

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

% **Date of decision: 24th January, 2022**

+ **CS(COMM) 416/2020 & I.A. No. 8969/2020 (O-XXXIX R-1&2)**

CENTURY 21 REAL ESTATE LLC Plaintiff

Through: Ms. Shwetasree Majumder with Ms.
Tanya Varma & Mr. Rohan Krishna
Seth, Advocates.

Versus

ALCHEMIST LTD & ANR. Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

[VIA VIDEO CONFERENCING]

**CS(COMM) 416/2020 & I.A. No. 10779/2021 (O-VIII R-10 of the CPC
by the plaintiff)**

1. The present suit has been filed for permanent injunction restraining infringement of trademark, passing off, rendition of accounts of profits, damages and delivery up against the defendants.
2. Vide order dated 6th October, 2020, this Court was pleased to grant an *ex parte ad interim* injunction against the defendants and directed the plaintiff to comply with provisions of Order XXXIX Rule 3 of Code of Civil Procedure, (CPC), 1908. In compliance thereof, the plaintiff had sent the complete set of the paper book which includes the pleadings, documents,

applications and order dated 06th October, 2020 along with a compliance letter to the defendants on 8th October, 2020 through courier and on 9th October, 2020 through speed post. An affidavit of compliance in this regard was filed by plaintiff on 21st October, 2020.

3. Service was also affected on the defendants through email by the plaintiff on 7th October, 2020 and an affidavit of email service was also filed by the plaintiff on 21st October, 2020. Subsequently, summons were yet again served upon the defendant on 14th January, 2021 through email and speedpost by the plaintiff and an affidavit of service was again filed by the plaintiff on 16th January, 2021.

4. The matter was listed before the Court on 21st January, 2021 and 5th July, 2021, however, the defendants neither appeared before the Court, nor filed any written statement. The statutory period of 120 days for filing written statement is already over and the defendants have forfeited their rights to file their written statement.

5. The present application under Order VIII Rule 10 of the CPC was filed on behalf of the plaintiff on 17th August, 2021 with an advance copy served to the defendants through email. The said application was listed before this Court on 26th August, 2021 when this Court was pleased to issued notice to the defendant. As per the office noting, notice of the present application was served upon the defendant no. 1 through speed post on 20th September, 2021. Even defendant no. 2 was served with the notice of the application through email on 28th September, 2021.

6. Since the defendants despite service of the summons in suit and the notice issued in the present application have failed to appear or to file written submission/reply, they are proceeded *ex-parte*.

7. At this stage, counsel for the plaintiff gives up prayers (e) and (f) of the prayer clause of the suit and submits that the present suit maybe decreed qua reliefs (a) to (d) of the prayer clause, relief (g) to the extent of USD 22,000 along with interest @ 10% per annum as admitted by the defendants and costs of the suit.

8. I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex-parte* evidence by filing affidavit of examination in chief. The plaint is duly supported by the affidavit of the plaintiff. Therefore, the counsel for the plaintiff has been heard on the merits of the case.

9. The relevant facts of the present case are that the plaintiff is a registered proprietor of the trademark “CENTURY 21”, both as a standalone word mark and also as a house mark. Plaintiff is a prominent and globally renowned franchisor in the field of real estate and has been using the aforesaid trademark in the course of his business and is otherwise well-known in the field of real estate industry.

10. Plaintiff also has a global website www.century21.com which is also accessible in India and has been operating since 2nd March, 1995. The plaintiff entered into a Sub-Franchise Agreement with defendant no.1 on 21st December, 2012 whereby defendant no.1 was granted exclusive right to use and sublicense the “CENTURY 21” trademarks and Century 21 system to franchisees in India.

11. Pursuant to the said agreement, defendant no.2 was incorporated by defendant no.1 by the name of ‘Century 21 Properties India Pvt. Ltd.’ The defendants also registered websites www.century21.in and www.century21.co.in in order to advertise the business which was conducted by it in “CENTURY 21” trademark.

12. On account of non-fulfillment of their commitments under the said agreement, the plaintiff terminated the agreement with the defendants vide letter dated 26th January, 2016 and claimed USD 22,000 towards minimum service fee along with interest @ of 10%. The said communication was replied by the defendants vide letter dated 1st March, 2016 admitting the aforesaid liability of USD 22,000 along with interest.

13. Despite instructions of the plaintiff to the contrary, the defendants continued to host the websites www.century21.co.in and www.century21.com. The defendants even after the termination of the franchise agreement and after being put to notice about the plaintiffs right have also continued to renew the registration of the said domain names, which clearly shows that the defendants have been misusing the plaintiffs registered trademark.

14. Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 empowers this Court to pass a summary judgment, without recording evidence, if it appears that defendants have no real prospect of defending the claim.

15. In the opinion of this Court, the defendants have no real prospect of defending the claim as they have neither entered appearance nor have, they filed their written statement. Moreover, despite the sub-franchise agreement of the defendant no. 1 and consequently of defendant no. 2 being terminated, the defendants have continued to use the domain names www.century21.in and www.century21.co.in, it is a clear case of infringement of plaintiffs' registered mark.

16. This Court is also of the view that the defendants are using the registered trademark 'CENTURY21' of the plaintiff in their website's

domain name with a view to trade upon and benefit from the immense reputation and goodwill of the plaintiffs' mark and pass off its services as that of the plaintiffs.

17. A decree is thus passed, in favour of the plaintiff and against the defendants, of (i) permanent injunction in terms of prayer clause (a) and (b) of the plaint; (ii) transfer of the domain name *www.century21.co.in* to the plaintiff, in terms of prayer clause (c) of the plaint; (iii) change of name of defendant no. 2, in a manner that is not identical to or resembling or otherwise deceptively similar to 'CENTURY 21' trademark, in terms of prayer clause (d) of the plaint; (iv) damages to the extent of USD 22,000/- along with interest @ 10 % per annum which amounts to Rs. 24, 31,036/-, in terms of prayer clause (g).

18. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. The plaintiff is given liberty to place on record the exact cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit and pending application stand disposed of.

AMIT BANSAL, J.

JANUARY 24, 2022

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