

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

INTERIM APPLICATION (LODGING) NO. 13127 OF 2024
WITH
INTERIM APPLICATION (LODGING) NO. 7980 OF 2024
WITH
LEAVE PETITION (LODGING) NO. 23641 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 8247 OF 2024
WITH
INTERIM APPLICATION (LODGING) NO. 8719 OF 2024
WITH
INTERIM APPLICATION (LODGING) NO. 24015 OF 2023
IN
COMMERCIAL IP SUIT (LODGING) NO. 23473 OF 2023

Aabid Paper Cones

...Applicant/Plaintiff

Versus

Mohd Azhar & Anr.

...Respondents/Defendants

WITH
INTERIM APPLICATION (LODGING) NO. 8627 OF 2025
IN
COMMERCIAL IP SUIT (LODGING) NO. 23473 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 13268 OF 2024
WITH
INTERIM APPLICATION (LODGING) NO. 13397 OF 2024
IN
COMMERCIAL IP SUIT (LODGING) NO. 23473 OF 2023
WITH
COMMERCIAL IP SUIT (LODGING) NO. 23473 OF 2023

- Mr. Hiren Kamod a/w Mr. Prem Khullar i/b Valmiky H. Narvekar, for the Applicant/Plaintiff.
- Mr. Pravin Singh a/w Mr. Ankit Jain, Mr. Javaid Muzaffar and Ms. Nandini Durgesh, for Respondents/Defendants.
- Ms. Charushila Vaidya, 2nd Assistant to Court Receiver.

CORAM : MANISH PITALE, J.
DATE : 24th MARCH, 2025.

P. C. :

INTERIM APPLICATION (LODGING) NO. 8627 OF 2025

1. The instant application is listed today at 09:30 a.m., as per direction issued in the order dated 19th March, 2025, This Court is informed that the Additional Special Receivers (ASRs) submitted their reports to the Court Receiver.

2. The learned counsel appearing for the applicant, on instructions, submits that the premises indicated in the order dated 19th March, 2025, were raided for execution of the said *ex-parte* ad-interim order and that a huge quantity of impugned goods bearing the impugned marks were found. The persons working at the site allegedly fled away, while respondent i.e. the proprietor of the concern remained absent throughout. The quantity of the impugned products was so high that the ASRs found it difficult to account for each and every item, particularly because the electricity supply of the said place was suddenly disrupted. Nonetheless, this Court is informed that the ASRs could seal the impugned products and the premises were locked, with the keys being given to the landlord for safekeeping.

3. Despite the specific directions contained in the order dated 19th March, 2025, the respondent – Mohd. Azhar has remained absent, although

the learned counsel appearing for him are present in Court.

4. On the face of it, the conduct of the said respondent shows defiance on his part apart from showing *prima facie* willful disobedience of the orders of this Court. It is to be noted that, this is the second application, which the applicant / plaintiff has been constrained to file under Order XXXIX Rule 2A of the Code of Civil Procedure (CPC). The apprehensions expressed by the applicant have been confirmed by the fact that during execution of the order dated 19th March, 2025, huge quantity of the impugned products have been found at the indicated premises.

5. The learned counsel for the respondents submitted that they have explanation for the aforesaid situation and that an opportunity may be granted to file an affidavit in response to the present application. An attempt was made to make submissions in respect of application filed on behalf of respondents under Order XXXIX 39 Rule 4 of the CPC. But, considering the position of law laid down by the Supreme Court **Prestige Lights Ltd. Vs. State Bank of India**¹ following the principle enunciated in the judgment of **Hadkinson Vs. Hadkinson**², this Court is of the opinion that until and unless the respondents show compliance with the directions issued by this Court, there is no question of hearing the respondents on their application under

1 (2007) 8 SCC 449

2 (1952) 2 ALL ER 567 CA

Order XXXIX Rule 4 of the CPC.

6. The Court Receiver shall ensure that the report of the ASRs along with report of the Court Receiver is placed on record on or before 02nd April, 2025.

7. The respondents shall file their reply affidavit in this application on or before 02nd April, 2025 with an advance copy being served on the learned counsel appearing for the applicant / plaintiff.

8. Although the learned counsel appearing for the respondents assures that respondent No.1 – Mohd. Azhar shall remain present in Court on the next date of hearing, considering repeated defaults on his part and *prima facie* disobedience of orders of this Court amounting to defiance being shown by the said respondent, this Court is of the opinion that the said respondent is merely giving instructions to the counsel without showing any intention of abiding by the directions issued by this Court. It is to be noted that in the order dated 19th March, 2025, this Court specifically noted the conduct of respondent – Mohd. Azhar and thereupon granted ad-interim direction in terms of prayer clause (h), requiring him to remain present before this Court. In that light, issue bailable warrant in sum of ₹ 25,000/- against respondent – Mohd. Azhar, for him to remain present in this Court, returnable on 07th April, 2025, at 10:30 a.m.

9. This application shall be listed for further consideration on **07th**
April, 2025, at 10:30 a.m. at serial No.1 in the cause list.

(MANISH PITALE, J.)