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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(COMM) 683/2022 & I.A. 35307/2024****THE INDIAN HOTELS COMPANY LIMITED**Plaintiff

Through: Mr. Pravin Anand, Advocate
with Mr. Achuthan Sreekumar,
Mr. Rohil Bansal and Mr.
Swastik Bisarya, Advs.
M: 7800902538

versus

MANOJDefendant

Through: None.

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****30.08.2024****MINI PUSHKARNA, J:****I.A. 35307/2024 (Application under Order XIII-A read with Order VIII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"))**

1. The plaintiff has filed the present suit seeking an order of permanent injunction restraining infringement of registered trademarks and copyrights, passing off, dilution and tarnishment of trademarks, damages, rendition of accounts, delivery up, etc.
2. The instant case pertains to defendant's unauthorised use of the



plaintiffs registered trademarks TAJ, , as well as plaintiff's various content and photographs available on the plaintiff's website at www.tajhotels.com and the photographs of the plaintiff's Taj Mahal Palace Hotel, Mumbai.

3. The case as set up by the plaintiff in the plaint is as follows:

3.1 The plaintiff is a part of the TATA Group of Companies, which is India's oldest, largest, most trusted and best known business conglomerate.

3.2 The plaintiff opened its first hotel-The Taj Mahal Palace, in Mumbai, in 1903. The Taj Mahal Palace is the hallmark of Indian hospitality, even today. Among the brands of the plaintiff, 'TAJ' is the most iconic brand of the plaintiff and a well known trademark, unmistakably associated with the plaintiff. With the opening of The Taj Mahal Palace in Mumbai, and thereafter, with the expansion of the brand across cities, countries and continents, the 'TAJ' brand enjoys an unmatched equity, and recollection in the minds of the common man.

3.3 Plaintiff's Taj Mahal Palace and Towers Hotel in Mumbai is the first building to be granted a trademark registration for the facade of the iconic



Taj Mahal Palace Hotel, Mumbai, i.e., . If any person comes across the photograph of the unique and distinct Taj Mahal Palace Hotel, Mumbai or its unique facade, they would immediately associate the same with the plaintiff and no one else.

3.4 The trademark 'TAJ' was adopted by the plaintiff as far back as 1903, with respect to the hospitality industry. The plaintiff has a website dedicated to its hotels, resorts etc., under the brand 'TAJ', which is available at www.tajhotels.com.

3.5 The plaintiff has been using the mark TAJ since 1903 and the mark



since 2016. The plaintiff is the registered proprietor of numerous registered trademark containing and comprising the mark 'TAJ'



and

3.6 The plaintiff is also the owner of the copyrights associated with the



logo/device , as well as plaintiff's Epicure Card dealing with the plaintiff's Taj Hotel Rewards Program available at the plaintiff's website at



<https://www.tajhotels.com/en-in/epicureprogram/>.

3.7 The plaintiff is not only the owner of the copyrights associated with



the logo/device , but also the owner of the photographs of its TAJ properties that have been uploaded on its website, as well as the plaintiff's Epicure Card dealing with the plaintiff's Taj Hotel Rewards Program.

3.8 The plaintiff has spent huge amounts of money in designing, conceptualizing, advertising, marketing and protecting their well known and



registered trademark 'TAJ'/ and permutation/combinations thereof, including their website, properties etc.

3.9 The defendant in the present case is one Manoj, who claims to be owner/Managing Director ("MD") of the defendant entity, i.e., Taj Iconic Membership. The defendant has a website at www.tajiconicmembership.com, which was registered on 22nd June, 2022.

3.10 The defendant is a habitual infringer and has unauthorizedly used the



plaintiff's well known and registered trademarks TAJ, ,



, as well as plaintiff's copyrighted content and photographs available on the plaintiff's website.

3.11 On 15th July, 2022, the defendant's representative contacted the plaintiff's representative, asking them as to whether they are interested in doing business with the defendant. In this regard, the plaintiff's representatives were invited for a meeting with the defendant. The plaintiff was then shocked to learn that the defendant was misusing the plaintiff's registered trademarks TAJ as part of their business name, domain, www.tajiconicmembership.com, website, and email ID etc.

