

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3000 OF 2010
WITH
NOTICE OF MOTION NO. 1206 OF 2016**

Rashtriya Metal Industries Ltd.	...Plaintiffs
<i>Versus</i>	
Rashtriya Metal Industries	...Defendants

Mr. Kishore D. Shah, *for the Plaintiffs.*
Mr. Rajendra Choudhary, *General Manager (Sales) of the Plaintiff*
Company, present.

CORAM: G.S. PATEL, J
DATED: 22nd September 2016

PC:-

1. This is the Plaintiffs' Notice of Motion under Rule 90 of the Bombay High Court (Original Side) Rules for a judgment for want of Written Statement.
2. Heard Mr. Shah, learned Advocate for the Plaintiffs.
3. The Suit is an action in trademark infringement and passing off in respect of the Plaintiffs' mark **RASTRIYA METAL**. It also seeks to restrain the Defendants from using the trading or firm name of **Rashtriya Metal Industries**. The Plaintiffs have produced a

compilation of documents. The compilation is taken on record and marked in evidence As Exhibit “P”, collectively. Mr. Rajendra Choudhary, General Manger (Sales) of the Plaintiffs company is personally present in Court. He attests to the correctness of the statements made in the Plaint.

4. The Defendants were served with a Writ of Summons. There is an Affidavit dated 6th January 2012. That Affidavit shows that the office of the Sheriff, which despatched the packet, received back the packet with the remark “refused”. A refusal of service is the Defendants’ own responsibility.

5. The Suit is accordingly decreed in terms of prayer clauses (a), (b), (c) and (d), which read as follows, and costs.

“(a) That the Defendants by themselves their servants and agents be restrained by a permanent order and injunction of this Hon’ble Court from in any manner using any of the metal products or any of the goods in class 6 of the 4th Schedule of the Trade Mark Act, 1999 and the Rules framed thereunder with mark ‘Rastriya Metal’ or any other mark or label or Logo identical to or similar to Plaintiffs’ mark or their Logo, duly registered under the Trade Mark Act, 1999 bearing No. 380961 or bearing No. 1725996 or bearing No. 131750 in class 6.

(b) That the Defendants by themselves their servants and agents be restrained by permanent order and injunction of the Hon’ble Court from in any manner using trading style or the name “Rashtriya Metal Industries” or any other trading style or name containing the word

'Rashtriya Metal' or any other word or mark deceptively similar to Plaintiffs' name or trading style.

(c) That the Defendants by themselves their servants and agents be restrained by permanent order and injunction of the Hon'ble Court from in any manner using mark "Rashtriya Metal" or any other mark containing word "Rashtriya Metal" or any mark deceptively similar thereto so as to pass off their goods and/or business as and for the goods or business of the Plaintiffs.

(d) The Defendants be ordered to render a true and faithfully accounts of the profits earned by them by using the mark of the Plaintiffs or any identical mark thereto and on such accounts being taken, pass a decree in favour of the Plaintiffs and against the Defendants together with interest at 12% per annum."

6. Drawn up decree dispensed with.

(G. S. PATEL, J.)