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

+ CS(COMM) 370/2024

THE INDIAN HOTELS COMPANY LIMITED Plaintiff

Through: Ms. Shwetasree Majumdar, Mr. Prithvi Singh, Mr. Rohan Krishna Seth and Ms. Aishwarya Debarshni, Advocates.

versus

JOHN DOE AND OTHERS Defendants

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advocates for D-8 & 9.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
07.05.2024

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I.A. 10304/2024 (*seeking exemption from pre-institution mediation*)

1. As the present suit contemplates urgent interim relief, in light of the judgment of Supreme Court in *Yamini Manohar v. T.K.D. Krithi*,¹ exemption from attempting pre-institution mediation is granted.

2. Disposed of.

I.A. 10305/2024 (*seeking leave to file additional documents*)

3. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

4. At the outset, Ms. Shwetasree Majumdar, counsel for Plaintiff, has presented certain additional documents, depicting additional infringing

¹ 2023 SCC OnLine SC 1382.



websites. These additional documents are handed over across the board and are taken on record. The said documents be also e-filed with the Registry.

5. Further, if the Plaintiff wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

6. Disposed of.

I.A. 10306/2024 (*seeking exemption from filing original, clear copies of documents*)

7. Exemption is granted, subject to all just exceptions.

8. Plaintiff shall file original, legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

9. Disposed of

I.A. 10307/2024 (*seeking exemption from advance service to Defendant No.1*)

10. The Plaintiff alleges that Defendant No. 1 is perpetrating fraud on the general public by creating a false association with the Plaintiff, resulting in grave financial losses to the public. Defendant No. 1 is/are an unknown person(s) whose identity(ies) cannot be ascertained by the Plaintiff and accordingly have been impleaded as John Doe(s). Considering the nature of controversy involved in the present suit as well as the peculiar facts and circumstances of the case, exemption from effecting advance service on Defendant No. 1 is allowed.

11. Disposed of.

I.A. 10308/2024 (*seeking extension of time for filing court fee*)

12. For the grounds and reasons stated therein, the application is allowed. Plaintiff is granted one week's time to file deficient court fees.



13. Disposed of.

CS(COMM) 370/2024

14. Let the plaint be registered as a suit.

15. Issue summons. Mr. Alexander Mathai Paikaday, Advocate, accepts summons on behalf of Defendants No. 8 and 9. He confirms the receipt of paperbook, and waives the right of formal service of summons. Written statement, if any, shall be filed within thirty days from today. Upon filing of process fee, issue summons to the remaining Defendants by all permissible modes. Summons shall state that the written statement(s) shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement(s), the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

16. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) 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.

17. List before the Joint Registrar for marking of exhibits on 08th August, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

18. List before Court for framing of issues thereafter.

I.A. 10303/2024 (under Order XXXIX Rules 1 and 2 read with Section 151 of CPC)

19. The Plaintiff has filed the present suit seeking permanent injunction



restraining Defendant No. 1 from infringing on its trademarks and copyrights, or passing off services as being those of the Plaintiff.


CASE OF PLAINTIFF

20. Ms. Shwetasree Majumdar, Counsel for Plaintiff submits the following facts and contentions:

20.1. The Indian Hotels Company Limited, the Plaintiff, is part of the TATA group of Companies. Plaintiff is engaged in the hospitality industry, and manages a large portfolio of hotels, resorts, jungle safaris, palaces etc. across many countries and under various brands, one of which is named “GINGER”.

20.2. The Plaintiff is the registered proprietor of the trademarks

“GINGER”, “”, “”, “”

and “”², in Class 43, in respect of temporary accommodation and related services for providing food and drinks. The said marks have been exclusively and extensively used by the Plaintiff, and as such, the trademarks have acquired a distinctive character and are associated solely with the Plaintiff, as such the Plaintiff claims statutory as well as common law rights in its trademarks. Further, the Plaintiff claims rights in the original professional photographs of its GINGER hotels³ under Section 2(c) read with Section 14(c) of the Copyrights Act, 1957⁴.

20.3. Plaintiff also owns a registered domain “gingerhotels.com” and operates a dedicated website “www.gingerhotels.com”, which extensively

² “Plaintiff’s trademarks”

³ “Plaintiff’s hotels”

⁴ “Copyright Act”



display the Plaintiff's brand, trademarks and copyrights - in order to promote its hotels and services. The website facilitates online reservations of hotel rooms, dining and meeting/conference halls in the Plaintiff's hotels, from any corner of the world. Plaintiff also operates various social media accounts for promoting its business.

