

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

**INTERIM APPLICATION (L) NO. 28909 OF 2024
IN
COMMERCIAL IP SUIT (L) NO. 14544 OF 2024**

Ankur Paints and Inks Pvt. Ltd. & Anr. ... Applicants
Versus
Asian Paints Limited ... Respondent

**WITH
COMMERCIAL IP SUIT (L) NO. 14544 OF 2024
WITH
INTERIM APPLICATION (L) NO. 15093 OF 2024
AND
INTERIM APPLICATION (L) NO. 31940 OF 2024
AND
COURT RECEIVER'S REPORT NO. 317 OF 2024
AND
LEAVE PETITION (L) NO. 15084 OF 2024
IN
COMMERCIAL IP SUIT (L) NO. 14544 OF 2024**

Asian Paints Limited ... Plaintiff
Versus
Ankur Paints and Inks Pvt. Ltd. & Anr. ... Defendants

Mr. Amey Nargolkar a/w Dhiren Karamia and Shubham Singh i/by
Khaitan & Co. for the Plaintiff.

Mr. Keshav K. Tripathi, J. Kapadia, Vikas Kumar, Vihaan Kumar
i/by Little & Co. for Defendants and Applicants in IAL/28909/24.

Ms. Charushila Vaidya, 2nd Assistant to Court Receiver.

**CORAM: MANISH PITALE, J.
DATE : 6th JANUARY 2025**

P.C. :

. This is an application filed by the defendants under Order

XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC), for vacating the *ex-parte* ad-interim order dated 20th June 2024 passed by this Court. By the said order, specific *ex-parte* ad-interim reliefs were granted in favour of the plaintiff. The order was executed and the Court Receiver's Report is already on record.

2. The plaintiff has thereafter moved an application bearing Interim Application (Lodging) No. 31940 of 2024, seeking amendment of pleadings, which is also on board.

3. When the learned counsel appearing for the defendants pressed for relief in Interim Application (Lodging) No. 28909 of 2024 filed under Order XXXIX Rule 4 of the CPC, this Court invited his attention to the said provision and put a query to him, as to whether any of the grounds raised in the application would fall within the specific category enumerated in the first proviso to Order XXXIX Rule 4 of the CPC, on the basis of which such *ex-parte* ad-interim reliefs could be vacated. The said category is to the effect that the party that has obtained such *ex-parte* ad-interim reliefs has knowingly made a false and misleading statement in relation to a material particular when the *ex-parte* ad-interim reliefs were granted without notice to the defendants.

4. In response, the learned counsel for the defendants relied upon the contents of the application under Order XXXIX Rule 4 of the CPC. This Court has perused the same and it is found that

the contentions raised therein are essentially on the merits of the matter and an attempt is made to demonstrate that *ex-parte* ad-interim reliefs could not have been granted. There is no pleading making any allegation against the plaintiff to the effect that it knowingly made a false and misleading statement in relation to a material particular. Therefore, this Court is of the opinion that the basic requirement for invoking Order XXXIX Rule 4 of the CPC, in the facts and circumstances of the present case is not satisfied. The application is found to be without any merits. Accordingly, the application is dismissed.

5. At this stage, the learned counsel for the defendants sought time to file reply affidavits in Interim Application (Lodging) No. 15093 of 2024 i.e. the application filed under Order XXXIX Rule 1 and 2 of the CPC by the plaintiff seeking interim reliefs and the aforesaid application bearing Interim Application (Lodging) No. 31940 of 2024, seeking amendment of pleadings.

6. Reply affidavits in these two applications be filed on behalf of the defendants within two weeks from today. Rejoinder, if any, shall be filed within two weeks thereafter.

7. List the aforesaid applications for further consideration on 12th February 2025 (High on Board).

MANISH PITALE, J.