



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.10659 OF 2024
IN
INTERIM APPLICATION NO.793 OF 2022
IN
COMMERCIAL INTELLECTUAL PROPERTY RIGHTS SUIT NO.188 OF
2023

Lords Inn Hotels and Developers Pvt. Ltd. ...Plaintiff/Applicant
Versus
S. P. Builders and Resorts Pvt. Ltd. and Ors. ...Defendants

Mr. Rashmin Khandekar a/w. Mr. Darpan Bhatia, Mr. Rishabh Dhanuka, Ms. Anisha Didwania and Ms. Mahima Shah i/b Mr. Rishabh Dhanuka for the Plaintiff/Applicant.

Mr. Sanjeev Sahay (VC) a/w. Archit Rajput and Mr. Pravin Singh for the Defendants.

CORAM : MANISH PITALE, J.
DATE : 27th FEBRUARY 2025

PC. :

1. Heard the learned counsel for the applicant (original plaintiff) and the learned counsel appearing for the respondents (original defendants).

2. By this application filed under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (CPC) the applicant is pressing for appropriate punitive orders against the respondents for having willfully disobeyed and violated the orders passed by this Court. It is emphasized that

order dated 29/11/2023 passed by this Court granting ad-interim relief in terms of prayer clause (a), which was duly served on the respondents on 11th December 2023, was violated with impunity and that the respondents continue to do so even today when this application is taken up for hearing.

3. The learned counsel for the applicant invited attention of this Court to the ad-interim order dated 29/11/2023, which was passed after the respondents had been repeatedly served in the matter. They chose not to appear before this Court. It was submitted that upon finding that a strong *prima facie* case was made out by the applicant in its favour, this Court granted the ad-interim order thereby temporarily restraining the respondents or their associates or affiliates from dishonestly using the registered trademarks and crucially restrained the respondents from infringing the registered trademark of the applicant in any manner.

4. It is the case of the applicant that despite service of the said ad-interim order on 11/12/2023, it was found that the respondents continued to use the name “Lords” associated with their hotel. It was also brought to the notice of this Court that the name of the hotel of the respondents continued to be featured on third party websites like www.makemytrip.com, www.goibibo.com and www.tripadvisor.com

etc. It was further brought to the notice of this Court that a representative of the applicants had visited the hotel of the respondents and obtained invoices, which also used the word “Lords”, thereby willfully disobeying and violating the order passed by this Court. Thereupon the learned counsel for the applicants invited attention of this Court to the reply affidavit filed on behalf of the respondents as also two compliance affidavits filed in these proceedings in pursuance of certain orders passed during the pendency of the present application. He submitted that the contents of the said affidavit showed that the respondents have compounded their acts of contumacious conduct by giving explanations, which show scant regard for the ad-interim order dated 10/11/2023 and also to the majesty of the Court. On this basis the learned counsel for the applicant submitted that the respondents deserve to be punished under Order XXXIX Rule 2A of CPC and that in any case they ought not to be heard any further in the present proceedings till they show compliance of the order/orders passed by this Court. Reliance was placed on the judgment of the Supreme Court in the case of *Prestige Lights Ltd. Vs. State Bank of India, (2007) 8 SCC 449*.

5. On the other hand the learned counsel appearing for the

respondents submitted that the present case cannot be said to be a case of willful disobedience on the part of the respondents. As regards compliance with the direction of intimating the third party websites to take down the name of the hotel of the respondents, attention of this Court was specifically invited to documents filed along with affidavit placed on record to show that in November 2024 communications were sent to the said websites referring to the order passed by this Court, with a request to take down the details of the hotel of the respondents from such websites. On that score it was submitted that there was total compliance on behalf of the respondents and therefore, no adverse inference can be drawn.

