

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION NO.80 OF 2015
IN
COMMERCIAL IP SUIT NO.292 OF 2015**

Siddhi Vinayak Knots & Prints Pvt Ltd ..Plaintiff
Vs.
M/s Amit Silk Mills & Ors ..Defendants

Mr. Bhushan Mahadik for Plaintiff/Applicant
Mr. Vinod Bhagat a/w Ms Ruchi Agarwal I/b Mr. G.S. Hegde and Mr. V. A. Bhagat for Defendant Nos.1 and 2

**CORAM : K.R.SHRIRAM, J.
DATE : 18th JUNE 2019**

P.C.:

1 Mr. Mahadik for plaintiff states that defendant nos.1 and 2 have sold sarees, which were manufactured by defendant nos.3 and 4 and it is plaintiff's case that the prints on those sarees infringed plaintiff's design. Mr. Mahadik states that nobody is present for defendant nos.3 and 4 though served and undertakes to file affidavit of service within one week from today.

2 Mr. Bhagat states that defendant nos.1 and 2 have sold only 40 sarees in total which would mean about 378 meters, worth about Rs.23,000/-. Mr. Bhagat states that defendant nos.1 and 2 do not have any stock which would infringe plaintiff's design, as alleged by plaintiff.

3 Mr. Bhagat states that defendant no.2 is the proprietor of defendant no.1 and defendant no.2 will file an affidavit confirming what

Mr. Bhagat states and copy of the affidavit will be served within two weeks from today. Mr. Bhagat states that it has already been stated in paragraph 23 of the affidavit in reply. Affidavit in reply has been signed by defendant no.2 in Hindi. It does not state anywhere that he knows English and he has not been produced before the Chief Interpreter and Translator of this court or any other court for that matter. Even the notary public has not endorsed that he has read out the affidavit and explained the contents to the affiant. Therefore, the affidavit as directed above has to be filed and defendant no.2 shall appear before the appropriate Chief Interpreter and Translator of appropriate court in Surat or the Chief Interpreter and Translator of this court.

4 In view of this statement made by Mr. Bhagat, Mr. Mahadik states that the notice of motion be accordingly disposed against defendant nos.1 and 2. As far as defendant nos. 3 and 4 are concerned, there is no affidavit in reply and nobody has been appearing to oppose the notice of motion. Therefore, notice of motion is disposed against defendant nos.3 and 4, in terms of prayer clauses (e) to (g) and the same read as under:

(e) That pending the hearing and final disposal of the suit the Hon'ble Court Receiver, Mumbai be appointed as Receiver with all powers under Order XI Rule 1 of Civil Procedure Code, 1908 to attend at and/or enter at any time of the day or night either by force or by breaking open the lock or by removing the defendants premises of the defendants mill owners, master printer, stockists, agents, dealers, and also those places where the sarees of the design bearing No.3620 of its catalogue "Jannat" are stocked, manufactured and/or packed and/or stored and/or sold, without notice to them with the help of police (if necessary) to make inventories and to take possession, custody and control of all

original sarees as shown in Exhibit "J" hereto and all other records and books of accounts pertaining thereto, dies, drawing, moulds and pattern of the impugned sarees used for manufacturing of the same. Alternatively, a commissioner be appointed with all power under the Code of Civil Procedure Code to take inventory of the impugned sarees, goods, designs lying in possession of the defendants and to carry out all other necessary and detailed investigation and enquiry including the ascertaining of the names and address of job workers, wholesalers, stockists and traders etc. and of all those connected with the impugned sarees complete address of all those peoples and places where the impugned goods are stocked and/or stored and/or manufactured and/or assembled and/or sold as also the total quantum of sale of impugned products effected by the defendants and other relevant details relating thereto;

(f) Pending the hearing and final disposal of the suit, the defendants by itself, through its servants, mill owners, master printers, agents, dealers, manufacturers, directors, owners, proprietors and/or otherwise howsoever be restrained by a perpetual order and/or injunction of this Hon'ble Court from in any manner infringing the registered trademark, logo, copyright land design rights of the plaintiffs and using, applying, placing upon the market for sale or exposing for sale and/or selling and/or cause to be used, applied and/or placed upon the market or expose for a sale and/or otherwise in any manner dealing with impugned sarees bearing the impugned original exquisite design from the impugned picture as shown in Exhibit M hereto.

(g) That pending the hearing and final disposal of the suit, the defendants by itself, through its servants, mill owners, master printers, agents, dealers, manufacturers, directors, owners, proprietors and/or otherwise howsoever be restrained by an order and injunction of this Hon'ble Court from in any manner using, applying, placing upon the market for sale or exposing for sale and/or selling and/or cause to be used, applied and/or placed upon the market or expose for a sale and/or otherwise in any manner dealing with the original sarees bearing the original exquisite design No.3620 from the original catalogues as shown in Exhibit-J hereinabove.

- 5 Notice of motion accordingly stands disposed.
- 6 Suit be listed for filing consent terms on 9th July 2019.

(K.R. SHRIRAM, J.)