

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

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INTERIM APPLICATION NO. 3027 OF 2021
WITH
CLAUSE XIV LEAVE PETITION (L.) NO. 17838 OF 2021
IN
COMMERCIAL IP SUIT NO. 289 OF 2021

Kewal Kiran Clothing Limited ...Applicant

In the matter between :

Kewal Kiran Clothing Limited ...Plaintiff

Vs.

Killer X & Anr. ...Defendants

Mr.Hiren Kamod a/w. Mr.Ramesh Gajria, Adv. Raina Gajria for
applicant/plaintiff.

Ms.Tanvi Sinha a/w. Mr.Mudit Tayal, Mr.Rohan Khosla i/b
Saikrishna & Associates for defendant No.2.

CORAM : N. J. JAMADAR, J.
DATE : 14TH JANUARY 2022
(THROUGH VIDEO CONFERENCE)

P.C.:

1. Heard the learned counsel for the plaintiff and the learned counsel for defendant No.2.
2. The action in the suit is for infringement of trade mark combined with an action in passing off.
3. By an order dated 25th August 2021, this Court granted the ad-interim relief in terms of prayer clauses (a), (c) [except the

stuck out portion) and (d) of the interim application.

4. Mr.Kamod, the learned counsel for the plaintiff submits that the order dated 25th August 2021 passed by this Court has been executed. The papers and proceedings, alongwith interim order were served on defendant No.1. However, none appears for defendant No.1.

5. The non-appearance of defendant No.1 is recorded by this Court in the order dated 15th November 2021.

6. The defendant No.2 has filed an affidavit-in-reply. The defendant No.2 has sought clarification of the order dated 25th February 2021 to the extent indicated in clause (a) of paragraph 23 of the affidavit-in-reply, which reads as under :

23 In light of the submissions made hereinabove, it is prayed that this Hon'ble Court may be pleased to :

(a) Clarify the Order dated 25.8.2021 to the extent that the Defendants No.2's obligation to comply with the same is subject to the Plaintiff specifically identifying and providing the infringing product listings to the Defendant No.2 for take down."

7. Mr. Kamod, the learned counsel for the plaintiff submits that, without prejudice to the plaintiff's rights and contentions in the suit, and having regard to the position of the defendant No.2 as an intermediary who only provides the platform, at this stage,

the plaintiff has no objection to clarify the order as sought by the defendant No.2.

8. In view of the aforesaid submissions, the order dated 25th August 2021 qua defendant No.2 stands clarified to the extent that the defendant No.2's obligation to comply with the order dated 25th August 2021 is subject to the plaintiff's specifically identifying and providing the infringing products listings to the defendant No.2 for being taken down.

9. The learned counsel for defendant No.2, submits that defendant No.2 would provide the e-mail address on which such request of taking down the infringing products can be sent by the plaintiff.

10. The defendant No.1 has not appeared despite service.

11. I am satisfied that leave under Clause XIV of the Letters Patent being granted, this Court will have jurisdiction to entertain the suit for passing off as well.

12. Hence, Clause XIV Leave Petition is made absolute.

13. The reasons which weighed with this Court in passing the interim order, dated 25th August 2021, justify the grant of relief in terms of prayer clause (b) against defendant No.1. Hence, there shall be an order in terms of prayer clause (b) against defendant

No.1, till the disposal of the suit.

14. The interim orders are made absolute till the disposal of the suit, subject to modification of interim order, dated 25th August 2021, as above, qua defendant No.2.

15. The interim application and Clause XIV Leave Petition stand disposed of.

(N. J. JAMADAR, J.)