IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 110 OF 2025

IN

COMIP SUIT NO. 44 OF 2024

Laser Shaving (India) Private Limited … Applicant/Original Plaintiff

Versus

Rkrm International Products Private Limited & Ors. … Respondents/Original Defendants

----

Mr. Rohan Kadam a/w Mr. Ashutosh Kane, Ms. Vedangi Soman and Ms. Sumana Roy Chowdhury i/b W.S. Kane & Co. for the Applicant/Plaintiff

Mr. Carl Patel a/w Ms. Sanaea Umrigar and Mr. Gaurav Begani for Respondent Nos. 1 and 2

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 29 APRIL 2025

PRONOUNCED ON : 25 JUNE 2025

<u>Order</u>:

1. The Applicant is a company engaged in the manufacturing and sale of safety razors and safety razor blades under the trademark "*SetMax*" *i.e.* (**"Applicant's trademark"**) and packaging/trade dress as

shown in Exhibit '**A**' of the Plaint, i.e., 

("Applicant's packaging/trade dress").

2. Respondent No. 1 is also, *inter alia*, engaged in the business of marketing and selling safety razor blades and products of various brands, such as ULTRAMAX, ULTRA-MAN, and RK ULTRA-MAN, including SETMAX.

3. Respondent No. 2 is stated to be the exclusive manufacturer of the safety razor blades marketed and sold by Respondent No. 1. Respondent No. 1 and Respondent No. 2 are collectively referred to as **"the Respondents"**.

4. Respondent No. 3 is stated to be a wholesaler/retailer who sells safety razor blades marketed and manufactured by Respondent No. 1 and 2, and Respondent No. 4 is stated to be the distributor of Respondent No. 1.

5. By way of the the present Interim Application, the Applicant has sought the following reliefs:

> "*(a) that pending the hearing and final disposal of the suit, the Defendants by themselves, their partners, proprietor, directors, servants, employees, agents, stockists, dealers, distributors and all persons claiming through them be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiff's copyright in its said original artistic packaging/trade dress as shown at Exhibit "A" to the Plaint, by reproducing and/or publishing and/or using the impugned packaging/ trade dress as shown at Exhibit "F" to the Plaint or any other packaging/trade dress/work which is a*

reproduction of the Plaintiff's said packaging/trade dress or substantial part thereof, or in any other manner whatsoever;

(b) that pending the hearing and final disposal of the suit, the Defendants by themselves, their partners, proprietor, directors, servants, employees, agents, stockists, dealers, distributors and all persons claiming through them be restrained by a temporary order and injunction of this Hon'ble Court from using the impugned trademark /"SetMax" and/or any other packaging/trade dress/trademark containing the trademark "SetMax" and/or any other packaging/ trade dress/ trademark identical with or deceptively similar to the Plaintiff's said packaging/trade dress/ trademark /"SetMax" upon and in relation to safety razor blades and/or similar goods so as to pass off or enable others to pass off the Defendants' impugned goods as and for the Plaintiff's said goods or in any other manner whatsoever;

(c) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed under Order XL Rule 1 of Civil Procedure Code, 1908 as the Receiver of the Defendants' impugned goods under the impugned packaging/trade dress/trademark / "SetMax" and/or any other packaging/trade dress/ trademark containing the trademark "SetMax" and/or any other trade packaging/trade dress/ trademark identical with or deceptively similar to the Plaintiff's said packaging/trade dress/trademark /

"SetMax", with all powers to enter, along with the representatives of the Plaintiff, in the premises of the Defendants and/or their agents and/or dealers and/or stockists and/or any person claiming under them at any time of the day or night without notice to the Defendants and with the help of the police, if necessary, to break open lock(s), if deemed necessary, to seize and take charge, possession and control of all goods under the impugned packaging/trade dress/trademark / "SetMax" and/or any other packaging/trade dress/ trademark containing the trademark "SetMax" and/or any other packaging/trade dress/trademark identical with or deceptively similar to the Plaintiff's said packaging/trade dress/ trademark / "SetMax", and also to take charge and possession of all other goods, records, account books relating to manufacture, distribution, stocking, marketing, trading and/or sale of safety blades and/or similar goods under the impugned packaging/trade dress/trademark / "SetMax" in possession and/or control of the Defendants and/or their agents and/or dealers and/or distributors and/or stockists and/or any person claiming under them;

(d) for ad interim reliefs in terms of prayers (a), (b) and (c) above;

(e) for costs of the suit;

(f) for such further and other reliefs as the nature and circumstance of the case may require."

