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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2157 OF 2015
IN
SUIT NO. 1058 OF 2015
WITH
LEAVE PETITION NO. 246 OF 2015**

Sapat International Private Limited ...Plaintiffs
Versus
Bhagyalaxmi Gruha Udyog & 3 others ...Defendants

Mr. Himanshu Kane, *with Mr. Rahul Kadam & Mr. Nikhil Sharma,*
i/b W.S. Kane & Co., for the Plaintiffs.

CORAM: G.S. PATEL, J
DATED: 11th August 2016

PC:-

1. There is an ad-interim order dated 27th October 2015 which has remained without challenge in Appeal or application for variation, recall or modification. The Defendants have filed an Affidavit in Reply. There is also a Rejoinder. There is also a pending Petition for leave under Clause XIV of the Letters Patent.
2. For the reasons set out in the Leave Petition, it is made absolute in terms of prayer clause (a).

3. In the Affidavit in Reply, Defendants Nos. 1 to 3 says that Defendant No. 1 has been engaged in re-packing of processed tea since September 2015 and that Defendants Nos. 1 and 2 have only entered the tea retail business recently. It is Defendant No. 4 who, they say, is providing the label. Although these Defendants Nos. 1 to 3 appear to contest the Plaintiffs' claim, neither they nor their Advocates are present in Court.

4. As regards Defendant No. 4, he says that the product packaging is designed by his clients which include Defendants Nos. 1, 2 and 3. It is obvious that each of these two sets of Defendants are trying to blame the other. At the same time, the fact that they are all working together is obvious from the contents of the two Affidavits, large portions of which are verbatim reproductions of one from the other. The long and short of this is that the Defendant No. 4 is a printer for Defendants Nos. 1, 2 and 3.

5. The defence, however, misses the point completely. There is no answer to what is stated in the plaint and in the exhibits annexed to it, which is that the entire lay-out, get up and appearance of the Defendants' packaging are carefully designed to mimic and imitate the Plaintiffs' packaging. In fact, it is almost impossible to tell the difference between Exhibit "B", the Defendants' packaging from Exhibit "A", the Plaintiffs' packaging. One would have to look very closely indeed to make out the difference. I have already discussed this in my previous order. I see no reason to change my view.

6. As to the question of the Assignment Deed and the challenge to it by the Defendants in the Reply, there is no substance to this since a copy of the Assignment Deed is annexed to the Affidavit in Rejoinder.

7. The ad-interim order dated 27th October 2015 is confirmed as the final order on the Notice of Motion. In addition, there will be an interim order in terms of prayer clause (b) in relation to the reliefs in passing off.

8. The Notice of Motion is disposed of with costs. In addition, the Plaintiffs will be entitled to recover the actual costs of this Notice of Motion at the time of final hearing of the Suit.

9. The Court Receive stands discharged without passing accounts, but on payment of his costs, charges and expenses by the Plaintiffs within a period of four weeks from today.

10. The Defendants will destroy the impugned packaging, complained of in the plaint, within a period of four weeks from today in the presence of the representatives of the Plaintiffs. It is clarified that the Defendants will be entitled to use the contents of the packaging for use, reuse or repacking.

(G. S. PATEL, J.)