

(2022) 07 DEL CK 0030

In the Delhi High Court

Case No : Civil Suit (COMM) No. 663 Of 2021

Choice Hotels International, Inc.

APPELLANT

Vs

Oravel Stays Private Limited & Ors.

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 142
Code Of Civil Procedure, 1908 — Order 39 Rule 2A, Order 39 Rule 4
Arbitration And Conciliation Act, 1996 — Section 23(4), 29A
Commercial Courts Act, 2015 — Section 12A
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 07 DEL CK 0030

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Abhilasha Nautiyal, Mukul Kochhar, Satvik Verma, Chaitanya Kaushik, Ayush Dhawan, Junaid Aamir, Drishti Harpalani

Judgement

Prathiba M. Singh, J

I.A. 10178/2022 (for delay)

1. This is an application filed by the Defendant No.1 seeking condonation of delay of 96 days in filing of the written statement. The present application is opposed by the Plaintiff.

2. Ms. Nautiyal, Id. Counsel for the Plaintiff - Choice Hotels International, Inc., makes the following submissions:

i. The Defendants had entered appearance on the first date i.e., 16th December, 2021 and summons were accepted by Id. Counsel for Defendant No.1 on the said date. Thereafter, the Defendant No.1 has been continuously appearing in the matter on several dates, including 24th February, 2022, 1st April, 2022, 21st April, 2022 and 26th April, 2022.

ii. The present case would be covered by the judgment in H.T. Media Limited &

Anr. v. Brainlink International Inc. & Anr. [CS(COMM) 119/2022, decided on 17th December, 2021], wherein the Id. Single Judge of this Court held that when the Defendant is continuously appearing and could have easily taken steps to file the written statement, the delay would not be liable to be condoned.

iii. Reliance is also placed upon the judgment in SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd. [(2019) 12 SCC 210], wherein it was held that the timelines under the Commercial Courts Act, 2015 are mandatory in nature.

3. On the other hand, Mr. Verma, Id. Senior Counsel appearing for the Defendant No.1 - Oravel Stays Private Limited, submits that, in view of the judgment of the Supreme Court in Prakash Corporates v. Dee Vee Projects Limited, (2022) 5 SCC 112, the benefits of the orders passed by the Supreme Court in Suo Moto Writ (Civil) No.3 of 2020 titled In Re: Cognizance for Extension of Limitation ought to be extended to Defendant No.1.

4. Heard Id. Counsels for the parties. The time period for filing the written statement under the provisions of the Commercial Courts Act, 2015 is mandatory in nature. This was clearly settled by the Supreme Court in SCG Contracts (supra). However, thereafter, during the pandemic, various orders have been passed by the Supreme Court in Suo Moto Writ (Civil) No.3 of 2020 titled In Re: Cognizance for Extension of Limitation, extending the period of limitation. The said extensions have also been extended to disputes arising under the Commercial Courts Act, 2015 as well.

5. In Prakash Corporates v. Dee Vee Projects Limited, (2022) 5 SCC 112, the Supreme Court held as under:

"27.6. Reverting to the orders passed by this Court, noticeable it is that on 27-4-2021, this Court restored the order dated 23-3-2020 and it was directed, in continuation of the order dated 8-3-2021, that the periods of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended. Ultimately, the said MA No. 665 of 2021 was disposed of on 23-9-2021 with this Court issuing directions similar to those contained in the order dated 8-3-2021 but while providing that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 2-10-2021 shall stand excluded.

27.7. We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions.

28.1. Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23-9-2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2. In other words, the orders passed by this Court on 23-3-2020, 6-5-2020, 10-7-2020, 27-4-2021 and 23-9-2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15-3-2020 to 2-10-2021) could still be filed within 90 days from 3-10-2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

28.3. Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time-limit for filing the written statement by the appellant in the subject suit did not come to an end on 6-5-2021.

