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

+ CS(COMM) 310/2023, CRL.M.A. 23998/2023, I.A. 17064/2023, I.A. 9444/2023, I.A. 15821/2023 & I.A. 16396/2023

HALDIRAM INDIA PVT LTD ..... Plaintiff  
Through: Mr. Neeraj Grover, Ms. Sunidhi Gupta, Ms. Ayushi Chandra, Mr. Naveen Grover, Ms. Kashish Sethi and Mr. S.K. Mishra, Advs.

versus

S K FOODS AND BEVERAGES & ANR. .... Defendants  
Through: Mr. Manoj Singh and Mr. Abhay Singh, Advs. for D-1  
Mr. Ashok Kumar Jain, Adv. for D-2

**CORAM:  
HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER (ORAL)**  
**05.09.2023**

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**CRL.M.A. 23998/2023**

1. This is an application by the Defendant 1 under Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.), alleging fabrication, on the part of the plaintiff, in IA 15821/2023, preferred under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC). Mr. Manoj Singh, learned Counsel for Defendant 1/applicant alleges three grounds of fabrication as having been made by the plaintiff in IA 15821/2023 which, according to him, invites action against the plaintiff under Section 340 of the Cr.P.C. These are the following:



(i) The plaintiff has, in IA 15821/2023, provided the following images of Invoice no. 589170 dated 19 July 2023, whereby the plaintiff is stated to have purchased certain food items from Defendant 1's outlet and has also provided photographs of the food items so purchased, thus:

Invoice



Products and Packages





Mr. Manoj Singh submits that, though the invoice reflects only one packet of Masala Namakpara as having been purchased by the plaintiff thereunder, images have been provided of two

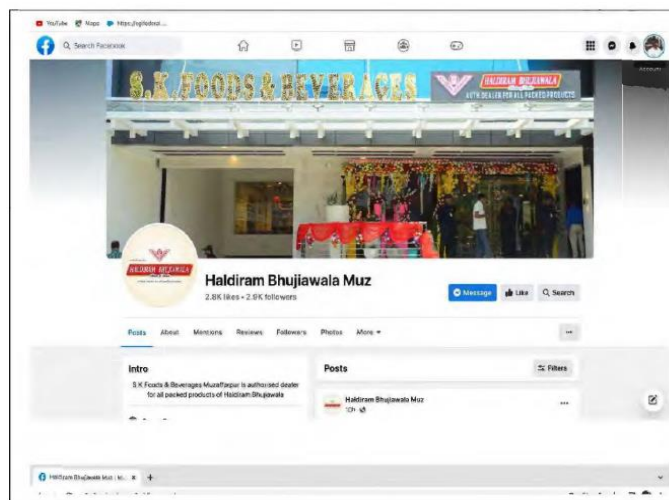


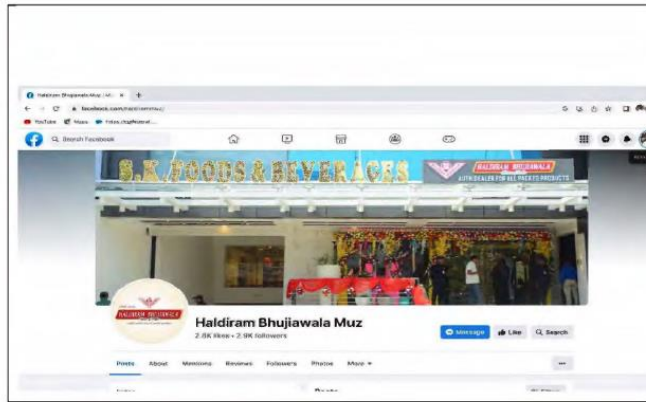
packets of Namakpara, of which the second does not bear any stamp regarding MRP etc. This, according to Mr. Manoj Singh, constitutes fabrication.

(ii) The second instance of fabrication, to which Mr. Manoj Singh draws my reference, is with respect to an image on the Facebook page of Defendant 1, which was filed by the plaintiff in the plaint as well as in IA 15821/2023. In this context, the following averments contained in para 11 of the present application deserve to be reproduced in *extenso*:

