



Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. (L) NO. 21714 OF 2023
IN
COMMERCIAL IP SUIT NO. 263 OF 2023
WITH
LEAVE PETITION NO. 21724 OF 2023

Asian Paints Limited

**.....Applicant/
Plaintiff**

Versus

Hemalatha Kola

.....Defendant

Mr. Vinod Bhagat a/w Ms. Fatema Kalolwala and Ms. Apeksha Mehta
i/b Vinod Bhagat for the Applicant / Plaintiff.

Ms. Charushila Vaidya, IInd Assistant to the Court Receiver present.

CORAM : R.I. CHAGLA, J.

DATED : 16TH FEBRUARY, 2024.

ORDER:

1. Heard Mr. Vinod Bhagat, learned Counsel appearing for the Applicant/Plaintiff. He has referred to the order dated 11th August, 2023 by which this Court had granted ex parte ad-interim relief in terms of prayer clauses (a), (b) and (d) of the Interim Application. The Court Receiver and Additional Special Receiver appointed have

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duly filed their Reports and the Court Receiver's Report No. 341 of 2023 is on record which is dated 16th September, 2023.

2. Mr. Bhagat states that upon execution of the commission the name and address of the manufacturer of the impugned goods bearing the infringing marks ASIAA PAINTS has been identified which is evident upon perusing the Court Receiver's Report. The original Defendant has also shared the invoice of the manufacturer, Numero Paints Pvt. Ltd., evidencing sale of goods by them to the original Defendant. Copy of the said invoice issued by Numero Paints Pvt. Ltd. in favour of the Defendant is appended and forms part of the Court Receiver Report.

3. In view thereof and though the suit has been numbered, a draft amendment is tendered to implead the name and address of Numero Paints Pvt. Ltd. as the Defendant No. 2. The same is taken on record and marked 'X' for identification. Leave has been sought to carry out amendment in the Interim Application and Suit Plaint in terms of the draft amendment marked 'X'.

4. Mr. Bhagat submits that this Court, in exercise of its discretionary power, has the right to allow the same to avoid

burdening the Court with the filing of additional applications in the present Suit.

5. Mr. Bhagat has sought continuation of ad-interim order dated 11th August, 2023 which is operational till the present date. He has submitted that the Defendant has been served with the papers and proceedings alongwith copy of the order dated 11.08.2023 and the Defendant through Advocate M. L. Ali addressed necessary communication to the Plaintiff's Advocate. Mr. Bhagat submits that the Affidavit of Service has been duly e-filed. He submits that the Defendant has been served and has also been notified of today's hearing via Whatsapp message and the same is taken on record, marked 'X1' for identification. He submits that once the draft amendment is allowed, the amended Plaint with exhibits and the amended Interim Application shall be served upon the Defendant pursuant to which the Leave Petition and the relief for passing off may be considered on the next date. He also seeks time to serve the writ of summons alongwith the amended Plaint upon the Defendant.

6. Having considered the submissions of Mr. Bhagat as well as perusing the draft amendment to implead the name and address of Numero Paints Pvt. Ltd. as the Defendant No. 2 as learnt of from the

Reports of the Additional Special Receiver and Court Receiver during execution of the commission, the amendment requires to be allowed in the Suit Plaint and Interim Application. Accordingly the Applicant / Plaintiff is granted leave to amend the Interim Application, the Suit Plaint and other ancilliary documents in terms of the Schedule of Draft Amendment marked 'X' which draft amendments shall be e-filed and the amendments carried out within a period of two weeks from the date of this Order i.e. on or before 1st March, 2024. Re-verification is dispensed with.

7. The Advocates for Plaintiff shall simultaneously serve a copy of the amended Plaint and the amended Interim Application on the Defendant and shall file an Affidavit of Service as proof thereof, on or before the next date of hearing.

8. Time to serve writ of summons on the Defendant alongwith the amended copy of the Plaint is extended by a period of 6 weeks from today.

9. The Plaintiff's Leave Petition under Clause XIV of the Letters Patent as well as the prayer for passing off shall be considered on the next date of hearing.

10. Place the Interim Application under the caption for further ad-interim relief on 8th March, 2024, High on Board.

11. Ex-parte ad-interim order shall continue till 11th March, 2024.

[R. I. CHAGLA, J.]