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

% *Date of decision: 18th March, 2025*

+ CS(COMM) 818/2022 with I.A. 19721/2022 and I.A. 45100/2024

APNATIME TECH PRIVATE LIMITED AND
ANR.

.....Plaintiffs

Through: Ms. Devyani Nath & Ms. Vani Sarin,
Advocates.

versus

ANIK DEV NATH AND OTHERS

.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringement of copyright and passing off of their services as those of the plaintiffs along with other ancillary reliefs.

PROCEEDINGS IN THE SUIT

2. Summons in the suit and notice in the application for interim injunction were issued to the defendants no.1 to 15 on 25th November 2022. On the same date, an *ex-parte ad interim* injunction in favour of the plaintiffs and against the defendant no.1 was granted and directions were given to the defendants no.2, 3, 13 and 14.

3. In compliance with the order dated 25th November 2022, the defendant no.15 furnished the requisite information with regard to the



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domain name registrant of www.apnajobs.in. Accordingly, the defendants no.3 and 13 to 15 were deleted from the array of parties on 27th March 2023 and the plaintiffs were directed to file an amended memo of parties incorporating the details of the domain name registrant of www.apnajobs.in furnished by the defendant no.15.

4. As per the amended memo of parties dated 28th August 2023, summons were issued to the defendant no.16 on 3rd November 2023.

5. As recorded in the order dated 3rd November 2023, the defendant no.1 was served through email on 30th October 2023. Despite service, none has entered appearance on behalf of the defendant no.1.

6. Thereafter, an application under Order XIII-A of the Code of Civil procedure, 1908 (hereinafter 'CPC') seeking a summary judgment against the defendants no.1 and 16 has been filed on behalf of the plaintiffs and notice was issued therein to the defendants no.1 and 16 on 14th November 2024.

7. As recorded in the order dated 11th March 2025, the defendants no.1 and 16 were served on 4th December 2024. However, no reply to this application has been filed by the aforesaid defendants. None appears on behalf of the defendants no.1 and 16 even today.

CASE SET UP BY THE PLAINTIFFS

8. The plaintiff no.1, Apnatime Tech Private Limited, is a company incorporated on 9th May 2019 in India and is a subsidiary of the plaintiff no.2, Apna Time Inc., which is a company incorporated on 24th April 2019 under the laws of Delaware, United States of America.

9. The plaintiff no.1 is the owner and proprietor of a mobile and web-based portal called 'Apna Job Search', which is a networking platform for



blue collar jobs to employees and potential employees.

10. The plaintiffs registered the domain www.apna.co and launched their website on 6th June 2019 and the mobile application, namely, Apna Job Search on 26th July 2019 on Google Play Store. The plaintiffs' mobile application is available in Hindi, English, Kannada, Bengali, Telugu, Tamil, Gujarat, Marathi, Odia, Assamese and Malayalam and has assisted more than 1.2 million individuals to secure interviews with over 25,000 potential employers within a span of one year from its launch.






11. The plaintiffs' target demographic is job seekers and employers focusing on blue and grey collar jobs. The plaintiffs, apart from having a very large candidate pool, also offer a superior technological solution and use artificial intelligence to ensure the highest level of accuracy in matches, making it easier for both the job seeker and the prospective employer. With over 60 categories, the plaintiffs' technological solution uses a social networking approach to hiring, accounts for attrition, provides for back-ups, assures a match within 72 hours and does not require superior CV writing skills from candidates looking to be placed (substituting the same with a unique auto generated 'virtual visiting card').

12. The plaintiffs boast of having facilitated over 4 lakh professional conversations between job seekers and prospective employers within a period of 30 days alone.

13. The plaintiffs adopted the mark APNA in April 2019 in the United States and in May 2019 in India and have been continuously using the same in relation to their recruitment and related services since then. The mark APNA forms an essential part of the plaintiffs' corporate names as well as their mobile application and primary business domain name www.apna.co.



The plaintiffs use the mark APNA as a house mark and several of their spin off business verticals use the same as a prefix.

14. The plaintiffs' portfolio of trade marks includes but is not limited to the marks APNA, , ApnaJobs, , ApnaChat, , ApnaCircle, , ApnaProfile,  and ApnaJob Groups (hereinafter 'APNA marks').