6. Before adverting to the rival contentions, it is necessary to set out the following facts:

i. On 31st August, 2023, one Galactic Conquistadors FZE (**"Galactic"**), a limited liability company incorporated in Dubai, applied for registration of the label 'SETMAX' depicted as **("Galactic's Trademark")** under Class 8 of the provisions of the Trademarks Act, 1999 on a 'proposed to be used basis' **("Galactic's Application for Trademark")**.

ii. The Applicant on 1st September 2023, applied for registration of the trademark of the word 'SETMAX'[1] also under class 8 of the provisions of the Trademarks Act, 1999. The Applicant thereafter, on 18th September 2023, applied for registration of the label mark[2] as indicated above under class 8 of the provisions of the Trademarks Act, 1999.

iii. On 15th October 2023, Galactic and Respondent No. 1 executed a Permissive User Agreement, whereby Galactic granted Respondent No. 1 the non-exclusive, non-transferable licence to use Galactic's Trademark.

iv. On 7th November 2023, the Trade Marks Registry issued an Examination Report in respect of the Applicant's Application No. 6115810 qua the label mark, in which the Trade Marks Registry raised

1 Application No. 6093233
2 Application No. 6115180

objections under Section 11(1)[3] of the Trademarks Act, 1999, citing that the Applicant's trademark was conflicting with Galactic's Trademark.

v. On 20th November 2023, the Trade Marks Registry issued an Examination Report for the Applicant's Application No. 6093233 qua the word mark, in which the Trade Marks Registry raised objections under Section 11 of the Act, citing that the mark was conflicting with Galactic's Trademark.

vi. On 28th November 2023 Galactic, through its advocates, issued a notice to the Applicant (**"Cease and Desist Notice"**) calling upon the Applicant to (i) cease and desist from in any manner using Galactic's Trademark; (ii) give an undertaking to Galactic that the Applicant would not use the trademark or trade dress from the date of the notice; (iii) de-list and remove all references/promotions/advertisements in respect of the trademark; (iv) deliver to Galactic all finished and unfinished goods in their possession that contained the impugned mark "SETMAX"; and (v) render to Galactic a full statement of accounts showing profits made by the Applicant from the sale of products containing the impugned marks.

3 **11. Relative grounds for refusal of registration.**— (1) Save as provided in section 12, a trademark shall not be registered if, because of— (a) its identity with an earlier trademark and similarity of goods or services covered by the trademark; or (b) its similarity to an earlier trademark and the identity or similarity of the goods or services covered by the trademark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trademark.

vii. On 1st December 2023, the Applicant responded to the Examination Report dated 7th November 2023 issued by the Trade Marks Registry in respect of its label mark application, *inter alia* stating that (i) the Applicant was a bona fide and honest user of the trademark "SETMAX", (ii) the Applicant had been using the trademark since 1st September 2023 and (iii) the Applicant's trademark and Galactic's trademark were not identical/similar and were thus unlikely to deceive the public or create confusion on the part of the public in the market.

viii. On 7th December 2023, the Applicant through its advocates, responded to Galactic's Cease and Desist Notice, *inter alia,* stating that the Applicant was the prior user of the trademark "SETMAX" mark, having superior title to the "SETMAX" trademark. The Applicant also set out that it had expended considerable amounts on the promotion and advertisement of the trademark "SETMAX" and had been selling its products in India, whereas Galactic had never used its trademark in India, and thus Galactic's Trademark could not be said to be distinctive.

ix. On 13th December 2023, the Applicant responded to the Examination Report dated 20th November 2023 in respect of the Applicant's word mark Application No. 6093233, stating that the Applicant was a prior superior user, and since the Respondent's application was still pending registration, the same could not be a defence to the Applicant's application for registration.

x. It is the case of the Applicant that sometime in January 2024, the Applicant learnt that Respondent No. 1 was manufacturing safety razor blades under an identical "SETMAX" trademark in packaging which the Applicant contended was substantially similar to the Applicant's packaging/trade dress (**"impugned products"**).

xi. On 5th January 2024, the Applicant filed a Notice of Opposition[4] to oppose Galactic's Application for Trademark. The Applicant opposed Galactic's Trademark *inter alia* by stating that the same "*is identical to the earlier used trademark SETMAX of the Opponents*".

xii. It is the case of the Applicant that on 9th January 2024, the Applicant procured the impugned products in Mumbai from Respondent No. 4 and also learnt that Respondent No. 4 had procured the goods from Respondent No. 3.

xiii. The Applicant then filed the present Suit on 15th January 2024 and, on 30th January 2024, moved for and obtained an *ex parte* ad interim relief against the Respondents in terms of prayer clause (a), (b) and (c) of the Interim Application.

xiv. On 29th February 2024, the Respondents filed Interim Application (L) No. 7226 of 2024 under the provisions of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (**"CPC"**) to vacate the Order dated 30th January 2024, claiming that the Applicant had suppressed crucial, material and vital facts and had on that basis obtained the *ex parte* Order in a malafide and fraudulent manner.

xv. This Hon'ble Court, vide an Order dated 2nd May 2024, vacated the *ex parte* ad interim order by *inter alia* holding that the Applicant had "*held back relevant material*" from this Court when the Applicant had moved for *ex parte* ad interim relief.

xvi. The pleadings in the captioned Interim Application were then completed, and the matter is thus taken up for final hearing.