20.4. Apart from the above, the Plaintiff's hotels are authentically listed on several accommodation and travel booking websites such as "www.makemytrip.com", "www.easemytrip.com", "www.tripadvisor.in", "www.goibibo.com", "www.trivago.in", "www.bookings.com", "www.agoda.com", etc.

20.5. Owing to the long and continuous use of the Plaintiff's trademarks, as well as promotional and advertisement activities, Plaintiff has acquired goodwill and reputation in its brands and trademarks. This is reflected from its financial records, as per which, for the FY 2022-23, Plaintiff's revenue amounted to more than INR 300 crores. Plaintiff has also received various awards as delineated in Paragraph No. 22 of plaint.

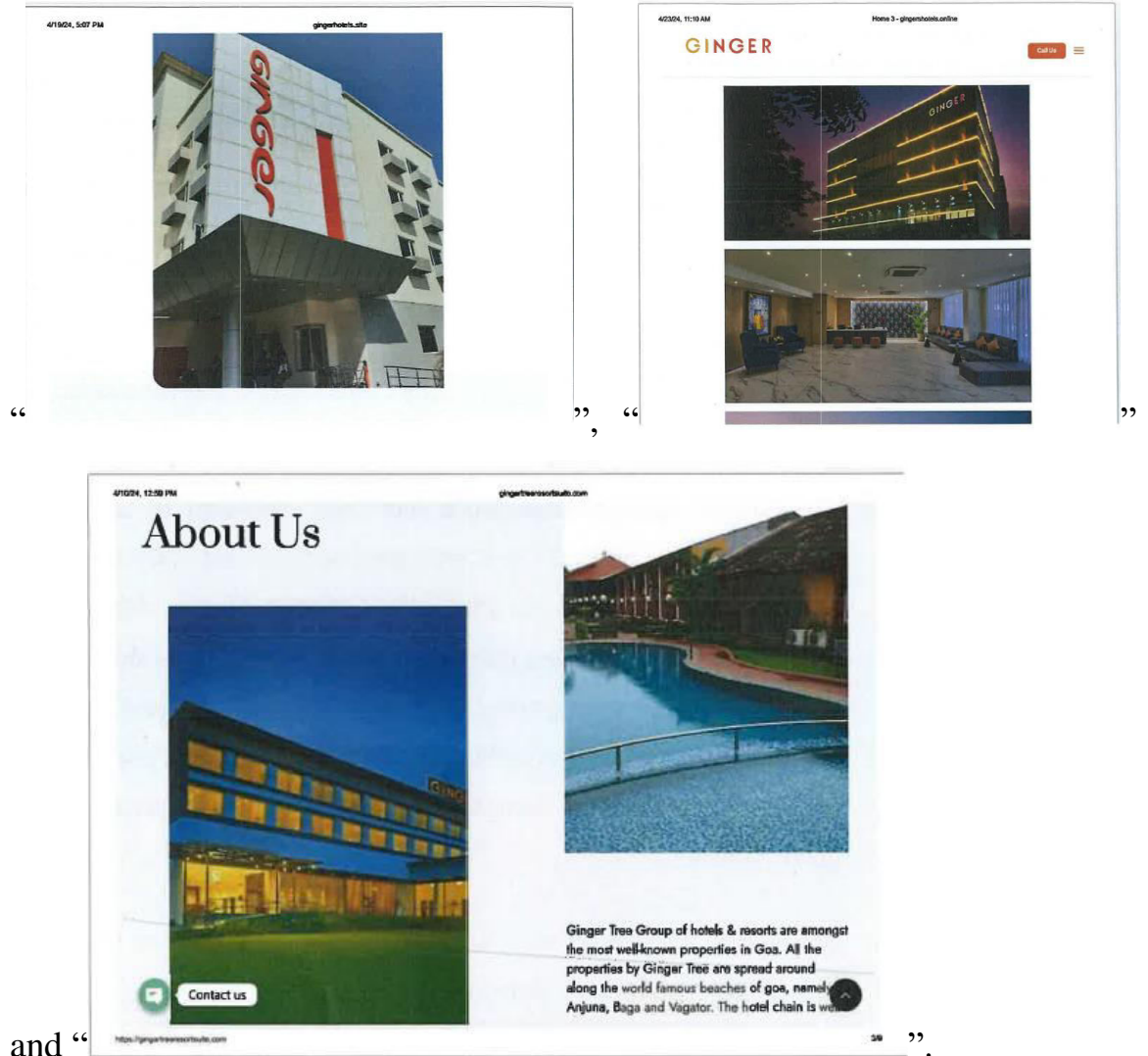
20.6. Plaintiff is aggrieved by the unauthorised use of its trademarks by Defendants No. 1, who are operating the websites - "www.gingertreeresortsuite.com", "www.gingershotel.com", "www.gingershotel.online", "www.gingerhotels.site", "www.gingershotels.online", "www.gingerhotel.website3.me", "www.gingerhotelsbooking.in", "www.gingerhotelsindia.in", "www.gingerresorthotel.online" and "www.mayfairheritagehotel.online"⁵.

