

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1770 of 2022

[M/s. Mysore Deep Perfumery House, a partnership Firm, Indore, M.P. by & through its Power of Attorney Holder Mr. Pradeep Kala s/o Babulal Kala ..vs.. Sunilkumar Amrutlal Jain]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. D. Khamborkar, Advocate for the petitioner

CORAM : ROHIT B. DEO, J.

DATED : 18-4-2022

The petitioner is the plaintiff in Trade Mark Suit 5 of 2019 who has suffered order dated 18-6-2021, the operative part of which reads thus :

“[1] Application below Exh. 5 and Exh.5-A are hereby rejected.

[2] The additional written statement / titled as amended written statement and reply affidavit at Exh. 39 are accepted, read and recorded.”

2. Learned counsel, Mr. Khamborkar states that the order to the extent the relief of temporary injunction is refused, is challenged in appeal. This petition is restricted to that part of the order which accepts on record the amended written statement.

3. The short submission of the learned counsel is that the trial Judge committed serious error in accepting on record the amended written statement.

4. It would be necessary to note the backdrop in the context of which the defendant was required to file the amended written statement. It is not in dispute that it was in view of the order passed by this Court in an appeal preferred by the defendant that the plaintiff amended the plaint. While setting aside the order below Exhibit 5, this Court remanded the matter to the trial Judge for fresh consideration of Exhibit 5. This Court permitted the plaintiff to amend the pleadings within 30 days and consequently, permitted the defendant to amend the pleadings. This Court further permitted the parties to place on record additional documents.

5. In view of the permission granted by this Court to the parties to amend the pleadings, it was not necessary for the defendant to prefer a separate application in the trial Court. In any event, I am satisfied that there is no prejudice caused since the trial has not commenced and the parties are at loggerheads, at an extremely nascent stage.

6. I further note that every contention which is raised in this petition is considered by the trial Judge including the contention that the defendant has

incorporated pleadings which are inconsistent. The learned trial Judge has exhaustively referred to the decisions holding the field, and has taken a view that the defendant is entitled to incorporate inconsistent pleas in the alternative. In any event, it is not even argued by the plaintiff, that so called inconsistent pleas are mutually destructive.

7. I see no reason to interfere in writ jurisdiction, the petition is dismissed.

JUDGE

wasnik