Submissions on behalf of the Applicant

7. Mr. Kadam, learned counsel appearing on behalf of the Applicant at the outset, submitted that the Applicant has been engaged in the business of manufacturing, marketing and sale of safety razors and razor blades in India since the 1960s and in the decade between 1st April 2013 and 31st December 2023 had generated gross sales of over Rs. 2,500 crores. He thus submitted that the Applicant is a well-established company enjoying enormous goodwill and reputation in the field of manufacturing, *inter alia,* razor blades and shaving systems.

8. He then submitted that the Applicant had, in the month of August 2023, adopted the mark 'SETMAX' for the sale of razor blades and accordingly procured printing material in respect of the same from third-party vendors as early as 8th August 2023. He submitted that the Applicant had also, in the month of August 2023, commissioned a graphic designer, namely one Mr.

Palala Dwarka Nath **("Artist")**, to design and create the artistic work/label 'Setmax Platinum Blade', as depicted below, and that the Applicant had adopted the said mark in August 2023.

He invited my attention to the definition of 'artistic work' as defined in Section 2(c)(i)[4] of the Copyright Act, 1957, and pointed out that the aforesaid work fell squarely within the definition of 'artistic work' as defined therein.

9. Mr. Kadam then placed reliance upon the Affidavit of the Artist dated 26th March 2024 and pointed out therefrom that the Artist had stated on oath that the said artistic work as depicted above had been designed by him during the course of his employment and retainership with the Applicant. He thus submitted that the said artistic work was an 'original' work since it emanated from the Artist and was an expression of the skill of the Artist. Basis this, Mr. Kadam, by placing reliance upon Section 13(1)(a)[5] and Section 17(c)[6] of the

4 **2. Interpretation** — In this Act, unless the context otherwise requires, —
…
(c)"artistic work" means,—
(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
...
5 **13. Works in which copyright subsists.**— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—
(a) original literary, dramatic, musical and artistic works;…

6 **17. First owner of copyright.**— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:
Provided that—
(a) …

Copyright Act, submitted that the Applicant was the first owner of the copyright subsisting in the said artistic work.

10. Mr. Kadam submitted that as the owner of the copyright, the Applicant was entitled to reproduce the artistic work in any material form as per Section 14(c)(i)[7] of the Copyright Act. He also placed reliance on Section 51(a)(i)[8] and (b)[9] of the Copyright Act to submit that by manufacturing and distributing the identical/similar 'infringing' copies of the artistic work, the Respondents were infringing upon the Applicant's copyright.

11. Mr. Kadam then placed reliance on the judgement of the Madras High Court in ***C. Cunniah & Ors v. Balraj & Co.***[10] and the judgement of this Court in ***Pidilite Industries Ltd. v. S.M. Associate & Ors.***[11] to submit that when deciding questions of infringement of copyright, the Court must consider whether the

---

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

…

7 ***14. Meaning of copyright.*** *-- For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-*

…

(c) in the case of an artistic work,- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

…

8 ***51. When copyright infringed.*** *– Copyright in a work shall be deemed to be infringed –*

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or …

9 *51. …*

(b) when any person –

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work…

10 72 Madras L.W. 514

11 2004 (28) PTC 193 (Bom)

infringing copy is one which comes so near to the original so as to suggest the original artistic work to the mind of every person seeing it. He argued that the infringing copy was not required to be an exact replica of the original work, but what was to be seen was whether, on a comparison of the two artistic works, it was easily discernible that one was a copy of the other. In the present case, he pointed out that this test stood fully satisfied.

12. Mr. Kadam submitted that the Applicant had commenced sale of the said safety razors by making use of the Applicant's trademark and packaging/trade dress on 15th September 2023, which was well before Respondent No. 1 had launched its products for sale. He pointed out that Respondent No. 1 had in paragraph 5 (xii) of the Affidavit in Reply dated 22nd June 2024 admitted that Respondent No. 1 had introduced the impugned products bearing the impugned trademark and packaging/trade dress in the market only in December 2023, which was well after the Applicant's products bearing the Applicant's trademark and packaging/trade dress were widely available in the market. He thus submitted that the Respondent had access to the Applicant's artistic work and had clearly copied the Applicant's packaging. He further pointed out that the Respondents had not provided any explanation for adopting the impugned packaging/trade dress and trademark, and aside from a mere denial, they had not specifically claimed that their packaging/trade dress was dissimilar to the Applicant's packaging/trade dress. He thus submitted that it was a clear-cut case of copyright infringement.

