

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

IN ITS COMMERCIAL DIVISION

**LEAVE PETITION NO.211 OF 2017
IN
COMMERCIAL SUIT (L) NO.313 OF 2017**

Ceat Limited)....Plaintiff

V/s.

Cvaz Tyres & Tubes LLP & Ors.)....Defendants

Mr.Ashish Kamat a/w Mr.Prathamesh Kamat and Mr.Shiv Iyer i/by
Ganesh and Co. for the plaintiff.

None for defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 19.7.2017**

P.C.:-

1 Despite opportunity given to the defendants to file a reply,
no reply has been filed.

2 The suit has been filed by the plaintiff alleging that the
defendants have infringed the trade mark/dress and for passing off.

3 This Leave Petition under clause XIV of the Letters Patent
is taken out by the petitioner/plaintiff in the said trade mark/dress
infringement and passing off suit. The Leave Petition is filed on the
basis that the plaintiff's suit for infringement of its registered trade
mark/dress is maintainable before this Court and that under Clause

XIV of the Letters Patent, the plaintiff be permitted to combine the cause of action of passing off with the cause of action for infringement of trade mark/dress in the above suit. The cause of action for passing off arises outside the jurisdiction of this Court.

4 The plaintiff's registered office is at Mumbai. Therefore, this court has jurisdiction under Section 134 of the Trade Marks Act 1999 and under Section 62 of the Copyright Act 1957. Clause-XIV of the Letters Patent reads as under :-

***"XIV-Joinder of several causes of actions :** And we do further ordain that where plaintiff has several causes of action against a defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit."*

5 The defendants have been served a copy of the Leave Petition, the plaintiffs' Notice of Motion and the affidavit in support and also the plaint with annexures. No affidavit of reply has been filed to the present petition. The necessary averments are at paragraph-50 of the Leave Petition.

6 Undisputedly, the plaintiff is carrying on business within

the jurisdiction of this Court. Once it is clear that Court has jurisdiction in respect of cause of action for infringement of trade mark/dress, because the business of plaintiff being within the jurisdiction of this court, this Court can call upon the defendants to show cause why the other cause of action claimed by the plaintiff i.e., on passing off by the defendants of their services/goods as those of the plaintiff, cannot be combined with the cause of action for infringement.

7 The exercise of discretion in a Clause XIV application was considered by this Court in ¹***Jagdish Gopal Kamath & Ors. Vs. Lime & Chilli Hospitality Services P. Ltd.*** and in paragraph 16, the Court after considering the observations/findings in various decisions and considering Clause XIV, has provided the factors to be considered in a Petition for leave under Clause XIV. It will be useful to reproduce Paragraph 16 and the same reads as under :

“16 From a reading of Clause XIV of the Letters Patent, the observations/findings in the aforestated decisions of the Hon'ble Division Bench of this Court, and from the above discussion it can safely be concluded that :

(i) the grant of leave under Clause XIV of the Letters Patent is a discretionary exercise;

(ii) the primary consideration, while deciding applications for grant of leave under clause XIV of the Letters Patent is 'avoiding multiplicity of litigation';

1 2013 Bom. C.R.446

(iii) in the absence of proven mala fides/hardship, the argument that grant of leave will drag the Defendant from a forum where the Defendant is situated, to the Court from which Clause XIV is sought and that this is prejudicial/inconvenient to the Defendant, is fallacious and misconceived;

(iv) leave may be declined considering undue hardship to the Defendant or such other similar ground/s;

(v) leave may be declined if the suit as filed is on the face of it not maintainable and the same is nothing but an abuse of law/Court;

(vi) the inquiry whether on facts the Plaintiff is entitled to grant of leave as sought for or not has to be minimal and not in detail, so as to ensure that KPP 16 Petition No. 972 of 2012 observations made do not adversely affect the parties while considering the prayers for grant of interim relief or while deciding the suit;

(vii) it is not possible to list all the circumstances under which leave under Clause XIV should be granted or declined. The Court has to use its judicial discretion and arrest any abuse of the process of a court without going into the merits of the case to the extent of virtually obliterating the distinction between grant of leave and grant of interim relief;

(viii) leave petitions cannot be converted into interlocutory hearings based on the initial cause of action. This will be an anathema to the object/legislative policy behind granting leave."

8 From the above, it is clear that grant of leave is a discretionary exercise and the primary consideration while deciding applications for grant of leave under Clause XIV is 'avoiding multiplicity of litigation'. The other point which has to really weigh in the mind of the Court is whether the plaintiff's action smacks of mala

fides and is an abuse of law/Court.

9 I am satisfied that granting leave would avoid multiplicity of proceedings otherwise the plaintiff will have to file a suit in Ahmedabad Court and the defendants also will have to defend 2 proceedings one in Mumbai and one in Ahmedabad. I cannot come to the conclusion that the plaintiff's action smacks of malafide or an abuse of law.

10 In the circumstances, leave is granted to the plaintiff under Clause XIV of the Letters Patent, as sought. Further, it is clarified that the defendants are at liberty to raise all contentions as to whether there is any infringement and / or otherwise at the time of hearing of the interim application.

11 Leave petition disposed.

(K.R.SHRIRAM,J)