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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th October, 2023

+ **CS(COMM) 370/2020 and O.A. 76/2023**

FLIPKART INTERNET PRIVATE LIMITED Plaintiff
Through: Ms. Shilpa Gupta, Ms. Surabhi Pande
and Ms. Arushi Mann, Advocates.

versus

GODADDY OPERATING COMPANY LLC & ORS. Defendants
Through: Ms. Shweta Sahu & Mr. Brijesh
Ujjainwal, Advs. For D-1, 2 & 31

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

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2. This is an original appeal filed by Defendant No. 2 - Endurance Digital Domains Technology LLP and Defendant No.30 - known as PDR Ltd. (earlier Defendant No.31) challenging the order dated 1st August, 2023 passed by the Joint Registrar.

3. Vide the said order dated 1st August, 2023 the Joint Registrar held that the written statement filed on 25th May, 2023 by PDR Ltd. and Endurance Digital Domains Technology LLP is not to be taken on record. The relevant part of the said order is as under:

“ After being impleaded on 11.11.2022, defendant no 2 &31 have filed the present IA, stating that defendants/applicants have acted in bonafide manner to the best of their abilities in order to avoid any delay in filing the written statement. However due to defendant no. 31 being based out of Seychelles, there was an unexpected delay in getting the information and instruction in relation to the present case, therefore some delay has occurred in



filing the written statement. It is also stated that the time period for filing the written statement for defendants / applicants began from 14.02.2023 and not from 11.11.2022 as the amended memo of parties was served upon defendants on 14.02.2023. It is stated that the defendants have filed the written statement after the delay of 70 but the delay should be condoned due to the reasons mentioned in the application, further no prejudice will be caused to the plaintiff, if the application is allowed and defendants are allowed to contest the suit filed by plaintiff.

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Learned counsel for the defendants has relied upon the judgment mentioned above, which in my respectful view is not applicable to the facts and circumstances of the present case, in view of the specific amendment inserted into the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Even otherwise defendants no.1&2 had ample time to file written statement, as they accepted notice on 11.11.2022, the date when they were impleaded, but inspite of that they had incurred the risk of not filing the written statement on time. There is no force in the contentions of Ld.counsel of defendants / applicants that the time period for filing the written statement for defendant no. 2 & 31 starts from the date, when they were served the copy of amended memo of parties, as there was a direction in the order dated 11.11.2022 for filing the amended memo of parties. There is a direction in the order dated 11.11.2022 for filing the amended memo of parties but there is no such direction that written statement shall be filed only after filing of amended memo of parties. Consequently there is no plausible explanation furnished for not filing the written statement on time by defendant no. 2 & 31. Since written statement has been preferred by defendant no.2&31 beyond the stipulated outer limit of 120 days, said delay cannot be condoned even by the court. As a resultant written statement filed by defendant no.2&31 cannot be taken on the record. Therefore right to file written



statement by defendant no. 2&31 is liable to be closed.

IA is hereby disposed off as dismissed.”

4. The present case relates to domain name disputes, wherein the Plaintiff - Flipkart Internet Private Limited is aggrieved by various domain names being registered by the Defendants with the Plaintiff's mark "Flipkart" as part of the said domain names. The Plaintiff also seeks permanent injunction *qua* other such websites/entities which are discovered during the course of the proceedings to have been engaged in infringing the Plaintiff's trademark "Flipkart" or any deceptive variant thereof.

5. Initially, this suit was filed against Defendant No.1 - GoDaddy Operating Company LLC and Defendant No. 2 - Endurance Digital Domains Technology LLP raising grievances against various domain names. The suit was against 30 identified Defendants and 31 to 40 were John Doe parties. The identified domain names included flipppsales.com, flipkartpk.com, filpkartupi.club, flipmart.shop, summersaleslive.xyz, Flipwalesale.com, Flipskrtstocksales.com, Flipskart-stock-sale.com, Flipcartstocksale.com, Flipskrtstockdeal.com, Flipkshop.xyz, Flipkrat-sale.com. During the pendency of this suit, further domain names and domain name registrars (DNRs) have also been impleaded. Currently, there are 46 identified Defendants and Defendant Nos. 47 to 50 are John Doe parties.

6. Multiple applications have been filed by the Plaintiff seeking impleadment of these parties and there are a large number of amended memos of parties which are on record.

