

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

**COMMERCIAL APPEAL NO. 68 OF 2017
IN
NOTICE OF MOTION NO. 513 OF 2015
IN
SUIT NO. 674 OF 2014
WITH
NOTICE OF MOTION NO. 14 OF 2017
IN
COMMERCIAL APPEAL NO. 68 OF 2017**

Dongguan TR Bearing Company Ltd., & Anr. ... Applicants.
(Org.Plaintiffs)

In the matter between :

Dongguan TR Bearing Company Ltd., & Anr. ... Appellants.

V/s.

M/s. Harman Overseas & Ors. ... Respondents.
(Org.Defendants)

Mr. V. Tulzapurkar, Sr. Counsel i/by V. A. Associates for the
Applicants/Appellants.

Mr. Himanshu Kane a/w. Mr. Nikhil Sharma & Mr. Aasif
Navadia i/by W.S. Kane & Co. for the Respondents.

**CORAM : NARESH H. PATIL AND
SMT. BHARATI H. DANGRE,JJ.**

DATE : 05th JULY, 2017

P.C. :

1 This the Appeal is filed by the Appellants against the
order dated 18th October, 2016 passed by the learned single

Judge of this Court (Coram : G.S. Patel,J.) in Notice of Motion No. 513 of 2015, thereby rejecting the ad-interim reliefs prayed for in the motion. Learned counsel appearing for the Appellants submits that while rejecting the motion/ application for ad-interim relief, the learned single Judge ought to have considered the voluminous record produced in support of the contentions raised by the Appellants/Plaintiffs. The learned counsel further submits that the Appellants had made a strong prima facie case before the learned single Judge for grant of ad-interim reliefs.

2 The learned counsel appearing for the Respondents submits that prior to filing of the present Suit No. 674 of 2014, the Appellants/Plaintiffs had filed a Suit (L) No. 176 of 2013 against the Respondents/Defendants, for the same cause of action. The Appellants / Plaintiffs had also prayed for interim reliefs in Notice of Motion No. 513 of 2015. The said Motion was rejected and the ad-interim relief was denied to the Appellants. The order of rejection of ad-interim relief dated 18th October, 2016 was not challenged by the Appellants. Thereafter, the Appellants preferred present Appeal. Earlier attempts to get the ad-interim order have failed. It is submitted that after a gap of about three years, the present notice of motion is filed. On merits, the learned counsel for the Respondents submits that the learned single Judge has rightly observed that the Appellants / plaintiffs had failed to establish

sufficiently a strong prima facie case for grant of ad-interim reliefs.

3 We have perused the record produced before us and considered submissions advanced. The Appellants had filed a suit earlier and the notice of motion was also considered by the learned single Judge. It is clear that the appellants' prayer for grant of ad-interim relief came to be rejected. This is a second suit filed by the appellant against the defendants on the similar cause of action. We are informed that an application under section 9-A of the Civil Procedure Code was filed by the Defendants which is pending for consideration. At the same time, the appellants are desirous of making an application for seeking leave to combine the cause of action for passing off with that of infringement. The order is awaited.

4 Having considered all the relevant factors, we are of the view that no interference is warranted in the order passed by the learned single Judge. It is clarified that the observations made by the learned single Judge in the impugned order be construed as prima facie in nature and shall not adversely affect other connected proceedings/rectification proceedings/notice of motions pending before the learned single Judge in respect of the said cause of action arising in the subject suit.

5 The Appeal is accordingly dismissed. In view of the dismissal of the Appeal itself, Notice of Motion No.14 of 2017 does not survive and the same is also dismissed as such.

(SMT. BHARATI H. DANGRE,J.)

(NARESH H. PATIL,J.)

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