

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

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INTERIM APPLICATION NO. 2314 OF 2022
WITH
COURT RECEIVER'S REPORT NO. 81 OF 2022
IN
COMMERCIAL IP SUIT NO. 102 OF 2022

Asian Paints Limited ...Applicant/Plaintiff
Versus
Akash Traders ...Defendant

* * *

- Mr. Vinod Bhagat and Mr. Atif Sayyed i/by Vinod Bhagat, for Applicant/Plaintiff.
- Mr. Sagar Dhotre, Representative of Court Receiver, is present.

* * *

CORAM : MANISH PITALE, J

DATE : 23rd MARCH, 2023.

P. C. :

1. Heard, learned Counsel for the Applicant/Plaintiff.
2. By order dated 26th February, 2022, this Court granted *ex-parte* ad-interim reliefs in favour of the Plaintiff in the context of its registered trademark "APEX". The Plaintiff sells paints under the said registered trademark. The *ex-parte* order passed by this Court was executed and Court Receiver's Report is already on record.
3. Thereafter, the Plaintiff carried out amendment to the cause title, to add the name of the proprietor of the Defendant. The Defendant was served with notices regarding listing of the application from time to time before this Court. On 15th September, 2022, this Court granted the Leave Petition for combining the causes of action of infringement and passing off.

4. Thereafter, by order dated 22nd November, 2022, this Court granted further ad-interim reliefs, pertaining to the cause of action of passing off.

5. It is relevant that even on the said date, there was no appearance on behalf of the Defendant. By the said order, this Court directed that the present application would be listed for disposal.

6. Thereafter, the application was listed and the ad-interim reliefs were continued till today. Even today, when the application is called out for hearing, none has appeared on behalf of the Defendant.

7. The learned Counsel for the Plaintiff in this backdrop, is pressing for the ad-interim reliefs to be made absolute. This Court has perused the material on record. There is sufficient material placed on record to show that the Plaintiff has been using its trademark "APEX" since the year 1995 and that the registration of its mark "APEX" dates back to 20th May, 1999.

8. A perusal of the photographs of the product of the Defendant shows that the most essential and central feature of the registered trademark of the Plaintiff i.e. the word "APEX" has been copied in the context of the product of the Defendant i.e. Wall Putty, which is closely associated with the activity of painting. It is further pointed that, in any case, the Plaintiff has registration of the said

trademark "APEX" for various goods, including Wall Putty. This is evident from copy of the certificates of registration placed on record at page 42 onwards.

9. As noted above, the Defendant has failed to appear before this Court and there is no defence on the part of the Defendant on record.

10. This Court is convinced that a strong *prima facie* case is made out by the Plaintiff in its favour for grant of interim reliefs as prayed in the present application. This Court is further convinced that unless the ad-interim reliefs granted by this Court are made absolute, the Plaintiff would suffer grave and irreparable loss, thereby indicating that the balance of convenience is in favour of the Plaintiff.

11. In view of the above, the ad-interim orders dated 26th February, 2022 and 22nd November, 2022, are made absolute. Consequently the application is allowed in terms of prayer clause (a) and (b). The said interim reliefs shall continue to operate during the pendency of the suit.

12. In the light of the above, the Court Receiver's Report is disposed of and the Court Receiver is discharged, without passing up of accounts.

(MANISH PITALE, J.)