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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1364 OF 2016
IN
SUIT NO. 397 OF 2016**

Bhavik Dattani & Anr. ...Plaintiffs
Versus
Mohd. Phool Shaikh ...Defendant

Mr. Prateik Parija, *i/b Probus Legal, for the Plaintiffs/Applicant.*

**CORAM: G.S. PATEL, J
DATED: 19th September 2016**

PC:-

1. The Suit is an action in infringement and passing off.

2. The litigation itself has had a somewhat chequered history. After the Suit was filed on 4th September 2015, an application was made for ad-interim reliefs. The Plaintiffs' case is that the 1st Plaintiff, a renowned fashion designer, conceived and adopted the trade mark **espelho**, and which was registered to the Plaintiffs. The Defendant was a former employee or workman — in fact a *karigar* — employed by the Plaintiffs. Having quit the Plaintiffs' employment, he began using a rival mark **espelhar**, a word that means absolutely nothing in any language. This was an evident

attempt to trade on Plaintiffs' reputation and goodwill. It was structurally, phonetically and visually similar to the Plaintiffs'.

3. I found in an ad-interim order dated 4th September 2015 that there is a strong *prima facie* case made out both in infringement and passing off and I grant ad-interim reliefs. A few typographical corrections were effected on 9th September 2015.

4. It seems that thereafter the Prothonotary & Senior Master passed a conditional order saying that if the office objections were not removed by 29th September 2015 the Suit would stand dismissed. The Plaintiffs' Advocates did not remove office objections in time. The Suit stood dismissed under Rule 986 of the Bombay High Court (Original Side) Rules.

5. The Plaintiffs then applied in Notice of Motion No. 965 of 2016 for restoration. I put the Plaintiffs' Advocates personally to terms and directed payment of costs by the Advocates of Rs. 15,000/- to the Defendant and Rs. 15,000/- additionally to the Maharashtra Legal Services Authority. The Plaintiffs' Advocate accepted this. The payment to the Maharashtra Legal Services Authority was made. A cheque was sent to the Defendant as well. The Defendant did not encash that cheque. Instead the Defendant carried the order of restoration in Appeal. That Appeal was dismissed by a Division Bench on 9th June 2016.

6. It seems that the Defendant has since not appeared and that the Suit has been listed as undefended Suit before the registrar since no Written Statement is filed.

7. The present Notice of Motion is listed at Serial No. 259 for hearing and final disposal. The names of the Defendant and his Advocates are correctly shown. This is a weekly list that was available from Friday, 16th September 2016. There is no Reply. There is no Written Statement.

8. I have no reason whatsoever to take a different view from the one I took on 4th September 2015. The Notice of Motion is made absolute in terms of prayer clauses (a), (b) and (c).

9. As the validity of that cheque expired, it is clarified that the Plaintiffs are not required to re-validate the cheque for costs in favour of the Defendant. In fact, the Plaintiffs and their Advocates are not required to issue fresh cheque towards costs. The Defendant is deemed to have given up his right towards costs granted by the earlier order.

10. The Notice of Motion is disposed in these terms. The Plaintiffs will be entitled to recover the actual costs of this Notice of Motion from the Defendant at the final hearing of the Suit.

(G. S. PATEL, J.)