13. He then pointed out that during the period between September 2023 and January 2024, the Applicant had enjoyed sales of its goods bearing the Applicant's trademark and packaging/trade dress to the tune of Rs. 6 crores, and had spent approximately Rs. 1.31 crores towards advertising the products sold under the Applicant's trademark and packaging/trade dress.

14. Mr. Kadam submitted that the Applicant's case for passing off was equally straightforward. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in ***Satyam Infoway v. Siffynet Solutions (P) Ltd.,***[12] from which he pointed out that the Hon'ble Supreme Court held that in a Suit for passing off, the Plaintiff was required to prove the following three elements: (i) that the plaintiff has goodwill in the market, (ii) misrepresentation by the defendant to the public, and (iii) loss or likelihood of it to the plaintiff. He also pointed out that the Hon'ble Supreme Court had further held that passing off is an action not only to protect the plaintiff's reputation but also to safeguard the interests of the public at large.

15. He then submitted that when there are two rival claimants, both of whom claim to have individually invented the same trademark, the claim of the one who is able to establish prior use shall prevail. He submitted that prior use would confer a superior title regardless of the length or duration of such prior use. In support of his contention, he placed reliance upon the decision in the case of ***Stannard v. Reay,***[13] from which he pointed out that even three weeks of

12 *2004 6 SCC 145*

13 1967 RPC 589

prior sales in that case was considered sufficient to generate actionable goodwill, based on which the Plaintiff was granted interim relief. He also pointed out that the Hon'ble Supreme Court had, in the case of ***Satyam Infoway (supra)***, held that where the first two elements of goodwill and misrepresentation were made out, the third element of likelihood of damage would be presumed.

16. Basis the above, Mr. Kadam submitted that the Applicant being the prior user of the said mark, had a superior title since not only had the Applicant launched its products in the market in September 2023, which was prior to the Respondent, but also the Applicant had generated sales upwards of Rs. 6 crores and had spent approximately Rs. 1.3 crores towards advertising and promotional expenses by December 2023. He thus submitted that the Applicant had actionable goodwill and was therefore entitled to interim relief as prayed for.

17. Mr. Kadam then pointed out that Galactic's Trademark Application was made on 31st August 2023 on a 'proposed to be used basis' and was pending registration. He pointed out from the judgement of this Court in the case of ***Pidilite Industries (supra)*** that even a registered trademark was not proof of extensive use, i.e., proof of commercial sale of goods. He submitted that the mere fact that Galactic had filed an application for trademark registration prior in point of time was therefore of no consequence to the Applicant's claim for passing off since the Applicant was a prior user. He thus submitted that the Applicant being the prior user, was entitled to an injunction against

Respondent Nos. 1 to 4 in terms of prayer clause (b) of the Interim Application.

18. Mr. Kadam then relied upon a judgment of this Hon'ble Court in the case of ***IPCA Laboratories Limited v. M/s Maral Labs & Ors.***[14] to submit that the same would squarely apply to the facts for the present case. He pointed out from the said judgement that even though the defendant in the said case had both placed an order with its manufacturer for medicines bearing the brand name "PIOMED" as also advertised the same in a glossary/trade journal before the Plaintiff commenced sale of "PIOMED, this Court had granted an injunction in favour of the plaintiff i.e., ***IPCA Laboratories***, solely on the basis that the plaintiff had commenced actual use of the mark, i.e., 'PIOMED', in the market prior to the defendant and was thus entitled to protection under the law of passing off.

19. Mr. Kadam submitted that, in the facts of the present case, the misrepresentation on the part of the Respondents was patent. He placed reliance upon the judgment of this Court in ***Hiralal Prabhudas v. Ganesh Trading & Co.,***[15] to submit that the test for determining misrepresentation was whether the average consumer, when confronted with the infringing trademark, would be likely to experience confusion, rather than mere wonderment, as to the source or origin of the goods. He emphasised that the similarity between the competing marks must be evaluated in the context of

---

14 NM/832/2003 in Suit/789/2003

15 1983 SCC OnLine Bom 284

the "Clapham Omnibus" test, i.e., from the perspective of a person with average intelligence and imperfect recollection. He submitted that, if this test were applied to the facts at hand, a simple visual comparison of the rival trademarks would show that the marks were not merely similar but virtually identical, which would lead to confusion amongst consumers.

20. He submitted that by sending the Cease and Desist Notice dated 28th November 2023 to the Applicant, Galactic had admitted that the rival marks were identical, and since Respondent No. 1 claimed to be the licensee of Galactic, Respondent No. 1 would be bound by such admission. He therefore submitted that the misrepresentation on the part of the Respondents was clearly evident in this case. He then pointed out that after being confronted with the Applicant's superior title, Galactic had maintained radio silence on this matter.