15. The mark APNA stands for one's own in English. The mark APNA, both as a standalone mark or in conjunction with other words/ marks, is completely arbitrary and therefore inherently distinctive in nature.

16. The plaintiffs' services under the APNA marks are availed by leading companies such as Amazon, Flipkart, Big Basket, Dunzo, Sodexo, Fortis, Mahindra, D-mart and Future Group.

17. The plaintiffs have extensively promoted and marketed the APNA marks since their adoption and have gained immense goodwill and reputation in respect of the same. Some of the important milestones achieved by the plaintiffs in relation to their services under the APNA marks include:

- a. Their mobile application has been downloaded over 1,00,00,000 times since its launch and has a user rating of 4.4 out of 5 based on over 1,63,658 reviews;
- b. Their YouTube channel has over 40,000 subscribers and their Facebook page has over 83,000 likes.

18. The plaintiffs have spent large sum of money to promote and advertise their services under the APNA marks. Pertinently, the marketing and promotional expenditure incurred by the plaintiff no.1 between April





2021 and September 2021 was Rs. 33,36,83,979/-. The plaintiffs also spend heavily towards development, upgradation and up-keep of their technology.

19. The plaintiffs' mobile application has been ranked amongst the 'Top 30 Business Category Apps' in the last quarter. The plaintiffs' commercial success has been extensively covered and reported by leading newspapers and news websites. The plaintiffs' services have also been well received by start-up accelerators and angel investors.

20. By virtue of prior and continuous use and large-scale advertisement and promotion of the APNA marks, the plaintiffs have acquired common law rights over the APNA marks and the same are exclusively associated with the plaintiffs.

21. In addition to their common law rights over the APNA marks, the plaintiffs have also filed trade mark applications for registration of the APNA marks. A list of the same, as given in paragraph no.13 of the plaint, is set out below:

S. No.	Trademark	Application No.	Use Claim	Class
1.		4588645	26/07/2019	9, 35 and 41
2.	Apna (word mark)	4588646	26/07/2019	9, 35 and 41
3.		4588651	17/08/2019	9 and 35
4.	Apnajobs (word mark)	4588652	17/08/2019	9 and 35



5.	apnachat	4588647	1/11/2019	9 and 35
6.	Apnachat (word mark)	4588648	1/11/2019	9 and 35
7.	apnacircle	4588649	05/08/2019	9 and 35
8.	Apnacircle (word mark)	4588650	05/08/2019	9 and 35
9.	apnaprofile	4588653	01/08/2019	9 and 35
10.	Apnaprofile (word mark)	4588654	01/08/2019	9 and 35

22. The plaintiffs are also the owner of copyright vested in the layout, arrangement and user interface of their website and mobile application which qualifies as 'original artistic work' under Section 2(c) of the Copyright Act, 1957.

23. During a routine investigation between August 2022 and September 2022, the plaintiffs came across the website operating through www.apnajobs.in. A perusal of the aforesaid website revealed that the plaintiffs' entire website has been mirrored thereon.

24. In the third week of September 2022, it was discovered by the plaintiffs that the website operating on the domain name www.apnajobs.in had been taken down, however, the said domain continued to be registered.

25. In October 2022, the plaintiffs came across the impugned domain www.apnajobs.org, registered in the name of the defendant no.1, which was also hosting a website being a mirror copy of the plaintiffs' website and is



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**apna**

using the plaintiffs' marks APNAJOBS and .

26. While instituting the present suit, it appeared to the plaintiffs that the defendant no.1 is the owner and registrant of both the impugned domain names www.apnajobs.in and www.apnajobs.org (hereinafter 'impugned domains'). The aforesaid was alleged by the plaintiffs on the following grounds:

- a. Websites operated on both the impugned domains are/ were a mirror copy of the plaintiffs' website.
- b. As per the WHOIS records, the registrants of both the domain names are residing in Bihar.
- c. The *modus operandi* of both the websites operating on the impugned domains is identical, *i.e.*, the registrants call up users on the pretext of offering a job and urge them to register for availing the services by paying a nominal fee of Rs. 49. However, the users, upon making the payment, are defrauded by paying exorbitant amounts of money instead of Rs. 49.

