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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 228/2024**

EIH LIMITED & ANR. Plaintiffs
Through: **Mr. Aditya Gupta & Ms. Aishwarya Kane, Advs.**

versus

M/S KRISHNA AND CO. Defendant
Through: **None**

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **15.03.2024**
I.A. No.6077/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 (“CPC”) as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. No.6078/2024 (exemption from filing certified, typed copies)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.
3. Accordingly, the present application is disposed of.



I.A. No.6079/2024 (exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.***, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.
2. Accordingly, the application stands disposed of.

CS(COMM) 228/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of plaintiffs' documents, without which the written statement shall not be taken on record. Liberty is given to plaintiffs to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, affidavit(s) of admission/denial of documents filed by the defendant, be filed by plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
3. List before the Joint Registrar for marking of exhibits on 20th May, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 6076/2024 (under Order XXXIX Rule 1 & 2 CPC)



1. This application has been filed by plaintiffs as part of the suit seeking a decree for permanent injunction restraining the defendant and all those acting for or on their behalf from using the mark/ name AMARVILAS or AMAR VILAS or any deceptively similar marks as part of their goods or services as well as websites and domain names, which are impugning the registered trademark AMARVILAS or AMAR VILAS and device mark



2. Plaintiff No.1 is an Indian Company and operates the luxury hotel property, '*The Oberoi Amarvilas, Agra*', which is owned by plaintiff No.2. Plaintiff No.1 is a registered proprietor of trademark 'VILAS' and several 'VILAS' formative marks, under which plaintiff No.1 operates award-winning luxury hotels and luxury experiences. Plaintiff No.1 also operates various leading hotel properties under the marks *inter alia* the 'OBEROI' including its flagship hotel, '*The Oberoi New Delhi*'. The said marks have been tabulated by plaintiffs as under:

S. No.	Mark	Services	Registration No.	Application Date	Status
1.	VILAS	Class 42: Hotel and restaurant services	1278707	15/04/2004	Valid and subsisting up to 15/04/2024



S. No.	Mark	Services	Registration No.	Application Date	Status
2.	 VANYAVILAS BANTHANBHIL AN OVERSEAS RESORT	Class 42: Hotel and restaurant services	1278712	15/04/2004	Valid and subsisting up to 15/04/2024
3.	RAJVILAS JAIPUR – AN OBEROI HOTEL	Class 43: Cafeterias, snack bars, restaurants, boarding, catering, tourist homes, hotel management and reservations	1248099	06/11/2003	Valid and subsisting up to 06/11/2033
4.	JAI VILAS	Class 42: Hotel and restaurant services	1278708	15/04/2004	Valid and subsisting up to 15/04/2024
5.	 AMARVILAS AGRA AN OVERSEAS RESORT	Class 16: paper, cardboard and goods made from these materials not included in other classes; printed matter; newspaper, periodicals, catalogue, photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint	925979	19/05/2000	Renewed up to 19/05/2010 Request for renewal filed; no O3 notice received



S. No.	Mark	Services	Registration No.	Application Date	Status
		brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included on other classes); printers type all being goods falling in class 16.			
6.		Class 21: small domestic utensils and containers (not of precious metal or coated there with) combs and sponges; brushes (other than paint brushes); brush making materials; instruments and material for cleaning purposes;	925980	19/05/2000	Renewed up to 19/05/2010 Request for renewal filed; no O3 notice received



S. No.	Mark	Services	Registration No.	Application Date	Status
		steelwool; glass ware, porcelain and earthenware, not included in other classes all being goods falling in class 21			
7.	 AMARVILAS AGRA AN ORESOI RESORT	Class 32: beers; mineral and aerated waters and other non-alcoholic drinks; fruitdrinks and fruit juices; syrups and other preparations for makingbeverage s all being goods falling in class 32	925985	19/05/2000	Renewed up to 19/05/2010 Request for renewal filed; no O3 notice received
8.	 AMARVILAS AGRA AN ORESOI RESORT	Class 31: agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds, natural plants and flowers;	925984	19/05/2000	Renewed up to 19/05/2010 Request for renewal filed; no O3 notice received