7. Insofar as the present appeal is concerned, it is relevant to point out that Defendants Nos. 2 and 31 sought their deletion and consequent substitution



of the correct entities. The same was allowed vide order dated 11th November, 2022. On the said date the following order was passed by the Joint Registrar:

“I.A. No. 6653/21 (under Order I Rule 10 (2) for deletion of applicant/defendant no. 2 and 31)”

Before proceeding to adjudicate this IA, it is noted that the registration number of this IA was incorrectly mentioned as “10889/20” by the learned predecessor in her order dated 12.09.2022. This mistake stands corrected. The correct registration number is reflected in the present order.

This IA belongs to defendants no 2 and 31. They are seeking their deletion and consequent substitution of the correct entities i.e. “Endurance digital domain technology LLP (earlier known as Endurance Domains Technology LLP)” in place of defendant no. 2 and “PDR Ltd” in place of defendant no. 31.

The counsel for the plaintiff states that the aforesaid IA be allowed with consequent deletions and substitutions without prejudice to her rights and contentions.

In the given circumstances, this IA stands allowed without prejudice to the rights and contentions of all concerned. The defendant no. 2 now stands substituted with “Endurance digital domain technology LLP” and defendant no. 31 stands substituted with “PDR Ltd”.

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The plaintiff shall file the Amended memo of parties before the next hearing in the light of the allowing of the aforesaid IA.

The pleadings in respect of defendant no. 1 are already complete.

The defence of the remaining defendants was already stuck off on 12.09.2022.

Sh. Parva Khare, counsel appearing on behalf of the newly substituted defendants no 2 and 31 accepts notice. He shall file the written statement in due course.

The plaintiff shall file the replication thereafter in due course.

The counsel for defendant no. 22 states that he has



complied with the interim directions of the Hon'ble Court whereby he can now be safely deleted being an unnecessary party. The counsel for the plaintiff seeks time to procure instructions in this regard.

List the matter for admission denial/marketing of exhibits on 12.01.2023.”

8. The case of PDR Ltd. and Endurance Digital Domains Technology LLP is that though notice was issued on 11th November, 2022, the reading of the said order passed by the Joint Registrar would show that the time for filing of written statement could not have commenced prior to filing of the amended memo of parties by the Plaintiff.
9. Ms. Sahu, Id. Counsel submits that the written statement by PDR Ltd. and Endurance Digital Domains Technology LLP was filed on 25th May, 2023 and it was within 120 days period from the date when the amended memo of parties dated 14th February, 2023 was filed impleading Defendant Nos.2 and 31.
10. On the other hand, it is submitted by the Id. Counsel for the Plaintiff that vide order dated 11th November, 2022, PDR Ltd. and Endurance Digital Domains Technology LLP were well aware that they had to file a written statement. The use of the word `notice` was in fact only a typographical error instead of `summons`.
11. Heard. Insofar as the time period for filing written statement is concerned, in a commercial suit, the same is a maximum of 120 days as held by the Hon'ble Supreme Court in ***M/S SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors., CA No. 1638/ 2019.***
12. The question in the present case is as to from when the 120 days period would commence. Considering the large number of applications for



impleadment of infringing domain names which are filed repeatedly in these domain name suits, in the facts of the present case, this Court is of the opinion that the period of 120 days for filing of written statement for PDR Ltd. and Endurance Digital Domains Technology LLP shall commence from the date when the amended memo was filed i.e. 14th February, 2023.

13. The written statement filed on 25th May, 2023 is beyond the period of 30 days as provided in Rule 4 of Chapter VII of the Delhi High Court (Original Side), Rules 2018 and Order VIII Rule 1 of the CPC, however it is within the period of 120 days. Accordingly, this written statement is taken on record subject to payment of Rs.20,000/- to the Plaintiff. The same shall be paid within 2 weeks by PDR Ltd. and Endurance Digital Domains Technology LLP.

14. It is made clear that the same is in the unique facts and circumstances of this case.

15. The appeal is allowed in the above terms.

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16. Let the replication be filed within the time prescribed in law.

17. List before the Joint Registrar on 17th October, 2023 for admission/denial.

18. List before the Court on 26th March, 2024.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 4, 2023

Rahul/kt