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

+ **CS(COMM) 830/2017 & I.A.No.14500/2017**

FRHI HOTELS & RESORTS S.A R.L. Plaintiff
Through Mr. Zeeshan Khan, Advocate.

versus

DR. MUKRAM ULLA KHAN Defendant
Through None

% **Date of Decision: 20th April, 2018**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A.14500/2017

Since none appears for the defendant, despite service, the *ex parte ad interim* injunction order dated 07th December, 2017 is confirmed till the disposal of the present suit.

CS(COMM) 830/2017

1. Present suit has been filed for permanent injunction restraining infringement of trade mark, passing off, rendition of accounts and damages against the defendant.
2. Since the defendant has neither filed his written statement nor entered appearance, he is proceeded *ex parte*.

3. At this stage, learned counsel for the plaintiff gives up prayers 45 (c), (d), (e) and (f) of the prayer clause to the suit. He prays that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508***, the present suit be decreed qua the relief of injunction and costs. The portion of the said judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

4. The relevant facts of the present case are that the plaintiff is a world leading travel and lifestyle group. It is stated in the plaint that the plaintiff, with its affiliates (collectively referred to as ‘Fairmont Hotels’) carry on an established international business as one of the leading luxury hotel companies in the world and largest luxury hotel and accommodation company in North America under the name FAIRMONT. It is stated in the plaint that the plaintiff has been recognised as one of the most distinguished brands in the world in the field of hospitality.

5. It is stated in the plaint that the plaintiff is the registered proprietor of the mark FAIRMONT in over 100 jurisdictions in the world including in India where the said mark is registered in various Classes under the Trade

Marks Act, 1999. It is averred in the plaint that the said mark was first registered in India under Class 42 of the Trade Marks Act, 1999 in 2003. It is stated in the plaint that the plaintiff first adopted the mark FAIRMONT as a hotel name in 1907 in San Francisco and has been continuously and uninterruptedly using the same and is a well-known/famous trade mark. It is further stated in the plaint that the trade mark FAIRMONT is the most distinguishing feature of the corporate name and trading style of the plaintiff and its many subsidiaries, and the same is now exclusively associated with Fairmont Hotels and its goods/services.

6. It is stated in the plaint, that the plaintiff is the owner of the website www.fairmont.com which has been in operation since 1995 and gives easy access to information of the services/goods of the plaintiff. It is also stated in the plaint that Fairmont Hotels entered the Indian market in 2008 to manage a hotel under development in Hyderabad, Andhra Pradesh and opened its first hotel, 'Fairmont Jaipur', under the mark FAIRMONT in Jaipur, Rajasthan in August, 2012.

7. Learned counsel for the plaintiff states that in or around June 2017, it came to the knowledge of the plaintiff that the defendant is using the mark MK FAIRMONT as a part of the name of its luxury serviced apartment and is operating a website under the domain name www.mkfairmont.com and

using the logo . He states that the plaintiff served a cease and desist letter upon the defendant on 14th June, 2017 and a reminder letter dated 21st July, 2017. However, the plaintiff received no response to the same.

8. Learned counsel for the plaintiff states that, upon further inquiry on the defendant's website www.mkfairmont.com, it became clear that the defendant has been continuously using the name MK FAIRMONT/



for a considerable amount of time and the website of the defendant re-directs customers to third party websites www.makemytrip.com and www.goibibo.com for booking the defendant's luxury serviced apartments.

9. He further states that adoption and use of plaintiff's registered trade mark FAIRMONT as a part of the name of his luxury service apartments MK FAIRMONT, domain name www.mkfairmont.com and logo



, by the defendant, constitutes infringement as well as passing off.

10. Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.

11. In the opinion of this Court, the defendant has no real prospect of defending the claim as it has neither entered appearance nor filed its written statement or denied the documents of the plaintiff.

12. Moreover, as the defendant is using the plaintiff's registered trade mark FAIRMONT as a part of the name of his luxury service apartments MK FAIRMONT, domain name www.mkfairmont.com and logo



in relation to providing luxury service apartments, it is a

clear case of infringement of the plaintiff's registered trade mark no. 1240803 among others as mentioned under para 12 of the plaint under Section 29(1) of the Trade Marks Act, 1999 for the following reasons:-

- i. FAIRMONT is a registered trade mark of the plaintiff in respect of inter alia accommodation services;
- ii. The mark FAIRMONT is used by the defendant, in course of the trade, with respect of providing luxury service apartments; and
- iii. Defendant is not a permitted user of the mark FAIRMONT.

13. The use of mark FAIRMONT by the defendant is also an infringement under Section 29(5) of the Trade Marks Act, 1999, for the following reasons :-

- i. FAIRMONT is a registered trade mark of the plaintiff in respect of inter alia hotel reservation and accommodation services;
- ii. The mark FAIRMONT is being used by the defendant as its trade name MK FAIRMONT in respect of providing luxury service apartments, which are the relevant services for which the mark FAIRMONT is registered in the name of the plaintiff.

14. This Court is also of the view that the defendant is using the registered trade mark FAIRMONT of the plaintiff as part of its trade name, domain name and logo with a view to trade upon and benefit from the immense reputation and goodwill of the plaintiff's mark and pass off its services as that of the plaintiff.

15. In view of the aforesaid, the suit is decreed in favour of the plaintiff and against the defendant in accordance with prayer clause 45 (a)

and (b) of the plaint along with the actual costs. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. The plaintiff is given liberty to place on record the exact cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit and application stand disposed of.

APRIL 20, 2018
rn/rs

MANMOHAN, J

