

TM SUIT (TRADEMARK) NO.1 OF 2021

ORDER BELOW EX-41

- (1) Heard ld. Advocate Mr. N.N.prajapati for the defendant and ld. Advocate Mr.R.H.Bhanshali for the Plaintiff. Read the application and written objection submitted by the plaintiff vide ex.44.
- (2) Ld. Advocate for the Defendant has given written argument vide ex.45.
- (3) Defendant has produced rejoinder affidavit against written objection of the plaintiff vide ex.51.
- (4) Ld. Advocate for the defendant has submitted list of authorities vide ex.55.
- (5) Ld. Advocate for the plaintiff has submitted list of authorities vide ex.67.
- (6) Before I decide present application on merits I want to take note of the litigations between the parties in this Court and Mirzapur Court.
 1. Present plaintiff has preferred present suit on date.18/03/2021.
 2. Defendant has produced written statement in the month of August, 2021.
 3. Plaintiff has given rejoinder affidavit in the month of November, 2021.
 4. Present defendant has preferred trademark suit before the Mirzapur Court in Ahmedabad on date 07/05/2022.

S.V.Vyas,
Principal District Judge,
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5. On 12/07/2022, Mirzapur Court has rejected interim injunction application of the present defendant.
 6. In this suit, on 30/08/2022 this Court has allowed interim injunction of the plaintiff.
 7. In the month of December, 2022, the plaintiff has produced original documents to compare with the copies produced by him in this suit.
 8. On 25/04/2023, defendant has given suggested issues.
 9. On 25/04/2023, this Court has framed issues.
 10. On 21/12/2025, defendant has preferred present application.
- (7) In this Court, interim injunction application of the plaintiff is allowed and interim injunction application of the defendant rejected in Mirzapur Court. Present defendant has challenged both the orders before the Hon'ble High Court of Gujarat. Further, petitions are pending before the Hon'ble High Court of Gujarat. Findings of the Trial Courts has not been reversed till the date.
- (8) During hearing of the interim injunction applications before this Court and Mirzapur Court, dispute raised in present application was taken by the present defendant. But this Court and Mirzapur Court has not believed prima facie dispute of the defendant. Much time has been taken in hearing of the present application by the defendant. But, I do not want to spent further time to decide present application. Because during hearing of the interim

injunction applications before this Court and Mirzapur Court, disputes of the present application was raised and decided on merits.

- (9) Considering the orders passed by this Court and Mirzapur Court under interim injunction application, I do not believe that present suit is barred by law under Section 142 of the Trademarks Act, 1999 and Section 60 of the Copyright Act, 1957. Hence, present application under Order-7, Rule-11 (D) of the C.P.C. is not maintainable at this stage. Present application of the defendant is barred by the principle of estoppels. After framing issues, present defendant has preferred present application and therefore, delay has been caused in suit proceedings.
- (10) It is well settled principle of law that while considering an application under Order-7, Rule-11 of the C.P.C., there is no scope of considering any of the defense of the defendant and Court should restrict it's scrutiny only to the averments made in the plaint for ascertaining, whether on the basis of the averments made in the plaint, the suit is tenable in the eyes of law or not. In the present application dispute taken by the defendant is triable issue and defendant can take as defense during trial. But it can not be taken as ground for the rejection of the plaint. During deciding application under Order-7, Rule-11 of the C.P.C., only the contention in the plaint can be taken into account. Further, plaint should also be read with documentary evidence produced by the plaintiff. Further, at the stage of

considering the application under Order-7, Rule-11 of the C.P.C., the Court has not to suppose examine merits of the facts of the plaint whether there is enough evidence, whereby the plaintiff will succeed in the suit or not. From the plaint, plaintiff has to show cause up action for institution the suit against defendant. In this application, there is no dispute of the cause of action from the defendant. At this stage, Court can not consider defense, written statement and evidences produced by the defendant. This Court as well as District Court, Mirzapur at Ahmedabad have believed that rival marks are not identical and/or deceptively similar. Defendant has taken dispute of the present application during interim injunction application before both the Courts and after order of the both the Court defendant can not re-agitate the dispute again by preferring present application.

- (11) The plaintiff has instituted present suit for groundless, unjustifiable and illegal threat under Section 142 of the Trademark Act, 1999 and Section 60 of the Copyright Act, 1957 against the defendant. Further, considering the plaint, the plaintiff has categorically mentioned in the plaint that the suit is for groundless, unjustifiable and illegal on the ground that the defendant is not the registered proprietor of the trade mark, rival marks are not similar, mark of the defendant is common to trade etc. Further, the plaintiff has disclosed all relevant, material, vital and necessary facts and cause of action in the plaint. In these circumstances

defendant can not take dispute that the present suit is not maintainable under Order-7, Rule-11 of the C.P.C. Dispute of the present suit is triable issue and at this state Court can not decide in application under Order-7, Rule-11 of the C.P.C. alone. Plaintiff has pleaded that defendant has issued groundless, unjustifiable and illegal threat to the plaintiff. Further, this contention is supported by the notice of the defendant. Court has to consider plaint as a whole not in peace meal. I believe that suit of plaintiff is legally and validly instituted under Section 142 of the Trademark Act, 1999 and Section 60 of the Copyright Act, 1957 against the defendant. After institution of the present suit by the plaintiff, defendant has preferred suit before the Mirzapur Court, Ahmedabad and tried to get remedy of interim injunction. But, defendant failed to get favourable order in his favour. I believe that after orders of injunction application, defendant has preferred present application to delay proceeding of the present suit. Till the date, Hon'ble High Court of Gujarat has not reversed orders of the interim injunction applications. Hence, I believe that, defendant has vested much time of this Court in hearing of the present application. Hence, it is required to reject with compensatory cost. In the interest of Justice, I pass final order as under.

-:: O R D E R ::-

- (1) The present application under Order-7, Rule-11 (D) of the C.P.C. is hereby rejected with compensatory cost.

S.V.Vyas,
Principal District Judge,
Devbhumi Dwarka @ Khambhaliya

- (2) The defendant is hereby directed to deposit Rs.10,000/- (Ten Thousand Only) as the cost in the District Legal Services Authority, Devbhumi Dwarka at Khambhalia within 15 days from this order.

**Signed and Pronounced in open Court Today, on this
12th Day of December, 2025.**

Place :- Khambhalia
Date :- 12.12.2025

[self]

(Samir Vinodchandra Vyas)
Principal District Judge
Devbhumi Dwarka @ Khambhalia
Code No. GJ 00345