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

+ **CS(COMM) 361/2024**

THE INDIAN HOTELS COMPANY LIMITED Plaintiff

Through: Mr. Pravin Anand, Mr. Achuthan
Sreekumar, Mr. Rohil Bansal and Ms.
Swastik Bisarya, Advocates.

versus

SHIVGYAN DEVELOPERS PRIVATE LIMITED Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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03.05.2024

I.A. 9901/2024 (seeking leave to file additional documents)

1. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.
2. Applicant, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.
3. Disposed of.

I.A. 9902/2024 (seeking exemption from filing certified, clear copies of original translated copies)

4. Exemption is granted, subject to all just exceptions.
5. Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
6. Disposed of.



I.A. 9903/2024 (seeking exemption from pre-litigation mediation)

7. Issue notice to Defendant, by all permissible modes, upon filing of process fee, returnable on
8. Upon service, such Respondent shall file a reply within a period of 30 days from the date of service. Rejoinder thereto, if any, be filed before the next date of hearing.

I.A. 9904/2024 (seeking extension from filing court)

9. The court fee has already been deposited by Plaintiff. Accordingly, the present application has been rendered infructuous.
10. Disposed of.

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11. Let the plaint be registered as a suit.
12. Upon filing of process fee, issue summons to Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
13. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
14. List before the Joint Registrar for marking of exhibits on 01st August,



2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

15. List before Court for framing of issues thereafter.

I.A. 9900/2024 (under Order XXIX Rules 1 and 2 of Code of Civil Procedure)

16. Mr. Pravin Anand, Counsel for Plaintiff submits the following facts and contentions for seeking an *ad-interim ex-parte* injunction:

16.1. The Indian Hotels Company Limited, the Plaintiff, is part of the TATA group of Companies. Plaintiff is engaged in the hospitality industry and owns a chain of reputed hotels across many countries. The Plaintiff has registered the trademarks/logos “VIVANTA”, “VIVANTA BY TAJ” “VIVANTA” and “VIVANTA”¹ in Classes 42 and 43. These trademarks cover a range of services related to hotels, motels, restaurants, resorts, and related services such as providing food, drink and temporary accommodation.

16.2. On account of long and continuous use and promotion of the Plaintiff’s trademarks/brand, it has earned substantial goodwill and reputation in the industry. This fact is evidenced by the Plaintiff’s financial highlights for the last six years, which are tabulated in Paragraph No. 12 of the present Application, and indicate that in FY 2022-23, Plaintiff earned a turnover of INR 1077.23 crores. Additionally, the Plaintiff has also incurred substantial amounts of money in advertising and promoting its brands and business, details of which are delineated in Paragraph No. 13 of the Application.



16.3 Plaintiff's grievance in the present suit, arises from Defendant's use of an identical mark "VIVANTA"² in relation to their goods and services. Sometime in February 2024, Plaintiff came across an advertisement in the newspaper, 'Times of India (Sunday Times), Jaipur Edition', depicting unauthorised use of the Plaintiff's trademarks by the Defendant. The said advertisement is as follows:



16.4. The Plaintiff conducted extensive online research and discovered that Defendant is a company registered on 1st July 2017 and is engaged in the business of selling/leasing/renting luxury flats and accommodations. The Defendant also operates a dedicated website at the domain www.shivgyan.com, wherein it is mentioned that the Defendant has multiple

¹ "Plaintiff's trademarks"


² "Impugned mark"



housing projects, one of which is named “SHIVGYAN VIVANTA”. The Defendant has also obtained a RERA³ registration for the said project in November 2017.

16.5. On the basis of search carried out by the Plaintiff, into the records of the Trade Marks registry, it appears that the Defendant does not have any registration for the impugned mark. However, the Defendant has two trademark registrations bearing Nos. 2304939 and 2304941 for the device



mark “”, in Classes 36 and 37, respectively in relation to real estate affairs and construction of commercial complexes/residential flats.

