

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 437 OF 2017
IN
SUIT (L) NO. 126 OF 2017

Siyaram Silm Mills Ltd ...Plaintiffs
Versus
Cosvate Siyaram Textiles Pvt Ltd & Ors ...Defendants

Dr Birendra Saraf, *with Rashmin Khandekar, Minesh Andharia, Janhvi Chadha, & Jay Shah, i/b Krishna & Saurastri Associates LLP, for the Plaintiffs.*

Mr Sharan Jagtiani, *with Rohan Sawant, Mahesh Mahadgut & Poonam Teddu, i/b Mahesh A Mahadgut, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 12th April 2017

PC:-

1. The Notice of Motion will have to be heard at an early date. No ad-interim relief is possible. The mark the Plaintiffs seek to protect, SIYARAM, is part of the Defendants' corporate name. The Defendants do not use that mark as a mark; but given the definition of a trade mark, as Dr Saraf says, that should make no difference. That, however, is not the issue nor the defence Mr Jagtiani takes in opposition to the application for ad-interim reliefs. He points out the Plaintiffs themselves admit knowledge of the Defendants' use of

SIYARAM in their corporate name since August 2012 when they came upon the Defendants' application for registration of other marks and opposed that application. The Defendants responded to that opposition; this disclosed the Defendants' corporate name. All of this is part of the Affidavit in Reply. In their opposition, the Defendants also pointed out that they had significant sales though perhaps not in Mumbai, and they even enclosed invoices.

2. The plaint does not specifically annexe or reference the Defendants' reply dated 25th December 2013 to the Plaintiffs' opposition, though the proceedings are referred to generally. The point is that the Plaintiffs have had knowledge since 2012-2013 of the Defendants' stand. I do not find an averment in the plaint that the Plaintiffs thought that the response from the Defendants in 2013 was unsubstantial or that they had examined it and found it to be worthless. Even in 2013 the Defendants annexed to their reply copies of invoices and these were also, therefore, to the Plaintiffs' knowledge.

3. It is also significant that prior to the filing of this Suit, the Defendants have brought a Suit in the District Court at Bhilwara in February 2017 against these very Plaintiffs.

4. Having regard to all these factors, I am not inclined to grant ad-interim reliefs.

5. In any case, Mr Jagtiani makes a statement that the Defendants will not claim equities from the date of the filing of the suit.

6. A preliminary issue has already been framed on 23rd March 2017.

7. List the matter on 20th April 2017 for directions as to trial on the preliminary issue since the Plaintiffs say that evidence will be required.

(G. S. PATEL, J.)