

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO.34540 OF 2024
IN
COMMERCIAL IP SUIT (L) NO.33976 OF 2024

T. V. Venugopal sole proprietor of
M/s. Ashika Incense Inc. ... Applicant / Plaintiff

Vs.

Attaullah having its proprietorship concern
as Adarsh Perfumery Udyog and others... Respondents / Defendants

WITH
LEAVE PETITION (L) NO.34537 OF 2024
IN
COMMERCIAL IP SUIT (L) NO.33976 OF 2024

Mr. Atmaram Patade a/w. Ms. Shikha Raniwala, Mr. Suraj Naik, Ms. Aryaa Shirodkar and Mr. Aditya Patil i/b. Mr. Atmaram Patade for Applicant / Plaintiff.
Ms. Charushila Vaidya, 2nd Assistant to Court Receiver.

CORAM : MANISH PITALE, J.
DATE : JANUARY 03, 2025

P.C. :

- . Heard Mr. Patade, learned counsel for the applicant / plaintiff.
2. By order dated 18.11.2024, this Court granted *ex-parte* ad-interim reliefs in favour of the applicant / plaintiff.
3. It is submitted on behalf of the plaintiff that while the said order was executed, perhaps because the information regarding the same may have been leaked, the impugned products could not be actually found at time of the raid. Court Receiver's Report No.2 of 2025 has been filed. The same is taken on record.
4. The learned counsel for the plaintiff refers to paragraph 22 of the

aforesaid order of this Court dated 18.11.2024 to emphasize that the FIR was already filed against the defendants in respect of the counterfeit marks being used. In that light, this Court had directed the defendants to remain present before this Court on the returnable date.

5. It is submitted that the defendants are not present despite the fact that they have been served. An affidavit of service has been e-filed, the original of which has been tendered. The said original affidavit of service is additionally taken on record. It shows that all the three defendants have been indeed served. They have chosen not to remain present before this Court.

6. The learned counsel for the plaintiff is further pressing for the leave petition being allowed, in the light of the defendants having been served. He submits that this Court may further consider granting ad-interim relief in terms of prayer clause (b), which pertains to the action of passing off. Reference is made to the relevant pleadings in the plaint with regard to the same.

7. The defendants have been served and despite the specific direction contained in paragraph 22 of the aforesaid order dated 18.11.2024, none of the defendants are present before this Court.

8. In the light of the defendants having been served, this Court has taken up the leave petition for consideration. For the reasons stated therein, the same is allowed.

9. In the light of the leave petition being allowed, this Court has considered the pleadings in the plaint with regard to the action of passing off. A perusal of paragraphs 41, 42, 45 and 47 of the plaint read with the details of the annual turnover of the plaintiff given at exhibit-I of the plaint, a *prima facie* case is made out by the plaintiff for granting

ad-interim relief in terms of prayer clause (b).

10. Accordingly, there shall be ad-interim relief in terms of prayer clause (b), which reads as follows:-

“b. pending hearing and final disposal of the suit, Defendants by themselves, their servants, agents, directors, partners, proprietors, employees, dealers, distributors, exporters, manufacturers, marketers, stockist and/or successors in title, affiliates and/or assigns and all persons acting for and on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from using the mark ADARSH SLEEP WELLS (EXHIBIT K1) and/or any other mark identical and/or deceptively similar to the Plaintiff's suit marks "ASHIKA/ASHIKA INCENSE INC." and "SLEEP WELL" (EXHIBIT B to B2) so as to pass off the goods/services of the Defendants as and for that of Plaintiff;”

11. It is further brought to the notice of this Court that the defendants have not given disclosures in terms of prayer clause (e), which was granted in the order dated 18.11.2024.

12. The defendants are expected to give such disclosures on or before the next date of listing.

13. The application shall now be listed for further consideration on 04.02.2025.

14. Ad-interim relief shall continue to operate till 07.02.2025.

15. The defendants shall remain present before this Court on the next date of listing, failing which, this Court will be constrained to pass appropriate orders in the matter to ensure their presence before this Court.

16. Liberty to the applicant / plaintiff to serve a copy of this order on the defendants before the next date of listing.

(MANISH PITALE, J.)