

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.3709 OF 2011
IN
SUIT NO.3022 OF 2011

Ras Resorts And Apart Hotels Ltd.

...Plaintiff

Versus

Ras Resort Private Limited

...Defendant

Mr. Ajraj Bagwe, with Ms. Dipti Vora, Priya Thakkar, i/b. M/s.
Jehangir Gulabbhai & Billimoria & Daruwalla for the Plaintiff.
None for the Defendant.

CORAM: G.S. PATEL, J.
DATED: 28th March 2016

P.C.

1. Heard.
2. The Notice of Motion has been served. An Affidavit in Reply is on record. So is a Written Statement to the Plaint. The Plaintiff has filed two Affidavits in Rejoinder.
3. The present Notice of Motion No.3709 of 2011 seeks interim reliefs in an action for infringement and passing off. The mark in question is both a trademark and service mark. It relates to the

Plaintiff's hotels and hospitality facilities *inter alia* in Mumbai and Silvassa.

4. On 22nd December 2011, Mr. Justice S.J. Vazifdar (as he then was) granted leave under Clause XIV of the Letters Patent and also granted ad-interim reliefs in terms of prayer clauses (a), (b) and (c) of the present Notice of Motion. Mr. Justice Vazifdar noted the value of the Plaintiff's services, their advertisement expenses, and also the fact that the Plaintiff has registered the domain name www.rasresorts.com. He also noted that the Defendants use an identical name "RAS RESORTS" for their property at Kufri near Shimla. The Defendants have adopted a competing internet domain name, www.rasresortshimla.com. The Court noted that there was no reply to the cease and desist notice.

5. It appears that thereafter the Defendants filed Notice of Motion No.721 of 2012 seeking to set aside the previous order dated 22nd December 2011. The only ground that was apparently taken was that the Defendants were not concerned with the subject matter of the Suit. Mr. Justice Vazifadar held by his order dated 22nd March 2012 that if the Defendants were not concerned with the subject matter of the Suit, the ad-interim order could not possibly affect them at all. Ad-interim orders were refused to the Defendants; and their Notice of Motion was directed to be heard in the normal course.

6. Mr. Bagwe for the Plaintiffs points out that despite making several assertions in the Written Statement, the fact of the matter is that the Defendants are even today using the mark that is impugned

in this Suit and that they continue to do so even after and despite the ad-interim order of 22nd December 2011. *Prima facie* this appears to be so. There is nothing on record to indicate that the Defendants have ceased use of the impugned mark. Indeed the Written Statement itself indicates that the Defendants have defended their use of the impugned mark throughout.

7. Today none appears for the Defendants even though the appearance of the Defendants is correctly shown. The matter is listed at Sr. No.209 on the Weekly Board that was notified well in advance, one week ago, along with accompanying notice that for this week Intellectual Property Notices of Motion as listed on the weekly board would be taken up in serial order.

8. In these circumstances I see no reason to keep the Defendants' Notice of Motion No.721 of 2012 pending. For that matter I see no reason why Plaintiff should be driven to waiting for yet another date for a final order on the Notice of Motion. Since it *prima facie* appears that the Defendants are and have been in contempt of the ad-interim order of this Court, there is no reason why the defence should be countenanced at all.

9. The Defendants' Notice of Motion No.721 of 2012, also listed today, is dismissed for default. The ad-interim order dated 22nd December 2011 in terms of prayer clauses (a), (b) and (c) is confirmed as the final order on the Plaintiff's Notice of Motion No.3709 of 2011. Both Notices of Motion are disposed of in these terms. There will be no order as to costs.

10. It is clarified that the disposal of the Notices of Motion does not mean that the Plaintiffs are in any way restrained from adopting suitable proceedings in contempt, if so advised. All contentions in that behalf are kept open.

(G. S. PATEL, J.)

Note: This order is modified as per order dated 4th April 2016 passed on a praecipe for Speaking to the Minutes of original order. The corrections are shown in bold, italicize and underline.