

Kavita S. J.

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

INTERIM APPLICATION (L) NO. 24015 OF 2023
IN
COMMERCIAL IPR SUIT (L) NO. 23473 OF 2023

Aabid Paper Cones

...Applicant /
Plaintiff

Versus

Mohd. Azar

...Defendant

Mr. S.S. Kanetkar i/b V.H. Narvekar, Advocate for Applicant/Plaintiff.

CORAM : R.I. CHAGLA, J.

DATE : 7TH OCTOBER, 2023.

ORDER :

1. The learned Counsel appearing for the Applicant/Plaintiff has sought applied for ex-parte ad-interim relief for infringement of trademark "ATONE" by the Defendant who is using the mark "A-TONE".

2. It appears from the averments in the Plaint that the Plaintiff had knowledge of the alleged infringement committed by the Defendant in November, 2022. Further, the Defendant had got the

impugned trademark registered with the Registrar of Trademark being Trademark No.3774631 in Class 09 on 7th November, 2020. The Plaintiff had filed its objection with the Registrar of Trademark by Statement of Case dated 28th November, 2022. There is further counter statement dated 6th January, 2023 filed by the Defendant to the Statement of Case filed by the Plaintiff. The proceedings have been referred to in Paragraph 12 of the Plaint.

3. Thus, in my view, the Applicant/Plaintiff cannot apply ex-parte considering that the Applicant/Plaintiff had knowledge of the Defendant in November, 2022 as well as having initiated proceedings before the Trademark Registrar for cancellation of registration of the impugned mark. The Defendant is required to be served with the papers and proceedings in the above matter on the Defendant.

4. Accordingly, the Plaintiff shall serve by way of private service on the Defendant the papers and proceedings in the above matter and file Affidavit of Service prior to the next date.

5. The Interim Application for ad-interim relief shall be placed on 16th October, 2023, High on Board.

[R.I. CHAGLA, J.]