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

+ CS(COMM) 696/2018 & I.A.No.15708/2013

M/S AMBIENCE PVT LTD Plaintiff
Through: Mr. Sumit Gahlawat, Advocate.

versus

AMBIENCE REALTECH INDIA PVT LTD & ORS
..... Defendants
Through: None

% Date of Decision: 20th September, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, mandatory injunction, passing off, rendition of accounts of profit, damages and delivery up. The prayer clause is reproduced hereinbelow:-

a) A decree of permanent injunction restraining the Defendants, their servants, agents, and employees from using Plaintiff's corporate name/mark "AMBIENCE" or any other name or mark which contain Plaintiff's trade mark "AMBIENCE" or any word which is deceptively similar thereto in relation to their business (including corporate name) or in any manner whatsoever;

b) A decree of mandatory injunction directing the Defendants to remove Plaintiff's corporate name/mark "AMBIENCE" from the name of Defendant No.1 and apply to the Registrar of Companies for the necessary change/deletion in that respect;

- c) *An order for rendition of accounts of profits illegally earned by the Defendants and a decree in terms of the said amount after ascertainment of the amount;*
- d) *A decree for delivery up of all the infringing materials, including but not limited to hoardings, labels, banners, advertisements, promotional materials, brochures, stationeries, business papers, web pages, domain names etc., containing any reference to the Plaintiff's name "AMBIENCE" or any name/mark deceptively similar to it;*
- e) *An order directing the Defendants to withdraw any and all applications for registration of the mark "AMBIENCE" or any other mark which is deceptively similar thereto and to withdraw any and all applications, petitions, registrations, incorporating in any way, shape, or form Plaintiff's mark "AMBIENCE" or any mark deceptively similarly thereto;*
- f) *An order for Damages be passed against the Defendants and in favour of the Plaintiff;*
- g) *For costs of the proceedings to be assessed and granted in favour of the Plaintiff; and*
- h) *Any further orders in the interests of justice.*

2. Vide order dated 30th September, 2013, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

"The plaintiff has made out a prima facie case in its favour for grant of ex parte ad interim order of injunction. Accordingly, till the next date, the defendants are restrained in terms of prayer (a) made in the aforesaid application."

3. Since despite service, no written statement was filed, the right of the defendants to file a written statement was closed on 15th December, 2015 and vide order dated 08th August, 2016 they were proceeded *ex-parte*.
4. The relevant facts of the present case are that, the plaintiff company is a parent company of the 'Ambience Company' which is one of country's leading real estate group since 1986. It is further averred that the Ambience group is known for its integrated Townships, Residential and commercial complexes, Hospitality, Facility and management under its mark 'AMBIENCE'. It is further averred that the total turnover of the plaintiff under its mark 'AMBIENCE' is in excess of one thousand crore.
5. It is stated that the plaintiff is the registered proprietor of the mark 'AMBIENCE' under various classes of the Trade Marks Act, 1999.
6. Learned counsel for the plaintiff states that in January, 2013, the plaintiff found that defendants had registered the defendant no. 1 company under the name 'Ambience Realtech India Pvt. Ltd' with the Registrar of Companies from June 2008. He states the defendant no. 2 and 3 are the directors of the defendant no. 1. He states the defendant no. 1's name suggests that the defendants are also in the field of real estate. Learned counsel for the plaintiff states that the plaintiff issued a legal notice dated 02nd January, 2013, to the defendants. He states that the defendants have not replied to the same and continue to use the mark 'AMBIENCE'.
7. Learned counsel for the plaintiff states that the defendants use of the mark 'AMBIENCE REALTECH' is likely to cause confusion amongst the public that the defendants are connected or associated with the plaintiff.
8. The plaintiff filed its evidence by way of affidavit of Mr. Sumit Choudhary, DGM (Sales & Marketing) who proved the registration of the mark Ambience under various classes and the same is exhibited as Exhibit

PW-1/3 Colly. PW1 has also proved legal notice dated 02nd January, 2013 as Exhibit PW-1/5 Colly.

9. A coordinate Bench of this Court in ***Krizm Hotels Private Limited Versus Vaishnavi Estates (P) Ltd 190(2012) DLT 631***, has held that:

“9. xxx xxx xxx

The defendant’s mark “Lemon Tree Apartments” is identical to the registered trade mark of the plaintiff; the services of the plaintiff and the defendant are similar (the plaintiff is in hotel business whereas the defendant is in the business of construction); it is likely to cause confusion to the public that the defendant’s “Lemon Tree Apartments” have an association with the plaintiff and, therefore, the plaintiff is entitled to protection under Section 29(2) and (3) of the Trade Marks Act.”

10. Keeping in view the aforesaid as well as the plaintiff’s evidence by way of an affidavit, the present suit is decreed in accordance with prayers (a), (b) and (e) of the plaint along with the actual costs. However, no specific damages are granted to the plaintiff as no evidence has been led about the quantum and/or extent of damage suffered by the plaintiff. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

SEPTEMBER 20, 2018

mn/j