

**COMMERCIAL NOTICE OF MOTION (L) NO.1536 OF 2019
WITH
LEAVE PETITION (L) NO.255 OF 2019
IN
COMMERCIAL IP SUIT (L) NO.722 OF 2019**

Vs.

Bakreswar Cement Private LimitedDefendant

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Mr. Vishal Khetan and Mr. Nitesh Khaitan, Directors of defendant present.

— — — —

DATE : 23rd JULY 2019

P.C.:

2 Mr. Keni states that Mr. Vishal Khetan and Mr. Nitesh Khaitan,
the Directors of defendant are present in Court and identifies them.
Mr. Keni submits to decree in terms of prayer clauses – (a) and (d), which
read as under :

(d) a decree and order directing the defendant to deliver up to the plaintiff for destruction and any and all printed/visual materials, all other goods, stationery, labels, stickers and other incriminating

materials bearing the impugned marks (depicted at Exhibit E-1 and E-2), in English, Hindi or any other regional language or any other mark identical and/or deceptively similar to the plaintiff's said 'CONCRETO' marks and to delete, obliterate or otherwise remove all references to the impugned mark (depicted at Exhibits E-1 and E-2) or any other mark identical and/or deceptively similar to the plaintiff's 'CONCRETOR' marks.

3 Mr. Kadam states that since defendant is submitting to decree in terms of prayer clauses – (a) and (d), he will not press for prayer clause – (c).

4 In paragraph 31, 32 and 33 of the plaint, plaintiff has listed various orders passed by the Hon'ble Calcutta High Court on the infringements committed by defendant. I asked the counsel for defendant and in fairness he stated that such orders against defendant for infringement of trade mark have been passed. Therefore, it is quite obvious that defendant is a serial offender and has no respect or regard or concern for the law of this land. The counterfeit product that is being sold is cement, which is very essential for building construction and also public roads or public utilities, etc. The strength of these constructions depends a lot on the quality of cement used and if people buy those counterfeit products of defendant thinking that it is that of plaintiff, the quality of cement is not assured and there are chances of the building itself crashing down risking life and limbs. Whenever a suit is filed defendant simply submits to decree and then starts infringing other trade marks. Such defendant/party should be certainly put to strict terms so that they will refrain or may think a million times before infringing another trade mark. These are the parties

who keep the Court's diary full and substantial judicial time is spent and various parties have to rush to Court and spend lot of money on lawyers and also suffered losses.

5 Therefore, defendant is also directed to give a donation of Rs.50 lakhs to National Defence Fund (NDF), State Bank of India, Institutional Division, Parliament Street, New Delhi, Account No.11084239799-www.pmindia.nic.in. and this amount shall be paid and compliance affidavit shall be filed within four weeks from today. If this amount is not paid, the assets of defendant shall be attached and shall be recovered as arrears of land revenue.

6 At this stage, Mr. Vishal Khetan and Mr. Nilesh Khaitan, the Directors of defendant company state that they will pay this amount of Rs.50 lakhs within two months from today. Therefore, two months time is granted. This is also accepted as undertaking by these two Directors.

7 Court Receiver appointed by this Court stands discharged without passing of accounts. Plaintiff's undertaking to pay such charges that is outstanding to the Court Receiver within two weeks of receiving a communication from the Court Receiver is accepted.

8 The counsel for defendant undertakes that defendant will hand over all the bags containing infringing mark and if those bags have got cement, then empty those bags and hand over the bags to plaintiff for destruction. Mr. Keni states that all the bags will be handed over within two

weeks from today. Statement accepted as undertaking to this Court.

9 As regards prayer clause – (d) is concerned, Mr. Keni states that it will be complied with within two weeks from today.

10 Since defendant have submitted to decree, the petition filed for leave under Section 14 stands disposed. Suit decreed accordingly. Notice of motion also stands disposed.

11 Court Receiver to hand over the keys of the rooms where the seized goods are kept to the advocate for plaintiff who shall take the keys with him on the date indicated by defendant for destruction, open the rooms and destroy the goods and hand over the keys to defendant.

12 Registry to forward a copy of this order to the Administrator of National Defence Fund for information and necessary action.

13 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)