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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 2181 OF 2015
IN
COUNTER CLAIM NO. 6 OF 2010
IN
SUIT NO. 632 OF 2009**

Allied Blenders & Distillers Pvt. Ltd.	...Applicant
In the matter between	
Tilaknagar Industries Ltd.	...Plaintiff
VS	
Herman Jansen Beverages Nedarland B.V. & Ors.	...Defendants

.....
Mr H.W.Kane a/w Ms Aditi Kulkarni, Ms Garema Srivastav i/b H.W.Kane for the Plaintiff in counter claim.
Mr Darius Dalal i/b Jehangir Gulabbhai & BILIMORIA & Daruwala for Defendant Nos.1,2 and 4.
Mr E.P.Bharucha Sr. Advocate a/w Ms Lara Jesani for the Applicants in NMS No. 2181 of 2015/ Defendant No.3.
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CORAM : S.C. GUPTE, J.

JANUARY 08, 2016

P.C. :

This Notice of Motion is taken out in a counter-claim which relates to passing off of goods. By an order dated 10 September 2014, this Court directed the Defendants to the counter-claim, not to introduce any products with subject trademarks into market without leave of the Court. The Defendants to the counter-claim have taken out the present Notice of Motion seeking such leave. Learned Counsel for the Defendants to the counter-claim now seeks permission to withdraw the Notice of Motion with liberty to file an appropriate proceedings for such leave later. Today's application is on the footing that whereas the excise authorities have already approved labels of the Defendants to the counter-claim and, accordingly, the Defendants to the counter-claim would be in a position to release their goods in the market under the approved labels, the Defendants

have noticed some error in the approval of one of the labels by the excise authorities and the Defendants would like to investigate the matter further and only later make an application for leave to introduce their goods in the market.

2 Whilst ordinarily there cannot be any objection to this application, learned Counsel for the Plaintiffs to the counter-claim submits that the excise authorities have alleged forgery in the approval letter submitted by the Defendants to the excise authorities and have proposed to initiate appropriate legal action in the matter and that, in the premises, this Court ought not to consider any liberty for the Defendants to the counter-claim to take out a fresh Notice of Motion.

3 I am afraid this issue need not be determined on the present application of the Defendants to the counter-claim. As and when, the Defendants apply for leave of the Court to introduce their goods in the market, the Plaintiffs would be in a position to place this grievance before the Court. Subject to this controversy being left open, I permit the Defendants to the counter-claim to withdraw the Notice of Motion with liberty to take out a fresh Notice of Motion as and when they so desire. The present Notice of Motion is disposed of accordingly. Learned Counsel for the Plaintiffs to the counter-claim presses for costs of the Motion. There shall be no order as to costs.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.