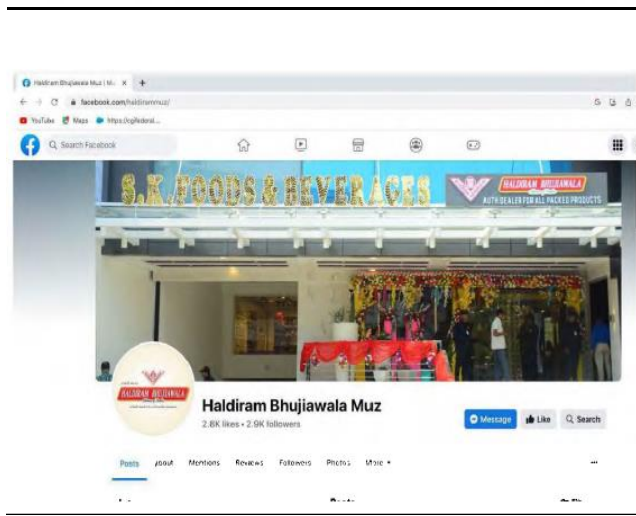
“.... Whereas, Plaintiff while applying under Order XXXIX Rule 2A asserted on the basis of alleged Screenshot of Facebook page of Applicant/ Defendant No.1, to be in existence on 19.7.2023 as shown @ Page 16 of the said application. Pertinently, the Plaintiff in order to purposefully to mislead this Hon’ble Court relied upon the same screenshot of Facebook page of Defendant No.1 filed by Plaintiff at Page 19 to 21 of documents alongwith the Suit Instituted in May 2023, which is produced herein below:

**IMAGE-1 : Facebook Page of Defendant No.1 filed at Page 19 to 21 of documents submitted along with Suit instituted on 15.5.2023:**





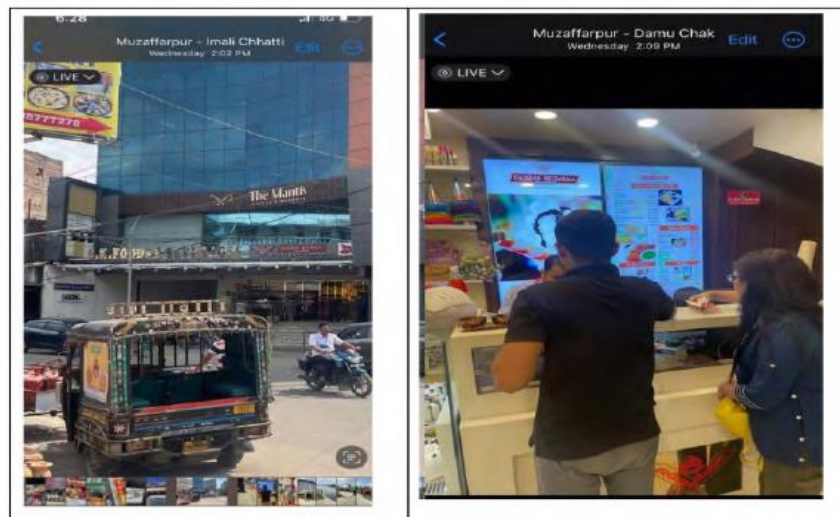
**IMAGE-2 : Facebook Page of Defendant No.1 filed at Page 16 of Application submitted under Order XXXIX Rule 2A of C.P.C. on 14.08.2023:**





Mr. Manoj Singh's contention is that the plaintiff filed, in its application under Order XXXIX Rule 2A of the CPC, the very same image which was filed by the plaintiff in the suit and claimed it to be of a later date, thereby misleading the Court and exposing itself to action under Section 340 of the Cr.P.C.

(iii) The third ground of alleged fabrication on the part of the plaintiff, as contended by Mr. Manoj Singh, is with respect to the following images filed by the plaintiff in IA 15821/2023 of an outlet of the defendant 1.



Mr. Manoj Singh submits that the aforesaid two images are of the same outlet of Defendant 1 though the title on the top of the page seems to indicate that they are from two different outlets. The two locations indicated at top of the images are, submits Mr. Manoj Singh, 2.5 kilometres away from each other and, therefore, the two images could not have been taken within a span of seven minutes.





2. Having heard Mr. Manoj Singh and Mr. Grover, learned Counsel for the plaintiff and perused the application, it is obvious that this application is a blatant abuse of the process of the Court and, in fact, should rightfully expose Defendant 1, rather than the plaintiff, to action under Section 340 of the Cr.P.C.

3. The first ground urged by Mr. Manoj Singh is based on a comparison between Invoice no. 589170 and certain images of food items provided below the invoice. The invoice reflects purchase of one packet each of “Sauf”, “Boondi Prasad”, “Gulab Jamun” and “Masala Namakpara”. It is not Mr. Manoj Singh’s case that the images below the invoice reflect any fifth item. Indeed, even if they did, it would hardly make out any case to proceed against the plaintiff under Section 340 of the Cr.P.C. The only case that Mr. Manoj Singh seeks to urge is that, while the invoice reflects one packet of Masala Namakpara, there are pictures of two packets of Masala Namakpara below the invoice, one of which does not contain a detailed label reflecting MRP etc.

4. Mr. Grover submits that both the packets of Masala Namakpara were purchased on the same day and all the bills which were relating to the items purchased on that day were not placed on record.

