

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.535 OF 2017
IN
COMMERCIAL IP SUIT NO.637 OF 2017**

Mahindra and Mahindra Limited Applicant/Plaintiff

V/s.

Mahindra Lube Care Private Limited Defendant

Dr. Abhinav Chandrachud a/w. Ms. Smriti Yadav and Mr. Dhiren Karania i/b.
Mustafa K. Bantwala for for applicant/plaintiff.

Mr. Atharva Dandekar a/w. Ms. Deepa Mani and Ms. Karishma Ahuja i/b.
DM Legal Ventures for defendant.

**CORAM : K.R.SHRIRAM, J.
DATED : 17th FEBRUARY 2021**

PC. :

1 There is a Clause 14 petition pending to which no reply has
been filed by defendant.

2 Therefore, petition for leave under Clause 14 is allowed and
accordingly disposed.

3 An ex-parte order came to be passed on 11th September 2017
granting prayer clauses – (a) and (c) [incorrectly mentioned as prayer
clauses – (a) and (b)] except the portions bracketed in the order. The order
was served soon thereafter and defendant had appeared on 3rd October
2017. Thereafter, no application has been made by defendant to recall the
ad-interim order passed. Affidavit in reply has been filed and the reply does
not contain anything which is acceptable. The main thrust of the defence is

plaintiff's company is registered as "Mahindra", whereas the name of defendant company is "Mahindra Lube Care Private Limited". The other defence is defendant's logo is not similar to plaintiff's logo. But what I find rather strange is the affidavit that is filed by one Arif Khan claiming to be the Proprietor of defendant whereas, defendant is a Private Limited Company. There is no explanation either in the affidavit in reply as to how Mr. Arif Khan, who claims to be the Proprietor of defendant, decided to use the name "Mahindra Lube Care Private Limited".

4 In the circumstances, in my view, the ad-interim order granted on 11th September 2017 has to be confirmed as order in this notice of motion. Therefore, the ad-interim order granted on 11th September 2017 is hereby confirmed as order in this notice of motion.

5 In view of leave under Clause 14 being granted, plaintiff will also be entitled to prayer clause – (b) of the notice of motion, which reads as under :

(b) that pending the hearing and final disposal of the suit, the defendant directly and/or indirectly, by itself, its employees, directors, partners, officers, servants, representatives, agents, franchisees, distributors, dealers, manufacturers, licensees and all persons claiming under it be restrained by a temporary/interim order and injunction of this Hon'ble Court from passing off the impugned goods and services of the defendant as that of the plaintiff by using the impugned mark, viz., Mahindra/Mahindra Lube Care or any mark identical with or deceptively similar to the plaintiff's said trade mark "Mahindra" and marks consisting of "Mahindra" in connection with its corporate name, trade name, impugned goods and services or on its website and/or on goods and/or services and/or any other domain names containing the plaintiff's said trade marks or any other mark similar to the plaintiff's said trade marks or in any manner from manufacturing, marketing or offering for sale, advertising or dealing in any

products or rendering any services under the impugned mark, viz., Mahindra/Mahindra Lube Care or any other mark which is similar to the plaintiff's said trade marks "Mahindra" and marks consisting of "Mahindra" so as to pass-off or enable others to pass-off the defenant's impugned goods and services as being to those of the plaintiff.

6 Notice of motion accordingly stands disposed.

7 Mr. Dandekar states that his instructions are to see if the matter could be amicably resolved. Certainly parties are always welcome to settle the matter and as and when they settle, they can move for taking the settlement terms on record. At the same time, the suit cannot be kept in abeyance waiting for the parties to settle particularly, when the suit has been pending for almost four years.

8 The pleading in the suit are completed. Therefore, on or before 3rd March 2021 parties shall give inspection of documents relied upon by each other. If inspection is not given, such party will not be permitted to rely upon such document. This will not, however, prevent a party from confronting a witness of another party with any document. On or before 10th March 2021 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

9 Suit be listed for issues on 17th March 2021 on which date parties shall come with agreed draft issues and a separate list of issues on

which they are unable to agree. On the next date, if parties do not come with draft issues, they are put to notice that parties will be put to terms.

(K.R. SHRIRAM, J.)