

Mcdonalds Corporation And Anr vs National Internet Exchange Of India And ... on 17 August, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 324/2020, I.As. 6950/2020, 6951/2020, 6952/2020, 6953/2020, 6954/2020 & 6955/2020

MCDONALDS CORPORATION AND ANR Plaintiffs
Through: Mr. Rajshekhar Rao, Mr. S.S. Rana,
Mrs. Bindra Rana, Mr. Vikrant Rana,
Ms. Priya Adlakha and Mr. Kiratraj
Sadana, Advs.

versus

NATIONAL INTERNET EXCHANGE OF INDIA
AND ORS. Defendants
Through: Mr. Brijesh Kumar Tamber, Adv. for
D-9 to D-11 and D19 and D20.
Mr. Jitender Mohapatra, Adv for
defendant nos. 12, 13, 14, 15, 16, 17
and 22.
Ms. Ekta Khangawal, Adv. for D18.
Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advs. for D-21.
Mr. Puneet Bhalla, Adv. for D-23.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 17.08.2020 This matter is being heard through video-conferencing. I.A. 6951/2020 & 6952/2020 (for exemption) Exemption allowed subject to all just exceptions.

Applications are disposed of.

I.A. 6953/2020 (by plaintiffs seeking exemption from filing the court fee) For the reasons stated in the application, the same is allowed. Subject to the applicants / plaintiffs filing the necessary Court fee within 72 hrs from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court, exemption from filing the requisite court fees is granted.

Application is disposed of.

I.A. 6954/2020 (by plaintiffs seeking permission to file additional documents) For the reasons stated in the application, the same is allowed. The applicants / plaintiffs are permitted to file additional documents within 30 days.

Application is disposed of.

I.A. 6955/2020 (by the plaintiffs seeking permission to serve the defendant Nos.1 to 23 through electronic mail) This application has been filed by the plaintiffs with the following prayers:

It is, therefore, most respectfully prays that this Hon'ble Court may be pleased to: -

(a) allow the Plaintiffs to serve the Defendant Nos. 1-23 through electronic mail; and

(b) pass any such order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Defendant nos. 9 to 23 are being represented today in the Court. The plaintiffs are exempted from serving the other defendants through electronic mode.

The application stands disposed of.

CS(COMM) 324/2020

1. At the outset, Mr. Rajshekhar Rao, learned counsel appearing for plaintiffs submits, on his oral request the Court may permit the plaintiffs to implead the Corporate Office of defendant nos. 9 to 23 Banks. The said request is allowed. Let amended memo of parties within a week.

2. Issue summons. Mr. Brijesh Kumar Tamber, Adv. accepts notice defendant nos. 9 to 11 & defendant nos. 19 and 20 and their corporate offices. Mr. Jitender Mohapatra, learned counsel accepts notice for defendant nos. 12 to 17 and defendant no.22 and their corporate offices. Ms. Ekta Khangawal, Adv. accepts notice for defendant no. 18 and its corporate office. Mr. Rajiv Kapur, Adv. accepts notice for defendant no.21 and Mr. Puneet Bhalla, Adv. accepts notice for defendant no. 23. Written statement / affidavits be filed within 30 days. Replication / reply affidavits be filed within 30 days thereafter.

3. Let summons be issued to the other defendants, returnable before Joint Registrar on December 1, 2020.

4. Summons shall state that the written statement shall be filed by the defendants within 30 days from the date of receipt of summons. The defendants shall file their affidavit of admission and denial of documents filed by the plaintiffs. Replication shall be filed within 30 days of the receipt of the, written statement / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendants.

5. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

I.A. 6950/2020 (by plaintiffs under Order XXXIX Rules 1 and 2 CPC)

6. Notice. Learned counsel as above accepts notice for defendant nos. 9 to 23. Reply / affidavit if any be filed by the defendants before the next date of hearing. Let notice on this application be issued to the other defendants through all modes, including e-mail returnable on November 2, 2020.

7. It is the submission of Mr. Rajshekhar Rao, learned counsel appearing for the plaintiffs that plaintiff no.1 had established business in relation to quick service restaurants, offered under the brand "McDonald's", which started in the United States of America. In 1968, plaintiff No. 1 created the Golden Arches Logo in yellow colour and adopted and started using the same with its trade mark "McDonald's". In order to protect its valuable intellectual property rights globally, plaintiff no.1 had applied and obtained registrations of its McDonald's family of trade names in over 100 countries around the world. On July 12, 1994, plaintiff no.1 registered the top-level domain name www.mcdonalds.com and has an interactive corresponding website which provides detailed information about its food service and its various menu offerings.

8. In the year 1993, plaintiff no.1 was given approval by the Govt. of India to operate a chain of restaurants in India through its wholly owned subsidiary company McDonalds India Pvt. Ltd., i.e., the plaintiff no.2 herein. The same was incorporated under the Companies Act, 1956 with the Registrar of Companies, Delhi on August 30, 1993. Mr. Rao states that plaintiff no.1 applied for and obtained registration over its tradename McDonalds, Golden Arch Logo , Mc, Mac and its operations thereof in India in the relevant classes. In support of his submission, he has drawn my attention to Paragraph 25 of the plaint. According to him, even the plaintiff no.1 got registered its top level domain name www.mcdonaldsindia.com on June 1, 1998, which it maintains for Indian consumers and general public.