6. As regards continued use of the word “Lords” in the name of the hotel of the respondents, it was submitted that since the prayer granted by this Court did not specify that the respondents stood temporarily restrained from using the word “Lords” in the name of their hotel, the continued use of said name does not amount to disobedience of the order of this Court. According to the respondents they were temporarily restrained from using the registered trademark of the applicant (original plaintiff) and nothing more and nothing less. In fact, it was submitted that despite the said situation respondents made two changes in the name of their hotel, first by adding the word

“Dehradun” to hotel “Lords” and second by adding the sketch of a “Horsehead” thereby showing that steps were taken by the respondents to bring about changes in the name of their hotel so as to show compliance with the order passed by this Court. It was submitted that if this Court is not satisfied with the explanation given by the respondents, compliance can be shown forthwith and the matter can be taken up for consideration after one week. It was insisted upon by the learned counsel appearing for the respondents that instead of disposing of the present application, this Court may consider granting a further opportunity to the respondents to show compliance with the order passed by this Court.

7. Having considered the rival submissions it would be appropriate to first refer to the order dated 29/11/2023, whereby this Court granted ad-interim relief in favour of the applicants. It is to be noted that the said order was passed after the respondents had been served repeatedly and yet they chose not to appear before this Court. This Court (Coram:R. I. Chagla, J.) considered the contentions raised on behalf of the applicants, particularly taking note of the registered trademarks of the applicants i.e. “Lords”  , and thereupon this Court observed in the said order as follows:

“16. Having considered the averments in the Complaint and in the Interim Application taken out as well as the documents in support of the Plaintiff’s claim, a prima facie case is made out for grant of ad-interim relief. The Plaintiff is the proprietor of the registered trade mark “LORD” / “LORD’S” since the year 2008. Further, this is apparent from the document at Exhibit A which is the Certificate of Registration of Trade Mark which shows that the Plaintiff is the proprietor of the said registered trade mark under No.1682810 in Class 42 which certificate has been issued by the Trade Marks Registry, Mumbai.

17. I am further prima facie satisfied that the Plaintiff has been able to establish that he has generated widespread business and developed goodwill and reputation associated with its trade mark “Lords” which is supported by the promotional and marketing expenses since 2018-2022 which is to the tune of Rs.34,76,767/- and revenue of Rs.16,78,54,873/- during the years 2018-2022. The Plaintiff’s trade mark is also displayed to promote business in various trade travel shows, award ceremonies and travel publications as mentioned in the list of events at Exhibit C to the Complaint.

18. The Defendants have been engaged in the operation of a hotel under its mark “HOTEL LORD’S”, where the mark “LORD’S” is the prominent feature since the year 2020 which is subsequent to the Plaintiff’s registered trade mark. This was discovered by the Plaintiff in or around February, 2022. There is no manner of doubt that the Defendants have

depicted their mark “HOTEL LORD’S” which is deceptively similar to the registered trademark of the Plaintiff in order to ride over on the reputation and goodwill of the Plaintiff thereby creating confusion in the minds of the customers. The Plaintiff had also issued cease and desist notice dated 10th February, 2022 to which there has been no response.”

8. On the basis of the said observation, this Court granted ad-interim relief in terms of prayer clause (a) of the interim application which reads thus:

“(a) Pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to pass a temporary order and injunction restraining the Defendant by themselves and / or their servants, agents, representatives sister concerns, subsidiaries, affiliates, Associates and / or under such Defendant from unauthorisedly and dishonestly using the Applicant’s registered mark as his trade name or part of his trade name or name of his business concern or part of the name or his business concern dealing in goods and services in respect of which the trade mark is registered so as to infringe the Applicant’s mark.”

9. It is undisputed that the said order was served upon the respondents on 11/12/2023 and that they were clearly aware about the contents of the order from that date onwards. The respondents were also served with the papers concerning the present proceedings and hence, they were aware about the issues raised by the applicant

(original plaintiff) in the present proceedings.