21. Mr. Kadam submitted that the Applicant having proved its goodwill and the misrepresentation on the part of the Respondents, the damage to the Applicant's goodwill and the public interest was imminent and inevitable. and that the Court must, in these facts, presume the likelihood of damage and loss to the Applicant, as held by the Hon'ble Supreme Court in the case of ***Satyam Infoway (supra)***.

22. Basis the above, Mr. Kadam submitted that the Applicant had made out a case for the grant of interim relief in terms of prayer clauses (a), (b) and (c) of the Interim Application and prayed the same be granted.

Submissions on behalf of Respondent Nos. 1 & 2

23. Mr. Patel Learned Counsel appearing on behalf of the Respondents at the outset pointed out that Galactic had adopted the trademark 'SETMAX' in July 2023 and had, in October 2023, entered into an Agreement by which Galactic had granted a licence to Respondent No. 1 to use the very same mark in respect of which Galactic had applied for registration "*solely in connection with the marketing, distribution, and sale of certain products [under class 8] in the territory of India bearing the said Trademark*". He submitted that even though the Agreement was entered into in October 2023, Respondent No. 1 had begun printing labels featuring the trademark "SETMAX" through Respondent No. 2 in August 2023, given the long-standing relationship and mutual understanding between Galactic and Respondent No. 1.

24. Mr. Patel then submitted that the Applicant was not entitled to any relief, interim or otherwise, on the grounds of (i) suppression of material facts, (ii) prosecution history estoppel, (iii) lack of jurisdiction and (iv) non-compliance with the provisions of Section 12A of the Commercial Courts Act, 2015 (**"Commercial Courts Act"**).

25. Mr. Patel then, on the aspect of suppression of material facts, pointed out that the Applicant had, wilfully and deliberately, suppressed the following material facts from the Plaint:

   a. That the Applicant had, in response to the Examination Report dated 7th November 2023 filed by the Trade Marks Registry in respect of the

Applicant's application for registration of its label mark, specifically stated as follows:

> "*it is submitted to the learned Examiner that our mark "SETMAX" does not resemble with the other mark enclosed in the examination report. The mark is not identical with or similar to earlier marks in respect of similar description of goods and there is no such identity or similarity exists which may likely to deceive or cause any confusion on the part of the public in the market. As such our mark cannot be deemed to be 'deceptively similar' or 'identical' to other mark enclosed in the examination report. There is no question of conflict. So, we respectfully submit that our mark "SETMAX" being a distinctive one and qualify for registration."*

b. That Galactic had issued the Cease and Desist Notice, *inter alia*, calling upon the Applicant to cease and desist from using in any manner Galactic's Trademark;

c. That the Applicant had responded to the Cease and Desist Notice on 7th December 2023, *inter alia*, claiming prior use.

d. That the Applicant had filed a Notice of Opposition dated 5th January 2024, opposing Galactic's Application for Trademark *inter alia* on the ground that Galactic's Trademark "*is identical to the earlier used trademark SETMAX of the Opponents*".

From the above, Mr. Patel pointed out that the Applicant had wilfully and deliberately suppressed the fact that the Applicant had in respect of the very same trademark, taken a diametrically opposite stand before the Trade Marks Registry and had also received a cease and desist notice calling upon the Applicant not to use the very same trademark. He thus submitted that the Applicant had therefore approached this Court with unclean hands and by suppressing material information from this Court. He submitted that the fact that the suppression was material already stood determined by the Order dated May, 2024, by which this Court had vacated the *ex parte* ad interim relief granted to the Applicant.

26. Mr. Patel then, in support of his contention that a litigant who suppresses material information from this Court is not entitled to any relief, first placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu v. Jagganath,***[16] from which he pointed out that the Hon'ble Supreme Court had affirmatively held as follows:

> *"**6.**.....A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as the opposite party."*

Mr. Patel then also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Amar Singh v. Union of India***[17] from which he pointed out the following:

> *"Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead courts, initiated proceedings without disclosure of facts. Courts have held that such litigants have come with "unclean hands" and are not entitled to be heard on merits of their case."*

16 (1994) 1 SCC 1

17 (2011) 7 SCC 69

Basis the above, Mr. Patel submitted that given that the Applicant had approached this Court by suppressing material facts, the Applicant was disentitled to even be heard on merits, much less entitled to any interim relief. He also pointed out that this Court had already found that the Applicant had suppressed material facts from this Court and had on that basis vacated the ex parte ad interim Order dated 30th January 2024. He submitted that this finding of suppression would equally disentitle the Applicant to any relief at the interim stage as well.