3.12 The plaintiff also received notices from Malviya Nagar Police Station, Delhi along with copy of FIR No. 0209 dated 16th September, 2022 stating that one Jeweller by the name of Puneet Mehra of Greater Kailash-I, Delhi, was defrauded by the defendant of Rs. 51,21,735/-. The said Puneet Mehra was invited by the defendant, impersonating as plaintiff to its office, and was then offered coffee laced with drugs. Subsequently, Puneet Mehra felt dizzy, and the representative of the defendant snatched the packet containing hundred gold coins from Puneet Mehra.

3.13 The concerned officials from Malviya Nagar Police Station contacted the plaintiff's representatives and served a notice dated 10th September, 2022, asking for explanation, and clarification as to whether the plaintiff was in any way connected, or associated with the defendant.

3.14 Being aggrieved by the defendant's adoption of the registered



trademarks of the plaintiff, and also the plaintiff's various content and photographs available on the plaintiff's website, the present suit has been filed.

4. This Court vide order dated 6th October, 2022, granted an *ex parte ad interim* injunction in favour of the plaintiff, thereby restraining the defendant from using the mark 'TAJ', the accompanying devices, including, as part of the corporate name or the logo thereof, or any other mark/name/logo/domain name, which is deceptively or confusingly similar to the plaintiff's mark 'TAJ'. The defendant was also restrained from using the infringing domain name www.tajconicmembership.com, or from reproducing any content from the plaintiff's website www.tajhotels.com.

5. A Local Commissioner was appointed on the same date, i.e., 6th October, 2022 to visit the premises of the defendant and execute the commission. Subsequently, on 11th October, 2022, the Local Commissioner visited the defendant's premises. However, the Local Commissioner was informed that the premises of the defendant had been sealed in a raid conducted by the Crime Branch on 17th September, 2022.

6. Summons in the suit were issued on 6th October, 2022. Subsequently, the defendant was served via substituted mode on 21st August, 2023, through publications in the newspapers, 'Times of India' and 'Navbharat Times'. However, defendant had failed to enter appearance in the suit and his right to file written statement was closed on 21st November, 2023. The defendant was proceeded *ex parte* vide order dated 22nd January, 2024.

7. The plaintiff has filed the present application, being *I.A. 35307/2024*, seeking summary judgment under Order XIII-A of CPC, against the defendant.



8. Learned counsel appearing for the plaintiff has made detailed submissions before this Court and has relied upon various judgments to submit that no purpose would be served by directing the plaintiff to lead *ex parte* evidence, when the defendant does not have any real prospect of successfully defending its claim.

9. I have heard learned counsel for the plaintiff and have perused the record.

10. At the outset, this Court notes that the trademark 'TAJ' was adopted by the plaintiff as far back as 1903, with respect to hospitality industry.



Further, the plaintiff has been using the mark since the year 2016. The plaintiff is the registered proprietor of the aforesaid marks, details of which are on record.

11. The plaintiff is also the owner of the copyrights associated with the



logo/device .

12. The plaintiff for its own business activities and those of companies promoted by it, has continuously and consistently being using its registered



trademark 'TAJ', and permutation and combination thereof, since decades. The plaintiff has spent huge amounts of money in advertising and promoting the said marks. The plaintiff has a huge turnover for the various services rendered by it.