34. On behalf of the respondent, much emphasis has been laid on the submission that the appellant was regularly appearing in the Court and, therefore, cannot take advantage of the orders passed in SMWP No. 3 of 2020. It is true that the appellant had indeed caused appearance in the Court in response to the summons and sought time for filing its written statement but at the same time, it is also undeniable that at the relevant point of time, the second wave of pandemic was simmering and then, it engulfed the country with rather unexpected intensity and ferocity. Then, on 27-4-2021, this Court restored the operation of the order dated 23-3-2020 in Cognizance for Extension of Limitation, In re. Putting all these factors together, we are unable to accept the submissions made on behalf of the respondent that because of earlier appearance or prayer for adjournment, the appellant-defendant would not be entitled to the relaxation available under the extraordinary orders passed by this Court."

6. In *Brainlink International Inc.* (supra), a view was taken by the Id. Single Judge of this Court that if the Defendant has been continuously appearing and the Defendant chose not to file the written statement despite there being no impediment in filing the same, no benefit of extension of time ought to be extended in such a case. The Id. Single Judge followed the judgment in *Flight*

Center Travels Pvt. Ltd. v. Flight Centre Limited, 2013 SCC OnLine Del 331 while rendering the said decision. The relevant portion of the said judgment is set out below:

"9. There is no dispute on the dates i.e., the suit came up for hearing for the first time on 28th April, 2020; the defendants filed an application under Order XXXIX Rule 4 CPC on 27th May, 2020, and appeared before the court on 29th May, 2020, through counsel; and, simultaneously, an application under Order XXXIX Rule 2A [I.A.4132/2020] was filed by the plaintiffs alleging violation of the interim directions issued on 28th April, 2020 and the reply was filed thereto by the defendants. It appears that the defendants stated before the court on 9th July, 2020 that the interim order must not be read to mean that the defendant is restrained from approaching the statutory authority for filing objections to the trademark. In fact, the defendants have already filed their objections before the Trademark Registry on 15th May 2020.

10. It is thus, more than apparent that the conditions that prevailed due to the pandemic did not actually impact the defendants to prevent them from interacting with their counsel and filing appropriate applications and replies before this court. To that extent, the orders of the Supreme Court in Cognizance For Extension of Limitation (supra) would not be applicable to the facts of the present case.

...

14. A coordinate Bench of this Court in Flight Center (supra) has held that when the defendant had knowledge of the case and had entered appearance through counsel, a technical process of service of summons need not be insisted upon. It was observed as below: -

"25. The objective of the process of issuance of summons is to obtain the presence of the defendant for final opportunity to be given to him to rebut the claim against him. Thus, if he appears at the initial stage in a sense there is waiver of the right to have summons served on him. This position has been explained in the case of Sri Nath Agrawal case (supra) and to that extent the aforesaid has been upheld by the Supreme Court in Siraj Ahmad Siddiqui case (supra)."

15. There is no reason to take a different view in the present case. Here, the defendants were fully aware of the present case. They participated on various dates from 29th May, 2020, including in mediation, and chose not to file their written statement. Had they been not represented by a counsel, a probable view could have been taken that the procedure was unknown to the defendants. However, they have been assisted by counsel throughout and the very number of the case would have flagged to them that this was a commercial suit, which entailed strict timelines. The plea of the learned counsel for the defendants that since the summons had not been served to them, the time had not begun to run, cannot be accepted. Thus, on both grounds, there is no merit found in the

present application. The same is dismissed.”

7. The Supreme Court has upheld the above judgment dated 17th December, 2021 passed by the Id. Single Judge of this Court in Brainlink International Inc. (supra) and dismissed the Special Leave Petition. The order dated 14th March, 2022 passed by the Supreme Court in Brainlink International Inc. & Anr. v. HT Media Limited & Anr. [SLP (C.) 3579/2022] is set out below:

“In the facts and circumstances of the case and keeping in mind the conduct on the part of the petitioners and when even during the pandemic the petitioners participated in the proceedings, which has been reflected in para 3 of the impugned order, we are in complete agreement with the view taken by the High Court.

No interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India. The Special Leave Petition stands dismissed.”

8. Thereafter, however, in Babasaheb Raosaheb Kobarne & Anr. v. Pyrotek India Private Limited & Ors., the Supreme Court has categorically held that the period from 15th March, 2020 till 28th February, 2022 would have to be excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. This includes the Commercial Courts Act, 2015 as the said statute is a special law. The observations of the Supreme Court in the said judgment are set out below:

“Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.12.2021 passed by the High Court of Judicature at Bombay in Writ Petition No.6191 of 2021, by which the High Court has dismissed the said writ petition and has confirmed the order passed by the learned Trial Court, refusing to take the written statement on record and has refused to condone the delay in filing the written statement, the original defendants have preferred the present appeal.

From the impugned judgment and order passed by the High Court, it appears that the High Court has refused to condoned the delay and take on record the written statement on the ground that the period of 120 days within which the written statement could have been taken on record, expired on 09.05.2020 which was during the lock-down imposed. Therefore, the High Court has refused to condone the delay and take the written statement on record.

Having heard the learned counsel appearing on behalf of the respective parties and having considered order dated 10.01.2022 passed by this Court in Miscellaneous Application No.21/2022 by which the following order was passed and order dated 04.01.2022 passed by this Court in SLP (C) No.17298/2021 in the case of Centaur Pharmaceuticals Pvt. Ltd. & Anr. Vs. Stanford Laboratories Pvt. Ltd., the impugned order passed by the High Court is unsustainable. The operative portion of the order passed by this Court in Miscellaneous Application No.21/2022 reads as under -

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent

orders dated 08.03.2021, 27.04.2021 and 23.09.2021. It is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022. III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12 A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

In that view of the matter, the period from 15.03.2020 till 28.02.2022 shall have to be excluded for the purposes of limitation as may be prescribed under any General or SPECIAL LAWS in respect of all judicial or quasi-judicial proceedings. The Commercial Courts Act, 2015 being a Special Law, the said order shall also be applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also.

In view of the above and for the reasons stated above and more particularly when the 120 days period expired in the present case on 09.05.2020 which was during the aforesaid period as prescribed by this Court in the aforesaid order, the High Court ought to have excluded the aforesaid period for the purpose of filing the written statement and ought to have permitted to take the written statement on record. The impugned judgment and order passed by the High Court refusing to condone the delay and take on record the written statement is hereby quashed and set aside. It is directed that the written statement, already filed, be taken on record and the same be considered in accordance with law.

It is reported that an interim injunction application is pending before the learned Trial Court since long. We direct the learned Trial Court to finally decide and dispose of the interim injunction application at the earliest and preferably within a period of six weeks from the date of receipt of the present order. The Appeal is accordingly allowed to the aforesaid extent. No costs.”

9. In this view of the matter, the delay of 96 days in filing the written statement stands condoned. The written statement filed on behalf of Defendant No.1 is taken on record, subject to costs of Rs.10,000/- to be paid to the Plaintiff within four weeks.

10. Replication be now filed in accordance with the timelines as prescribed under

the Commercial Courts Act, 2015.

11. I.A. 10178/2022 is disposed of.

I.A. 6376/2022 (u/O XXXIX Rule 2A CPC)

12. Vide order dated 16th December, 2021, an ad interim injunction was granted in the present case, in the following terms:

"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 Plaintiffs 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 listings pertaining to Defendants No. 2, 3 and 4 from their website."

13. On the previous date i.e., 26th April, 2022, this Court had noticed that there were various listings of properties bearing the mark 'COMFORT INN', 'COMFORT', etc. which were appearing on the Defendant No.1's website, in violation of the order dated 16th December, 2021.

14. On the said date, Mr. Satvik Verma, Id. Senior Counsel appearing for Defendant No.1 had sought time to seek instructions in the matter. He submitted that insofar as the new infringing listings specified in the present application are concerned, the same would be taken down. It was submitted that Defendant No.1 does not intend to violate the order in any manner, and various steps were taken by Defendant No. 1 to implement the previous order passed by this Court.