S. No.	Mark	Services	Registration No.	Application Date	Status
		foodstuffs and animals, malt all being goods falling in class 31			
9.	 AMARVILAS AGRA AN URBAN RESORT	Class 33: wines, whisky, vodka, gin, spirits and liqueurs all being goods falling in class 33.	925986	19/05/2000	Renewed up to 19/05/2010 Request for renewal filed; no O3 notice received
10.	 AMARVILAS AGRA AN URBAN RESORT	Class 29: meat, fish poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and milk products; edible oils and fats; salad dressing; preserves; pickles all being goods falling in class 29.	925982	19/05/2000	Removed due to non-renewal Request for restoration filed; no O3 notice received

3. Grievance is against the defendant which operates a hotel 'Hotel Amar Vilas' in Indore, Madhya Pradesh and is accessible through websites 'hotelamarvilas.chobs.in' and 'hotelamarvilas.com'. Counsel for plaintiff submits that the dominant part of defendant's hotel name 'Amar Vilas' is identical to plaintiffs' mark AMARVILAS and is used in respect of identical services, i.e., hotels and restaurants. Moreover, the use of the mark 'Amar Vilas' as part of the defendant's website names, serves to cause confusion



amongst consumers, particularly international consumers and dilutes the trade mark of the plaintiffs.

4. Defendant also advertises the ‘Amar Vilas’ mark to consumers through various social media platforms *inter alia* ‘www.facebook.com/amarvilas’ and ‘www.instagram.com/hotelamarvilasindore’.

5. The AMARVILAS property at Agra was launched by the OBEROI Group in the year 2000 and has since won a number of awards and accolades. The sales turnover of the AMARVILAS Hotel run by plaintiffs, is claimed to be as under:

Year	Sales turnover of the Plaintiffs’ Amarvilas hotel (all figures in Rupees Million)
2022-23	1,083.50
2021-22	471.55
2020-21	188.46
2019-20	1,005.42
2018-19	1,071.29
2017-18	1,037.02
2016-17	1,015.00
2015-16	966.37
2014-15	902.59
2013-14	855.24



Year	Sales turnover of the Plaintiffs' Amarvilas hotel (all figures in Rupees Million)
2012-13	806.87
2011-12	712.04
2010-11	637.63
2009-10	586.85

6. The promotional expenditure for the AMARVILAS Hotel, as claimed by plaintiffs, is tabulated as under:



Year	Promotional expenditure of Plaintiffs (all figures in Rupees Million)
2022-23	38.07
2021-22	16.06
2020-21	9.56
2019-20	41.89
2018-19	42.89
2017-18	38.71
2016-17	57.37
2015-16	53.17
2014-15	38.37
2013-14	41.35
2012-13	41.26
2011-12	43.08
2010-11	39.17
2009-10	35.16

7. In addition, defendant's hotel is listed on various third-party online platforms including 'Agoda', 'Expedia', 'GoIbibo', 'MakeMyTrip' and 'TripAdvisor', which provide listings for various hotels and bookings. The listings which plaintiff is aggrieved with are tabulated as under:



S. No.	Infringing Platform	URL for Infringing Listing
1.	Agoda	https://www.agoda.com/hotel-amar-vilas-indore/hotel/indore-in.html?cid=1844104
2.	Expedia	https://www.expedia.co.in/Indore-Hotels-Hotel-Amarvilas.h23100488.Hotel-Information
3.	GoIbibo and MakeMyTrip	https://www.goibibo.com/hotels/amar-vilas-hotel-in-indore-8201154845370656093/ and https://www.makemytrip.com/hotels/hotel_amar_vilas-details-indore.html
4.	TripAdvisor	https://www.tripadvisor.in/Hotel_Review-g494941-d736576-Reviews-Hotel_Amar_Vilas-Indore_Indore_District_Madhya_Pradesh.html

8. It is stated that a cease-and-desist notice was sent by plaintiffs to defendant on 14th December, 2022 and was served through courier and speed post, followed up by a reminder notice dated 6th April, 2023. However, defendant did not respond. Plaintiff also sought mitigation of their infringement by writing to the above-mentioned websites/platforms to remove the listings of defendant, however, they did not receive a positive response regarding the same.

