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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LEAVE PETITION NO.5 OF 2015

IN

SUIT (L) NO.31 OF 2015

WITH

NOTICE OF MOTION (L) NO.92 OF 2015

IN

SUIT (L) NO.31 OF 2015

Borosil Glass Works Limited

...Petitioner/Plaintiff

vs

J.T. Sales Corporation And Anr.

...Respondents/Defendants

.....

Mr. Ventakesh Dhond, Senior Advocate, a/w. Mr. Rashmin Khandekar, a/w. Mr. K.S. Pachoo and Ms. Tanuja Liman, i/b. Avesh Kayser, for the Petitioner/Plaintiff.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 19, 2015

P.C. :

. This is an interim application in an infringement and passing off suit. The Plaintiff is in the business of manufacture and sale of glass products and is a registered proprietor of the trade mark **BOROSIL** in classes 9,10, 11, 16 and 21. The gravamen of the present Notice of Motion is that the Defendants have declared themselves to be authorised distributors and stockists of the Plaintiff's products marketed under the trade mark **BOROSIL**. It is the case of the Plaintiff that the Defendants are neither the authorised distributors nor the authorised stockists of the Plaintiff. The Plaintiff has received a communication from the Controller of

Stores, Punjab, Chandigarh, that the Defendants are claiming to be authorised distributors and stockists of the Plaintiff and offering more discount in the market than offered by the authorised service dealers of the Plaintiff in Ludhiana in Punjab. It is the case of the Plaintiff that there have been some instances of disputes earlier between the Plaintiff and the Defendants. Having regard to these instances as well as the present communication received from the Controller of Stores, it is the case of the Plaintiff that the Defendants by claiming themselves to be authorised distributors and stockists of the Plaintiff and dealing as such in goods bearing the Plaintiff's trade mark **BOROSIL** have been passing off goods and abusing the Plaintiff's common law rights to their trade mark **BOROSIL**. It is the case of the Plaintiff that in such a case besides passing off their goods as the goods of the Plaintiff, the Defendants are also guilty of malicious falsehood and trade libel.

2. The Defendants have been duly served with the Notice of Motion and plaint together with the notice of today's application for ad-interim injunction. Learned Counsel for the Plaintiff has tendered a track report of the courier service providers in this behalf. The Defendants are absent despite service. Learned Counsel for the Plaintiff undertakes to file an affidavit in proof of service within a period of two weeks from today.

3. A case for grant of ad-interim reliefs is, accordingly, made out. There will be an ad-interim injunction in terms of prayer clause (c) of the Notice of Motion, until further orders.

4. The Plaintiff has also filed a Leave Petition under Clause XIV of the Letters Patent for combining the cause of action of passing off with the

cause of action of infringement for reasons stated in the Petition. Leave is granted to the Plaintiff under Clause XIV of the Letters Patent in terms of prayer clauses (a) and (b) of the Petition.

5. Reply to the Notice of Motion to be filed within a period of three weeks. Rejoinder, if any, within two weeks thereafter. Place this Notice of Motion for hearing on 3 March 2015.

(S.C. GUPTE, J.)