27. Mr. Patel then took pains to point out that the principle laid down by the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu (supra)*** and ***Amar Singh (supra)*** applied even to cases of trademark/copyright infringement and passing off. In support of this contention, he placed reliance on the decision of the Hon'ble Delhi High Court in ***Lightbook & Anr v. Pravin Shriram Kadam & Ors.***[18] which he submitted was virtually identical to the facts of the present case. Mr. Patel then pointed out that in the said case the Plaintiff therein, i.e., Lightbook, had also before the Trade Marks Registry, in reply to the Defendant's application under Section 57, taken the virtually identical stand as taken by the Applicant herein and had thereafter filed a Suit for infringement and passing off suppressing the stand taken before the Trade Marks Registry. He pointed out that the Delhi High Court had, after noting this, rejected the application for interim relief filed by Lightbook *inter alia* holding as follows:

18 2023 SCC OnLine Del 2308

> *"29. Every litigant who approaches the Court is required to place his cards on the table, face up. A Court which does not have, before it, all the facts, cannot dispense justice as it should."*

He also placed reliance upon other decisions of the Delhi High Court, in the case of ***Vee Excel Drugs & Pharmaceuticals Ltd. v. HAB Pharmaceuticals & Research LIM***[19] and ***BDA Private Ltd. v. Paul P. John & Anr***[20]**,** both of which were cases of trademark infringement and passing off, and pointed out that the Delhi High Court had, in both those cases, denied the Plaintiffs interim relief on the ground of suppression of material facts.

28. He additionally placed reliance on the decision of the Hon'ble Supreme Court in ***Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society*** [21] to submit that it was incumbent upon a litigant to disclose all the facts of a case before the Court and not selectively decide what material to place before the Court. He pointed out from the said judgement that the Hon'ble Supreme Court had, in this context, specifically held as follows:

> *"**44.**........it was not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court"*

He thus submitted that the Applicant having selectively chosen what material to place before the Court and having suppressed relevant and material facts from this Court, had committed a fraud upon this Court and was thus disentitled to any equitable relief.

19 (2009) 111 DRJ 192

20 (2008) 152 DLT 405

21 (2013) 11 SCC 531

29. Mr. Patel submitted that the Applicant having specifically taken a stand before the Trade Marks Registry that the Applicant's mark was not similar nor identical to the mark used by the Respondent No. 1 and that there was thus no likelihood of confusion, was estopped from now contending to the contrary. In support of his contention he placed reliance on the judgements of this Court in the case of ***Shantapa v. Anna***[22] and ***Tilaknagar Industries Ltd. v. Herman Jansen Beverages Nederland B.V. & Ors***[23].

30. Mr. Patel then pointed out that since the present Suit was filed as a Commercial Suit the Applicant was, as per the provisions of Order XI Rule 1(1) and (3)[24] of the CPC as amended by the Commercial Courts Act, 2015 (**"Commercial Courts Act"**), required to (i) file a list of all documents which

22 2023 SCC OnLine Bom 2566

23 2025 SCC OnLine Bom 479

24 "**1. Disclosure and discovery of documents** –

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including.—

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or (ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or (iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him, have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix."

were in its power, possession, control or custody pertaining to the Suit, including documents which were referred to in the Suit, even if such documents are adverse to the Plaintiff's case, and (ii) make a declaration that all such documents have been disclosed and that the plaintiff does not have any other documents in its possession. Mr. Patel submitted that the Applicant had in the present case not only failed to annex/disclose all the documents but had infact made a false declaration by stating as follows:

> *"5. I say that all documents in the Plaintiffs power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the Plaintiff has been disclosed and/or copies thereof annexed with the plaint, and that the Plaintiff does not have any other documents in its power, possession, control or custody."*

He submitted that the aforesaid declaration was false, which also amounted to an offence under Section 199[25] of the Indian Penal Code, 1860. Basis this, he thus submitted that the Suit itself was required to be dismissed.

31. Mr. Patel then, without prejudice to the above, submitted that the Applicant had also failed to *prima facie* establish that the Applicant had any goodwill, which was an essential element to sustain an action for passing off, or that the Applicant's products were of a superior quality to the Respondents' products. On a query from the Court, he pointed out that the shaving blades sold by Respondent No. 1 were substantially more expensive than the Applicant's blades. Given this, he submitted that the Applicant had failed to prove that any

---

[25] 199. **False statement made in declaration which is by law receivable as evidence**.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

loss had been caused or was likely to be caused to the Applicant's reputation by the sale of the Respondents' impugned products . He pointed out that the Applicant had merely provided an extract of their internal accounts and had made bald statements in this regard, without providing any substantial evidence.

32. He also pointed out that all the alleged sales made by the Applicant were only to one 'Malhotra Marketing', which he submitted was a related party of the Applicant. He pointed out that this fact was also not initially disclosed in the Plaint and thus also amounted to another suppression of material fact by the Applicant. He additionally pointed out that there was, infact, no sale by the Applicant to Malhotra Marketing but merely a stock transfer. He pointed out that the Applicant had also failed to provide any information with regard to sales in the open market. It was thus he submitted that the Applicant's contention of goodwill was plainly misconceived.