9. In respect of the Court's concern that plaintiff's property at Amar Vilas, Agra and defendant's property at Indore, Madhya Pradesh, cater to very different category of consumers, in that the hotel tariff would be vastly different, counsel for plaintiffs has pointed out to a decision of Single Judge of this Court in **Amam Resorts v. Mr. Deepak Narula & Anr.**, (2010) SCC OnLine Del 4024, wherein the Court has observed as under:



"19. Here, the defendant does not dispute that it uses the AMAN mark, in respect of a hotel, established by it; it also has similar services, with the said mark. While the defendant's use may be bona fide, there is no gainsaying that once it decided to enter the hospitality business, after the plaintiff had used the mark in India, and secured registration, it amounted to infringement. In such cases, the only defence available is prior user of the mark. Now, while the defendant had been using the mark previously in respect of ticketing and travel related services, that use, prima facie did not entitle it to use a mark identical or similar to an existing registered mark, i.e the plaintiff's AMAN marks. Contrary to the argument of different markets for the two hotels, the decision in Dongre has noted that where a rival or junior mark prices his goods or services at significantly cheaper rates than the plaintiff, there is likelihood of reputation loss. There is perhaps a ring of truth in the defendant's argument here, when it says that its room rates are a fraction of what the plaintiff charges. Yet, the Court cannot be unmindful of the fact that in an Internet driven era, the consumer may be led to the defendant's site. There can be cases of confusion. While that may not happen, with some discerning customers, the possibility cannot be ruled out."

(emphasis added)

10. In these facts and circumstances, in the opinion of this Court, plaintiffs have made out a *prima facie* case in their favour for grant of an *ex parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of the plaintiffs, and the plaintiffs are likely to suffer irreparable harm in case the *ad interim* injunction, as prayed for, is not granted.

11. Accordingly, *ex parte ad interim* injunction is passed against the defendant in the following terms:



- a. Defendant, their proprietors, partners, affiliates, representatives and all those acting for or on their behalf are restrained from using the mark/ name AMARVILAS or AMAR VILAS or any deceptively similar marks in relation to goods or services including signages, stationery, websites, domain names amounting to infringement of plaintiffs' registered trademark.
- b. Defendant, their proprietors, partners, affiliates, representatives and all those acting for or on their behalf are restrained from using the mark/ name AMARVILAS or AMAR VILAS as part of their websites and domain names including *hotelamarvilas.chobs.in* and *hotelamarvilas.com*.
- c. Defendant, their proprietors, partners, affiliates, representatives and all those acting for or on their behalf are directed to communicate to all platforms which have defendant's hotel listings including Agoda', 'Expedia', 'GoIbibo', 'MakeMyTrip' and 'TripAdvisor' to remove the said listings which use the name 'Amar Vilas' for defendant's property.

12. Considering that defendant is already running its hotel for some time and in order to ensure that there is no inconvenience to those who have already booked the hotel and further, for giving an opportunity to defendant to ensure adoption of a new brand / mark, as well as get the listings removed, it is directed that the present injunction shall come into effect only from 1st May, 2024.



13. On steps being taken by plaintiffs, issue notice to defendant through all permissible modes including speed post, courier, and email. Affidavit of service along with proof thereof be placed on record before the next date of hearing.
14. Reply, if any, be filed within three weeks with advance copy to the counsel for plaintiffs, who may file rejoinder thereto, if so desired, before the next date of hearing.
15. Compliance with Order XXXIX Rule 3, CPC be effected within one week from today.
16. List on 24th July, 2024.
17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 15, 2024/sm/na