

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 37 OF 2014
WITH
NOTICE OF MOTION NO. 910 OF 2015
WITH
LEAVE PETITION NO. 369 OF 2013**

Ultratech Cement Limited & Anr. ...Plaintiffs
Versus
Shree Balaji Cement Industries & Ors. ...Defendants

Mr. Amit Jamsandekar, *a/w Ms. Alka Parelkar and ms. Esha Trivedi, i/b V. A. Assoicates, for the Petitioner/Applicant.*
Mr. Rashmin Khandekar, *a/w Mr. Manish Saurastri, Mr. Minesh Andharia, i/b Krishna & Saurastri Associates, for the Respondent.*
Mr. M. R. Mandawgade, *OSD to Court Receiver, present.*

CORAM: G.S. PATEL, J
DATED: 23rd November 2016

PC:-

1. Mr. Pardeep Kumar, a partner of the 1st Defendant is personally present. He has a 30% share in the partnership firm. In the cause title of the Suit, the 3rd Defendant has been deleted, having expired, from the partnership firm. The 2nd Defendant, Mr. Pawan Kumar, is the other partner of the firm with a 70% share in it.

Leave to amend to add Mr. Pardeep Kumar as Defendant No. 3. Amendment to be carried out forthwith without need of reverification.

2. For the reasons stated in the Leave Petition, it is made absolute in terms of prayer clause (a).

3. Mr. Pardeep Kumar instructs Mr. Khandekar to submit to a decree in terms of prayer clauses (a), (b) and (d). In addition, Mr. Pardeep Kumar agrees before me that Defendant Nos. 1, 2 and 3 will jointly and severally submit to a decree in damages in the amount of Rs. 5,00,000/- in terms of prayer clause (c).

4. Mr. Jamsandekar on behalf of the Plaintiffs and, on instructions, says that the amount of damages may be directed to be paid to such a charitable organisation as this Court may direct. The amount of Rs. 5,00,000/- in damages is to be paid to the Tata Memorial Hospital within a period of four weeks from today under intimation to Mr. Jamsandekar's attorneys.

5. The Defendants have registered two marks. They agree and undertake to have those marks assigned to the Plaintiffs. Upon that assignment being effected, the Plaintiffs will withdraw their rectification applications. The marks in question are **Ultra Tuck** having registration No. 1522026 in class 19 and No. 2333240 in class 35. The assignment is to be executed within a period of four weeks from today. Along with the assignment, all the necessary forms and applications are also be executed by the Defendants.

6. Mr. Pardeep Kumar, who is personally present in Court, has the authority to bind the other Defendants by virtue of his presence in Court.

7. The Suit is decreed in these terms. Drawn up decree dispensed with.

8. Refund of Court fees, if any, in accordance with the Rules.

9. In order to ensure that there is no further controversy and since the prayers in the Suit speak of two labels, but there are actually two more modified labels annexed to the Notice of Motion under Order 39 Rule 2A of Code of Civil Procedure, 1908, there will be a decree in terms of all four labels. By way of abundant caution, copies of all four labels are appended to this order.

10. In view of this, all pending Notices of Motion do not survive and are dismissed as infructuous.

11. As regards the objection under Section 9A of the Code of Civil Procedure, 1908, since the Suit itself is being disposed of, no question arises of considering the preliminary issue of jurisdiction. Mr. Pardeep Kumar submits to the jurisdiction of this Court.

(G. S. PATEL, J.)