15. Today, Mr. Verma, Id. Senior Counsel submits that initially the suit had been filed in respect of three properties and three listings, and the concerned entities were also specifically impleaded as Defendant Nos. 2, 3 and 4. Thereafter, 18 further listings of properties were brought to the notice of the Defendant No.1 by way of the present contempt application. During the pendency of the present application, further five listings have been sent by the Plaintiff.

16. In respect of all the aforementioned listings and the use of the word 'COMFORT/COMFORT INN' in different forms and variants, Mr. Verma submits

that all the online listings of all the 26 properties have been removed from the Defendant No.1's portal. He further submits that all the physical boards and hoardings, etc. have also been removed from the respective properties as well, except for three to four properties, where the said parties have refused to remove the physical boards.

17. In response, Ms. Nautiyal, Id. Counsel submits that Defendant No.1 has arrangements with all these properties as it is also engaged in co-branding of the said properties with the mark 'OYO' or the letter 'O', which is the Defendant No.1's mark. Thus, the Defendant No.1 ought to take responsibility for removal of all the online listings, as also, the physical boards.

18. Heard Id. Counsels for the parties. A perusal of the record shows that the initial injunction order dated 16th December, 2021 extended only to Defendant Nos.1 to 4 and the specific properties that were identified were Defendant Nos.2, 3 and 4. In respect of these three properties, the listings and the physical boards already stand removed. By way of the present contempt application, 18 further listings were brought to the notice of the Defendant No.1, which have also been removed.

19. Insofar as the physical boards are concerned, the Defendant No.1 shall ensure that in respect of the properties which are refusing to remove the injuncted marks, the co-branding or the display board of the Defendant No.1 shall also be removed by the Defendant No.1. The details of such parties be communicated to the Plaintiff, within a period of two weeks. If there is any outstanding grievance against the three to five properties which were refusing to remove the injuncted marks from the premises, the Plaintiff is free to avail of its remedies, in accordance with law.

20. Insofar as the further five listings which have been brought to the notice of the Defendant No.1 are concerned, the same procedure of removal of listings and removal of co-branding by the Defendant No.1 shall be followed. Defendant No.1 shall also inform the representatives of these properties to remove the injuncted marks. If they fail to do so, the Plaintiff is free to avail of its remedies, in accordance with law.

21. At this stage, Mr. Verma, Id. Senior Counsel submits that the online listings of the further five properties communicated by the Id. Counsel for the Plaintiff have also been removed from the online portal of Defendant No.1.

22. In future, whenever the online listings or physical properties of any further parties having arrangements with Defendant No.1 for using the injuncted marks come to the notice of the Plaintiff, the Plaintiff shall give issue an intimation to Defendant No.1 in respect of the same. Upon receiving such an intimation, the said listings shall be removed within one week. An endeavour shall be made by Defendant No.1 to write to the said parties for removal of the physical boards from their properties, within one week of receiving such intimation. If the same are not removed by the parties, within two weeks, the Defendant No.1 shall

inform the Plaintiff accordingly, who shall then be free to avail of its remedies, in accordance with law.

23. It is made clear that the direction issued to Defendant No.1 to remove online listings shall also apply qua the online portals with whom the Defendant no.1 has online travel listing arrangements.

24. I.A. 6376/2022 is disposed of, in the above terms.

CS(COMM) 663/2021 & I.A. 16848/2021 (for stay)

25. One of the issues that arises in the present suit is whether the Plaintiff has rights in the word/mark 'COMFORT', 'SUITES', 'INN' per se or are the rights in the combination marks. A perusal of the plaint and documents placed on record shows that the Plaintiff has various registrations.

26. The question as to the extent of the monopoly that the Plaintiff shall be entitled to enjoy owing to the said registrations would be required to be heard further.

27. Interim order already granted shall continue till the next date.

28. List before the Joint Registrar on 2nd September, 2022.

29. List before the Court on 17th October, 2022.