

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****LEAVE PETITION NO. 65 OF 2015****IN****SUIT (L) NO. 297 OF 2015**

Galpha Laboratories Ltd.

...Petitioner

Vs.

Torque Pharmaceuticals Pvt.Ltd.

...Respondents

Mr.Rashmin Khandekar i/b. Mr.Mahesh Mahadgut for the Petitioner/ Plaintiff.

Mr.Gautam Ankhad i/b. M/s.Gordhandas & Fozdar for Respondents / Defendants.

CORAM : S.C. GUPTE, J.**7 MAY 2015****P.C. :**

The petition seeks leave under Clause XIV of the Letters Patent for combining the cause of action of passing off with the cause of action of infringement in the suit herein.

2 The Petitioner is a proprietor of a registered trade mark 'B-COLEN' in Class 5 in respect of pharmaceutical preparations. The Petitioner holds this registration as of 15 November 1977. The Petitioner claims that the trade mark has acquired tremendous goodwill and reputation by reason of its extensive use over a long period of time. It is the Petitioner's grievance that in February 2015, it came across a similar product marketed under the mark 'B-COLEX' by the Respondents. It is the case of the Petitioner that the use of the mark 'B-COLEX' in connection with the offending goods not only constitutes an infringement of its registered trade mark 'B-COLEN', but also amounts to passing off of the Respondents' goods as those of the Petitioner. The two causes of action are connected and based on the same set of facts. Whereas the Petitioner carries on business in Mumbai and thus this Court has jurisdiction in the infringement action,

since the Respondents do not carry on business or sell the offending goods in Mumbai, the Petitioner applies for leave of this Court for combining the cause of action of passing off with the cause of action of infringement.

3 The application is opposed on the ground that the Petitioner has no cause of action of infringement to maintain before this Court, and thus there is no case for grant of leave under Clause XIV.

4 The jurisdiction of the Court in respect of a cause of action, within the meaning of Clause XIV, has to be reckoned on the basis of averments in the plaint. The Respondents can always challenge such jurisdiction, but at the stage of a leave application such challenge could only be on the ground that the averments in the plaint do not make out any cause of action or show the jurisdiction of the Court.

5 The plaint in the present case avers that the Petitioner is a proprietor of a registered trade mark, carrying on business within the jurisdiction of this Court. On the basis of these averments, under Section 134 of the Trade Marks Act, 1999, this Court has jurisdiction to entertain an infringement action at the instance of the Plaintiff. It is also clear that the cause of action of passing off in the present case accrues to the Plaintiff on the same set of facts as in the case of the alleged infringement and as a result, the two causes of action can be conveniently combined. There is no reason why the causes of action ought not to be permitted to be so combined.

6 Accordingly, by a separate order the leave petition is allowed in terms of prayer clause (a).

(S.C. GUPTE, J.)