16.6. In order to verify the infringing activities of the Defendant, the Plaintiff engaged the services of a private investigator to conduct on-site investigation at the Defendant’s premises. The said investigation revealed unauthorised use of the Plaintiff’s trademark, as depicted from the following photographs:

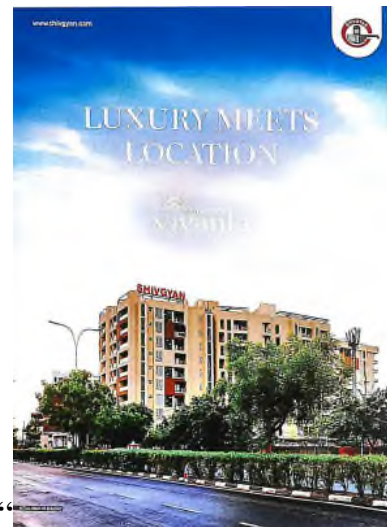
³ Real Estate Regulatory Authority



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“ ”



“ ” and



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16.7. After receipt of the investigation report, the Plaintiff addressed a legal notice dated 18th March 2024 to the Defendant, instructing them to immediately stop the unauthorised use of Plaintiff’s trademarks. However,



the Defendant failed to reply to the above notice. Therefore, in order to protect its statutory and common law rights in its registered trademarks, the Plaintiff filed the present suit, with advance intimation to the Defendants.

17. The suit is presently at the *ad-interim* stage, where the Court, upon a *prima facie* assessment of the facts and contentions presented by Mr. Anand, observes that, considering the goodwill, reputation, and long-standing presence of the Plaintiff's brand and trademark "VIVANTA," the Defendant's adoption of an identical mark for similar services related to luxury accommodation poses a significant risk of confusing and/or deceiving consumers. The Plaintiff provides hotel and restaurant services under the "VIVANTA" brand, while the Defendant offers real estate projects involving luxury accommodation under the same mark. Both cater to a similar clientele seeking premium living experiences. Given the overlapping nature of the services, along with the shared marketing channels, which target consumers who are interested in luxury lifestyles, there is substantial potential for the marks to be associated with each other. This association could lead consumers to mistakenly believe that the Defendant's services or project is related to or endorsed by the Plaintiff, thereby causing irreparable harm to the Plaintiff's business interests and diluting the distinctive character of their trademark. The similarities of the services and the identical nature of the marks clearly indicate the likelihood of passing off and trademark infringement, warranting protective measures at this interlocutory stage.

18. Further, it is observed that the Defendant has extensively advertised its project bearing the Impugned mark. This is evident from the Defendant's website, social media pages, and project brochure, which *prima facie*



suggests that the Defendant has consciously used the Plaintiff's trademark to mislead consumers and create a false association between the two. Given the identical nature of the marks and the overlapping target audience for both parties, such actions have the potential to cause significant harm to the Plaintiff's brand and business interests. It is also noteworthy that, despite receiving advance notice of the present lawsuit, the Defendants have not appeared before this Court to present their case.

19. In view of the foregoing, the Plaintiff has made out a *prima facie* case of infringement and passing off in their favour; and in case an *ex-parte ad-interim* injunction is not granted by this Court, the Plaintiff will suffer irreparable loss of reputation and goodwill. Further, the balance of convenience also lies in favour of the Plaintiff and against Defendant.

20. In view thereof, till the next date of hearing, Defendant and/or anyone acting on their behalf, are restrained from unauthorizedly using the Plaintiff's registered trademark "VIVANTA" or any other identical or deceptively similar mark, in any manner or form (both online and offline), thereby amounting to infringement and/or passing off.

21. Issue notice to the Defendant. Reply, if any, to be filed within a period of four weeks from the date of this order. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

22. Compliance of Order XXXIX Rule 3 of CPC be done within three days from the date of this order.

23. List before the Court on 03rd October, 2024.

SANJEEV NARULA, J

MAY 3, 2024/d.negi