

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1114 OF 2015
IN
SUIT NO.468 OF 2015

Mr. Prakash Melwani	... Applicant
<i>In the matter between</i>	
Mr. Prakash Melwani	... Plaintiff
<i>Versus</i>	
Mr. Rajdeep Pharmaceuticals and Another	... Defendants

Mr. Alankar Kirpekar, with Piyush Pandey i/b MAG Legal for the Plaintiff.
Mr. Kaimaz Irani, i/b P.Das for the Defendant No.2.

CORAM: G.S. PATEL, J
DATED: 25th July 2016

PC:-

1. There is an Affidavit in Reply dated 15th July 2016 from the 2nd Defendant.

2. The 1st Defendant for its part states in a letter dated 8th July 2016 to Mr. Kirpekar for the Plaintiff and to the Plaintiff himself that there was indeed an infringement of the Plaintiff's registered trademark "**WARM RUB**" for a pain relieving ointment. The 1st Defendant, Rajdip Pharmaceuticals, says this was inadvertent.

3. The Affidavit by Ms. Pooja Vijay Devnani, the Sole Proprietor of the 2nd Defendant, Garuda Exports also says that the infringement by the 2nd Defendant, also admitted, was equally inadvertent. This happened because the 2nd Defendant received an order from a South African principal or buyer asking the 2nd Defendant to get an ointment with the name “Warm Rub” manufactured. The 2nd Defendant was given all the specifications of the packaging, the word, the get up and so on. Without suspecting any infringement, or so the Affidavit claims, the 2nd Defendant got the product packaging manufactured by the 1st Defendant.

4. Mr. Kirpekar for the Plaintiff does not accept that any of these acts were inadvertent. He maintains that this is not the first time that the 2nd Defendant has infringed somebody else’s trademark. He points out that the Affidavit in Reply itself discloses that by trafficking in this infringing manner, the 2nd Defendant has earned substantial amount in revenue.

5. All of this is, of course, denied by the 2nd Defendant. These are not matters that should be decided at the interim stage simply because there is a statement by the 2nd Defendant on Affidavit and by the 1st Defendant in a corresponding undertaking not to repeat the infringing acts. That must surely suffice for the purposes of the Notice of Motion. The rest can remain open on both sides to the final disposal of the Suit, including on the question of damages, if any. All contentions in that behalf are kept open.

6. The statements by the Defendants that they are now not infringing and will hereafter not infringe the Plaintiffs' registered mark "**WARM RUB**" or attempt to use any packaging, artwork or get up similar to that of the Plaintiffs, is accepted as an undertaking to the Court.

7. The Notice of Motion is disposed in these terms. There will be no order as to costs.

(G. S. PATEL, J.)