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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 173/2016

MEHAR WING SERVICES PRIVATE LIMITED & ANR

..... Plaintiffs

Through: Mr. D.K.Yadav, Adv.

versus

JINDAL RESTAURANT

..... Defendant

Through: Mr. Rajiv Bakshi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **07.03.2019**

IA No.2046/2019(u/O.XI R-1(5) CPC filed by plaintiffs)

1. The plaintiffs seeks to place on record a document, which though was not filed by the plaintiffs along with the plaint but after the filing of the written statement, was filed by the plaintiffs, before the framing of issues on 10th October, 2017, along with a written synopsis filed in support of the application for interim relief. This application was filed when the counsel for the defendant took objection to the plaintiffs in their evidence proving the said document.

2. The document is a partnership deed and invoice of M/s. Silver Spoon Food and Beverages which also according to the counsel for the plaintiffs is using the registered trade mark, for infringement and passing off whereof the present suit is filed and sales of which M/s. Silver Spoon Food and Beverages are also pleaded in paragraph 15 of the plaint.

3. The counsel for the defendant has opposed the application contending, (i) that the partnership has not been pleaded by the

plaintiffs; (ii) that a written synopsis cannot take place of a pleading; (iii) that the document was admittedly not filed at the time prescribed for filing thereof; and, (iv) that there is no explanation whatsoever in the application for non-filing of the document at the appropriate stage.

4. I am of the view that since the sale figures of M/s. Silver Spoon Food and Beverages have indeed been mentioned in paragraph 15 of the plaint, subject to the objection of the counsel for the defendant of lack of pleadings and which objection is kept open for consideration at the stage of final arguments, the documents which are admittedly on record since prior to the framing of issues should be permitted to be taken on record, subject to the plaintiffs' paying costs of Rs.25,000/- to the counsel for the defendant.

5. The application is, thus, allowed. The two documents being Ex. PW1/8 and Ex. PW1/12 are permitted to be taken on record and to be proved in accordance with law.

6. The application is disposed of.

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7. The cost be paid within two weeks. Else the plaintiffs shall not be entitled to prove the documents and the same shall be taken off the record.

8. List before the Joint Registrar on 1st April, 2019 for scheduling further dates of trial.

RAJIV SAHAI ENDLAW, J

MARCH 07, 2019

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