10. It is to be noted that there are documents placed on record along with the reply affidavit and two compliance affidavits on behalf of the respondents showing that they took steps between 25/11/2024 and 30/11/2024 to write to third party websites www.makemytrip.com, www.goibibo.com and www.tripadvisor.com etc to take down details of their hotel from their website, after specifically referring to the order of this Court. But, these communications were sent after one year of the ad interim order dated 29/11/2023 and that too after the applicant repeatedly raised the said issue of non-compliance by the respondents. The earlier two communications relied upon by the respondents can be of no consequence because they do not even refer to the order of this Court. Thus, on this score the respondents blatantly violated the ad-interim order of this Court for a period of one year.

11. It is to be noted that the respondents continued to use the name of their Hotel as “Hotel Lords”, despite service of the ad-interim order dated 29/11/2023 on 11/12/2023 upon them. It appears that thereafter, the respondents added the word “Dehradun” and also a sketch of a “Horsehead” to the words “Hotel Lords” in respect of their hotel. It is also to be noted that, according to the respondents making

such additions was enough compliance with the orders passed by this Court. It is also a matter of record that in the reply affidavit filed in the present application the respondents took a bold stand that since prayer clause (a) granted by this Court in the order dated 29/11/2023 does not refer to the word “Lords”, the respondents were and are entitled to use the said word in respect of their hotel. According to the respondents they would fall foul the orders passed by this Court only if they were to use the registered trademark of the applicants and not otherwise. In fact, the reply affidavit at paragraph 17 quoted prayer clause (a) of the interim application of the applicants and thereafter, the respondents stated as follows:

“ The said prayer clause categorically prays for the injunction on the usage of the plaintiff registered Mark. The said prayer nowhere prays for the injunction on the usage of the Word LORDS. The respondent has complied with the said Order and even since inception has a very distinctive and different Mark than that of the petitioner’s.”

12. The aforementioned stand taken on behalf of the respondents is further indication of the impunity with which they have willfully disobeyed and violated the order passed by this Court. A perusal of above quoted prayer clause (a) shows that this Court temporarily restrained the respondents from dishonestly using the trademark of

the applicant and also from infringing said trademark by using the same in their trade name or part of the trade name. The aforesaid direction obviously has to be read with the effect of the statute i.e the Trademarks Act, 1999, and particularly Section 29 (1) thereof, which pertains to infringement of registered trademarks. A perusal of the same show that a registered trademark is infringed when the mark which is identical with or deceptively similar to the same is used in relation to goods or services of the party against whom such an allegation is made. In the present case, the entire case of the applicant is that it being the registered proprietor of the trademark “Lords”, is entitled to such a proprietary right against any party that uses an identical, similar or deceptively similar mark. The mark being used by the respondents, at the time when the ad-interim order was passed was admittedly “Hotel Lords”. The use of such mark/name by the respondents was noticed and thereupon, this Court granted the said ad-interim relief in favour of the applicants.

13. The respondents in the affidavits filed before this Court have given their own interpretation to what the order of this Court meant and on the basis of their interpretation/spin given to the order of this Court, it is claimed that there is no violation and it is further boldly stated that the respondents are entitled to continue to use the

offending mark. The conduct of the respondents is further compounded by claiming that the ad-interim order passed by this Court gives no protection to the applicants insofar as “Lords” is concerned. This Court finds that the aforesaid conduct of the respondents in continuing to use the name “Hotel Lords” and thereafter adding the word “Dehradun” and sketch of a “Horsehead” to the same and thereupon taking the aforesaid stand in the affidavits filed before this Court amounts to contumacious conduct and willful disobedience and violation of the orders passed by this Court.

