

Ramada International, Inc vs La-Ramada World Private Limited & Anr on 26 July, 2022

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (COMM) 470/2021 & I.As.11638-39/2022

RAMADA INTERNATIONAL, INC

..... Plai

Through: Mr. Ashwani Balayan and Mr. Pranay

Bali, Advocates. (M:9773770851)

versus

LA-RAMADA WORLD PRIVATE LIMITED & ANR.... Defendants

Through: Mr. Pankaj Kumar and Mr. Vipin

Kumar Tyagi, Advocates with D-2

person. (M:9311020997)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 26.07.2022

1. The matter has been called out in the supplementary list, however, none appears for the Defendants. Reply to the contempt application has also not been filed by the Defendants. In the interest of justice, a passover is granted.

I.A.11639/2022 (for exemption)

2. Allowed, subject to all just exceptions. I.A.11639/2022 is disposed of. I.A.11638/2022 (for cancellation of NBW) in CS(COMM) 470/2021

3. This is an application filed by Defendant No.2 seeking cancellation of Non-Bailable Warrants (NBWs) issued against him vide order dated 11th July, 2022. The plea in the application is that the Defendants had challenged the order dated 11th July, 2022 passed by this Court by way of an appeal being FAO(OS)(COMM) 184/2022 titled La Ramada World Pvt. Ltd. v. Ramada International Inc. In the said appeal, ld. Division Bench has passed the following order permitting the Defendant to move the present application:

"1. The appellants have filed the present appeal impugning an order dated 11.07.2022 passed by the learned Single Judge in CS (COMM.) 470/2021 captioned Ramada International, INC v. La-ramada World Private Limited & Anr. The learned Single Judge had directed issuance of non-bailable warrants against appellant no.2 as the

Court found that despite repeated opportunities, appellant no.2 had not joined the proceedings and, prima facie, violated the orders of the Court.

2. The learned counsel for the appellants states that they have an explanation regarding non-appearance of the appellants. Notwithstanding the same, they tender an unconditional and unqualified apology for not joining the proceedings and for any disobedience of the orders passed by this Court.

3. After some arguments, the learned counsel appearing for the appellants seeks liberty to withdraw the present appeal to approach the learned Single Judge to vary the order directing issuance of non-bailable warrants with the request to afford the appellants another opportunity to be heard.

4. The petition is dismissed as withdrawn with the aforesaid liberty. All pending applications are also disposed of.

5. The non-bailable warrants issued against appellant no.2 shall not be implemented till 26.07.2022.

6. Dasti under the signature of the Court Master."

4. The stand of Id. Counsel for Defendant No.2 is that the Defendant did not use the mark 'LA RAMADA' after passing of the injunction order dated 23rd September, 2021. It is also submitted that various domain names/websites and social media accounts have now been closed by the Defendants. Id. counsel for the Defendants requests that time may be given to him for filing of reply/written statement. Mr. Balayan, Id. Counsel for the Plaintiff on the other hand submits that the Local Commissioner had visited Defendant No.2's premises and the Local Commissioner's report itself would show the evidence of use of the mark by Defendant No.2 after the injunction order was passed by the Court. He further submits that the Defendant has also not given his proper residential address, inasmuch as the police had to visit his premises on three occasions in order to locate the Defendant.

5. Mr. Dharmendra Kumar Sharma, Defendant No.2, against whom the NBWs were issued, has appeared before the Court today and has submitted his Aadhar card as the proof of his identity. Copy of the Aadhar card is retained on record. He confirms to the Court that he is residing in House No.1584, Gali No.113, Ganeshpura, Trinagar, Delhi-110035. The Id. Counsel for Defendant No.2 submits that once the warrants were issued, Defendant No.2 had shifted to his son's house in Ghaziabad at 804, Quantum Homes, Raj Nagar Extn., Ghaziabad.

6. A perusal of the record in this case shows that an ex-parte ad-interim injunction order was granted on 23rd September, 2021 in the following terms:

" 6. The plaintiff has made out a prima facie case. The defendants, their partners, directors, etc. are restrained from using in any manner the plaintiff's trade mark

RAMADA or any other mark which is deceptively or confusingly similar to the said mark including but not limited to the impugned marks LA RAMADA, LA RAMADA WORLD, LA RAMADA WORLD RESORT & SPA, , etc. Defendant No. 1 will also take steps to change the company's name 'La-Ramada World Pvt. Ltd.' forthwith. The domain names as noted above would also be changed or suspended within two weeks."

