

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION (L) NO. 24015 OF 2023  
AND  
LEAVE PETITION (L) NO. 23641 OF 2023  
AND  
INTERIM APPLICATION (L) NO. 13127 OF 2024  
IN  
COMMERCIAL IP SUIT (L) NO. 23473 OF 2023**

Aabid Paper Cones ... Applicant/  
Plaintiff  
Versus  
Mohd. Azhar ... Defendant

**WITH  
INTERIM APPLICATION (L) NO. 7980 OF 2024  
AND  
INTERIM APPLICATION (L) NO. 8247 OF 2024  
AND  
INTERIM APPLICATION (L) NO. 8719 OF 2024  
AND  
INTERIM APPLICATION (L) NO. 13268 OF 2024  
AND  
INTERIM APPLICATION (L) NO. 13397 OF 2024  
IN  
COMMERCIAL IP SUIT (L) NO. 23473 OF 2023**

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Adv. S. S. Kanetkar i/by V. H. Narvekar for the Plaintiff.  
Mr. Praveen Singh a/w Javaid Muzaffar and Nandini Durgesh for  
Defendant.

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**CORAM: MANISH PITALE, J.  
DATE : 29<sup>th</sup> JANUARY 2025**

**P.C. :**

. This Court, on 28<sup>th</sup> January 2025, passed an order directing listing of the present Interim Application (Lodging) No. 24015 of 2023, along with all pending applications, for consideration. This was in the backdrop of allegation made against the defendant that he has been violating with impunity an ad-interim order dated 6<sup>th</sup> February 2024, passed by this Court. It is highlighted that in the said order, apart from the fact that this Court made certain observations indicating that the applicant/plaintiff had made out a *prima facie* case in its favour, a statement was recorded on behalf of the defendant that he would not use the impugned mark during the pendency of the applications. It is alleged that the said direction of this Court was further continued by subsequent order dated 14<sup>th</sup> March 2024 and yet, the defendant has continued to violate the directions of this Court.

2. In that light, the applicant/ plaintiff filed a further application bearing Interim Application (Lodging) No. 13127 of 2024 under Order XXXIX Rule 2A of the Civil Procedure Code, 1908 (CPC). It is to be noted that the defendant has filed reply affidavits in the said pending applications and he has also filed two applications, one seeking permission to recall the statement recorded on behalf of the defendant in the order dated 6<sup>th</sup> February 2024 and the other for vacating the aforesaid order. In the said applications, the defendant has alleged that the applicant/plaintiff has suppressed certain information from this Court. Much reliance is placed on the fact that the defendant has

registration for the impugned mark as per Registration Certificate dated 7<sup>th</sup> November 2020, dating back to the date of the application filed by the defendant i.e. 10<sup>th</sup> March 2018.

3. In fact, the learned counsel appearing for the defendant placed much reliance on the aforesaid certificate and submitted that in the face of registration granted for the impugned mark of the defendant in class 9, which is the relevant class for the subject goods, the ad-interim order ought to be vacated.

4. In response, the learned counsel for the applicant/plaintiff invited attention of this Court to the pleadings in the plaint, including specific paragraphs where disclosures were given about such registration of the impugned mark obtained by the defendant from the Trade Mark Registry. It was submitted that all necessary disclosures were made and this Court in the order dated 6<sup>th</sup> February 2024 specifically took note of the applicant's claim that it has been using the subject mark atleast since the year 2013. It is submitted that even as per the documents placed on record on behalf of the defendant, it is evident that the user of the impugned mark is claimed by the defendant himself from 10<sup>th</sup> March 2018, which is much later than the first user of the subject mark by the applicant in the year 2013.

5. In this context, the learned counsel for the defendant referred to the reply filed in the application of the plaintiff under Order XXXIX Rule 2A of the CPC and alleged that the invoices

and bills placed on record with the plaint are fake. It is submitted that the report of the handwriting expert filed with the reply demonstrates that the signatures on the invoices/bills pertaining to the year 2013 onwards are different from the signatures of the plaintiff in the present plaint and the documents filed in this Court.

6. This Court is of the opinion that the contentions being raised on behalf of the rival parties would require consideration in detail. It is also relevant that in the order dated 6<sup>th</sup> February 2024, not only did this Court record the statement made on behalf of the defendant that the impugned mark would not be used during the pendency of the application, but this Court also specifically took note of the fact that the applicant is claiming prior user from the year 2013 onwards. The documents on record show that the applicant/ plaintiff has registrations in classes 16 and 35 dated 11<sup>th</sup> July 2021 and 14<sup>th</sup> October 2020 respectively with user claim since the year 2013.

7. On the other hand, the defendant has Registration Certificate dated 7<sup>th</sup> November 2020 in his favour, with admitted user claim from 10<sup>th</sup> March 2018 onwards. In such circumstances and in the face of the statement made on behalf of the defendant, even today, that he is not using the impugned mark, this Court is of the opinion that the ad-interim order operating since 6<sup>th</sup> February 2024 need not be vacated at this stage, as detailed hearing on all the applications would be necessary in the facts and

circumstances of the case.

8. In view of the above, ad-interim order dated 6<sup>th</sup> February 2024 is continued till the next date of hearing.

9. List all the pending applications and leave petition for hearing on 13<sup>th</sup> March 2025 at 3:30 p.m.

10. In the meanwhile and within two weeks from today, the plaintiff may file reply affidavits in Interim Application (Lodging) Nos. 8719 of 2024, 5247 of 2024 and 13397 of 2024.

**MANISH PITALE, J.**