



2025:DHC:1277-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 24.02.2025***

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FAO(OS) (COMM) 32/2025**ADYAR GATE HOTELS LIMITED****.....Appellant**

Through: Mr.Rajiv Nayar, Mr.Amit Sibal,
Sr. Advs. with Mr.Prateek K.
Chadha, Mr.Adarsh
Ramanujan, Mr.Prahalad Bhat,
Ms.Manjira Dasgupta,
Mr.Sreekar Aechuri, Ms.Surbhi
Soni and Mr.Aniket Chauhan,
Advs.

versus

ITC LIMITED & ANR.**.....Respondents**

Through: Mr.Mukul Rohatgi,
Mr.Arvind Nigam, Sr. Advs.
with Mr.Arvind Nayar,
Mr.Hemant Singh, Ms.Mamta
Jha, Ms.Shrutima Ehersa,
Ms.Aiswarya Debadarshini,
Mr.Nikhil Rohatgi, Mr.Keshav,
Mr.Akshay Joshi, Mr.Agnish
Aditya, Advs.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 11243/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

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2. We have heard the learned senior counsel for the respondents,
who appears on advance notice of this appeal.



3. The caveat, accordingly, stands discharged.

**FAO(OS) (COMM) 32/2025 & CM APPL. 11241/2025, CM
APPL. 11242/2025**

4. This appeal has been filed by the appellant, challenging the Order dated 13.02.2025 passed by the learned Single Judge of this Court on I.A. 3768/2025 in CS(COMM) 119 /2025 titled ***ITC Limited & Anr. v. Adyar Gate Hotels Limited***, whereby the learned Single Judge has passed the following *ad-interim ex-parte* order of injunction in favour of the respondent and against the appellant:

“37. Consequently, till the next date of hearing, defendant, by itself or through directors/partners/proprietors as the case may be, group companies, associates, divisions, firms, assignees in business, licensees, franchisees, dealers, distributors, their principal officers, servants, distributors and agents, and all others acting for and on behalf of the defendant are restrained from using or directly or indirectly dealing in restaurant and food business under the trade mark DAKSHIN/



and/or any other trademark that may be identical and/or deceptively similar to the registered trademarks of the plaintiff no.1.

38. Further, the defendant is directed to take down all listings/posts/articles bearing the infringing trademark from its social media handles/websites as well as third-party websites such as <https://www.zomato.com/>, <https://www.eazydiner.com/> and <https://www.tripadvisor.in/> and/or any other websites/webpages/social media platforms /blogs/online locations.”

5. Mr.Rajiv Nayar, the learned senior counsel for the appellant,



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submits that the appellant and the respondents had entered into an Agreement dated 12.02.1985, whereby the appellant acted as the owner of the property and the respondent no.1 was to operate a hotel under the name of “Welcomgroup Park Sheraton”. The appellant claims that on 01.04.1989, it was the appellant who conceived and planned the creation of a restaurant at the said property by the name of “Dakshin”, which was intended to be a fine dining establishment serving South Indian cuisines.

6. The 1985 Agreement between the parties was thereafter amended and extended, and it finally lapsed in 2015.

7. After the respondents’ exiting from the said property, the appellant entered into another agreement with the Inter Continental Group, who took over the running of the hotel. In the meantime, the restaurant under the name “Dakshin” continued, while the hotel was re-named as ‘Crowne Plaza Chennai Adyar Park’.

8. In November 2023, the owner of the property decided to shut down the operations of the said hotel and demolish the existing construction.

9. In April 2024, the construction activity started at the said property, because of which the restaurant had to be temporarily shut down and later shifted from the said property to another property which is on the same street, since October 2024.

10. He submits that the appellant, in fact, intends to go back to the original premises once it is fully constructed and operational.

11. The appellant contends that without any prior ‘Cease and Desist’ Notice, the respondents filed the above Suit before the learned



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Single Judge and the learned Single Judge has passed the *ex-parte ad-interim* order, thereby bringing the business of the appellant to a standstill.

12. He submits that even the advance copy of the Suit was sent by the respondents to the appellant by way of an email alone and at the Email ID of the appellant given in the Company Master Data. However, as the email went into the 'spam box', the appellant did not become aware of the filing of the Suit and could not appear before the learned Single Judge. He submits that the respondents intentionally did not make any efforts to personally serve the Suit on the appellant or at least inform it of the listing of the Suit, though it has all contact information of the appellant because of their past association with the appellant.

13. The learned senior counsel for the appellant further contends that the Delhi Courts, in fact, have no territorial jurisdiction to entertain the present Suit; the marks being not registered at Delhi, the registered office of the respondents also not being at Delhi, and no part of the cause of action having arisen in Delhi.

14. Issue notice.

15. Notice is accepted by Ms.Mamta Jha, the learned counsel on behalf of the respondents.

16. Mr.Mukul Rohatgi, the learned senior counsel appearing for the respondents, on the other hand, submits that the mark "Dakshin" belongs to the respondents. The same was allowed to be used by the appellant, first in view of the management of the hotel by the respondents, and after the respondents exited from the property, as a



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Licensee. He submits that the appellant being a mere Licensee of the said mark, cannot use the same from other properties.

17. He submits that the mark stands registered in the name of the respondents and is being widely used Pan India by the respondents including in properties in Delhi, Hyderabad, Bangalore, etc. He submits that the mark of the respondents stands registered from the year 2000 with the user date of 1989, therefore, the appellant cannot challenge the ownership of the mark vesting with the respondents. He submits that, in fact, the appellant obtained registration of the said mark by claiming itself to be an associate company of the respondent no.1 and, therefore, cannot claim any benefit of such registration as well.