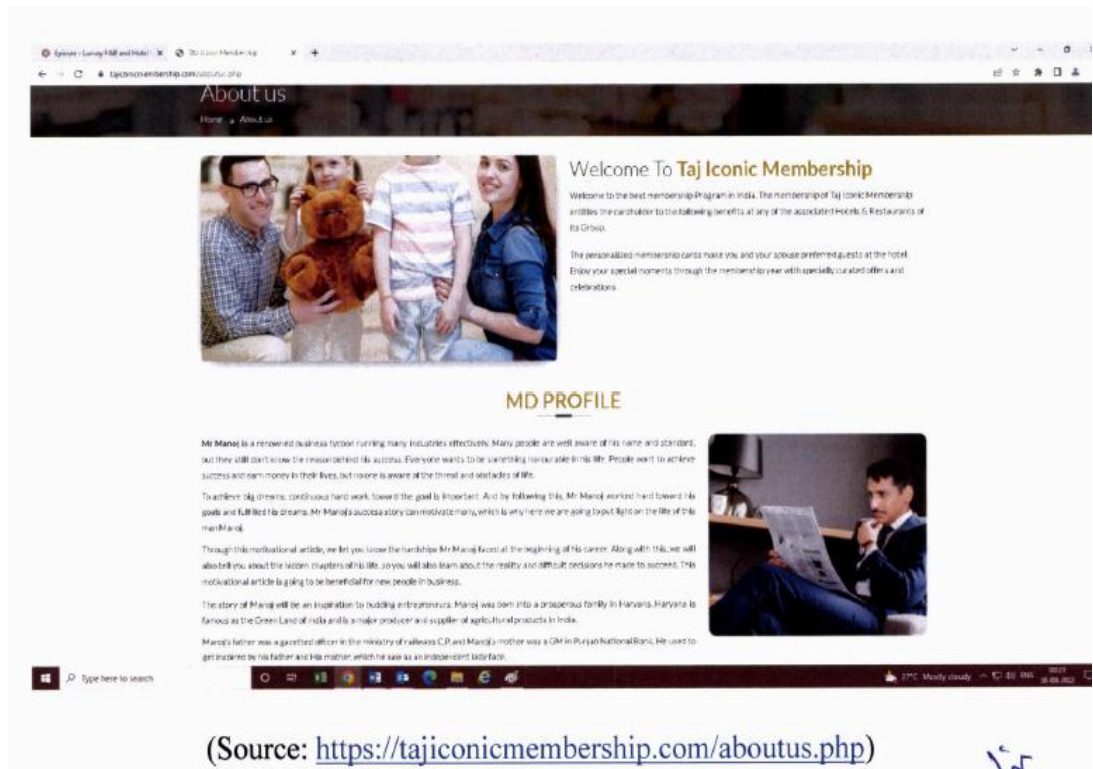
13. Thus, from the averments made in the plaint and the documents on record, the plaintiff has been able to establish its goodwill and reputation in

respect of its marks, 'TAJ',

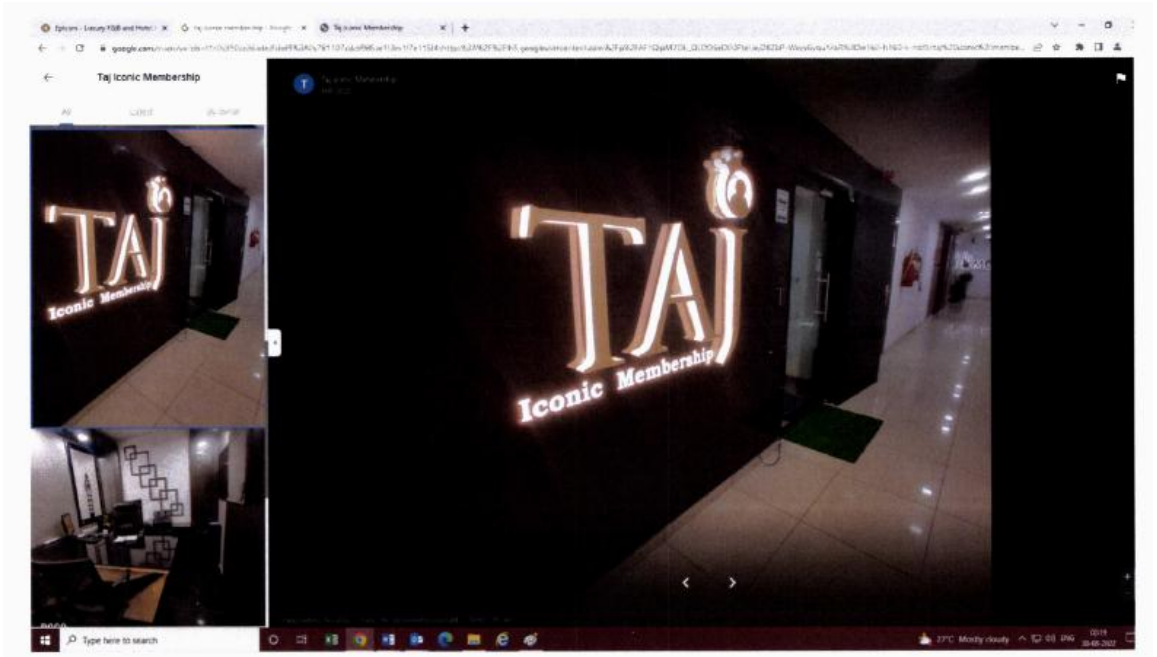


14. The defendant has unauthorizedly used the plaintiff's marks, as well as various content and photographs available on the plaintiff's website. The defendant has been misusing the plaintiff's registered trademarks as part of its business name, domain and website, in the following manner:





15. Even the photographs of the defendant available on Google, show unauthorised use of the plaintiff’s registered trademarks, as follows:



(Source:

[https://www.google.com/maps/uv?pb=!1s0x390ce36adecfabd9%3A0x781107cdcd985ae113m1!7e115!4shttps%3A%2F%2Fh5.googleusercontent.com%2Fp%2FAF1QipM7Dk_OLDD6eD00PteUejD8ZbP-WxyyByquYAxR%3Dw160-h160-k-no!5staj%20iconic%20membership%20-%20Google%20Search!15sCgIgAQ&imagekey=!1e10!2sAF1QipMOgQMCaVLXb3_igh_PnJI0mWMMgaNdb_F7TtJ&hl=en&sa=X&ved=2ahUKEwj6lPPi9ez5AhWm1XMBHWMLAuEQoip6BAhhEAM\)](https://www.google.com/maps/uv?pb=!1s0x390ce36adecfabd9%3A0x781107cdcd985ae113m1!7e115!4shttps%3A%2F%2Fh5.googleusercontent.com%2Fp%2FAF1QipM7Dk_OLDD6eD00PteUejD8ZbP-WxyyByquYAxR%3Dw160-h160-k-no!5staj%20iconic%20membership%20-%20Google%20Search!15sCgIgAQ&imagekey=!1e10!2sAF1QipMOgQMCaVLXb3_igh_PnJI0mWMMgaNdb_F7TtJ&hl=en&sa=X&ved=2ahUKEwj6lPPi9ez5AhWm1XMBHWMLAuEQoip6BAhhEAM))






16. Even outside its premises, the defendant put the signage, using the plaintiff's mark, as follows:





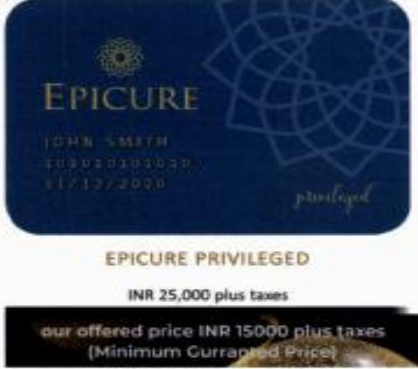


17. A comparison chart showing the use of the plaintiff's mark and its



photographs, by the defendant, as given in the plaint, is reproduced as under:

Plaintiff	Defendant
<p data-bbox="448 483 778 645">TAJ and </p>	<p data-bbox="970 562 1390 663">Welcome To Taj Iconic Membership (website)</p> <p data-bbox="1078 725 1291 936"> (website)</p> <p data-bbox="1054 1003 1302 1214"> (Brochure pg. 2)</p> <p data-bbox="1074 1279 1299 1489"> (Brochure pg. 2)</p> <p data-bbox="1046 1547 1326 1854"> (office)</p>




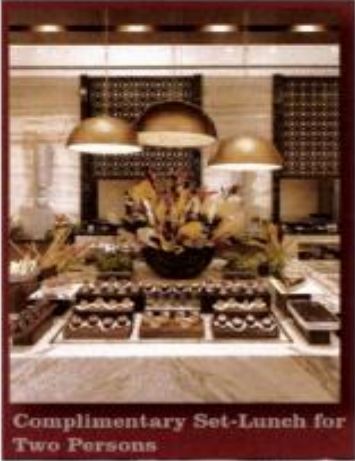


	 <p>(office)</p>
 <p>(website)</p>	 <p>(Brochure pg. 5)</p>
 <p>(website)</p>	 <p>(Brochure pg. 5)</p>




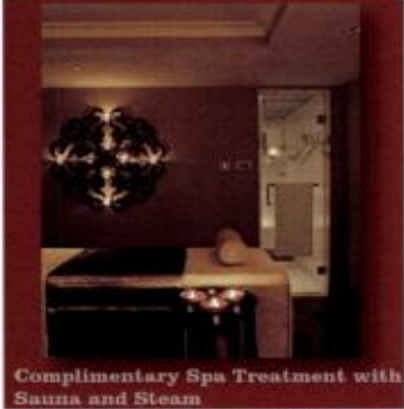




 <p>25% Discount on Food & Beverage On dine-in & takeaway at participating restaurants across hotels for upto 10 persons</p> <p>(website)</p>	 <p>25% Discount on Food & Beverage</p> <p>(Brochure pg. 14)</p>
 <p>20% Discount on Spa Treatments At spa/spas across participating hotels</p> <p>(website)</p>	 <p>20% Discount on Spa Treatments</p> <p>(Brochure pg. 14)</p>
 <p>20% Discount on Qmin For food deliveries ordered via Qmin mobile app</p>	 <p>20% Discount on Qmin</p>




