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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 242/2017 & IA No.4016/2017 (u/O XXXIX R-1&2 CPC)

IHHR HOSPITALITY PVT. LTD Plaintiff
Through: Mr. Vaibhav Vutts, Ms. Aamna Hasan, Mr. Shantanu Sood and Ms. Deepa T.M., Advs.

Versus

HOTEL ANANDA Defendant
Through: Mr. Manan Verma and Mr. Arjun Gadhoke, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.04.2017

1. The plaintiff has sued to restrain the defendant from infringing the trademark 'ANANDA' of the plaintiff in relation to hotels and spa.
2. The suit was entertained and vide *ex-parte* ad-interim order dated 30th March, 2017, while issuing summons of the suit and notice of the application for interim relief, the defendant was restrained from using the trademark 'ANANDA' or any other trademark deceptively similar thereto in relation to its hotel and hotel services.
3. Though the report of service of the defendant is awaited but the counsel for the defendant appears and states that he has filed written statement and reply.
4. The written statement and reply have not come on record.
5. The counsel for the defendant however presses for hearing on the application for interim relief contending that the *ex-parte* ad-interim order is

liable to be vacated owing to the judgment dated 9th May, 2012 of the Division Bench of this Court in ***IHHR Hospitality Pvt. Ltd. Vs. Bestech India Pvt. Ltd.*** AIR 2013 Del 32 having held that there can be no exclusivity to the word ‘ANANDA’.

6. Since the counsel for the defendant seeks vacation of stay only on the ground of the judgment of the Division Bench of this Court, the application for interim relief has on the insistence of the counsel for the defendant been heard today itself, without the written statement and reply on record.

7. The counsel for the defendant relies on paras 9 & 13 of the judgment of the Division Bench, where the Division Bench has observed (i) that the plaintiff having chosen to obtain registration of a word, as its trademark, which is not only *publici juris* but is a word which is closely associated by the large mass of people in India as indicative of, in relation to an abode: a place of peace where the mind, the body and the soul can relax and rejuvenate; and (ii) that the word ‘ANANDA’ is a word which is *publici juris*; in relation to abodes, it signifies joy, bliss and happiness and that the sales of the plaintiff cannot be indicative of a distinctiveness of the word being linked to the plaintiff.

8. The counsel for the plaintiff has in the Court handed over a copy of the subsequent order dated 6th August, 2012 of the Division Bench in the same appeal by which the judgment dated 9th May, 2012 was recalled and the appeal was treated as disposed of binding the plaintiff and the defendant/respondent in that case to the settlement arrived at between them.

9. The counsel for the plaintiff thus contends that the judgment aforesaid of the Division Bench does not come in the way of this Court

considering the matter afresh.

10. The counsel for the defendant has argued that even though on account of settlement arrived at between the plaintiff and the defendant/respondent in the case the Division Bench may have recalled the judgment but the ratio of the judgment, particularly as laid down in paras 9 & 13 thereof, would still hold.

11. The counsel for the plaintiff has contended that there is vast difference between the facts of the case before the Division Bench and the facts of the present case. It is argued (i) that while the plaintiff in the case before the Division Bench was seeking to restrain use of the name 'Bestech Park View Ananda' in relation to marketing of apartments in a Group Housing Gated Complex, the plaintiff herein is seeking to restrain use of the word 'ANANDA' by the defendant in relation to the same services as that for which the plaintiff has obtained registration; (ii) that while the mark under consideration before the Division Bench was a composite mark i.e. 'Bestech Park View Ananda', the competing marks in the present case are identical. It is further the contention of the counsel for the plaintiff, (a) that the plaintiff adopted the mark in relation to hotel and spa services and obtained registration thereof in the year 1998, when none else at least in the hotel services was using the said mark; (b) that the plaintiff since 1998 has been successfully protecting infringement of its trademark and passing off by others of their services as that of the plaintiff; (c) that the services being provided by both, the plaintiff and the defendant herein are the same i.e. of a luxury hotel.

12. A perusal of the registration of the word ‘ANANDA’ in favour of the plaintiff, as evident from the Certificate at page 53 of the plaintiff’s document, shows the same to be in Class 42 and pertaining to hotel resorts, hotels and spa.

13. The counsel for the plaintiff states that at the time of registration, Class 42 of the Fourth Schedule of the Trade Marks Rules, 2002 was the miscellaneous class as under:

“42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services, legal services, scientific and industrial research; computer programming; services that cannot be classified in other classes.”

but now it corresponds to Class 43 which is as under:-

“services for providing food and drink; temporary accommodation”.

14. I may notice that the services provided in the case of **Bestech India Pvt. Ltd.** supra fall in a distinct Class 37 providing for “building construction; repair; installation services”. This is yet another distinction between the case before the Division Bench and the present dispute. While in the case before the Division Bench, the services in relation to which injunction was sought were different, in the present case they are identical.

15. The counsel for the defendant has argued that the plaintiff is more identified as a spa, while the defendant in the brochure of its hotel does not even mention the facility of spa. It is further argued that there is a huge difference in the room tariff of plaintiff’s and defendants’ hotels.

16. I have perused the brochure of the defendant at page 510 of the documents and the brochure of the plaintiff at page 68 of the documents and

am of the view that the difference if any in the hotels of the plaintiff and the defendant is something which can be assessed only at the time of trial. As of today, the plaintiff has a registered trademark and the defendant, after so many years of use of the said trademark of the plaintiff (the counsel for the defendant, on enquiry states that the defendant commenced using the trademark 'ANANDA' last year only), has started using the same for the same kind of services. The classification under the Trade Marks Rules, 2002 does not make any distinction between a hotel and a spa hotel. Moreover, it is not as if all patrons of the hotel of the plaintiff have to mandatorily avail of spa services.

17. I am therefore of the view that no ground for vacation of the interim stay is made out.

18. IA No.4016/2017 is allowed and disposed of by making the *ex-parte* ad-interim order dated 30th March, 2017 absolute till the decision of the suit.

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19. The counsel for the defendant states that the matter be passed over to enable him to obtain instructions from the defendant, whether the defendant is willing to suffer a decree for permanent injunction, subject to the plaintiff not pressing for other reliefs.

20. The matter was passed over requesting the counsel for the plaintiff also to obtain instructions, as to whether the plaintiff is willing to make a statement giving up the other claims.

21. On passover, the counsel for the defendant states that the defendant is willing to suffer a decree for permanent injunction in terms of prayer paragraph 45(a)&(b) of the plaint.

22. The counsel for the plaintiff states that he has been unable to obtain instructions.

23. I am however of the opinion that there is no need to keep the suit pending for the counsel for the plaintiff to obtain instructions. The defendant, at the earliest having agreed to suffer a decree for permanent injunction and having used the infringing mark only for about one year, and otherwise in the facts and circumstances of the case, it is not found to be a fit case to be put to trial for computing the damages if any suffered by the plaintiff on account of such use of the mark by the defendant. Accordingly, the claim of the plaintiff for damages is declined.

24. A decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph 45 (a) & (b) of the plaint and further clarifying that in terms thereof, the defendant shall also remove the name 'ANANDA' from www.tripadvisor.in.

25. Leaving the parties to bear their own costs.

26. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 11, 2017

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