18. He submits that the appellant is also expanding its business by using the said mark, thereby, not only causing dilution of the mark of the respondents but also causing damage to the reputation and goodwill of the respondents.

19. The learned senior counsel for the respondents submits that the remedy of the appellant against the impugned order, if any, would have been to move an appropriate application before the learned Single Judge seeking vacation of the *interim* order, if so advised; the appellant could not have filed the present appeal without filing its reply or written statement before the learned Single Judge and without contesting the pleadings of the respondents before the learned Single Judge.

20. Placing reliance on the Judgements of the Supreme Court in ***Midas Hygiene Industries (P) Ltd. & Anr. v. Sudhir Bhatia & Ors.***,



(2004) 3 SCC 90, and of this Court in ***BCH Electric Limited v. Eaton Corporation & Anr.***, 2016 SCC OnLine Del 3639, he submits that mere delay in filing of the Suit cannot be fatal to the relief of an *ex-parte ad interim* injunction.

21. On advance service of the Suit, he submits that the same was duly served on the appellant at the email address given by the appellant in its ROC record. He submits that it is not the case of the appellant that the email address was not correct or not in use. He submits that the appellant, having intentionally not appeared before the learned Single Judge, cannot now complain against the order being passed *ex parte*.

22. We have considered the submissions made by the learned counsels for the parties.

23. At the outset, we recognise the limited jurisdiction that we exercise while sitting in an appeal over an Order passed by the learned Single Judge of this Court in exercise of its discretionary powers. This Court, would normally not interfere with an Order passed by the learned Single Judge only because it would have exercised the discretion differently. However, having said the above, there are certain peculiar facts in the present case, which are:

- a) Admittedly, the appellant has used the said mark since 2015 not only by itself, but also being a part of a competitor of the respondents, that is, Inter Continental Hotel Chain.
- b) The respondents, at least at present, do not contend that this was an unauthorised use for which they had taken any legal action against the appellant.



- c) The appellant is also a registered proprietor of the mark and the registration has not been challenged by the respondents.
- d) The learned senior counsel for the appellant has submitted that the appellant for the present will use the mark only at the premises where the restaurant is presently running, and will not expand its business including to another premises or to that of catering, which has been complained of by the respondents.

24. While the learned Single Judge is vested with a power of granting an order of *ad-interim* injunction *ex parte* against the defendant, the discretion to pass the same has to be exercised keeping the parameters of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (in short, ‘CPC’) in view. Order XXXIX Rule 3 of the CPC provides that the Court shall ordinarily direct notice of the application seeking *ad-interim* injunction to the opposite party before granting an injunction, except where it appears that the object of granting the injunction would be defeated by the delay. The Court is to record its reason for its said opinion.

25. In the present case, the learned Single Judge records the reason for granting of an *ex parte* order of injunction against the appellant as under:

“35. On account of prior adoption since 1989, extensive use, promotion and substantial sales under the distinctive trademark DAKSHIN/



, at a prima facie stage, the plaintiffs have been able to prove that they have acquired tremendous goodwill and reputation in their restaurants under the name DAKSHIN. Thus, opening of a restaurant



bearing an identical trademark and trade name would result in causing damage to the goodwill and reputation of the plaintiffs. A prima-facie case of passing off is made out on behalf of the plaintiffs.

36. Balance of convenience is in favour of the plaintiffs and against the defendant. Irreparable injury would be caused to the plaintiffs if the defendant continues to operate restaurants using the impugned mark. Prejudice would also be caused to the public as an impression will be made that the restaurant being run by the defendant bearing the impugned mark is associated to the plaintiffs as the mark of the defendant is identical to that of the plaintiffs and is likely to cause confusion in the market.”

26. While, the above reason would hold true for grant of an *interim* injunction against the appellant, if so made out on hearing the appellant as well, they do not satisfy the test for grant of an *ex parte* order of injunction without giving a notice of the application to the appellant. The learned Single Judge has failed to appreciate that the appellant had been using the Impugned Mark independently and, in fact, with a competitor of the respondents since the year 2015. It had also shifted its premises to the present location sometime in October, 2024. It was not the case of the respondents that the appellant was a recent user of the mark and if an *ex parte* order of injunction is not granted, the same would stand defeated at a later stage by passage of time. In our opinion, therefore, the learned Single Judge has not kept the important consideration in mind before passing the Impugned Order.

27. In view of the above, we set aside the *ex-parte ad-interim* Order dated 13.02.2025 passed by the learned Single Judge. We direct that



the appellant shall file its response to the *interim* application filed by the respondents within a period of one week from today.

28. The above time is being granted upon taking the consent of the learned senior counsel for the appellant and the appellant will not be entitled to seek further extension of time for filing of the reply.

29. If so advised, the respondents may file a rejoinder thereto, within a week thereafter.

30. The *interim* application, that is, I.A. 3768/2025 shall be listed before the learned Single Judge for consideration on 18th March, 2025, when the learned Single Judge should make an endeavour to hear the application on merits.

31. We make it clear that we have only considered the present appeal on the aspect as to whether a case for an *ex-parte ad interim* injunction was made out by the respondents without expressing any opinion on the merit.

32. While adjudicating on the *interim* application seeking injunction filed by the respondents, the learned Single Judge shall consider it on its own merit without being influenced by any observation made by us in the present Order.

33. The appeal, along with pending applications, stands disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 24, 2025/sg/Vs

[Click here to check corrigendum, if any](#)