<p>(website)</p>	<p>(Brochure pg. 14)</p>
 <p>Complimentary Night Stays</p> <p>2 vouchers for a one night stay each on the basic category rooms including breakfast for two persons at select participating hotels.</p> <p>(website)</p>	 <p>Complimentary One Night Stay</p> <p>(Brochure pg. 15)</p>
 <p>Complimentary Set-Lunch for Two Persons</p> <p>For one time, at participating All-Day Dining restaurants across hotels.</p> <p>(website)</p>	 <p>Complimentary Set-Lunch for Two Persons</p> <p>(Brochure pg. 15)</p>



 <p>Complimentary One Room Upgrade One-time one-level room upgrade for one night received directly at Best Available Rate</p> <p>(website)</p>	 <p>Complimentary One Room Upgrade</p> <p>(Brochure pg. 15)</p>
 <p>Complimentary Spa Treatment with Sauna and Steam One-time sixty minute spa treatment and access to sauna and steam for one person at Jiva Spa across participating hotels</p> <p>(website)</p>	 <p>Complimentary Spa Treatment with Sauna and Steam</p> <p>(Brochure pg. 15)</p>
	 <p>(Brochure pg. 14)</p>
<p>Photograph of the Plaintiff's iconic, distinct and unique, Taj Mahal Palace Hotel, Mumbai</p>	

18. There is no justification or any plausible reason for adoption of the



registered trademarks 'TAJ', , by the defendant, and also the plaintiff's various content and photographs available on the plaintiff's website. The plaintiff has no connection or association with the defendant and has not authorised the defendant to use the said marks, logos, photographs and content.

19. Accordingly, it is clear that the action of the defendant in adopting the plaintiff's marks, photographs and content, is malafide, deliberate, and intentional and thus, constitutes infringement. The defendant's infringing activity is bound to cause confusion in the minds of the unwary consumers, who will assume the defendant's services and packages to have originated from the plaintiff.

20. The defendant has chosen not to file its written statement and has not entered appearance to defend his actions. Thus, this Court is of the opinion that no purpose would be served by directing the plaintiff to lead *ex parte* evidence. The defendant has no real prospect of defending the plaintiff's claim. Thus, the plaintiff is entitled to a summary judgment under Order XIII-A of the CPC read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

21. Holding that the Court is empowered to grant a summary judgment, where the defendant has no real prospects of successfully defending the claim, and when there is no other compelling reason why the claim should not be disposed of before recording of oral evidence, this Court in the case of *DS Confectionery Products Limited Versus Nirmala Gupta and*



*Another*¹, has held as follows:

“xxx xxx xxx

24. Adoption of the similar trade mark and trade name by the defendants is not only a violation of the rights of the plaintiff, but may also deceive general unwary consumers and appears dishonest.

25. In the present case, the defendants have chosen not to file their written statements, nor have they entered appearance in the suit to defend the same. In my opinion, therefore, this is a fit case where a Summary Judgment in terms of Order XIII-A of the Civil Procedure Code, 1908, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiff and against the defendants.

26. This Court, in *Su-Kam Power Systems Ltd. v. Kunwer Sachdev*, 2019 SCC OnLine Del 10764, has held as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions

¹ 2022 SCC OnLine Del 4013



of fact as held by the Canadian Supreme Court in *Robert Hryniak v. Fred Mauldin*, 2014 SCC OnLine Can SC 53, in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

xxx xxx xxx”

(Emphasis Supplied)

22. On the aspect of damages being claimed by the plaintiff, this Court notes that in various cases, damages have been granted on account of the defendant not appearing deliberately, despite having knowledge of the proceedings. It is to be noted that not filing any defence by the defendant shows the malafides and guilt of the defendant, that he has no plausible explanation for his intentional, illegal and infringing acts.

