

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 2161 OF 2018

IN

COMMERCIAL IP NO. 249 OF 2015

Ultratech Cement Limited and another ... Plaintiffs

Versus

Jai Shree Krishna Cement ... Defendant

ALONGWITH

NOTICE OF MOTION NO. 2165 OF 2018

IN

COMMERCIAL IP NO. 125 OF 2014

Ultratech Cement Limited and another ... Plaintiffs

Versus

Jai Shree Kripa (P) Ltd. and another ... Defendants

Mr. Amit Jamsandekar alongwith Ms. Archita A. Gharat instructed by V.A. Associates for the Plaintiffs in COMIP-125-2014 and COMIP-249-2015.

Mr. Vinod Bhagat alongwith Ms. Laher Shah instructed by G.S. Hegde & V.A. Bhagat for the Defendants in COMIP-125-2014.

Mr. S.R. Soni for the Defendant in COMIP-249-2015.

Mr. Omprakash Sharma, present in COMIP-125-2014.

Mr. Hawasingh Yadav, present in COMIP-249-2015.

CORAM : S.J. KATHAWALLA, J.

DATED : 24th OCTOBER, 2018

P.C.:

1. The above Notice of Motion is taken out under Order 39 Rule 2A of the Code of Civil Procedure, 1908 for committing breach of the orders passed by this Court

dated 22nd September, 2014 and 19th August, 2014 in Commercial IP Suit No.249 of 2015 and Commercial IP Suit No.125 of 2014 respectively, restraining the Defendants in the respective Notices of Motion from using the marks/labels containing the words (a) “Jai Shree Ultratech CEMENT The Engineer’s Choice with Sun Logo”, (b) “Ultra Strong CEMENT The Engineer’s Choice with Sun Logo” and/or (c) “Jai Shree Ultratuck CEMENT The Engineer’s Choice with Sun Logo”.

2. The Defendant in Commercial IP Suit No. 125 of 2014 has fairly admitted that he has thereafter manufactured cement and sold under the mark “Jay Shree Kripa Cement” under a different artwork and his bags were printed by M/s. Chittlanga Chemicals Pvt. Ltd. The Defendant in Commercial IP Suit No. 249 of 2015 has stated that though the Plaintiffs have produced the bags bearing the impugned mark “Jai Shree Ultra Storng CEMENT The Engineer’s Choice” with a Sun Logo and the name of the Defendant is shown as the Manufacturer, the Defendant has never got the bags printed with the impugned mark.

3. The Defendant in Suit No.249 of 2015 admits that he and the Defendant in Commercial IP Suit No. 125 of 2014 are carrying on business from the same complex and he too gets printed his bags from M/s. Chittlanga Chemicals Pvt. Ltd. The Defendant in Suit No. 125 of 2014 has submitted that the Defendant in Suit No. 249 of 2015 is making an incorrect statement and that he has got the bags bearing the impugned mark printed from the same printer and has sold the cement under the impugned mark “Ultrastorng Cement”.

4. In view of the above, the Director/s of M/s. Chittlanga Chemicals Pvt. Ltd. is directed to remain present before this Court on 29th October, 2018 at 3.00 p.m. by themselves and/or through Advocate and inform the Court whether the impugned bags bearing marks/labels “Ultrastorng Cement” have been printed by them on instructions from the Defendant - Jay Shree Krishna Cement having their office at 27F, Riico Industrial Area, Sota Nala-301 701, Behror (BHR), Rajasthan and if not at whose instance the said bags have been printed by them. A copy of this order shall be forthwith served on M/s. Chittlanga Chemicals Pvt. Ltd. by the Advocate for the Plaintiff by hand-delivery and also by fax and/or e-mail.

4. Stand over to 29th October, 2018 at 3.00 p.m, when the Defendants in both the suits i.e. Hawasingh Yadav and Mr. Omprakash Sharma shall remain present in Court.

(S.J.KATHAWALLA, J.)