5. In any event, the fact of the matter is that the four items of which images are provided correspond to the four items reflected in the invoice. It is not as though the image of any fifth item is provided.



There is, therefore, no substance in this submission of Mr. Manoj Singh.

6. The second submission of Mr. Manoj Singh, in fact, would invite action against his client, rather than the plaintiff, under Section 340 of the Cr.P.C. There is clear and transparent mis-statement, in the present application, with respect to the Facebook images contained in IA 15821/2023. In fact, the plaintiff had provided, with its plaint and with IA 15821/2023, the following images:

#### Image with the Plaintiff



#### Image provided in IA 15821/2023







7. A comparison of the aforementioned images provided by the plaintiff in the plaint and in IA 15821/2023 clearly indicates that they are different from each other, with the caption below the image in the plaint reading “HALDIRAM BHUJIAWALA MUZ” and the title below the image in IA 15821/2023 reading “S.K. Foods and Beverages. In fact, submits Mr. Grover, the precise case that the plaintiff had sought to make out in IA 15821/2023 was that, even while changing the title below the photograph on the Facebook page, the defendant 1 continued to reflect the injuncted *HALDIRAM*

*BHUJIAWALA*



and/or



mark in the image contained on the said page.

8. It is a matter of great regret that, in an application under Section 340 of the Cr.P.C., Defendant 1 has had the temerity to reflect, as the image of the Facebook page filed in IA 15821/2023, a different image. It would be seen, from the afore-extracted portion of para 11 in the present application that the Defendant 1 has sought to make it appear that the same Facebook page of Defendant 1 was filed by the plaintiff along with the suit and in IA 15821/2023. The Defendant 1 has, in fact, copied the same page at both places, under the heads “Image 1: Facebook page of Defendant 1 filed at pages 19 to 21 of documents submitted along with suit instituted on 15.05.2023” and “Image-2:



Facebook page of Defendant 1 filed at page 16 of application submitted under Order XXXIX Rule 2A of the CPC on 14.08.2023". In fact, the image filed by the plaintiff at page 16 of IA 15821/2023 is not the image which is reflected to have been so filed, at page 18 of the present application. The present application, therefore, has consciously sought to mislead the Court, regrettably while seeking initiation of action against the plaintiff under Section 340 of the Cr.P.C.

**9.** The third ground on which Mr. Manoj Singh alleges fabrication on the part of the plaintiff is equally insubstantial. Mr. Grover has pointed out that the headings at the top of the two photographs in question are with respect to the Jio Tower locations through which the photographs were taken at that particular point of time. Both the locations, admittedly, pertain to Defendant 1's restaurant's location. Mr. Manoj Singh's contention is that the restaurant is at Chhata Chowk and not at IMLI CHATI or at DAMU CHAK. The submission ignores the most basic fundamentals regarding the manner in which photographs are taken by mobile phones and uploaded. The locations indicated at the top of the photograph are not reflective of the location of the shop but of the Jio tower through which the connection had been established. This contention of the Defendant 1 is also, therefore, completely devoid of substance.

**10.** This Court has repeatedly expressed a view that unjustified invocation of Section 340 of the Cr.P.C. in civil proceedings is an abuse of process of law and, if it is not substantiated with good



reasons, is required to be seen as an attempt to pressurise the opposite party in the proceedings. In the present case, the situation is exacerbated by the fact that Defendant 1 has consciously resorted itself to mis-statement and filing erroneous photographs in its application. Valuable time of this Court has been expended in this application which is completely frivolous and, to repeat, is *ex facie* an abuse of the legal process.

**11.** For the aforesaid reasons, while the Court is, for the present, restraining itself from issuing notice to Defendant 1 under Section 340 of the Cr.P.C. for filing fabricated photographs, the present application is dismissed with costs of ₹ 1 lakh to be paid to the plaintiff within a period of two weeks from today.

**I.A. 15821/2023 [under Order XXXIX Rule 2A, CPC]**

**12.** Issue notice, returnable on 11 October 2023.

**13.** Reply to this application, if any, be positively filed within 15 days with an advance copy to learned Counsel for the applicant who may file a rejoinder thereto before the next date of hearing.

**14.** List for hearing and disposal of this application on 11 October 2023.

**I.A. 17064/2023 [Exemption]**

**15.** Exemption allowed, subject to all just exceptions.



**I.A. 9444/2023 [under Order XXXIX Rules 1 & 2, CPC] & I.A. 16396/2023 [under Order VII Rules 10 & 11, CPC]**

16. Re-notify on 11 October 2023.

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17. List before the learned Joint Registrar (Judicial) on 20 November 2023 for completion of pleadings, if any, marking of exhibits and admission and denial of the documents, whereafter the matter would be placed before the Court for a case management hearing and further proceedings.

**C.HARI SHANKAR, J**

**SEPTEMBER 5, 2023**

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