14. Although in the reply affidavit the respondents have stated that they are tendering an apology to this Court, in the facts and circumstances of the present case, it is found that the apology is neither genuine nor sincere. It is to be noted that the said apology is contained in the reply affidavit sworn on 28/7/2024, a good seven months after ad-interim order was already served upon the respondents. The other contents of the reply affidavit clearly indicate that there is hardly any remorse on the part of the respondents while willfully disobeying the order of this Court. In this regard the position of law is clearly laid down in the case of **Food Corporation Of India vs Sukh Prasad on 24 March, 2009, 2009 (5) SCC 665**, wherein the Supreme Court has held that the power exercised by the Court under

Order 39 Rule 2A of CPC is punitive in nature, akin to power to punish civil contempt exercised by the Court under Contempt of Courts Act, 1971. In the case of ***Cargil India Private Limited Vs. M. M. Oil Enterprises (Order dated 16/5/2019 in Notice of Motion No.1107/2019 in Commercial IP Suit No.425/2017)***, this Court has deliberated upon the manner in which an apology tendered by alleged violator of the orders of the Court is to be considered. It was laid down that when the apology tendered by the respondents is found, in the facts and circumstances of the case, to be insincere and non-genuine the same ought to be rejected for the reason that accepting such an apology and letting such a respondent to go scot free would result in the faith of the common person in the judicial system being eroded.

15. Applying the position of law to the facts of the present case , this Court is of the opinion that the apology of the respondents cannot be accepted. Accordingly it is rejected. This Court has already found hereinabove that the respondents have willfully, deliberately and with impunity violated the orders of this Court by continuing to use the name “Hotel Lords” and thereafter the name “Hotel Lords” in conjunction with word “Dehradun” and a sketch of “Horsehead”, showing scant regard to the majesty of this Court and to the Rule of

Law. For such contumacious conduct the respondents deserve to be punished.

16. This Court also finds substance in the contentions raised on behalf of the applicant by placing reliance on judgment of Supreme Court in the case of *Prestige Lights Ltd. (supra)* to contend that the respondents ought not to be heard any further in the present proceedings till such time that they show complete compliance with the ad-interim order dated 29/11/2023. A perusal of the said judgment shows that the law laid down therein is based on the principle enunciated by the English Court in the case *Hadkinson vs. Hadkinson [1952] 2 ALL E. R. 567 CA*. In the said case the Appellate Court refused to hear an appeal preferred by the appellant till such time that compliance was shown with the order of the competent Court. Therefore, this Court is convinced that apart from allowing the present application by issuing appropriate punitive order against the respondents, a further direction deserves to be issued against the respondents on the aforementioned principle.

17. While passing the instant order this Court has particularly taken note of the voluminous documents placed on record on behalf of the applicant to show that the respondents have continued to violate the ad-interim order dated 29/11/2023 passed by this Court even till

date. A photograph of the hotel of the respondents is placed on record, which shows that the said hotel of the respondents located in Dehradun still carries the name “Hotel Lords” prominently with the sketch of Horsehead added to it during pendency of the present proceedings. This is enough for the Court to reach the aforementioned conclusion that the respondents have continued to indulge in contumacious conduct, thereby inviting punitive order by this Court exercising jurisdiction under Order 39 Rule 2A of CPC.

18. In view of the above the application is disposed of by issuing the following directions:

a) *The respondents are held guilty of having willfully, deliberately and with impunity disobeyed and violated order dated 29/11/2023 passed by this Court, thereby making themselves liable for a punitive order under Order 39 Rule 2A of CPC ;*

b) *For the aforesaid conduct of the respondents, instead of being directly sent to civil prison, they are directed to pay an amount of Rs.5 lakhs to the applicants within 6 weeks from today to purge the contempt;*

c) *In the event the respondents fail to pay the aforesaid amount to the applicants within the stipulated period of time, respondent nos. 2 to 5 shall be detained in civil prison for a period of 6 weeks; and*

d) *Until and unless the respondents show compliance*

with the order dated 29/11/2023 in true letter and spirit they shall not be heard in Commercial Intellectual Property Rights Suit No.188 of 2023 and all applications filed therein..

19. The application stands disposed of.

(MANISH PITALE, J.)