

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

**INTERIM APPLICATION NO.1 OF 2019
IN
COMMERCIAL SUIT (L) NO.1319 OF 2019
WITH
LEAVE PETITION NO.204 OF 2019**

Sulphur Mills Limited	...	Applicant/Plaintiff
Versus		
FERTIS India Private Limited	...	Defendant

.....

Mr. Rahmin Khandekar a/w Mr. Shriraj Dhruv, M/s Paulome Mehta &
Mr. Harshel Doshi i/b Dhru & co. for the Applicant/Plaintiff.
Mr. Hiren Kamod a/w Mr. Rohan Rohatagi i/b Mr. Punit Jani for the
Defendant.

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CORAM : S.C. GUPTE, J.

DATE : 9 JANUARY 2020

P. C. :

. This commercial IP suit complains of infringement of registered trade mark and also passing off of goods. Since the Defendant carries on business outside the local limits of jurisdiction of this court and in that sense, the cause of action of passing off arises outside the jurisdiction of this court, the Plaintiff has filed a leave petition seeking leave under clause XIV of Letters Patent for combining the two causes of action, namely, the cause of action of infringement and

the cause of action of passing off. In defence to both the petition as well as to the ad-interim application made by the Plaintiff, it is submitted by the Defendant that the Defendant is also a registered proprietor of the same trade mark and that accordingly, the suit itself is not maintainable. It is submitted that, therefore, not only should ad-interim relief be refused to the Plaintiff, but even leave under clause XIV of Letters Patent should not be accorded. Ordinarily, at the stage of leave under clause XIV, the court has to merely conduct a tentative enquiry and on the basis of such enquiry, grant or refuse leave to combine the causes of action. In the facts of the present case, it would accordingly be in the interest justice to accord leave under clause XIV of Letters Patent, but keeping the issue of maintainability of the suit open. This issue can be considered at the time of hearing of the interim application.

2 Accordingly, the leave petition is allowed by granting leave under Clause XIV of Letters Patent to the Plaintiff, subject, however, to the issue of maintainability of the suit for infringement against the Defendant herein being kept open.

3 Reply, if any, to the interim application to be filed within three weeks from today. Rejoinder, if any, within two weeks thereafter. The Interim Application to come up for hearing after five weeks.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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