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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 62/2023, I.A. 2128/2023**
GUPTA AND GUPTA PVT LTD Plaintiff
Through: Mr. Gurinder Pal Singh and Ms. Jaya Bajpai, Advocates.

versus

KHAN CHACHA HYDRABADI BIRYANI AND ORS. Defendant
Through: Mr. Tushar John, Adv. for D-25
Mr. Abhay Pratap Singh and Ms. Mitali.
Advocates for D-26.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
15.01.2024

I.A. 12358/2023 (Under Order XXXIX Rule 2A, CPC seeking necessary orders against defendants No. 25 & 26)

1. This application has been filed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 ("CPC") by the plaintiff alleging non-compliance of order dated 06th February, 2023 whereby injunction had been granted by this Court against defendant Nos. 1-24 restraining them from using or advertising (directly or indirectly) any mark including the words "KHAN CHACHA", the registered trademark of the plaintiff. Furthermore, defendant Nos. 25 and 26 were directed to block access to the websites and mobile applications of defendant Nos. 1-24.

2. Non-compliance of the aforesaid directions has been claimed against defendants Nos. 25 and 26 ('Zomato' and 'Swiggy' respectively, the digital platforms allowing ordering of food) in that, despite the said order, the web



pages of defendant Nos. 25 and 26 was still showing names of defendant Nos. 1-24, for the purposes of ordering food.

3. However, even the plaintiff document shows that the said listings hosted by defendants No. 25 and 26, were not allowing any orders, but had the following standard message, *“The outlet is not accepting orders at the moment. We are to get them back online.”*

4. The plaintiff’s complaint is that the names of defendant Nos. 1-24 were still showing on these lists despite the standard message which was disallowing the orders.

5. Reply has been filed by defendant Nos. 25 and 26, clarifying that the question of non-compliance does not arise; they had taken immediate steps to disable these listings in their backend systems; and the documents filed by the plaintiff are only showing so because of the ‘cookies’ which are embedded showing some past data as well. Along with the reply, documents have been filed to show that the said listings have been fully disabled and any attempt them show *“page not found”*.

6. Be that as it may, presently, it does seem that these listings are completely disabled and therefore, the relief sought in the application may not be necessitated.

7. However, plaintiff is at liberty to address a written communication to defendant Nos. 25 and 26 in the event they chance upon any listings on these platforms which exhibit the names of the defendant Nos. 1-24, considering that the grievance was against the use of the plaintiff’s registered trademark “KHAN CHACHA”.

8. Upon receiving such written communication, defendant Nos. 25 and 26 shall take immediate steps to address the same.



9. In case defendant Nos. 25 and 26 have any reservation with regard to the request of the plaintiff, they shall revert to the plaintiff, who shall be at liberty to approach this Court seeking appropriate relief.
10. The application is disposed of with above directions.
11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 15, 2024/RK/sc