27. However, upon furnishing of the requisite information with regard to the domain name registrant of www.apnajobs.in by the defendant no.15, it was revealed that the said domain name was owned by one Mr. Santosh Kumar, who was then arrayed as the defendant no.16 in the present suit.

28. The plaintiffs have received numerous complaints from customers who were defrauded on the impugned websites and ended up paying huge amounts. Due to the scam conducted by the defendants no.1 and 16, innocent consumers are being duped of their hard-earned money leading to unfair losses to the members of public.



29. Aggrieved by the aforesaid, the plaintiffs instituted the present suit seeking permanent injunction restraining infringement of copyright and passing off of the impugned services as those of the plaintiffs.

ANALYSIS AND FINDINGS

30. I have heard counsel for the plaintiffs and perused the material on record.

31. The plaint has been duly verified and is also supported by the affidavit of the authorized signatory of the plaintiff no.1 and the constituted attorney of the plaintiff no.2. In view of the fact that no written statement has been filed behalf of the defendants no.1 and 16, all the averments made against them in the plaint are deemed to have been admitted. Further, since no affidavit of admission/ denial has been filed on behalf of the aforesaid defendants in respect of the documents filed with the plaint, the same are deemed to have been admitted in terms of Rule 3 of the Delhi High Court (Original Side) Rules, 2018.

32. Therefore, I am of the opinion that no purpose would be served by directing the plaintiffs to lead *ex-parte* evidence by filing an affidavit of examination-in-chief and the plaintiffs are entitled to a summary judgment.

33. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that they have been continuously and extensively rendering their services under the APNA marks in India since May 2019.


34. The plaintiffs, through their extensive and continuous use of the APNA marks in India, significant sales made thereunder and promotion thereof, have been able to establish their goodwill and reputation under the APNA marks in India.



35. A bare perusal of the material on record shows that the defendants no.1 and 16 have adopted and are using the impugned domains and the identical mark APNA/ APNAJOBS in relation to the impugned services, which are also identical with the plaintiffs' services under the APNA marks.

36. Therefore, the defendants no.1 and 16 have been taking unfair advantage of the reputation and goodwill of the plaintiffs under the APNA marks. The aforesaid defendants have deceived the unwary consumers by dishonestly adopting the plaintiffs' APNA marks and operating the impugned websites without any plausible explanation as well as have defrauded them by charging exorbitant money in the name of registration fees.

37. The *mala fide* adoption and use of the mark APNA/ AONAJOB and the impugned domains by the defendants no.1 and 16 is evident from the fact that the impugned websites are a mirror of the plaintiffs' website operating under the domain www.apna.co. The aforesaid defendants, on the impugned websites, have copied all the elements from the plaintiffs' website

including the literary and artistic works, the plaintiffs' logo  and customer reviews displayed on the home page of the plaintiffs' website.

38. In view of the above, the plaintiffs have established a clear case of infringement of copyright as well as passing off of the impugned services as those of the plaintiffs.

39. At this stage, it is relevant to note that despite service of summons on 30th October 2023, the defendant no.1 did not appear before the Court. Despite service of notice in the application seeking a summary judgment, no appearance has been entered on behalf of the defendant no.16 as well.



Further, neither a written statement nor any communication in respect of the plaintiffs' allegations has been placed on record on behalf of the aforesaid defendants.

40. Since the aforesaid defendants have failed to take any requisite steps to contest the present suit despite having suffered an interim injunction, it is evident that the defendants no.1 and 16 have no defence to put forth on merits.

41. In *Su-Kam Power Systems Ltd. v. Kunwer Sachdev*, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

42. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants no.1 and 16 have no real prospect of successfully defending the claims in the



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present suit. Further, taking into account that the aforesaid defendants have not set up any defence, there is no compelling reason for the recording of oral evidence.

43. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiffs and against the defendants no.1 and 16.

44. In view of the foregoing analysis, the present suit is decreed in terms of prayer clause contained in paragraph no.45(a), (b) and (c) of the plaint.

45. Counsel for the plaintiffs does not press for the remaining reliefs claimed in the suit.

46. Let the decree sheet be drawn up accordingly.

47. All pending applications stand disposed of.

AMIT BANSAL, J

MARCH 18, 2025

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