

(2018) 10 DEL CK 0590

In the Delhi High Court

Case No : First Appeal From Order (Os) (Comm) 236 Of 2018, Civil
Miscellaneous No. 43480, 43482, 43483 Of 2018

Mcdonalds India Pvt Ltd

APPELLANT

Vs

Connaught Plaza Restaurants Pvt Ltd & Anr

RESPONDENT

Date of Decision : 25-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule1, Order 39 Rule 2
Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 10 DEL CK 0590

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Rajiv Nayar, Niti Dixit, Amit Dhingra, Rohan Jaitley, Abhishek Tewari, Raunaq Mathur, Sumit Chopra, Shivam Raheja, Zahra Aziz, Shorya Veer Berry, Jayant K. Mehta, Bhargav R. Thali, Abhinandan Banerjee, Rahul Kukreja, T. Abraham, Varuna Bhanrale, Akshay Puri

Final Decision : Disposed Off

Judgement

G.S. Sistani, J

Caveat Pet. 959/2018

Mr. Mehta has entered appearance on behalf of the caveator. The caveat petition is accordingly disposed of.

CM No. 43481/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

FAO(OS) (COMM) 236/2018

1. The respondent herein had filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim relief against the respondent

No. 2 in the present appeal (herein after referred to as RFPL). During the pendency of the petition, the appellant herein (hereinafter referred to as MIPL) made an application seeking intervention, which has been dismissed and various interim orders have been passed for release of goods in favour of respondent No. 1 herein.

2. Mr. Rajiv Nayar, learned Senior Counsel appearing for the MIPL/ appellant herein submits that prior to filing of the petition under Section 9 of

Arbitration and Conciliation Act, the MIPL appellant herein had instituted a suit for perpetual injunction and recovery of money. Along with the plaint,

MIPL had also filed an application being IA No. 409/2018 in CS(COMM) No. 24/2018 under Order XXXIX Rules 1 and 2 of the CPC seeking

various reliefs, which we reproduce below:

â??(a) grant a temporary injunction restraining Defendants No. 1 and 2, either directly or indirectly, either by themselves, or through their associates,

agents, employees, beneficiaries, successors and assignees, from using and/or duplicating the McDonaldâ??s System, or any portion thereof, and to

operate the McDonaldâ??s restaurants identified in Schedules â??Aâ?? â??Bâ?? and â??Câ?? of the plaint, or in any manner whatsoever;

(b) grant a temporary injunction restraining Defendants No. 1 and / or 2 from holding themselves out to any person as being associated with the

Plaintiff, or the McDonaldâ??s System in any manner whatsoever;

(c) grant a temporary injunction restraining Defendants No.1 and/or 2, either directly or indirectly, either by themselves, or through their associates,

agents, employees, beneficiaries, successors and assignees, from disclosing or revealing any portion of the McDonaldâ??s System to any person in any

manner whatsoever;

(d) grant a temporary injunction restraining Defendants No. 1 and/ or 2, either directly or indirectly, either by themselves, or through their associates,

agents, employees, beneficiaries, successors and assignees, from disposing of or relinquishing leasehold rights, property, equipment, machinery, etc.

relevant to the operation of the McDonaldâ??s restaurants;

(e) grant a temporary injunction restraining Defendant No. 1 and/or 2, either directly or indirectly, either by themselves, or through their associates,

agents, employees, beneficiaries, successors and assignees, from soliciting or contacting with suppliers and vendors for food, beverage and non-food

items approved under the McDonald's System;

(f) grant ad-interim, ex-parte relief in terms of (a), (b), (c), (d) and (e) above, and

(g) pass such other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.â??

3. Mr. Nayyar, learned Senior Counsel submits that on the one hand, the MIPL was not permitted to intervene in the matter and on the other hand, the

prayers made in the application, more particularly prayer (e), seeking injunction would be rendered infructuous in case the order of the learned Single

Judge dated 17.09.2018 is not set aside and/or modified as while dismissing the application the learned Single Judge has made certain observations on

merits of the matter. It is further contended that the respondent No.1 cannot be allowed to seek relief which would directly affect the rights of the

appellant in separate proceedings without impleading the appellant as a party.

4. Mr. Mehta who appears on behalf of the caveator accepts notice and submits that in the suit which has been filed, detailed arguments have already

been addressed since March, 2018 and the matter is listed for addressing arguments in rejoinder by the MIPL/plaintiff before the learned Single Judge.

Mr. Mehta submits that the respondents would have no objection, if the application pending under Order XXXIX is decided on its own merit by the

learned Single Judge.

5. Mr. Nayyar, however, submits that the learned Single Judge while deciding the intervention application has also made some adverse observations

pertaining to the franchise agreement entered into between the MIPL herein and the respondent, more particularly, the observations made in Para 8,

10 and 11 of the order.

6. Having heard the learned counsel for the parties, we are of the considered view that since the MIPL was not allowed to intervene, we make it

clear that the application filed by the MIPL i.e. IA No. 409/2018 in CS (COMM) 24/2018 pending before the learned Single Judge seeking various

reliefs would be decided by the learned Single Judge on its own merits and based on the submissions made by learned counsel for both the parties

without being affected by the observations made by the learned Single Judge in the impugned order. The rights and legal objections of both the parties

are kept open to be decided by the learned Single Judge while deciding the

application under Order XXXIX Rules 1 & 2 CPC. It would also be open for the appellant to seek modification, amendment or file a fresh application, if so advised, as prayed, in view of the subsequent events.

7. With the above observations, the appeal and the accompanying applications stand disposed of.

8. Both the parties agree not to seek adjournment before the learned Single Judge when the matter is listed on 29th October, 2018.

9. Dasti under signature of Court Master, as prayed.