

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 380 OF 2022
IN
COMMERCIAL IP SUIT NO. 440 OF 2021**

Hindustan Unilever Limited ... Applicant/Orig. Plaintiff

vs.

Ashok Kumar (unknown person) and anr. ... Defendants

WITH

LEAVE PETITION NO. 171 OF 2021 (Not on board. Taken on board)

WITH

COURT RECEIVER'S REPORT NO. 313 OF 2021

IN

COMMERCIAL IP SUIT (LODGING) NO. 15765 OF 2022

Mr. Vinod Bhagat with Ms. Prachi Shah, i/by. G. S. Hegde and V. A. Bhagat
for the applicant/plaintiff.

Ms. Rekha Rane, 2nd Assistant to Court Receiver.

CORAM : MANISH PITALE, J

DATE : 19th OCTOBER, 2022

P.C. :

. By order dated 14th June, 2021, this Court granted ex-parte ad-interim reliefs in favour of the plaintiff. Court Receiver executed the order and Court Receiver's Report No.313 of 2021 was submitted.

2. Initially, this suit proceeded as 'John Doe' action and thereafter, when the Court Receiver executed the order of this Court, details of the defendants came on record. Accordingly, the plaintiff amended the plaint and defendant No.2 was added as a party to the suit. This Court is informed that post-amendment, defendant No.2 was also served with the papers.

3. Affidavit of service dated 29th August, 2022 is handed over by learned counsel for the applicant/plaintiff, which is taken on record. Even as regards the hearing fixed for today, learned counsel for the plaintiff has handed over the document showing notice delivered on defendant No.2 by way of whatsapp. The same is also taken on record.

4. In the light of the fact that the defendants have been served and the papers have also been served on them, learned counsel for the plaintiff is pressing for grant of leave under Clause XIV of the Letters Patent for combining the cause of action for passing off with the cause of action for infringement.

5. Perused the contents of the Leave Petition. This Court is satisfied that the prayer in the said Leave Petition deserves to be granted.

6. Leave Petition is allowed and disposed of.

7. In the light of the Leave Petition being granted, learned counsel appearing for the plaintiff submits that ad-interim relief in prayer clause (c) may also be granted. In that regard, learned counsel for plaintiff invited attention of this Court to paragraph Nos.15, 21, 23, 24 and 28 of the plaint.

8. Upon perusal of the pleadings in the aforesaid paragraphs, it appears that the plaintiff has indeed made out a case for combining the cause of action for passing off with the cause of action for infringement.

9. Accordingly, ad-interim relief is granted in terms of prayer clause (c), which reads as follows:

“(c) the Defendant by themselves, their proprietor/partners, servants, agents, distributors, assignees and all those connected with the Defendant in their business be restrained by a perpetual order and injunction of this Hon’ble Court from manufacturing, marketing, selling, distributing and/or using in any manner whatsoever in relation to their detergent preparations and/or any other like goods used in the FMCG industry, the counterfeit marks SURF/SURF EXCEL, Device of SPLAT, HINDUSTAN UNILEVER and HUL and the impugned trade dress or any mark or trade dress identical with and/or deceptively similar to the Plaintiff’s distinctive and prior used trade marks SURF/SURF EXCEL, Device of SPLAT, HINDUSTAN UNILEVER and HUL and the Plaintiff’s distinctive trade dress of SURF EXCEL, so as to pass off the Defendant’s goods and business as and for those of the Plaintiff or in some way connected or associated therewith;”

10. Ad-interim relief granted today and ad-interim reliefs granted earlier shall continue to operate till further orders.

11. The Court Receiver stands discharged without passing up of the accounts. Accordingly, the Court Receiver’s Report also stands disposed of.

12. List the application for final disposal on 12th December, 2022.

(MANISH PITALE, J)

Priya Kambli