

Choice Hotels International Inc vs Oravel Stays Private Limited & Ors on 16 December, 2021

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 663/2021

CHOICE HOTELS INTERNATIONAL INC.

Through: Ms. Abhilasha Nautiyal
Gupta and Mr. Mukul
Advocates.

versus

ORAVEL STAYS PRIVATE LIMITED & ORS. Defe

Through: Mr. Chaitanya Kaushik, Advocate
Defendant No. 1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 16.12.2021

[VIA HYBRID MODE]

I.A. No. 16849/2021 (seeking exemption from filing clear copies, etc.) and I.A. No. 16850/2021 (seeking exemption from filing apostilled affidavits)

1. Exemption is granted, subject to all just exceptions.
2. The Plaintiff shall file better copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the applications stand disposed of.

I.A. No. 16851/2021 (u/O XI Rule 1(4) of the Commercial Courts Act, 2015 r/w Section 151 the Code of Civil Procedure, 1908 [hereinafter "CPC"] seeking leave to file additional documents)

4. This is an application seeking leave to file additional documents under Commercial Courts Act, 2015.
5. The Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly as per

the provisions of the Commercial Courts Act.

6. Accordingly, the application stands disposed of.

I.A. No. 16852/2021 (seeking exemption from going through pre-institution mediation under Section 12A of the Commercial Courts Act, 2015)

7. Mr. Chaitanya Kaushik, counsel for Defendant No. 1 states that the matter can be resolved through mediation. The suggestion is acceptable to the Plaintiff.

8. List the matter before the Delhi High Court Mediation and Conciliation Centre on 10th January, 2022.

9. Accordingly, the application stands disposed of.

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10. Let the plaint be registered as a suit.

11. Issue summons. Mr. Chaitanya Kaushik, counsel for the Defendant No. 1, accepts summons. Upon filing of process fee, issue summons to the remaining Defendants, by all permissible modes, returnable on the next date of hearing.

12. Summons to Defendants No. 2, 3 and 4 shall inform that the Plaintiff and Defendant No. 1 have been referred to mediation and if the recipients, also desire, they may also join the said proceedings, before the Delhi High Court Mediation and Conciliation Centre. Summons shall also state that the written statement shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/ denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

13. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/ denial of documents of the Defendants, be filed by the Plaintiff, 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.

14. List before the Joint Registrar for marking of exhibits on 24th February, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

15. List before Court for framing of issues on 26th April, 2022.

I.A. No. 16848/2021 (u/Order XXXIX Rule 1 & 2 r/w Section 151 of CPC)

16. Plaintiff has filed the accompanying suit, inter alia, seeking permanent injunction against the Defendants from infringing its trademarks "COMFORT INN", "COMFORT HOTEL", "COMFORT", and "COMFORT SUITES" [hereinafter "Plaintiff's Formative Trademarks"], passing off, dilution, rendition of accounts, damages, delivery-up, among other ancillary reliefs.

17. The case as set out in the Plaint is as follows: Plaintiff is a hospitality holding corporation set up in 1939 under the name of 'Quality Courts United', it became 'Choice Hotels International Inc.' in 1990. The Plaintiff's business consists of franchising and licensing high quality hotel services in different countries of the world. It also owns and operates different hotels chains. Plaintiff is a registered proprietor of trademark "COMFORT INN"

which was adopted in India since 1991 and the earliest registration for the mark "COMFORT INN" dates back to 1986. Defendant No. 1 viz. Oravel Stays Pvt. Ltd. is conducting business as 'OYO Rooms' and it owns and operates various hotel chains under co-branded marks and is responsible for operation, management, promotion, advertising, etc. of Defendants No. 2, 3 and 4 i.e., hotels' co-branded/ franchise hotels of Defendant No. 1.

18. In paragraph No. 27 of the Plaint, details of Plaintiff's trademark registrations, are set out, which are stated to be valid and subsisting as on date. Plaintiff has also provided details of its revenue and the amounts spent on advertising in India, in paragraph Nos. 28 and 29 of the Plaint.

19. It is also contended that the Plaintiff's trademark "COMFORT INN"

has been declared to be a well-known trademark by this Court in judgment dated 09th February, 2015 in CS(OS) 332/2010 [Later re-numbered as CS (COMM) 560/2017].

20. Ms. Abhilasha Nautiyal, counsel for the Plaintiff argues that the Defendants' have infringed Plaintiff's Formative Trademarks by using, advertising, and providing services under the impugned marks. In April 2021, Plaintiff discovered that Defendants No. 1, 2, and 3 are misusing the Plaintiff's Formative Trademarks, by using the mark "CAPITAL O 71979 COMFORT INN" and "CAPITAL O 75252 COMFORT INN" for Defendants No. 2 and 3, respectively; around the same time, Plaintiff also discovered that Defendants No. 1 and 4 together, were also misusing Plaintiff's Formative Trademarks at their hotel (Defendant No. 4) in Gurugram, by using the mark "CAPITAL O 67834 COMFORT INN". Ms. Nautiyal contends that none of the Defendants have any connection with Plaintiff whatsoever.

21. She further relies upon the policy of Defendant No. 1 to submit that Defendant No. 1 is co-branding with property owners. As the policy stipulates that the services rendered at Defendant No. 2 to 4 have to meet with standards set by Defendant No. 1.

22. Ms. Nautiyal draws attention to various screenshots of the websites of Defendant No. 1, annexed along with the Plaint at page Nos. 35, 42 and 47, to demonstrate the infringement. The said

screenshots depict various listing of the hotels by Defendants using infringing trademarks that are identical and deceptively similar to the Plaintiff's Formative Trademarks.

23. Having perused the documents on record and the submissions advanced, as noted above, the Plaintiff has established a prima facie case in its favour; balance of convenience also lies in favour of the Plaintiff; irreparable loss would be caused in case an ex parte injunction is not granted. Accordingly, till the next date of hearing, the Defendants, their proprietors, partners, affiliates, successors or any such persons acting for their behalf are restrained from using trademark/ trade name "CAPITAL COMFORT INN" in any form including social media or as part of their domain name, e-mail address or any other trademark/ trade name which is identical or deceptively similar to "COMFORT", "COMFORT INN" and Plaintiff's Formative Trademarks.

24. It is clarified that the Defendants are not restrained from using the mark "CAPITAL O".

25. Mr. Chaitanya Kaushik, counsel for Defendant No. 1, who appears on advance notice, states that Defendant No. 1 has no role to play and is merely providing services to the hotel owners for listing of properties on its websites. He further submits that Defendant No. 1 is willing to take down listing pertaining to Defendants No. 2, 3 and 4 from their website.

26. Let the provision of Order XXXIX Rule 3 of CPC be complied with within a period of one week from today.

27. List before the Joint Registrar for completion of pleadings on 24th February, 2022.

28. List before the Court thereafter on 26th April, 2022.

SANJEEV NARULA, J DECEMBER 16, 2021/as