33. Mr. Patel submitted that the Applicant's contention that the Applicant had expended an amount of approximately Rs. 1.3 crore on advertisement to establish goodwill was also devoid of merit. Firstly, he submitted that the Applicant had not provided any material in support of the details and frequency of the advertisements on which the amount of Rs. 1.3 crores had supposedly been spent, and *secondly,* he pointed out that Rs. 1.3 crores would be the cost of a single advertisement aired during a popular and/or highly viewed programme. He thus submitted that such a budget would by no means form the basis to generate any goodwill for the Applicant.

34. Mr. Patel then, on the aspect of jurisdiction, submitted that this Court did not have the jurisdiction to entertain the Suit since (i) the Applicant's registered address was situated in the State of Telangana (ii) all of the Applicant's directors resided outside the jurisdiction of this Court, and (iii) the Applicant had only made bald and unsubstantiated assertions to the effect that the control and management of the Applicant's business operations were carried out from Mumbai, without placing reliance upon any credible or cogent material to substantiate this claim. It was thus that he submitted that this Court lacked the territorial jurisdiction to entertain, try and dispose off the present Suit.

35. Lastly, Mr. Patel submitted that the Suit was liable to be dismissed at the threshold since the Applicant had, by wilfully and deliberately suppressing material facts, circumvented the mandatory provisions of Section 12A[26] of the Commercial Courts Act, 2015. In support of his contention that such suppression warranted dismissal of the Suit, he placed reliance upon the judgment of the Calcutta High Court in the case of ***Unique Entrepreneurs & Finance Limited v. Really Agritech Pvt. Ltd. & Anr.***,[27] which he pointed out held as follows:

> *"11. … Ordinarily, in intellectual property matters keeping in mind the question of public interest, nature of rival rights or competing interests involved, the need for urgent interim reliefs is almost inevitable. However, this is not an inflexible rule nor an exception to the mandatory provisions under section 12A of the [Commercial Courts] Act. It is also true that the cause of action in such cases is*

26 **12A. Pre-Institution Mediation and Settlement.**-- (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government

….

27 2025 SCC OnLine Cal 2426

recurring and continuing in nature. Nevertheless, this has to be tested in the backdrop of when the right to sue accrues. The mandatory obligation under section 12A of the Act cannot be bypassed in a circuitous manner to render the same nugatory and ineffective.

…

13. … A party litigant cannot be indifferent and negligent in its duty to place all relevant documents and materials in support of its contention and is bound to produce the same. One who comes to court must come with clean hands. Non-mentioning and non-production of the true and correct information pertaining to the Kisan Mela or the WhatsApp messages and the documents in support thereof tantamounts to material suppression and in effect playing fraud on the Court. …

14. Both the above facts are material and germane on the aspect of knowledge of the impugned mark and suppression thereof can only be with the aim of wriggling out of the mandatory requirement under section 12A of the Act. Concealment of material facts disqualifies any litigant from obtaining relief. In this bargain, the plaintiffs have deprived themselves of an opportunity of providing any explanation or justification whether believable or not either in the plaint or the petition.

…

18. In view of the above, the non-mentioning of the true and material facts i.e. … is a clear attempt to suppress and misrepresent facts. … The dispensation with the requirement of Pre-Institution Mediation and Settlement granted in terms of the order dated 30 September 2024 stands revoked. There shall be an order in terms of prayers (a) and (b) of the Master's Summons in GA-COM 3 of 2024. The plaint filed in IP COM 31 of 2024 stands rejected. Consequently, all interim orders are vacated. …"

Basis the above, Mr. Patel submitted that the Applicant had willfully and deliberately suppressed the material facts from the Plaint only to avoid and bypass the mandatory provisions of Section 12A of the Commercial Courts Act, and on this ground alone, not only was the Applicant disentitled to any interim relief, but the Suit itself was required to be dismissed.

Submissions of the Applicant in Rejoinder

36. Mr. Kadam, first pointed out that the Contesting Respondents had neither disputed that the impugned packaging/trade dress was similar/identical to that of the Applicant's nor had they demonstrated that they had independently created and/or commissioned the impugned packaging/trade dress. He thus submitted that the Respondents had virtually admitted to copying the Applicant's packaging/trade dress, which clearly constituted an infringement of the Applicant's copyright in that packaging/trade dress.

37. He also pointed out that the Respondents had not disputed that they were the junior users of the impugned mark, nor had they disputed that the marks were similar/identical to the Applicant's mark and were thus likely to cause confusion in the minds of the public. Basis this, he submitted that the Respondents had therefore also admitted to committing the act of passing off.

