

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

NOTICE OF MOTION NO.84 OF 2015

IN

COMMERCIAL I.P.SUIT NO.300 OF 2015

Dabur India Limited)....Applicants/Plaintiffs

V/s.

Mandom Corporation & Ors.)....Defendants

WITH

NOTICE OF MOTION (L) NO.1655 OF 2015

IN

COUNTER CLAIM NO.17 OF 2016

Mr.Sandeep Parikh a/w Mr.Durgaprasad Poojari and Mr.Shekhar Vig
i/by PDS Legal for plaintiffs/applicants.

Mr.Himanshu Kane a/w Mr.Darpan Bhatia and Mr.Dominie Alvares i/
by Amit Jajoo for defendants.

CORAM : K.R.SHRIRAM,J

DATE : 13.8.2019

P.C.:-

1. No ad-interim order was passed in the Notice of Motion No.84 of 2015 because on 3.3.2015 it was recorded that the parties agree that the Notice of Motion itself can be finally heard after they were allowed to put in their respective pleadings. We are in August-2019. In paragraph-11 of the plaint, in the suit for infringement of trade mark and passing off, plaintiffs state that they had marketed

some products in February-1994 upto October 1995 i.e., 20 years prior to filing of the suit and plaintiffs are proposing to launch other products. It is obvious from the plaint that between 1995 till date of the suit, no product has been launched. Plaintiffs also state that they have manufactured perfume, colognes under the manufacturing license obtained from FD Authorities in 2004 but plaintiffs state they are not selling any of those products.

2. In the circumstances, question of granting any relief in the Notice of Motion does not arise. Mr.Parikh for applicants also stated that no product by name trade mark GATSBY is being sold by plaintiffs today.

Mr.Kane for defendants states plaintiffs are not selling and relies on their own statement at pages-224 & 225 of the plaint.

3. In page-224 which is an affidavit filed by one Sunil Pophale who was the managing director of Fem Care Pharma Limited, predecessor in title of plaintiffs, opposing an application of defendant no.1, it is stated “to start with, my company test-marketed perfumes, outsourced from the market, under the impugned mark during February 1994 to October 1995 of which the record is not presently available”. It is also stated in or about April-2004 my company

decided to revive its product range under its registered trademark GATSBY and manufacture the product in its factory at Nashik. It is stated that Fem Care Pharma Limited took up the manufacture of the said products and the clinical trials relating thereto were at the final stage and after completion of the clinical trial and testing process, the company 'proposes' to re-launch its products under its trademark GATSBY in a big way. That was on 14.11.2005. Plaintiffs have acquired right, title and interest on the trade mark GATSBY only in 2010. There is nothing on record that after 2005 any product with the trade mark GATSBY has been launched in the market. Therefore, question of granting any relief does not arise. If and when plaintiffs decide to launch any product, they may give four weeks notice in advance to defendants. Notice of Motion No.84 of 2015 accordingly disposed.

4. As regards Notice of Motion (L) No.1655 of 2015 in the Counter Claim, Mr.Kane states that since plaintiffs are yet to launch their product, he will apply to the Court for appropriate relief as and when any product is launched or he gets notice from plaintiffs and seeks leave to withdraw the Notice of Motion with liberty as prayed for. Notice of Motion (L) No.1655 of 2015 dismissed as withdrawn with liberty as prayed for.

5. Plaintiffs are yet to file written statement to the Counter claim though Mr.Kane states it has been served more than 4 years ago. Purely by way of indulgence, time to file written statement is granted upto and including 23.8.2019.

6. Mr.Kane states that cross objection for rectification by parties is pending before IPAB since 2015. It is rather shocking that these matters have been pending for so many years. We have some matters in this Court which have been pending for longer time and Govt. of India seems to be doing nothing to solve this major problem. In view of the inaction on the part of Govt. of India, there are suits which are pending and we find reports after reports alleging huge pendency in Courts.

Delhi High Court in ¹***Mylan Laboratories Limited V/s. Union of India & Ors.*** has in effect castigated the Union of India. I am in respectful agreement with the conclusion arrived at by the Delhi High Court. These are matters where doctrine of necessity has to be invoked.

1 W.P.(C) 5571/2019 & C.M.Appln.24540/2019 & 26833/2019 decided on 8.7.2019

7. Mr.Kane and Mr.Parikh state that IPAB in Calcutta has after the judgment of the Delhi High Court, issued notice stating that rectification application between the parties to this suit is listed for hearing on 19.8.2019.

8. Therefore, suit and counter claim be listed for directions on 27.9.2019. IPAB is requested to, if for any reason it is unable to dispose of the rectification application on 19.8.2019, dispose of the same before the next date fixed by this Court.

9. Stand over to 27.9.2019.

10. For completion of record, registry to take on file the rejoinder being filed.

(K.R.SHRIRAM,J)