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

+ **CS(COMM) 865/2016**

**MILLENNIUM & COPTHRONE
INTERNATIONAL LIMITED**

..... Plaintiff

Through: Mr. J.V. Abhay, Adv.

Versus

VALLIYIL KUNHIMON MOHAMED & ANR Defendants

Through: Mr. Arunav Patnaik, Mr. Shikhar
Saha and Mr. Karun Phawa, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.01.2018

IA No.13120/2016 (of defendants u/O VII R-11 CPC)

1. The applicants/defendants, in this suit for permanent injunction restraining infringement of trade mark and passing off, seek rejection of the plaint on the ground of the plaint as per averments contained therein not disclosing this Court to be having territorial jurisdiction to entertain the suit.
2. Para 56 of the plaint qua territorial jurisdiction is as under:

“56. It is submitted that this Hon’ble Court has the jurisdiction to entertain and try the present Suit inasmuch as Defendants offer, advertise and sell their services all over India including in Delhi through their interactive website www.millenniumcontinental.com. The said website is inter alia accessible in Delhi and through which online bookings or reservations for rooms can also be made instantly from Delhi. Such reservations from Delhi can also be made from other websites such as www.makemytrip.com and www.tripadvisor.com. Illustrative extracts from the impugned

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website www.millenniumcontinental.com and other third party websites evincing such reservations from Delhi have been filed as documents with the *Plaint*. Defendants are thus carrying on business and offering their services for sale in Delhi. The impugned activities of Defendants of providing services under the mark **MILLENNIUM** and the impugned logo are carried on within the territorial jurisdiction of this Hon'ble Court. Therefore, the case of action has arisen within the territorial jurisdiction of this Hon'ble Court. Additionally, Plaintiff's

MILLENNIUM and  logo trade marks, which are the subject matter of the Suit, are also registered and have their situs in Delhi. Plaintiff's services are also widely availed of by customers in Delhi and transactions made through its website www.millenniumhotels.com and other third party travel and hotel booking websites. It is thus submitted that this Hon'ble Court has the jurisdiction to entertain and try the present Suit."

3. The counsel for the applicants/defendants has referred to para 58 of the dicta of the Division Bench of this Court in **Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy** 2009 SCC OnLine Del 3780 and to the order dated 11th April, 2017 of a Co-ordinate Bench in CS(OS) No.2213/2014 titled **Federal Express Corporation Vs. Fedex Securities Ltd.**, particularly to para 27 thereof.

4. On enquiry, whether an appeal has been preferred against **Federal Express Corporation** supra, the counsel for the plaintiff states that he was the counsel for the plaintiff in **Federal Express Corporation** also and though an appeal has been preferred against the order dated 11th April, 2017 but not on the aspect of territorial jurisdiction. He has also contended that the facts of **Federal Express Corporation** were different.



5. The Division Bench in ***Banyan Tree Holding (P) Limited*** supra in para 58 held as under:

“58. We summarise our findings on the questions referred for our opinion as under:

Question (i): *For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the Defendants lends jurisdiction to such Court where such suit is filed ("the forum court")?*

Answer: *For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the Plaintiff would have to show that the Defendant "purposefully availed" itself of the jurisdiction of the forum court. For this it would have to be prima facie shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the **specific targeting** of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state.*

Question (ii): *In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the Plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?*

Answer: *For the purposes of Section 20 (c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant the Plaintiff will have to show prima facie that the said website, whether euphemistically termed as "passive plus" or "interactive", was specifically targeted at viewers in the forum*



state for commercial transactions. The Plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state resulting in an injury or harm to the Plaintiff within the forum state.

Question (iii): *Is it permissible for the Plaintiff to establish such prima facie case through "trap orders" or "trap transactions"?*

Answer: *The commercial transaction entered into by the Defendant with an internet user located within the jurisdiction of the forum court cannot possibly be a solitary trap transaction since that would not be an instance of "purposeful" avilment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the Plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown as having been obtained using fair means. The Plaintiff seeking to establish jurisdiction on the basis of such trap transactions would have to aver unambiguously in the plaint, and also place along with it supporting material, to prima facie show that the trap transactions relied upon satisfy the above test."*

6. The counsel for the defendants/applicants had contended that the plaintiff has not given any instance of the commercial transactions from Delhi.

7. In my view, para 56 of the plaint satisfies the requirements laid down in ***Banyan Tree Holding (P) Limited*** supra.

8. The counsel for the applicants/defendants also, on enquiry, admits that the applicants/defendants take booking for their hotel in Ernakulum from wheresoever it may be made in the world including from Delhi. Once, it is so, it cannot be said that the requirements of Section 20 of the Code of



Civil Procedure, 1908 are not satisfied, particularly when the plaintiff has not pleaded any place of business in India.

9. The counsel for the applicants/defendants has also pleaded that this forum is not convenient.

10. The applicants/defendants who are selling room nights of their hotel at Delhi and collecting payments from prospective customers in Delhi cannot plead this Court to be not a convenient Court.

11. There is thus no merit in the said plea either.

12. No ground for rejection of the plaint is made out.

13. Dismissed.

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14. List on 4th April, 2018 for framing of issues, if any and for consideration of the application for interim relief.

RAJIV SAHAI ENDLAW, J.

JANUARY 03, 2018

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