

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 116/2023

TATA SIA AIRLINES LIMITED..... Plaintiff
Through: Ms. Kruttika Vijay, Mr. Aditya
Gupta and Mr. Mukul Kochhar, Advs.

Versus

VISTARA BUILDTECH LLP & ANR Defendants
Through:



CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **03.03.2023**

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1. The plaintiff is aggrieved by the use, by the defendants of the marks , , ,  and . The plaintiff is the proprietor of, *inter alia*,

- (i) the word mark VISTARA, registered in
 - (a) Classes 12 and 39 with effect from 2nd June 2014,
 - (b) Class 16 with effect from 13th January 2015 and
 - (c) Classes 16, 21, 25, 27, 28 and 18 with effect from 13th January 2015,
- (ii) the device mark  in Classes 12 and 39 with effect from 2nd June 2014 and
- (iii) the colour combination mark  with effect from 10th September 2020.

2. The plaintiff is the well-known collaboration between Tata Sons Pvt Ltd and the Singapore Airlines Ltd which, under the mark VISTARA, is engaged in the commercial aviation industry. Para 14 of the plaint provides details of the revenue earned by the plaintiff from 2018 to 2022 with the revenue earned in 2022 being to the tune of ₹ 5,520 crores. The plaint also highlights the considerable amounts spent towards promotion and advertising of its services which, in the financial years 2021-2022, was ₹19.92 crores.

3. The plaintiff is aggrieved by the use, by the defendants, of the mark VISTARA as part of the impugned marks. The impugned marks are stated to be used by the defendants in connection with commercial properties which are being developed by the defendants.

4. In view of the infringing nature of the defendants' marks, the plaintiff issued a cease and desist notice to the defendants on 2nd January 2023, calling on the defendants to desist from continuing to use the impugned marks. This was followed by a reminder on 19th January 2023. However, there was no response to either of the said missives.

5. It is in these circumstances that the plaintiff has approached this court by means of the present suit, seeking an injunction against the defendants using the impugned marks in any manner, as the marks infringe the registered trademarks of the plaintiff and are likely to lead an unsuspecting consumer to believe that defendants' activities have some association with the plaintiff.

6. A *prima facie* case of infringement is clearly made out as the plaintiff has, in its favour, several registrations of the word mark

VISTARA.

7. VISTARA is a coined word, which has no known meaning or etymological significance. The plaintiff has been using the mark VISTARA since at least 2015, and the plaintiff asserts that the defendants as a partnership firm came into existence in 2022 and are yet to commence building operations under the impugned marks.

8. The plaintiff, therefore, also has the advantage of priority of use over the defendants.

9. In the circumstances, let the plaint be registered as a suit.

10. Issue summons, calling on the defendants to enter appearance and file written statement.

11. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendants within 30 days thereof.

12. List before the learned Joint Registrar (Judicial) for completion of the pleadings, admission and denial of documents and marking of exhibits on 6th April 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 4305/2023(Order XXXIX Rules 1 and 2 of the CPC)

13. This is an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs. The plaintiff has made out a clear *prima facie* case of infringement and passing off in its favour and against the defendants. The defendants are yet to commence operations. The assertions in the plaint reveal that the defendant, as a partnership firm, has itself come into existence only in 2022.

14. As such, the defendants cannot, *prima facie*, plead longevity of user as a defence against grant of injunction.

15. The plaint also points out that plaintiff is declared as a well-known mark by judgment dated 5th August 2019 passed by this Court in CS (Comm.) 156 of 2019. As the plaintiff would also be entitled to benefit of Section 29(4) of the Trade Marks Act, 1999.

16. In such circumstances, the judgments of the Supreme Court in *Laxmikant V. Patel v. Chetanbhai Shah*¹ and *Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia*², require the Court to injunct the defendants from continuing with its infringing activities.

17. In the circumstances, issue notice, returnable on 4th May 2023 before the Court.



18. Reply be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, if any, within four weeks thereof.

¹ (2002) 3 SCC 65

² (2004) 3 SCC 90

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19. Till the next date of hearing, the defendants and all others acting on their behalf shall stand restrained from using the mark “VISTARA” either as a word mark as part of any device marks,

including the impugned marks , , ,  and , in any manner whatsoever and in connection with any goods or services.

20. As this order has been passed *ex parte*, the plaintiff is directed to comply with the requirement of Order XXXIX Rule 3 of the CPC within one week from today.

I.A. 4306/2023 (exemption)

21. Subject to the plaintiff filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

22. The application is disposed of.

I.A. 4307/2023 (Order XI Rule 1(4) of the CPC)

23. This application seeks permission to file additional documents. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the CPC as amended by the Commercial Courts Act, 2015 within four weeks from today.

24. The application stands disposed of accordingly.

I.A. 4308/2023 (Section 12A of the Commercial Courts Act, 2015)

25. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*³, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

26. The application stands allowed accordingly.

C.HARI SHANKAR, J

MARCH 3, 2023

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