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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO.2754 OF 2014

IN

NOTICE OF MOTION NO.2331 OF 2014

IN

SUIT (L) NO.973 OF 2014

WITH

LEAVE PETITION NO.367 OF 2014

IN

SUIT (L) NO.973 OF 2014

Hawa Valves (India) Pvt. Ltd. ...Plaintiff

vs

Hawa Valves Automation And Anr. ...Defendants.

.....

Mr. Ajit Anekar, i/b. Auris Legal, for the Plaintiff.

Mr. J.R. Shah a/w. Mr. Yogesh H. Vora, for the Defendants.

.....

CORAM : S.C. GUPTE, J.

DATED : 26 MARCH, 2015

P.C. :

. This Notice of Motion is taken out by the original Plaintiff under Order XXXIX Rule 2A and 11 of the Code of Civil Procedure. It is the case of the Plaintiff that, despite an order passed by this Court on 14 October 2014, the 1st Defendant has not removed the offending content from its website. In the order passed by this Court on 14 October 2014, in Notice of Motion (L) No.2331 of 2014 taken out by the Plaintiff, this Court held that considering **Exhibits “I” and “J”** to the plaint, which showed the pages of the respective websites of Defendant No.1 and the Plaintiff, the 1st Defendant appeared *prima facie* to have copied wholly the contents of the Plaintiff's website. The Court, thereafter, noted the agreement of learned

Counsel for the Defendants to make a statement in terms of prayer clause (b) of that Notice of Motion, excluding the words “perpetual” and restricting the same to the 1st Defendant. The prayer clause (b) of that Notice of Motion is quoted below :-

“(b) that pending the hearing and final disposal of the Suit, the Defendants be restrained by a perpetual order and injunction of this Hon'ble Court from using the Plaintiff's copyrighted text available on the website / promotional material.”

2. This Court, thereafter, passed an order directing the 1st Defendant forthwith to remove all offending content, i.e. “all material infringing the Plaintiff's copyright”, from the entirety of the 1st Defendant's website within a period of 24 hours. It is the case of the Plaintiff that, despite this order, the offending content has not been removed from the 1st Defendant's website.

3. In answer, it is submitted by the 1st Defendant in its affidavit in reply dated 16 February 2015 that the offending material has already been removed by the 1st Defendant from its website. It is submitted that whilst complaining of breach of copyright, in para 4(u) of the plaint (wrongly mentioned as 3(u) in the affidavit), it was the Plaintiff's case that by using the text from the Plaintiff's website, Defendant No.1 projected itself to the potential clients of the Plaintiff as if it were an entity of the Plaintiff itself; the Plaintiff mentioned in this behalf the fact of Defendant No.1 having been tactfully used "Global Solutions" as also the word “**HAWA**” in connection with the goods of the 1st Defendant and thereby created an impression that Defendant No.1 was approved for supply of valves by Shell Global Solutions and that the business of the 1st Defendant was infact that

of the Plaintiff. Having regard to these allegations, it is submitted by the 1st Defendant that it removed the words HAWA and Global Solutions from its website. The 1st Defendant nevertheless offers to delete the entire text under the title "**What We Do**", if the Court comes to the conclusion that the 1st Defendant is actually required to delete the entire of this content in its order passed on 14 October 2014.

4. In rejoinder, it is submitted by learned Counsel for the Plaintiff that the Plaintiff has infact alleged in the plaint that the entire text of the Defendant's website is a verbatim copy of the Plaintiff's website and there is no occasion for misconstruing the Plaintiff's allegations in respect of breach of copyright or for that matter, the order passed by this Court on 14 October 2014.

5. It is clear from the text of the order dated 14 October 2014, to my mind, that what this Court required the 1st Defendant to do was to delete the entire content under the caption "**What We Do**", since the same was a verbatim copy of the material placed on the Plaintiff's website (**Exhibit "J"** to the plaint). The Defendant is, accordingly, directed to delete the entire text under the caption "**What We Do**" forthwith in compliance with the order dated 14 October 2014.

6. As for the 1st Defendant's plea of a bona fide interpretation of the order passed by this Court on 14 October 2014, in my opinion, it is a believable case that having regard to the Plaintiff's statement in para 4(u) in particular, the 1st Defendant was under a bonafide belief that the offending material contained of was the one referred to in paragraph 4 (u) of the plaint and that the 1st Defendant took the mandate of this Court's order to

be restricted to removal of this particular content. In its contempt jurisdiction what the Court is required to see is that there is a wilful contumacious conduct on the part of the contemnor and that such conduct must be beyond any reasonable doubt. Having regard to the facts of the present case, I am afraid this Court is unable to come to such a conclusion, though this Court has made it clear that, henceforth, the 1st Defendant cannot display the entire of the offending content, referred to above, on its website.

7. In the premises, the 1st Defendant is directed to forthwith (within the next 24 hours) remove the entire text appearing under the caption "**What We Do**" on its website, shown as **Exhibit "I"** of the plaint. The Notice of Motion is disposed of accordingly.

8. It is needless to add that the question whether or not the offending material in fact contravenes or infringes the Plaintiff's copyright in the material displayed on its website, is a matter which will be argued by the parties at the hearing of Notice of Motion (L) No.2331 of 2014. At present, we are concerned with the ad-interim order, breach of which is complained of in the present Notice of Motion.

9. Place the Leave Petition for hearing on 8 April 2015.

(S.C. GUPTE, J.)