The impugned websites prominently display the Plaintiff's trademarks as

⁵ "Impugned websites". The websites "www.gingerhotelsindia.in", "www.gingerresorthotel.online" and "www.mayfairheritagehotel.online" have been included pursuant to the additional documents taken on record by the Court on 7th May, 2024.



well as original photographs of the Plaintiff’s hotels. The misuse of the Plaintiff’s trademarks on the impugned websites is evident from the following screenshots:-



20.7. During the month of April 2024, Plaintiff received several complaints of fraud perpetuated across different cities, related to the impugned websites wherein, reservation services for accommodations at the Plaintiff’s hotels are offered to customers. The impugned websites have not been authorised to offer reservation/booking services by the Plaintiff. Further, upon investigation, it was discovered that the photographs displayed on the



website were original photographs of the Plaintiff's hotels.

20.8. Defendant No. 1 is/are an unknown person(s), who contact unwary customers through the impugned websites. Since the Plaintiff is unable to ascertain the identity(ies) of such unknown person(s), they have been impleaded as John Doe(s)⁶. Defendants No. 2 and 3 are Domain Name Registrars of the domains associated to the impugned websites. The *modus operandi* of the fraud perpetuated through the impugned websites, is to display genuine photographs of the Plaintiff's hotels and offer booking/reservations of rooms under the guise of the reservations being booked on the official website of the Plaintiff. Though the identity of Defendant No. 1 cannot be ascertained by the Plaintiff, it is noticed that the impugned websites mention certain phone numbers⁷, through which reservation requests can be made. Further, some of the impugned websites are only skeleton websites which permit the users to book a room only by contacting the impugned phone numbers. Once an unsuspecting customer makes a room booking request, by contacting the said phone numbers, Defendant No. 1 would request certain payments on account of 'reservation charges' on certain UPI IDs or request them to share sensitive banking information including One Time Passwords⁸, card details, email addresses, etc. Once such sensitive information is shared, substantial amounts of money are siphoned off from the customer's bank accounts.

20.9. The infringing activities are further perpetuated by Defendant No. 1's unauthorised use of the Plaintiff's trademarks, as part of the domain names, websites, social media handle names, email addresses etc. which is solely

⁶ Hereinafter, any reference to "Defendant No. 1" refers to unknown person(s) who have been impleaded as John Does.

⁷ "Impugned phone numbers"

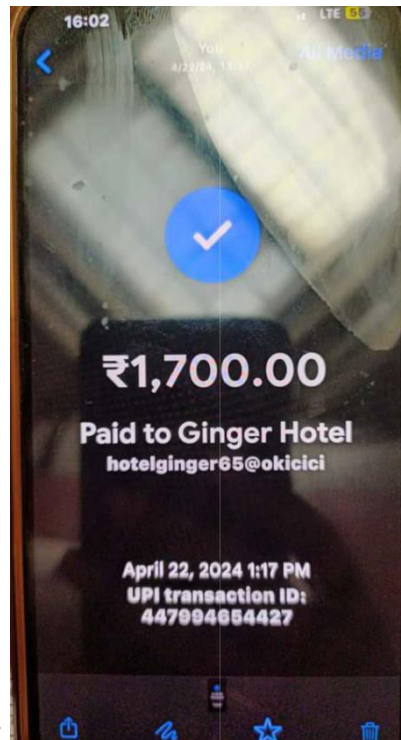
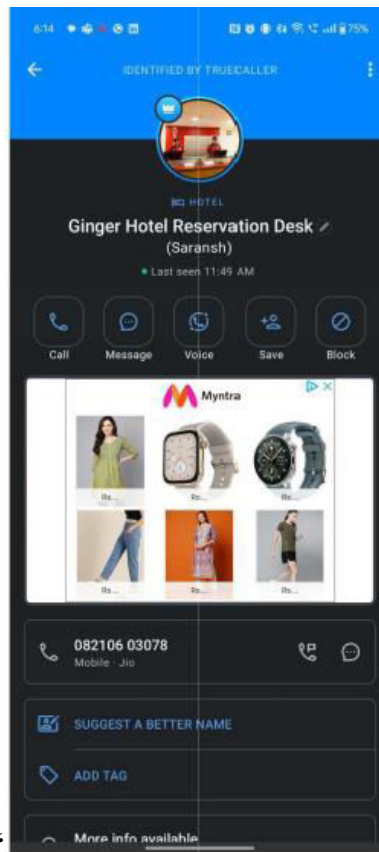
⁸ "OTPs"