7. However, Defendant No.2 kept changing the domain names from time to time and continued to use the mark 'LA RAMADA' in various domain names being, www.lrwworld.com, www.lrw.co.in, www.lrworld.co.in. The said Defendant also created an Instagram account by the name 'laramadaworld_lrw' and Facebook account called 'LA RAMADA WORLD'. The injunction order, which was passed, was confirmed on 15th March, 2022 and the application under Order XXXIX Rules 1 & 2 CPC was disposed of. In the meantime, a contempt application was also moved by the Plaintiff and the same was considered by the Court on 14th December, 2021 as also on 15th March, 2022.

8. On 15th March, 2022, after noting the conduct of the Defendant, a Local Commissioner was appointed to visit the premises of the Defendant at A-79 (2RD F/F) DDA Shed Okhla Ph-2, Okhla Industrial Area Phase-I. Vide the said order, Defendant No.2 was further directed to remain present in court on the next date of hearing. The relevant portion of the order dated reads as under:

"14. Additionally, since the Defendants are choosing not to appear before the Court and continue to run their business, it is deemed appropriate to appoint a Local Commissioner. Mr. Rohan Joshua Kapoor, Advocate (M. No.8800934843; Email;-rikpmlasc@gmail.com; Enrolment No.: D/2878/2020) who is present in the Court, is appointed as the Local Commissioner to undertake the following tasks:

1. The Local Commissioner to visit the premises of Defendants at A-79 (2RD F/F) DDA Shed Okhla Ph-2, Okhla Industrial Area Ph I, Block A, Delhi South West, Delhi, DL 110020 IN.

2. Copies of the previous orders dated 23rd September, 2021 and 14th December, 2021 and today's order and complete paper book shall be served by the Local Commissioner upon Mr. Dharmendra Kumar Sharma, Defendant No.2, at the time of execution of commission.

3. The Local Commissioner shall make a complete inventory of all evidence related to the usage of the word 'LA RAMADA' and such evidence shall be seized including pamphlets, brochures etc. The Local Commissioner shall also ensure that all the social media accounts bearing 'LA RAMADA' or 'RAMADA' mark are shut down by the Defendants with the help of the IT personnel present at the premises.

4. The Local Commissioner is permitted to take photographs or videography of the proceedings if it is deemed appropriate. Two representatives of the Plaintiff,

including a lawyer, are permitted to accompany the Local Commissioner.

5. The Local Commissioner would take assistance from the Local SHO in executing the Commission. The SHO of the concerned area shall also serve a copy of this order upon Mr. Dharmendra Kumar Sharma, Defendant No.2 and file a status report in this regard.

6. If the Defendants have a server which is located at the said premises, the data on the said server shall be copied including the accounts of the Defendants onto a hard drive. The Local Commissioner shall file the same in a hard drive before this Court, along with the Report.

The Defendants shall cooperate and give to the Local Commissioner, the password to the computer file containing the accounts, if the same is on a computerised software.

7. The Local Commissioner, while executing the local commission, shall ensure that there is no disruption to the business of the Defendants except for the purposes of the execution of the commission. The commission shall be executed in a peaceful manner and the Defendants shall cooperate with the Local Commissioner.

15. The fee of the Local Commissioner is fixed at Rs.1 lakh apart from expenses. Let the local commission be executed on or before 25th March, 2022. The report be filed within two weeks.

16. Defendant No.2 shall remain present in the Court on the next date of hearing."

9. A detailed report was submitted by the Local Commissioner which showed, without any doubt, that the mark 'LA RAMADA WORLD PRIVATE LIMITED' was being used by Defendant No.2 on the display board, stationery and other documents despite the injunction order passed by the Court. The Local Commissioner also reported that travel packages and tour packages were being booked by the Defendant under the name 'LA RAMADA WORLD PRIVATE LIMITED'.

