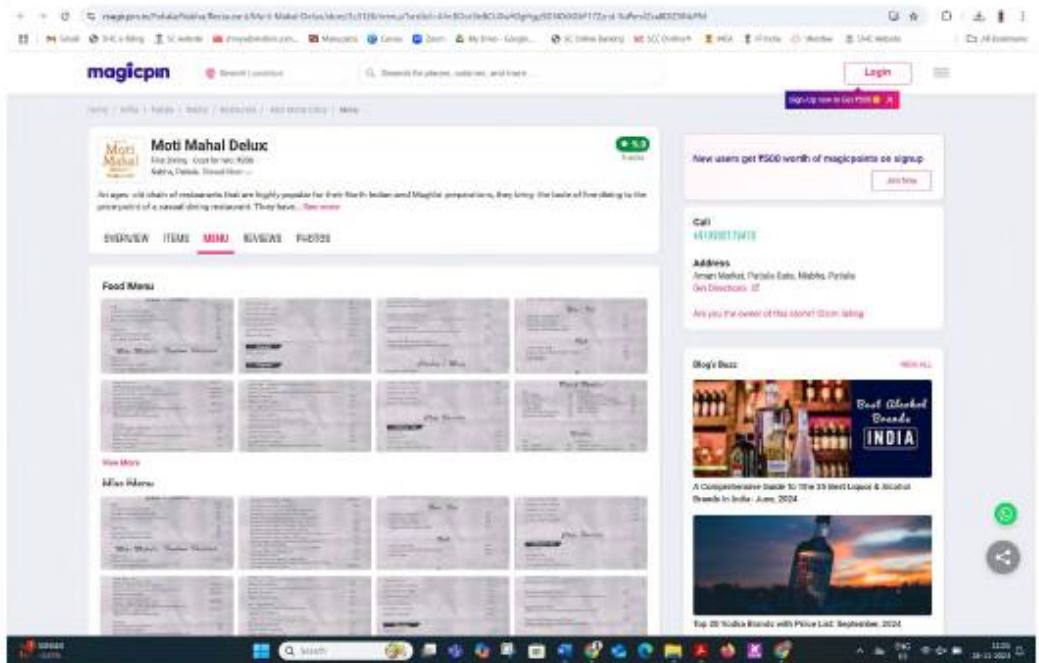
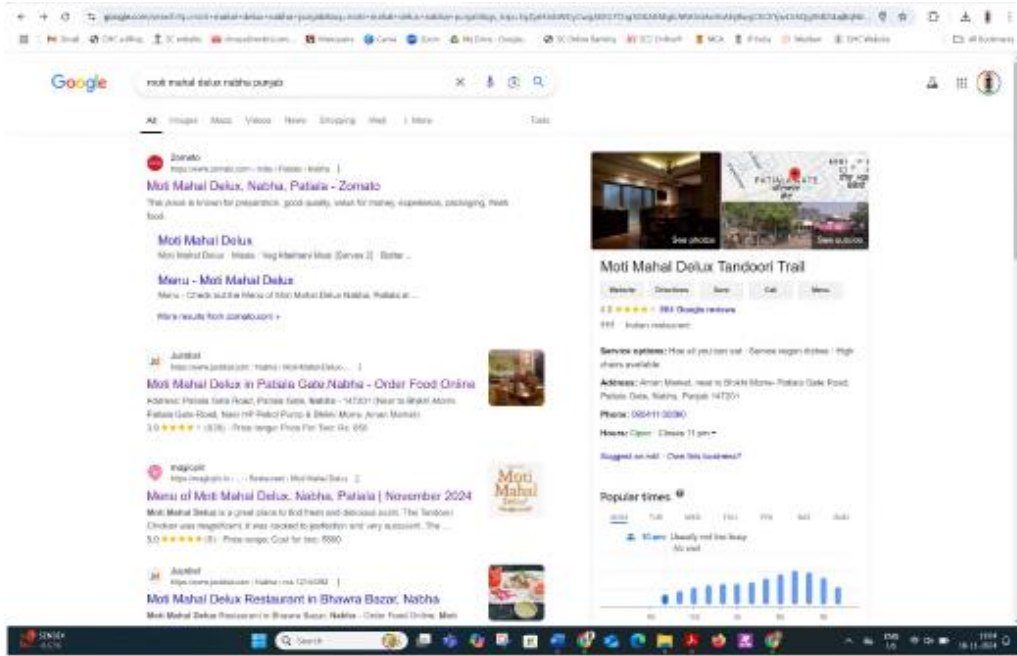
38. It is further submitted that in and around the third week of October 2024, in order to check whether the defendant no. 1 was complying with the requisitions contained in the Franchise Agreement, the plaintiff no. 1 conducted investigations on social media platforms and third-party websites, and were shocked to find that the said defendant is continuing to carry on operations of the restaurant located under the mark 'MOTI MAHAL

