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

+ CS(COMM) 361/2024, CCP(O) 83/2024, I.A. 9900/2024, I.A. 9903/2024, I.A. 38894/2024, I.A. 44329/2024, I.A. 12976/2025 & I.A. 18537/2025

THE INDIAN HOTELS COMPANY LIMITEDPlaintiff

Through: Mr. Pravin Anand, Mr. Achuthyan Sreekumar, Mr. Rohil Bansal and Mr. Swastik Bisarya, Advs.

versus

SHIVGYAN DEVELOPERS PRIVATE LIMITEDDefendant

Through: Mr. Rishub Kapoor, Adv.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER
01.08.2025

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I.A. 18537/2025 (Joint settlement application under order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908, on behalf of the Plaintiff and Defendant)

1. The present application has been filed jointly by the parties under Order XXIII Rule 3 Code of Civil Procedure, 1908 ('CPC'), seeking disposal of the suit in terms of the Settlement arrived at between the parties.
2. It is stated that the Plaintiff had filed the underlying suit against the Defendant seeking an order of permanent injunction restraining infringement, passing off, dilution and tarnishment of the registered and well-known trademark 'VIVANTA'.
3. It is stated that to avoid further litigation and in the interest of an



amicable resolution of the disputes between the parties, the parties have decided to mutually resolve the present dispute.

4. Learned counsel for the parties' state that the terms of the settlement are more specifically recorded in paragraph '3' of the captioned application which reads as under:

"3. With a view to avoid further litigation and in the interest of an amicable resolution of the present dispute, the parties hereto have decided to mutually resolve the present dispute as per the settlement terms set out hereinafter:

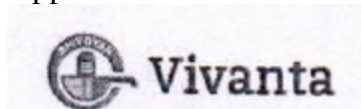
- (i) The Defendant acknowledges the Plaintiff to be the sole proprietor of the registered and well-known trademark VIVANTA ;
- (ii) The Defendant undertakes to never use the Plaintiff's registered and well-known trademark VIVANTA or any other mark which may be deceptively similar thereto, in any form or manner; and
- (iii) That going forward, the Defendant undertakes to use the mark **VIVIAN** in place of VIVANTA and no other mark which may be deceptively similar to the Plaintiff's registered and well-known trademark VIVANTA; and
- (iv) That the Defendant undertakes to withdraw their below mentioned trademark applications and shall share all communications/correspondences between them and the Trademarks Registry in this regard with the Plaintiff's counsels within 7 days from signing the present application –

(a) Application number 6369461 dated 02.04.2024 for the mark



in class 36;

(b) Application number 6369462 dated 02.04.2024 for the mark



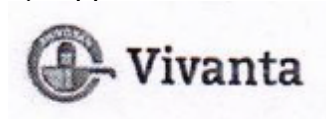
in class 36;

(c) Application number 6369463 dated 02.04.2024 for the mark



in class 37;

d) Application number 6369464 dated 02.04.2024 for the mark



in class 37;

- (v) The Defendant undertakes that except for the above mentioned 4 trademark applications i.e. 6369461, 6369462, 6369463 and 6369464, the Defendant has not applied for or obtained any trademark registration(s) or copyright registration(s) or for that matter any kind of registration(s) for the mark VIVANTA or any other mark which may be deceptively similar thereto before any statutory or non-statutory body.
- (vi) The Defendant undertakes that they will remove all references to the Plaintiff's registered well-known trademark VIVANTA from all online and offline platforms and shall even take necessary steps before the Real Estate Regulatory Authority (RERA) to drop the use of the Plaintiff's registered and well-known trademark VIVANTA in all forms and manner. Moreover, the Defendant undertakes to drop use of the said mark VIVANTA in all forms and manner by taking appropriate steps before all statutory and non-statutory bodies. The Defendant undertaken to share with the Plaintiff's counsel all communications/correspondences they make with RERA or any statutory or non-statutory body in this regards.
- (vii) The Defendant undertakes to strictly abide by the settlement terms contained in the instant application and also agrees to suffer a decree of permanent injunction in terms thereof and in terms of prayer paragraph no. 54 (i), (ii), (iii) and (iv) of the Plaintiff.
- (viii) Subject to the Defendant's strict adherence to all the settlement terms contained in the instant application, the Plaintiff agrees to not press for the reliefs of delivery up, rendition of accounts, damages and costs as prayed for in prayer paragraph no. 54 (v), (vi), (vii) and (viii) of the plaintiff."

5. Learned counsel for the Defendant states that as per paragraph 3(iv)



of the captioned application, the Defendant has undertaken to withdraw its four (4) applications pending before the trademark registry within seven (7) days.

5.1. He states that the Defendant undertakes to comply with the said undertaking within the time sought. He also states that the Defendant has agreed to change its trademark to 'VIVIAN' as set out in paragraph 3(iii).

6. Learned counsel for the parties' states that the suit may be decreed in terms of this application.

7. The captioned application records that the suit be decreed in terms of paragraph no. 54 (i), (ii), (iii) and (iv) of the plaint.

8. The Supreme Court in **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**¹, while dealing with Section 89 of the CPC has observed that while dealing with the settlement the Court should apply the Order XXIII Rule 3 CPC and make a decree in terms of the settlement in regard to the subject matter of the suit, to make such settlement effective.

9. This Court is satisfied that the compromise between the parties as contained in the captioned application satisfies the requirement of Order XXIII Rule 3 CPC and therefore, this Court does not find any impediment in disposing of the underlying suit in terms of the aforesaid settlement.

10. The statements and undertakings given by the learned counsel for the parties are accepted by this Court and the parties are held bound by the same.

11. Consequently, the captioned suit is hereby decreed in terms of the paragraph 54 (i), (ii), (iii) and (iv) of the plaint as well as the conditions



agreed between the parties in this application.

12. The Registry of this Court is directed to draw a decree in terms of this order. The settlement terms set out in the captioned application shall also form part of the decree.

13. Learned counsel for the Plaintiff prays that since the suit is still at pre-trial stage, the court fee may be refunded.

14. Keeping in view the aforesaid facts, the registry is directed to refund 100% Court Fee in favour of plaintiff within six (6) weeks, in accordance with law. The said direction has been passed having regard to Section 16 and 16A of the Court Fees Act, 1870, and the judgment of the Supreme Court in **High Court of Judicature at Madras v. M.C. Subramaniam & Ors**².

15. Pending applications are disposed of.

16. In view of the above, the application is allowed.

17. Interim orders, if any, stand merged into the final decree.

18. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

AUGUST 1, 2025/msh

¹ (2010) 8 SCC 24.

² (2021) 3 SCC 560.