10. None appeared on behalf of the Defendant No.2 on the next date of hearing i.e., 30th May, 2022. Bailable warrants were, thereafter, issued by the Court after considering the Defendant's conduct. On 11th July, 2022, the SHO of PS Okhla Industrial Area had placed on record a status report and as per the said report the bailable warrants were executed and a direction was given to Defendant No.2 to appear before the Court. However, Defendant No.2 did not appear personally before the Court on the next date, i.e., 11th July, 2022. In view thereof, taking all the facts into consideration and the continuous misuse of the mark 'LA RAMADA' and 'RAMADA' by the Defendants, NBWs were issued by the Court on 11th July, 2022 in the following terms:

"8. Heard ld. Counsels for the parties. The manner in which the Defendants are continuously and contumaciously violating the orders of the Court and running their websites and their business from their offices clearly shows that they have no respect or regard for the orders of the Court. The conduct of the Defendants prima facie

constitutes contempt of the orders passed by this Court.

9. Accordingly, non-bailable warrants are issued against Defendant No.2 - Mr. Dharmendra Kumar Sharma, through the SHO, P.S. Okhla Industrial Area, Phase-I, Block A, South West District, New Delhi. The SHO shall execute the said non-bailable warrants against Defendant No.2, within a period of two days. A Rapid Antigen test for COVID-19 shall be conducted on Defendant No.2 before taking him into custody. Upon testing negative, he can be taken into custody. If he tests positive, the SHO shall execute the warrants after one week."

11. Challenging the said order, the Defendants approached the Id. Divisional Bench, which had posted the matter on 20th July, 2022 and passed the order extracted above.

12. Pursuant thereto, the present application has been filed by Defendant No.2 before this Court.

13. Id. counsel for the Defendants submits that the Defendant could not make proper submissions on the last date owing to the fact that the said Defendant was not given proper legal advice and the said Defendant unconditionally apologies for his conduct. It is also submitted by Id. Counsel that the Defendant's company's name has now been changed to 'LRW International Pvt. Ltd.'. Further, following is the status of the domain names and social media accounts as per the Defendants, as pleaded in the application:

"Company name:

LRW INTERNATIONAL PRIVATE LIMITED Domain name:

1. laramadaworld.net.in (the website was never used but purchased by the applicant)

2. laramadaworld.online (closed on 23.11.2021)

3. laramadaworld.com (closed on 08.08.2020)

4. lrw.co.in (closed on 11.02.2022 & 06.06.2022)

5. lrwworld.co (down from 09th june2022)

6. lrwworld.com (27.11.2021 to 09.02.2022) Face book (automatically closed)
Instagram (automatically closed)"

14. Issue notice in the application. Mr. Balayan, Id. Counsel for the Plaintiff accepts notice. Let reply be filed within 4 weeks after verifying whether the misuse of the mark has been stopped by the Defendants or not.

15. In the meantime, considering the Local Commissioner's report, which showed that continuously tour packages were being booked by the Defendants and that the Defendants continued to use the mark 'LA RAMADA WORLD PRIVATE LIMITED' despite the injunction order, it is directed that the NBWs shall stand suspended subject to-

(1) The Defendants depositing Rs.10 lakhs with the worthy Registrar General of Delhi High Court. The said amount shall be deposited in the following manner:

- Rs.5 lakhs shall be deposited by the Defendants by 26th August, 2022 and • Rs.5 lakhs shall be deposited by 25th September, 2022. Upon deposit, the same shall be retained in FDRs on auto- renewal mode.

(2) The Defendants shall continue to abide by the injunction order and if any violation is noticed by the Court, the NBWs shall be liable to re-activated.

16. Insofar as the written statement is concerned, the right for filing of written statement already stands closed since the timelines prescribed under the Commercial Court Act, 2015 are mandatory, inasmuch as the Defendants have been served way back in 2021 itself and have chosen not to file the written statement. However, ld. Counsel for the Defendants seeks time to file reply to the application under Order XXXIX Rule 2A CPC. Reply to the said application may be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

17. Mr. Balayan, ld. Counsel, has pointed out that there are several listings of the Defendants appearing on social media as also on third party websites. If so, steps shall be taken by the Defendants within 2 days for removal of the said listings and entries. Emails shall be sent by the Defendants with a copy to ld. Counsel for the Plaintiff. Upon receipt of such emails, the Plaintiff is also permitted to follow up with the third-party websites which shall take down the said entries and listings within 48 hours upon receiving said email. If there are any further listings which are discovered by the Plaintiff, the Plaintiff shall keep the Defendants intimated and appropriate action shall be taken by the Defendants to take down the said listings.

18. Defendant No.2 shall remain present in Court on the next date of hearing.

19. List on 10th October, 2022, the date already fixed.

PRATHIBA M. SINGH, J.

JULY 26, 2022/dk/sk