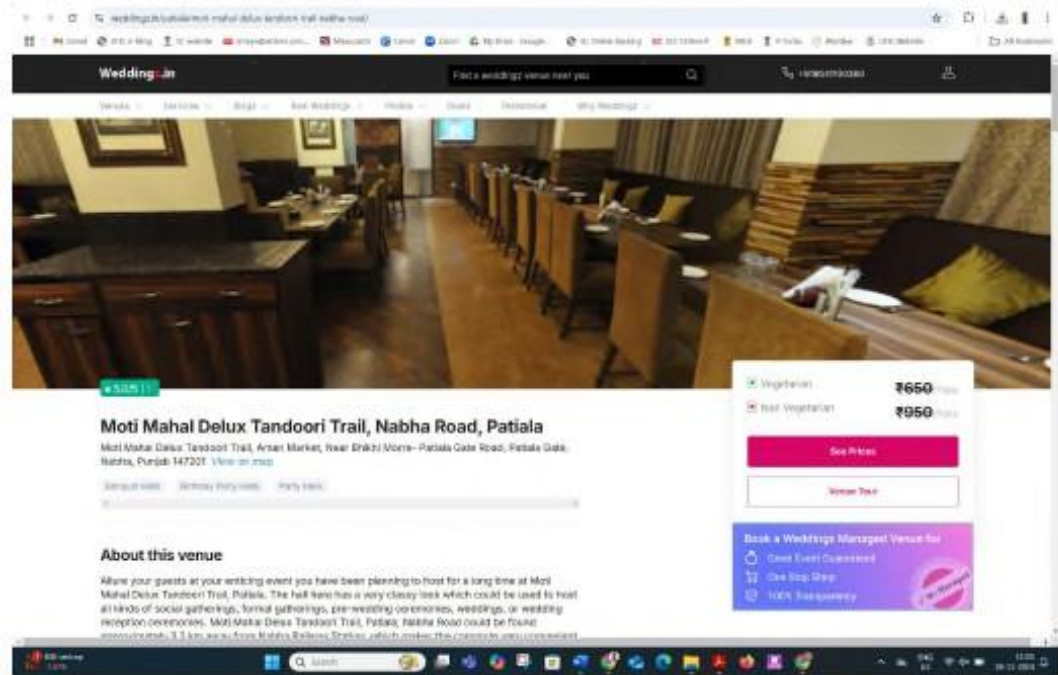
DELUX TANDOORI TRAIL' / , despite the termination of the said Franchise Agreement.

39. It is further submitted that despite the termination of the Franchise Agreement by efflux of time w.e.f. 05th October, 2022, the marks 'MOTI

MAHAL DELUX TANDOORI TRAIL' / , and 'MOTI MAHAL DELUX' are also being prominently displayed by the defendant no. 1 on various third-party websites, including, but not limited to Google, Magicpin, Wedding.in, Justdial and Zomato, which are also websites on which the plaintiffs market, promote, advertise, offer for sale and sell its goods/services bearing the earlier, well-known registered trademarks, thereby leading to actual confusion. The relevant screenshots from the said third-party websites, are reproduced as under:







40. It is further submitted that the defendant no. 1 is using the impugned marks w.r.t. identical goods/services, which would be supplied to through the same trade channels and to the same set of consumers, who recognize and demand the services of the plaintiffs by referring to their trademarks ‘MOTI MAHAL’ and ‘TANDOOR TRAIL’ and which trademarks have been brazenly copied/imitated by the said defendant. The same would also lead to confusion as it is more than likely that the average consumer/potential franchisee may, on approach, only see the identical trademarks, i.e. ‘MOTI MAHAL’ and ‘TANDOORI TRAIL’. In view of such similarities, the identical industry, trade channels and consumers there exists a strong likelihood of confusion on the part of the consuming public and potential franchisees, including, an association of the defendant no. 1’s goods/services with the plaintiffs’ as they are likely to assume and confuse that the said defendant’s goods/services are connected or otherwise

affiliated/associated with the plaintiffs, when no such connection or affiliation/association exists pursuant to the termination of the Franchise Agreement. The same also results in tarnishing and eroding the distinctiveness hard earned by the plaintiffs in their earlier, well-known registered trademarks.

41. Learned counsel appearing for the plaintiffs has also drawn the attention of this Court to the various orders passed previously in favour of the plaintiffs, wherein, infringement of the same marks, which are subject matter of the present suit, were involved.

42. Learned counsel appearing for the plaintiffs has also handed over the Email sent to the defendants yesterday i.e., 11th December, 2024, informing about the listing of the present case.

43. None appears for the defendants despite advance service.

44. In the above circumstances, the plaintiffs have demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiffs will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiffs, and against the defendants.

45. Accordingly, till the next date of hearing, the following directions are issued:

I. The defendant no. 1, its principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assignees, etc. are restrained from advertising, selling, offering for sale, marketing, promoting any restaurant and catering business or in any other manner whatsoever, using the impugned marks 'MOTI MAHAL', 'MOTI MAHAL DELUX' and 'MOTI



MAHAL DELUX TANDOORI TRAIL/ or any other mark, which is deceptively and/or confusingly similar and/or identical/virtually identical to the plaintiffs' trademarks 'MOTI MAHAL', 'TANDOORI TRAIL' or 'MOTI MAHAL' formative marks or any of the trademarks of the plaintiffs, either as trademark or part of a trademark, or in any other manner whatsoever, amounting to infringement/passing off of the plaintiffs' registered marks.

II. Further, the defendant no. 1 is directed to remove the references of all the impugned marks 'MOTI MAHAL', 'MOTI MAHAL DELUX' and/or

'MOTI MAHAL DELUX TANDOORI TRAIL'/  from the board/hoarding of the impugned restaurant outside the premises of the defendant no. 1, from social media websites such as www.instagram.com and www.facebook.com, and third-party websites www.google.com, www.zomato.com, www.magicpinc.com, www.wedding.in and www.justdial.com.

46. Issue notice to the defendants by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

47. Let reply be filed within a period of four weeks.

48. Rejoinder thereto, if any, be filed within two weeks, thereafter.

49. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week.

50. List before the Court on 06th May, 2025.

MINI PUSHKARNA, J

DECEMBER 12, 2024

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