

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMMERCIAL SUMMARY SUIT NO. 59 OF 2014
ALONGWITH
INTERIM APPLICATION NO. 2064 OF 2020**

Rishab Apparel Private Limited

... Plaintiff

V/s.

Mondelez India Foods Limited

...Defendant

Mr. S. L. Shah i/b Shah Legal for Plaintiff.

Mr. Mantul Bajpai i/b Crawford Bayley and Co. for Defendant.

CORAM : K.R.SHRIRAM, J.**DATED : 4th MARCH, 2021.****P.C. :**

1. Mr. Shah appearing for plaintiff states that affidavit in lieu of examination in chief of plaintiff's first witness Mr. Rajendra Baradia was affirmed in December, 2018 but due to inadvertence in his office did not get filed in the Registry and the copy was served upon defendant only in March, 2020. At the same time, Mr. Shah has no explanation as to why, when the affidavit in lieu of examination in chief was to be filed on or before 04/04/2018, as noted in the order dated 14/03/2018, plaintiff affirmed the affidavit only in December, 2018. Mr. Shah says there were some difficulty with plaintiff. The court's order cannot be taken for granted. On 05/04/2018, the matter was stood over to 26/04/2018. Thereafter, the matter came to be listed on 12/03/2020 when plaintiff was absent. Even on

04/02/2021 plaintiff was absent. Plaintiff is lucky that the suit has not got dismissed. At the same time, on 05/04/2018 Mr. Shah has appeared before the court and notwithstanding that the affidavit, Mr. Shah says, is affirmed in December, 2018. Unless parties co-operate with the court and comply with the court's order strictly and meticulously no matter can move seamlessly. In my view though the Registry should be directed to take the affidavit and plaintiff should be directed to pay some cost for not complying with the orders of the court, I do not wish to take a strong action of rejecting the affidavit.

Plaintiff shall give a donation of Rs.10,000/- (Rupees Ten Thousand Only) to High Court Legal Aid Fund, Account No.60045304283, IFSC-MAHB0000002 of the Bank Of Maharashtra, Branch – Fort, Mumbai – 400 032, maintained by the High Court Legal Services Committee, Mumbai, Room No.105, 1st Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the receipt thereof physically or through Email, i.e., hclsc.mumbai@gmail.com which shall be the proof of such payment/deposit.

Mr. Shah says that within one week he will file the list of witnesses with copy to defendant. Statement accepted.

2. Mr. Bajpai is seeking two weeks time to file defendant's affidavit of documents and compilation and serve copy thereof upon plaintiff. On

29/09/2015 parties were directed to file their affidavit of documents, compilation of documents and exchange the same on or before 20/10/2015. On 20/10/2015 time was extended till 24/11/2015. On 24/11/2015 further four weeks time was granted at the request of plaintiff's counsel. In the order dated 14/03/2018 defendant objection to some of the documents relied upon by plaintiff is also noted but still defendant does not file any affidavit of documents and Mr. Bajpai is coming up with an ingenious excuse that on 12/03/2020, the court had ordered the matter to be listed for dismissal and hence defendant did not file affidavit of documents. In my view it is the most unimaginative excuse. Be that as it may, by way of indulgence, I hereby grant time upto and including 11/03/2021.

Defendant shall file its affidavit of documents and serve a copy thereof upon plaintiff by 11th March, 2021 failing which defendant will not be permitted to rely on any document, copy whereof is not annexed to the written statement and mentioned in the list of documents annexed to the written statement.

3. On or before 15th March, 2021 inspection to be completed. If inspection is not given, defendant will not be permitted to rely on document of which inspection has not been given.

4. On or before 20th March, 2021 statement of admission and denial with reasons for denial to be given by plaintiff. If the statement of admission and denial is not given, plaintiff shall be deemed to have

admitted the existence of all the documents of defendant.

5. Defendant shall also give a donation of Rs.10,000/- (Rupees Ten Thousand Only) to High Court Legal Aid Fund, Account No.60045304283, IFSC-MAHB0000002 of the Bank Of Maharashtra, Branch – Fort, Mumbai – 400 032, maintained by the High Court Legal Services Committee, Mumbai, Room No.105, 1st Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the receipt thereof physically or through Email, i.e., hclsc.mumbai@gmail.com which shall be the proof of such payment/ deposit and the amount shall be paid on or before 10th March, 2021 whether defendant's wish to file affidavit of documents or not.

INTERIM APPLICATION NO. 2064 OF 2020

6. There is an Interim Application taken out by plaintiff bearing no.2064 of 2020. This Interim Application is for change of plaintiff's name. It is also listed on board today. Exhibit A to the application is a copy of Certificate of Incorporation pursuant to change of name issued on 21/09/2019 by Registrar of Companies, Mumbai. The Interim Application is taken on 17/02/2020. In view of the above, application is allowed in terms of prayer clause (a) and (b). However, it is clarified that no consequential amendments to the plaint is permitted. Amendment only to the extent excluding the bracketed portion in red ink in the schedule is allowed.

7. Interim Application No.2064 of 2020 stands disposed.
8. Stand over to 7th April, 2021 at 2.30 p.m. for marking of documents/recording evidence at which time, plaintiff's first witness shall remain present in the court. If the witness does not remain present plaintiff's evidence will be closed.

(K.R. SHRIRAM, J.)