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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LEAVE PETITION NO. 45 OF 2016
IN
SUIT (L) NO. 175 OF 2016

UltraTech Cement Limited & Anr.	...Plaintiffs
<i>Versus</i>	
Salsar Cement & 4 Ors.	...Defendants

Mr. Amit Jamsandekar, *with Ms. Alka Parelkar & Ms. Esha Trivedi,*
i/b V.A. Associates, for the Plaintiffs.
Mr. Sayantan Basu, *with Partha Chakrabarthy, & Devasis Mitra,*
i/b Legal Assistance, for the Defendants.

CORAM: G.S. PATEL, J.
DATED: 18th March 2016

PC:-

1. Heard. The Petition seeks leave seeks to combine a cause of action in passing off with the cause of action in trade mark infringement pleaded in the Plaint.

2. The reasons for seeking this relief are set out in paragraph 9 of the Petition. Here, the Petitioners/Plaintiffs state that it has its registered office in Mumbai. In view of the provisions of Section 134 of the Trade Marks Act, 1999, at least as regards their cause of action in infringement, this Court has jurisdiction. The question is

whether they should be permitted to combine the cause of action in passing off. It is not possible, at this stage, to assess the merits of the case, i.e., whether there is or is not a case made out in infringement or even in passing off. As I understand it, what the Petitioners/Plaintiffs claim is that while the Defendants have certain registrations, the mark they use, and which the Plaintiffs complain of, is not the Defendants' registered mark but is another mark altogether. It is on this basis that reliefs in infringement and passing off are sought. Whether the Plaintiffs have made out a case on either or both causes of action or not will undoubtedly have to be deferred to the hearing of the ad-interim application or perhaps even to the Notice of Motion itself, with all contentions being expressly kept open for the present.

3. At this stage, however, there is no reason to deny the relief sought in the Petition under Clause XIV of the Letters Patent. The Petition is, accordingly, made absolute in terms of prayer clause (a).

(G. S. PATEL, J.)