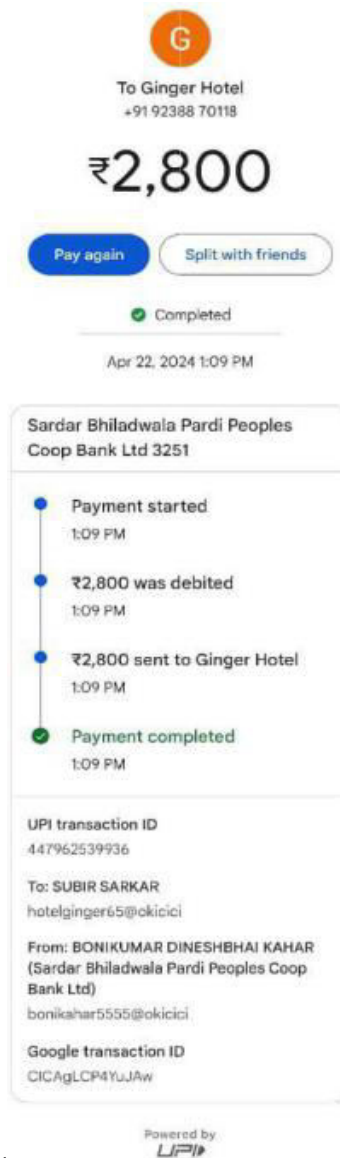


intended to create a false association with the Plaintiff. As such, the conduct of Defendant No. 1 is deliberate and fraudulent, and is aimed to unjustly and wrongfully gain, by deceiving the general public as to the authenticity of the services offered by them. Further, as the entire fraud is being perpetuated through the impugned websites and phone numbers, it is necessary to suspend access/block the same.

20.10. The acts of Defendant No. 1 not only infringe upon the Plaintiff's trademarks and copyrights but also involve falsely claiming an association with the Plaintiff, thereby passing themselves off as the Plaintiff. This misrepresentation portrays the Plaintiff as committing the said fraud and deceiving its own customers. Such actions by Defendant No. 1 amounts to tarnishment of the Plaintiff's long-standing and well-established goodwill and reputation in its brand and trademarks.

21. The Court has considered the aforementioned submissions. In the opinion of this Court, the Plaintiff has demonstrated a *prima facie* case of infringement of the Plaintiff's trademarks and copyrights, as well as passing off of the Plaintiff's marks. It appears that Defendant No. 1 is perpetuating serious financial fraud on unsuspecting victims, by misrepresenting themselves to be associated with the Plaintiff and offering services related to the Plaintiff's hotels, with the *malafide* intent to siphon off the customer's money. Some illustrative screenshots of the communications/transactions between the victims and Defendant No. 1 are as follows:





“ ”

22. By systematically misappropriating the Plaintiff’s trademark on the impugned websites, social media user details, UPI IDs, etc., Defendant No. 1 is attempting to appear to be authentically associated with the Plaintiff, in order to defraud the general public of their hard-earned money, and thereby causing substantial harm to Plaintiff’s reputation and goodwill on account of this false association.





23. In light of the above, the Plaintiff has made out a *prima facie* case in its favour and in case no *ex-parte ad-interim* injunction is granted, the



Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiff and against the Defendants No. 1.

