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

+ **FAO(OS) (COMM) 25/2016**

**CELEBRITIES MANAGEMENT
PRIVATE LIMITED**

..... Appellant

Represented by: Mr.Sudhir Chandra,
Sr.Advocate instructed by Ms.
Swathi Sukumar, Ms.Sonakshi
Malhan, Ms.Anu Paarcha,
Advocates

versus

**TRAVELLERS EXCHANGE
CORPORATION & ORS**

..... Respondents

Represented by: Mr.Sidhant Goel, Advocate
with Ms.Shweta
Duggal, Ms.Pragya Mishra,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **03.05.2016**

CM No.16007-08/2016

Allowed subject to just exceptions.

CM No.16009/2016

For the reasons stated in the application 34 days delay in filing the appeal is condoned.

Application is allowed.

FAO(OS) (COMM) 25/2016

1. The grievance of the appellant is to the ex-parte ad-interim injunction granted by the learned Single Judge on January 25, 2016 being continued

and to the order dated April 04, 2016 when IA No.4315/2016, filed by the appellant under Order XXXIX Rule 4 of the Code of Civil Procedure praying that the ex-parte ad-interim injunction granted on January 25, 2016 be vacated resulted in notice being issued in the application returnable for July 15, 2016.

2. Case pleaded by the respondent (plaintiff in the suit) is that it coined the word 'Travelex' in the year 1976 and adopted the same for its business operations : currency exchange business. As per the respondent it has obtained registration of the trade mark 'Travelex' in several countries including India where nine registrations of the word mark have been obtained in singular as also in conjunction with other words. In India, first application for registration of the trade mark was filed on July 01, 2004.

3. Grievance is to the appellant adopting the trade mark 'Travelxp'. It is pleaded in the plaint that the respondent learnt that the appellant had applied for registration of the trade mark when the respondent checked the online portal of the Registrar of the Trade Marks somewhere in the month of July, 2015. It learnt that on July 17, 2014 the appellant had applied for registration of the word 'Travelxp' under Class-36 of the Trade Marks Act, 1999. Claiming that a cease and desist notice sent on July 10, 2015 was not respected, suit was filed seeking to restrain the appellant from carrying on business using the trade mark 'Travelxp' or any other mark deceptively similar to plaintiff's trade mark 'Travelex'.

4. Relying upon the pleadings and the documents filed, on January 25 2016 the learned Single Judge, while issuing summons in the suit returnable for March 10, 2016, granted an ex-parte ad-interim injunction in favour of the respondent; reasoning that the word 'Travelex' was a coined word and

that the defendant was claiming user since July 10, 2015.

5. IA No. 4315/2016 the appellant has pleaded that the respondent is guilty of concealment. It is pleaded that the same online portal of the Registrar of Trade Marks with reference where to it has been pleaded in the plaint that in July, 2015 the respondent learnt for the first time that the appellant had applied for registration of its trade mark claiming user since July 10, 2015 would evince that the portal shows that the appellant is the registered proprietor, having registration in India, of the trade marks as under:-

Sl.No.	Trademark	Class	Application date
1	Travelxp (word mark)	42	04.03.2009
2.	Travelxp (word mark)	39	09.03.2009
3.	Travelxp (word mark)	38	04.03.2009
4.	Travelxp (word mark)	41	04.03.2009
5.	Travelxp (word mark)	43	30.08.2010

6. In the application the appellant has pleaded rights of a registered proprietor of a trade mark under Section 28 of the Trade Marks Act, 1999. It has been pleaded that the businesses of the appellant are entirely different than that of the respondent. Learned senior counsel for the appellant submits that the respondent is in the business of currency exchange and the word 'Travelex' can easily be coined by picking up the word 'Travel' and the first two letters of exchange; meaning thereby though a coined word, 'Travelex' would be accorded a lower level of protection. It is urged that appellant's user of the offending trade mark would thus be bona fide and in

any case would relate back to the year 2009. At the forefront is the argument that the respondent is guilty of suppressing facts to its knowledge i.e. appellant being the registered proprietor of the word mark 'Travelxp' in Class-38, 39, 41, 42 and 43 of the Trade Marks Act, 1999 since the year 2009.

7. We have seen the file of the suit and note that after the appellant was served summons in the suit and the injunction granted in the first week of February, 2016 it took no steps to oppose the suit promptly. On March 10, 2016 counsel for the appellant sought time to file a written statement and this resulted in the learned Single Judge fixing the schedule by which pleadings have to be completed and admissions/denial of documents conducted. The suit was listed before the learned Joint Registrar on July 11, 2016 for admission/denial and September 05, 2016 before Court for arguments on the injunction application. Nearly a month thereafter, on April 04, 2016 IA No.4315/2016 was filed and notice therein was issued returnable for July 15, 2016.

8. We find that the written statement filed by the appellant has not been brought on record and is currently lying in the Registry with some objections. The documents filed by the appellant are also lying in objections.

9. Though, technically a right may have accrued to the appellant to challenge the order granting ex-parte ad-interim order because for 30 days having elapsed and the learned Single Judge not having decided application filed by the appellant to vacate the ex-parte injunction and continuing the injunction without recording reasons, but we refuse to entertain the appeal for the reason the appellant has not made any serious

attempt before the learned Single Judge to get the ex-parte ad-interim injunction order vacated and for which proof would be the fact that till date the appellant has not got placed in the suit file its written statement and the relied upon documents.

10. Under circumstances we dismiss the appeal but note that the arguments concerning the application filed by the appellant to vacate the ex-parte ad-interim injunction would not take more than 30 minutes to both parties to present their respective views and therefore observe that upon the appellant ensuring that the written statement filed by it is placed on record of the suit and so are the relied upon documents, on an application filed in the suit the learned Single Judge would bestow a few minutes, after preponing date of hearing of IA No.4315/2016 and decide the same preferably before the ensuing summer vacations.

11. No costs.

CM No.16010/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MAY 03, 2016
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