9. According to Mr. Rao on June 5, 2019, plaintiff through the officials of their franchisee came to know that a person namely Mr. Jackie D. Chatlani claimed that he has been contacted by some persons under the pretence of providing him a McDonald's Franchise. Thereafter from the very same day, the franchisees of the plaintiffs started receiving several e- mails at their official e-mail IDs, messages on LinkedIn profiles, profiles, calls, couriers at their office addresses, containing signed fake and forged McDonald's franchise application forms, fake approval letters on the fabricated letter head of McDonald's. Pursuant thereto, plaintiff no.2 filed a complaint with the concerned Police Station requesting an investigation into the fraudulent activities being carried out misusing the tradename of McDonalds, its GSTIN and registered address of its franchisee and registration of FIR.

10. According to him, even a supplementary complaint dated August 6, 2019 and October 3, 2019 were filed with the same police station. In fact, a caution notice was also issued in the leading newspaper. He states, even the plaintiffs have filed a complaint with the domain Registrar for suspension of the impugned domain names like mcdonaldfranchises.com. According to him, on the

basis of the complaint after one domain is suspended several other mirror websites are created by the said persons / defendants to continue their fraudulent and infringing activities. In fact, in some cases, the names of websites are very similar to the blocked websites.

11. Mr. Rao also states, despite police complaint no action has been taken by the concerned Police Station resulting in the plaintiff no.2 file a complaint under Sections 156 (3) and 200 Cr.P.C. in the Court of learned Metropolitan Magistrate, Patiala House Courts, New Delhi seeking directions for registration of a FIR. He states, similar complaint has been made to the Principal Commissioner, GST, Delhi. He concedes to the fact that on the basis of the complaint made by the prospective investor the Cyber Cell of the Delhi Police has registered an FIR under Section 420/468 of the IPC along with Sections 66, 66 C and 66 D of the Information Technology Act, 2000 and the investigations are being made.

12. In substance, it is his submission that defendant no. 24 are the fraudulent people who are misusing the plaintiffs' names, registered McDonald's family of Trade Marks and Copyright in the artistic work of the Golden Arches Logo / . They are engaged in registering misleading domain names incorporating the trade mark McDonald's and operating fake websites thereupon to invite the general public to apply for McDonald's Franchise opportunities, collecting monies from them illegally and fraudulently, without any permission and authorization from the plaintiffs and their affiliates. However, the whereabouts of these defendants are not known to the plaintiffs and there is a reasonable apprehension that there is a big group of Imposters and may include some bank officials and website developers also, who are involved in these illegal and fraudulent activities. According to him, it is in this background the present Suit has been filed impleading the Banks wherein the accounts have been opened by the defendant no.24 to siphon off the money received from the applicants under the guise of granting them the franchise.

13. During the course of hearing, Mr. Rao has also drawn my attention to Pages 157, 158 and 234, which are the customers acknowledgement slip depicting the deposit of certain amount of monies in the beneficiary name as McDonalds India Pvt. India Ltd.

14. Having heard Mr. Rao and learned counsel appearing for defendant nos. 9 to 23 who are present before this Court today, this Court is of the view that the plaintiffs have made out a prima facie case in their favour and the balance of convenience is also in favour of the plaintiffs. Irreparable loss shall be caused if the interim order as sought for is not granted. Accordingly, (a) defendants No. 24 by themselves, their directors, partners, proprietors, agents, servants, representatives, employees and/or any one claiming under them, directly or indirectly are restrained from infringing plaintiff No. 1's registered trademarks, including McDonald's and the Golden Arches Logo and its variations or any other confusingly and deceptively similar trade mark thereto by offering fake McDonald's franchise opportunities to the general public. (b) The defendants No. 24 by themselves, their directors, partners, proprietors, agents, servants, representatives, employees or any one claiming under them, directly or indirectly are restrained from in any manner infringing plaintiff No. 1's Copyright in the artistic work of the Golden Arches Logo / by using, publishing, advertising, circulating the same in any manner, in respect of their services and business. (c) Further, defendants No. 24 by themselves, their directors, partners, proprietors, agents, servants,

representatives, employees or any one claiming under them, from in any manner, directly or indirectly are restrained from misusing the plaintiffs' name, McDonald's FAMILY OF TRADE MARKS, registered address, GSTIN of the Plaintiffs and their franchisee, domain names, websites, business paper, corporate stamps etc. or any other similar business identification, in relation to their business and services so as to pass off or enable others to pass off their goods, services and business as that of the Plaintiffs. (d) The defendant Nos. 9 to 23 are directed to immediately freeze the bank accounts of the Imposters/Defendants as mentioned in paragraph 40 of this application.

Registry while issuing notice to the defendant nos. 2 to 8 shall call upon the said defendants to file an affidavit to disclose the complete identity of the registrants of the domain names as depicted in Para 34 (g) of the application from their records i.e., their names, address, phone numbers, e- mail Ids, billing and payment details. Similarly, the defendant nos. 9 to 23 shall incorporate in their reply / affidavits the identity of the account holder of the bank accounts, KYC documents, identity related documents, bank statements from the date of opening of the accounts till date.

15. The provisions of Order XXXIX Rule 3 CPC be complied within two weeks.

V. KAMESWAR RAO, J AUGUST 17, 2020/jg