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

+ **CS(COMM) 500/2021& & I.As. 13247-13250/2021**

LT FOODS LIMITED

..... Plaintiff

Through

Mr.J.Sai Deepak, Mr.R.Abhishek and
Mr.Avinash K Sharma, Advs.

versus

DAWAT BIRYANI & ANR.

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **08.10.2021**

This hearing is conducted through video conferencing.

I.As. 13248-13249/2021(exemption)

Allowed subject to just exceptions.

I.A. 13250/2021

This is an application under Section 12A of the Commercial Courts
Act.

For the reasons stated in the application the same is allowed.

CS(COMM) 500/2021

Let the plaint be registered as suit.

Issue summons to the defendants by speed post and e-mail, returnable
for 09.12.2021.



I.A. 13247/2021

1. This is an application under Order 39 Rules 1 and 2 CPC filed by the plaintiff seeking the following reliefs:

“a. A decree of *exparte ad-interim/ interim* injunction restraining the Defendants, its directors, its principal officers, family members, servants, agents, vendors, dealers, manufacturers, distributors, retailers and anyone acting for and on its behalf from producing, selling, offering for sale or advertising, promoting its goods or services, exporting or enabling advertising campaigns either directly or indirectly in physical/electronic form, internet, websites or in any manner any product bearing the Impugned Mark/Package "Dawat Biryani" which is identical to the Plaintiffs marks /labels of DAWAT, DAAWAT or its related marks including or any mark which is identical or deceptively similar to the Plaintiffs marks/labels of DAWAT, DAAWAT in a manner so as to suggest an affiliation, approval, license, connection, sponsorship or endorsement with the Plaintiff so as to result in Infringement.

b. A decree of *exparte ad-interim/ interim* injunction restraining the Defendants, its directors, its principal officers, family members, servants, agents, vendors, dealers, manufacturers, distributors, retailers and anyone acting for and on its behalf from producing, selling, offering for sale or advertising, promoting its goods or services, exporting or enabling advertising campaigns either directly or indirectly in physical/electronic form, internet, websites or in any manner any product bearing the Impugned Mark/Package "Dawat Biryani" which is identical to the Plaintiffs marks /labels of DAWAT, DAAWAT or its related marks including or any mark which is identical or deceptively similar to the Plaintiffs marks / labels of DAWAT, DAAWAT in a manner so as to suggest an affiliation, approval, license, connection, sponsorship or endorsement with the Plaintiff so as to result in Passing Off.

c. A decree of *exparte ad-interim/ interim* injunction restraining



the Defendant, its directors, its principal officers, family members, servants, agents, vendors, dealers, manufacturers, distributors, retailers and anyone acting for and on its behalf from undertaking acts of unfair competition.

d. A decree of permanent injunction restraining the Defendant, its Proprietor, directors, its principal officers, family members, servants, agents, vendors, dealers, manufacturers, distributors, retailers and anyone acting for and on its behalf from committing dilution Plaintiffs registered marks DAWAT, DAAWAT, and related marks.

e. A decree of mandatory injunction directing the Defendants to take down the website, maintained under the domain name <https://dawatbiryani.co.in> and/ or any other domain name which is deceptively or conceptually similar to or contains , the Plaintiffs ' registered marks DAWAT,DAAWAT, and related marks in any form or variation.

f. A decree of mandatory injunction directing the Defendants to take down the listings in all Food delivery Applications including but not limited Zomato and Swiggy bearing the mark Impugned Dawat Biryani or any other name which is deceptively or conceptually similar to or contains, the Plaintiffs ' registered marks DAWAT, DAAWAT, and related marks in any form or variation.”

2. It is the case of the plaintiff that in 1984 Shri Lal Chand Tirath Ram Rice Mills adopted the word mark DAWAT and the same has been in use continuously without any interruption since then. The application for registration of the said mark was filed in 1987.The mark was later assigned to the plaintiff in 2003. Since its adoption by the plaintiff the trademark “DAWAT / DAAWAT” and the label marks has been in extensive and commercial use. It is further stated that the plaintiff is the registered user of the mark DAAWAT in more than 60 countries.

3. It is stated that sometimes in August, 2021 the plaintiff became aware of the defendant who is running a restaurant under the name “Dawat



Biryani”. Even the food is served in containers / cup containing the mark “Dawat Biryani”. The defendant is also running a website being dawatbiryani.co.in. It is further stated that the act of defendant is fraudulent mala fide, unfair and dishonest. Plaintiff after becoming aware of the same also issued a legal notice on 31.08.2021. Till date no reply has been received.

4. *Prima facie* the mark of the defendants is deceptively similar to that of the plaintiff. Plaintiff has made out a *prima facie* case.
5. The defendants are restrained by an *ex-parte* injunction in terms of prayer (a), (b), (e) and (f) as noted above.
6. Plaintiff to comply with Order 39 Rule 3 CPC within five days.
7. Issue notice to the defendants by speed post and e-mail, returnable for 09.12.2021.

JAYANT NATH, J.

OCTOBER 8, 2021/st