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

+ **CS(COMM) 208/2024 & I.A. 5482/2024, I.A. 5483/2024**

ITC LIMITED & ANR.

.....Plaintiffs

Through: Mr. Nalin Kohli, Sr. Adv. with Mr. Nalin Kohli, Mr. Anshul Malik and Mr. Ayuushman Aroraa, Mr. Debjyoti Sarkar, Mr. Vishal Nagpal, Mr. Amit Kumar Mishra, Ms. Mitakshara Goyal, Mr. Shivam Singh, Mr. Azeem Parvez, Advocates (M:9810228369)

versus

J AND K HERITAGE RESORTS PRIVATE LIMITED & ANR.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

12.09.2024

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1. The present suit has been filed for permanent injunction restraining the defendants from using the trademark/trade name 'FORTUNE INN



RIVIERA or FORTUNE or

or



or

or any other mark identical

or deceptively similar to the plaintiff no.1's registered trademark 'FORTUNE'.



2. As per the case canvassed by the plaintiffs in the plaint, the facts are as follows:

- I. Plaintiff No. 1 claims to be one of the India's foremost private sector companies having launched its hotel business in the year 1975. It is submitted that plaintiff no.1 licensed the trademark "FORTUNE" to plaintiff no. 2, who enters into business arrangements with different third parties, for various properties across the country.
 - II. Subsequently, the plaintiff no. 2 entered into a license agreement dated 30th October, 2006 with the defendants, which was modified vide a supplementary agreement of 22nd October, 2015 and renewed by way of agreement dated 24th November, 2017, for permission to use the trademark "FORTUNE" in respect of the hotel at Jammu.
 - III. However, due to continuous non-payment and other disputes between the parties, plaintiff no. 2 issued a termination letter dated 29th August, 2022.
 - IV. Despite being served the termination letter, defendants continued to use the plaintiffs' registered trademark "FORTUNE". Thus, a cease and desist notice was issued on 28th March, 2023, 26th October, 2023 and 03rd January, 2024. However, the defendants did not reply to any of the notices issued by the plaintiffs. Subsequently, an Email dated 15th December, 2023 was received by the plaintiffs, wherein, the defendants stated that they have removed all the signages and trademarks of "FORTUNE" from all the locations. However, the same was found to be untrue. Thus, the present suit came to be filed.
3. This Court notes that by way of order dated 07th March, 2024, an *ex-parte ad interim* injunction was passed in favour of the plaintiffs and against



the defendants, wherein, the defendants were restrained from using the impugned mark.

4. This Court also notes that despite service of summons to the defendants on 05th April, 2024, none has appeared on behalf of the defendants till date. Thus, vide order dated 07th August, 2024, learned Joint Registrar (Judicial) recorded that no written statement has been filed by any of the defendants, despite service. Thus, the right of the defendants to file written statement was closed.

5. It is further noted that the statutory period for filing of written statement by the defendants, has lapsed.

6. Accordingly, since no written statement has been filed on behalf of the defendants, this Court proceeds under Order VIII Rule 10 of the Code of Civil Procedure (“CPC”), 1908 to decree the suit in favour of the plaintiffs and against the defendants, as no defence has been raised on behalf of the defendants.

7. Learned Senior Counsel appearing for the plaintiffs submits that if the suit is decreed in favour of the plaintiffs, the plaintiffs shall give up their prayers *qua* costs and damages. However, he requests for refund of court fees.

8. He further submits that though the defendants have not appeared before this Court, however, they have approached the plaintiffs out of court and have already undertaken to remove all the signages from all the locations.

9. Learned Senior Counsel for the plaintiffs also submits that certain amount has already been paid by the defendants to the plaintiffs. Thus, he submits that he does not press for the prayer for any costs and damages.



10. Accordingly, the suit is decreed in favour of the plaintiffs and against the defendants in terms of Paragraph 61 (a) to (c) of the prayer clause in the plaint.

11. In view of the fact that the present suit is being decreed at a nascent stage, i.e., the first date when the suit was taken up for hearing, being only March, 2024, the Registry is directed to issue a certificate of refund of full Court fees in favour of the plaintiffs.

12. Decree sheet be drawn up.

13. Accordingly, the suit along with pending applications, stands disposed of.

MINI PUSHKARNA, J

SEPTEMBER 12, 2024

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