

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

**INTERIM APPLICATION (L) NO. 8399 OF 2023
IN
COMMERCIAL IP SUIT NO. 177 OF 2023**

Lallubhai Amichand Limited ... Plaintiff

Versus

Absolink Enterprise Private Limited ... Defendant

Mr. Zal T. Andhyarujina, Senior Counsel, Mr. Karl Tamboly, Maithili Parikh, Sumanth Anchan a/w Vikrant Singh Negi, Pratik Thakkar, Sneha Barange i/b DSK Legal for the Plaintiff.

Mr. Venkatesh Dhond, Senior Advocate, Mr. Sharan Jagtiani, Senior Advocate, Mr. Rohan Cama, Mr. Pheroza Mehta, Mr. Prakhar Parekh, Ms. Alena Sonawane, Ms. Anuja Bhansali, Mr. Tejas Popat, Ms. Abhyarthana Singh i/b Rashmikant and Partners

Mr. Veerendra Tulzapurkar, Senior Counsel a/w Mr. A.S. Pal, Siddharth Mehta, Sanjana Das and Siddhartha Puthoor i/b Mehta & Padamsey for the Defendant.

CORAM : R.I. CHAGLA, J.

DATED : 20th JUNE, 2023

ORDER :

1 The preliminary objection has been taken by Mr. Andhyarujina, the learned Senior Counsel appearing for the Applicant/ Plaintiff that the limited additional affidavit on behalf of the Defendant

dated 06.06.2023 is attempted to be filed in breach of the order dated 03.05.2023 wherein this Court has recorded that the Interim Application requires to be heard and there shall be no further pleadings in the Interim Application.

2 Mr. Venkatesh Dhond, learned Senior Counsel appearing for the Defendant has taken this Court through the averments in the Plaint viz. paragraph 11.5 to 11.7 of the Plaint wherein reference has been made to certain facts with regard to the Plaintiff-Company learning of the incorporation of the Defendant-Company by Defendant Nos.2 and 3 and their being informed by Defendant Nos.2 and 3 that the Defendant Company was formed to handle their personal investment. In paragraph 11.7 of the Plaint there is further statement that the Plaintiff was shocked to see the name of the Defendant-Company come up in a search result when search had been carried out using HSN Code for limited products aluminum products and stainless steel products. The case being of the Plaintiff that the Defendant-Company engages in competing business to that of the Plaintiff-Company. This has been stated in paragraph 11.08 of the Plaint.

3 Mr. Dhond has referred to the limited affidavit on behalf of the Defendant in order to contend that these averments/statements of the

Plaintiff are false and that in fact the 1st Defendant-Company was not an investment Company but was carrying on business of export sale and had their warehouse address adjoining the Plaintiff's premises. He has further referred to various e-mails and whats-app messages in order to show that the Plaintiff who aware of the activities of 1st Defendant-Company and that the accounts including the tax challan were shared with the Plaintiff. He has also referred to a Memorandum of Understanding dated 03.09.2010 which is annexed at Exhibit-A to the limited affidavit in order to contend that this has been suppressed in the Plaint. He has submitted that this material relied upon has a bearing in the adjudicating of the disputes in the Suit.

4 Having considered the preliminary objection as well as the counter, in my view the limited additional affidavit on behalf of the Defendant is necessary for a proper determination of whether the ex-parte ad-interim order dated 05.04.2023 could have been passed without knowledge of these facts.

5 Accordingly, the limited additional affidavit dated 06.06.2023 tendered by Mr. Dhond is taken on record.

6 The Plaintiff is permitted to file affidavit in reply to the additional affidavit of the Defendant which shall be filed by 22.06.2023.

7 Place the Interim Application on 23.06.2023, first at
2.30 p.m.

(R.I. CHAGLA, J.)