24. Therefore, till the next date of hearing, an *ex-parte ad interim* injunction is granted in favour of Plaintiff in the following terms:

24.1. Defendant No. 1 and/or any other person acting for/on their behalf, are restrained from deploying or using in any manner, the registered

trademarks of the Plaintiff, being “GINGER”, “”, “”, “” and “”, or any other mark which is deceptively similar to the Plaintiff’s trademarks, amounting to infringement or passing off.

24.2. Defendant No. 1 and/or any other person acting for or on their behalf, are restrained from using the Plaintiff’s original copyrighted photographs of the GINGER Hotel properties, by reproducing or publishing the same in any manner, which constitutes infringement of the Plaintiff’s copyright in the said photographs.

24.3. Defendants No. 2 and 3 [Domain Name Registrars] are directed to suspend access to the domain names – “gingertreeresortsuite.com”, “gingershotel.com”, “gingershotel.online”, “gingerhotels.site”, “gingershotels.online”, and “gingerhotelsbooking.in”, “gingerhotelsindia.in”, “gingerresorthotel.online” and “mayfairheritagehotel.online”⁹. They shall, within four weeks from the date of this order, file in a sealed cover, the complete details concerning the

⁹ The domain names “gingerhotelsindia.in”, “gingerresorthotel.online” and “mayfairheritagehotel.online” have been included pursuant to the additional documents taken on record by the Court on 7th May, 2024.



registrants of the aforesaid domain names, including the name, contact details and payment details, as are available with them. A copy of the said documents shall also be provided to counsel for Plaintiffs, which shall be strictly used by them for the purpose of investigation and identification of the perpetrators.

24.4. Defendants No. 4 [Axis Bank Limited], 5 [Yes Bank] and 6 [ICICI Bank] shall freeze/suspend operations of respective bank accounts associated with the UPI IDs: baljinderkaur10@naviaxis, 7510018554-2@ybl and hotelginger65@okicici. They shall, within four weeks from the date of this order, file in a sealed cover the information, including KYC documents, pertaining to the bank account holders of the bank accounts associated with the above UPI IDs. A copy of the said documents shall also be provided to counsel for Plaintiffs, which shall be strictly used by them for the purpose of investigation and identification of the perpetrators.

24.5. Defendant No. 7 [National Payment Corporation of India] is directed to suspend and disable the UPI IDs: baljinderkaur10@naviaxis, 7510018554-2@ybl and hotelginger65@okicici. They shall, within four weeks from the date of this order, file in a sealed cover the information, including KYC documents and details of the associated bank accounts, pertaining to account holders of the aforesaid UPI IDs. A copy of the said documents shall also be provided to counsel for Plaintiffs, which shall be strictly used by them for the purpose of investigation and identification of the perpetrators.

24.6. Defendants No. 8 and 9 [Department of Telecommunications and Ministry of Electronics and Information Technology, respectively] are directed to issue necessary directions to the telecom service providers and



internet service providers to block the websites “www.gingertreeresortsuite.com”, “www.gingershotel.com”, “www.gingershotel.online”, “www.gingerhotels.site”, “www.gingershotels.online”, “www.gingerhotel.website3.me”, “www.gingerhotelsbooking.in”, “www.gingerhotelsindia.in”, “www.gingerresorthotel.online” and “www.mayfairheritagehotel.online”.

24.7. Defendants No. 10 [Reliance Jio Infocomm Limited], 11 [Bharti Airtel Ltd.] and 12 [Vodafone Idea Limited] shall temporarily block the phone numbers +91-8109742216, +91-9395950695, +91-9306608733, +91-9238870118, +91-7510018554, +91-8210603078, +91-9174348631, +91-7217556564, +91-9238720730, +91-9238985192 and +91-9238561275¹⁰. Each telecommunications service provider shall identify which of these phone numbers are allocated within their network and implement the temporary blocking accordingly. They shall file, in a sealed cover, the details of the respective subscribers, including KYC documents, in whose names the said numbers are registered, within four weeks from the date of this order. A copy of such documents shall also be provided to counsel for Plaintiffs, which shall be strictly used by them for the purpose of investigation and identification of the perpetrators.

25. Compliance of Order XXXIX Rule 3 of CPC be done with one week from the date of this order.

26. List before the Court on 07th October, 2024.

SANJEEV NARULA, J

MAY 7, 2024/d.negi

¹⁰ The numbers +91-9238720730, +91-9238985192 and +91-9238561275 have been included pursuant to the additional documents taken on record by the Court on 7th May, 2024.