23. Holding that a party who chooses not to participate in Court proceedings, should not be permitted to enjoy the benefits of evasion of Court proceedings and must suffer the consequences of damages, this Court in the case of *Cartier International AG and Others Versus Gaurav Bhatia and Others*², has held as follows:

“xxx xxx xxx

65. It appears from the conduct of the defendants who have deliberately stayed away from the present proceedings with the result that an enquiry into their accounts for determination of damages could not take place.

66. It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books

² 2016 SCC OnLine Del 8



would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books.

xxx xxx xxx

69. With regard to the relief of damages as claimed by the plaintiffs in para 44 (g) of the plaint, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In *Time Incorporated v. Lokesh Srivastava & Anr.*, (supra) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that **“time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.”**

70. Further, this Court in *Microsoft Corporation v. Rajendra Pawar & Anr.*, 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 has held **“Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant’s conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such**



erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.
xxx xxx xxx”

(Emphasis Supplied)

24. This Court notes that in the present case, the defendant is not only guilty of infringement of the plaintiff’s marks and photographs, but has also indulged in criminal activities by impersonating as plaintiff and defrauding a jeweller of hundred gold coins worth Rs. 51,21,735/-. An FIR also stands lodged against the defendant in that regard, by the said jeweller. The submissions made in this regard in the plaint, read as under:

“xxx xxx xxx

44.

(a) One Puneet Mehra (Jeweller) of GK- 1 was defrauded by the Defendant of Rs. 51,21,735/-.

(b) The Defendant claims to be associated with the Plaintiff and they asked for quotations from Jewellery shops for the purchase of gold and silver coins required by the Defendant (impersonating as the Plaintiff).

(c) Thereafter, the said Puneet Mehra visited the Defendant's office located at I-129, 12th Floor, Himalaya House, 23 K.G. Marg, Connaught Place, New Delhi carrying a pouch containing 100 gold coins accompanied by the Defendant's representatives, i.e., one Prem Rajput and Ashish Shrivastava.

(d) Upon reaching the said premises, Puneet Mehra met one Mohit Goel, who claimed to be the head/senior official of the Defendant. Mohit Goel was offered a cup of coffee and the Defendant's representatives mentioned that they are a part of the TAJ Group/ Plaintiff and that they make the best coffee. The said coffee was laced with certain drugs /



psychotropic substance.

(e) After having the coffee laced with drugs, Puneet Mehra felt dizzy and the said Mohit Goel snatched a packet containing 100 gold coins from Puneet Mehra.

(f) The said Defendant's representatives have even contacted various other jewellery shops owners with the same modus-operandi to cheat them whilst impersonating as the Plaintiff / TAJ Group.

xxx xxx xxx

46. The concerned officials from Malviya Nagar Police Station, Delhi contacted the Plaintiff's representatives and served a notice dated 10th September, 2022 asking for explanation and clarification as to whether the Plaintiff is in any way connected or associated with the Defendants.

xxx xxx xxx”

25. Thus, it is apparent that the use of the various contents and photographs available on the plaintiff's website, by the defendant in relation to business activities, has the effect of inducing the consumers and members of the trade to falsely believe that the defendant has a direct nexus or affiliation with the plaintiff. Further, the fraudulent and illegal trade activities of the defendant has also the effect of causing incalculable harm and injury to the business, goodwill and reputation associated with the plaintiff's associated mark.

26. Accordingly, in the facts and circumstances of the present case, this Court is of the opinion that the interest of justice shall be served in awarding damages to the tune of Rs. 10 lacs and cost of Rs. 5 lacs, in favour of the plaintiff.

27. Accordingly, the following directions are passed:

i. Decree of permanent injunction is passed in favour of the plaintiff and against the defendant, in terms of paragraph 64 (i)(ii)(iii)(iv)(v) and (vi) of



the prayer clause in the plaint.

ii. In view of the direction for transferring the domain www.tajiconicmembership.com in favour of the plaintiff, the plaintiff is granted liberty to approach the Domain Name Registrant in this regard, which shall do the needful, in terms of this order.

iii. The plaintiff is held entitled to damages to the tune of Rs. 10 lacs and cost of Rs. 5 lacs.

28. The suit is decreed in the aforesaid terms.

29. Decree sheet be drawn up.

30. The present suit is disposed of, along with the pending application.

**(MINI PUSHKARNA)
JUDGE**

AUGUST 30, 2024

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