

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 617 OF 2016
IN
SUIT NO. 164 OF 2016
WITH
CHAMBER SUMMONS NO. 369 OF 2016**

Siddhi Vinayak Knots & Prints Private Limited ...Plaintiffs
Versus
E-Bay Private Limited & 2 Others ...Defendants

Mrs. Farzana Khan, i/b Mr. Bhushan V. Mahadik, for the Plaintiffs.
None for the Defendants.

CORAM: G.S. PATEL, J
DATED: 5th December 2016

PC:-

1. The Defendants are served. M/s. H.D. & Associates entered appearance for the Defendants on 10th May 2016. There are also Affidavits of Service. There is no Affidavit in Reply till date.
2. The Plaintiffs' case is that Defendant No. 3 has illicitly reproduced the Plaintiffs' design for its sarees and other items of dress on various web portals. The Plaintiffs claim that they have copyright in these designs and creations which are being sold by the

Plaintiffs under their mark or brand **LAXMIPATI** used in relation to sarees and published in the Plaintiffs' catalogue titled *Jannat*. Samples of the Plaintiffs' catalogue designs are annexed to the plaint.

3. The complaint is not in respect of use of a mark **LAXMIPATI** itself but in the replication of the Plaintiffs' copyright-protected designs in their sarees and the images of the modelled sarees. Exhibits "N" to "P" at pages 105 to 107 of the plaint show that the Defendants have, *prima facie*, exactly replicated at least one of the Plaintiffs' saree designs, a representation of which is at page 182 of the paper-book. There is also another image of the Plaintiffs' saree at page 86 (in the third column). There is no way to distinguish the Defendants' use. In fact, it seems that the Defendants have just taken the image from the Plaintiffs' catalogue and have purported to pass it off as their own. The Defendants' design is an exact replica of the Plaintiffs' design and image. There is a clear case made out in copyright infringement and passing off in relation to the Plaintiffs' design.

4. I will grant the injunction in the Notice of Motion noting at this stage that despite adequate opportunities, Defendant No. 3 has not cared to file an Affidavit in Reply.

5. The Notice of Motion is made absolute as against the 3rd Defendant in the following terms, *viz.*, that pending the suit—

- (a) The 3rd Defendant is restrained from in any manner using, copying or displaying any images (including in particular design No. 3620) containing the Plaintiffs' sarees, designs and images from its catalogue *Jannat* or from any other source in any manner whatsoever, including on any third-party portals or websites.
 - (b) The Court Receiver shall visit the premises of the 3rd Defendant at the location shown in the cause title of the suit, with the assistance of the local police, if necessary, and make an inventory of all infringing materials and goods and then seal these in the premises of the 3rd Defendant.
6. Let the Court Receiver place a report, if necessary, for further directions thereafter.

(G. S. PATEL, J.)