

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2311 OF 2016
IN
SUIT (L) NO. 810 OF 2016

Shafeeque Ahmed Mohammad Sayeed ...Plaintiff
Versus
Ansari Bilal Ahmadlal Mohammad ...Defendant

Mr. Alankar Kirpekar, *with Mr. Murlidhar Khadilkar, Ms. Jaya Manghwani, Mr. Shekhar Bhagat & Mr. Aakash Joshi, for the Plaintiff.*
Mr. Dipesh Siroya, *for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 26th October 2016

OPERATIVE PART:-

1. The reasoned order and judgment was dictated in open Court. It took some time. Since tomorrow is the last working day of Court working for this term, the reasoned order will be delayed till re-opening.
2. The operative portion (pronounced in Court) is reproduced below, namely, an order in terms of prayer clauses (a), (b), (c) and (d) of the Notice of Motion, which reads thus:

(a) “that pending the hearing and final disposal of the Suit the Hon'ble Court Receiver, Mumbai be appointed as Receiver with all powers under Order XL, Rule 1 of the Civil Procedure Code, 1908, to attend at and / or enter either by force or by breaking open the lock or by removing the obstruction of barrier or to otherwise enter into the Defendant's premises and / or factories and also at the premises of the Defendant's stockists, agents, dealers, manufacturers and also those places where the impugned goods are stocked and / or sold, without notice to them with the help of police (if necessary) and in presence of the Plaintiff's representatives to make inventories and to take possession, custody and control of all impugned goods with the offending mark 'SUKOON' and its label and / or any other mark or label deceptively similar in any manner whatsoever to the Plaintiff's mark 'SUKOON' and its label in any manner whatsoever;

(b) that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Defendant by himself and / or through its directors, partners, proprietors, servants, agents, exporters, importers, stockists and / or otherwise howsoever by an order of temporary injunction of this Hon'ble Court from in any manner using the impugned label being Exhibit “L” hereto and / or any other label which is an obvious imitation and / or colorable imitation and / or slavish imitation in any manner whatsoever to the Plaintiff's “SUKOON” label as shown in Exhibit “A” hereto; so as to infringe the Plaintiff's copyright contained in the Plaintiff's “SUKOON” label as shown in Exhibit “A” hereto in any manner whatsoever;

(c) that pending the hearing and final disposal of the Suit this Hon'ble Court be pleased to restrain the Defendant by himself and / or through its directors, partners, proprietors, servants, agents, exporters, importers, stockists and /or otherwise howsoever by an order of temporary injunction of this Hon'ble Court from in any manner using the

impugned label mark "SUKOON" as shown in Exhibit "L" and / or word "SUKOON" and / or any other mark, which is structurally and / or visually and / or phonetically similar in any manner whatsoever to the Plaintiff's registered trade mark "SUKOON" label as shown in Exhibit "F" and "H" hereto and / or its essential word mark "SUKOON" in any manner whatsoever so as to infringe the Plaintiff's registered trade "SUKOON" label being Exhibit "F" and "H" hereto;

(d) that pending the hearing and final disposal of the suit that this Hon'ble Court be pleased to restrain the Defendant by himself and / or through its directors, partners, proprietors, servants, agents, exporters, importers, stockist and / or otherwise howsoever by an order of temporary injunction of this Hon'ble Court from in any manner using the impugned Trade Mark "SUKOON" and / or impugned label and / or trade dress and get-up thereof as shown in Exhibits "L" hereto and / or any other mark or word and / or any other label which is / are deceptively similar in any manner whatsoever to the Plaintiff's Trade Mark "SUKOON" and its label and its trade dress and its get-up so as to pass off and / or enable others to pass off the Defendant's products / massage oil as and for that of the Plaintiff in any manner whatsoever;

3. The Court Receiver is to seize and seal the goods, packets and labels with the offending trade marks in the premises of the Defendant (which includes any person claiming by, through or under himi). It is clarified that the Court Receiver is required to seal the goods of this Defendant, i.e., those bearing the impugned mark and label HEENA SUKOON OIL / HS HEENA SUKOON OIL and not bearing any other mark or label. For this purpose, the Court Receiver will be at liberty to take the assistance of the Local Police

Authorities, who will act on production of an authenticated copy of this order.

4. Mr. Kirpekar makes a submission that the Defendant should be required to recall all products from distributors because they are selling products with backdated batch numbers. I have no material before me today on Affidavit or elsewhere that shows this. There is also no prayer for it, and I do not see how possibly I can grant this order. Perhaps this is Mr. Kirpekar's client's fault, that their product is so successful that distributors are holding on to large unsold inventories of the Defendant's products. Mr. Kirpekar's client might have himself to blame for this state of affairs. Liberty to Mr. Kirpekar to file a separate Notice of Motion on sufficient material being shown.

5. The Notice of Motion is disposed of in these terms with no order as to costs.

6. All concerned to act on an authenticated of this order.

(G. S. PATEL, J.)