38. According to Mr. Kadam, even the defences raised by the contesting Respondents were really in the nature of 'negative defences', and the same largely pertained only to the Applicant's case of passing off and had no bearing or relevance to the Applicant's case in respect of copyright infringement. He submitted that the law relating to copyright infringement was fundamentally concerned with only two elements. The *first* was the authorship of the original work, and the *second* was the act of copying or reproducing the original work without authorisation. Mr. Kadam submitted that in the facts of the present case, both of these elements stood established since the authorship of the original work vested in the Applicant and that the Respondents had not really disputed the act of copying. In light of this, he

submitted that the extraneous defences sought by the respondents, including their alleged rights under a different contractual or commercial relationship with Galactic, were wholly irrelevant to the Applicant's claim for copyright infringement.

39. He then, without prejudice to the above submissions, proceeded to deal with each of the arguments advanced by the Contesting Respondents as follows:

i. He first pointed out that the Respondents' reliance upon the Order dated 4th May 2024 to contend that the same had conclusively determined the issue of material suppression was patently misconceived. He pointed out that the said Order, in paragraphs 39, 40, 42 and 43, clearly recorded that the observations made in the Order pertained only to the aspect of whether notice ought to have been given to the Respondents before the Applicant had moved for *ex parte* ad interim relief and nothing more. He then pointed out that the Order itself made clear that the Court had not made any observations on the merits of the entitlement of the Applicant to interim reliefs.

ii. Mr. Kadam then submitted that the contention that the Applicant had suppressed material facts and was estopped from taking a stand contrary to that taken before the Trade Marks Registry was both wholly misconceived and legally untenable. He argued that what the Respondents had claimed to be material suppression would not qualify as material suppression of facts as per the well-settled legal principles. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in ***Government of***

NCT of Delhi v. BSK Realtors LLP & Anr.[28] and pointed out that suppression transcends mere concealment of facts and that the charge of suppression should not be used as a weapon of technicality. He then pointed out that the Hon'ble Supreme Court had, in the said case, laid down the two requirements which had to be satisfied to uphold a contention of suppression of material facts. The *first* he submitted was that there must be a wilful and deliberate withholding of facts, and the *second* was that the facts must fundamentally affect the decision-making process or alter the outcome of the case.

iii. He submitted that in the facts of the present case, even if it was assumed that the Applicant had suppressed facts, the same would not fundamentally alter the outcome of the case, and thus, it could never be contended that the suppression was material. He pointed out that the observations in the Order dated 2nd May 2024 focused on the materiality of the 'suppressed facts' in the context of the issuance of notice to the Respondents, rather than their relevance to the merits of the Applicant's case. It was thus he submitted that this Court had in the Order dated 2nd May 2024 explicitly refrained from commenting on the merits of the matter.

iv. He then submitted that at the time when the Applicant approached this Court for ad interim relief, the Applicant was entirely unaware of the fact that Respondent No. 1 was a licensee of Galactic. He further argued that the Applicant had no reason to assume that the Respondents were in any manner connected to Galactic since the goods that were manufactured by the

28 2024 7 SCC 370

Respondent did not reveal such a relationship between the Respondent and Galactic. He thus submitted that the Applicant could not be held liable for wilfully and deliberately withholding facts regarding the Cease and Desist Notice issued by Galactic, Galactic's trademark application, or the stand taken by the Applicant in reply to the examination report.

v. Mr. Kadam then submitted that the Respondents reliance upon the judgment of this Court in the case of ***Shantappa*** was entirely misplaced. While he did not dispute the proposition of law laid down by this Court in the case of ***Shantappa,*** he submitted that the same infact supported the case of the Applicant since it held that prosecution history estoppel emanates out of the doctrine of estoppel under Section 115[29] of the Indian Evidence Act, 1872. He thus submitted that even for prosecution history estoppel to apply, it was incumbent upon the Respondents to prove that the ingredients of estoppel in terms of Section 115 of the Indian Evidence Act existed.

vi. Mr. Kadam then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Chhaganlal Keshavlal Mehta v. Patel Narandas Haribhai***[30]***,*** to point out that the Hon'ble Supreme Court had *inter alia* held that to establish a case of estoppel, the party relying on the defence of estoppel must show that (i) there was a representation made by the plaintiff which was meant to be, and was infact, relied upon by the defendant; (ii) the statement

29 **115. Estoppel**.—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing
Illustrations …

30 (1982 1 SCC 223)

must be the proximate cause of leading the other party to act to his prejudice; (iii) the party claiming the benefit of an estoppel was not aware of the true state of affairs; and (iv) only the person to whom the representation was made or for whom it was designed can avail of it. He also placed reliance on the judgement of ***Kishori LAL v. MST Chaltibai***[31]**,** whereby the Hon'ble Supreme Court, upon examining a plethora of judgements, held that when both the parties were equally conversant with the true facts, the doctrine of estoppel was inapplicable. He then, from the decision of this Court in ***Pidilite Industries*** and the decision of the Hon'ble Supreme Court in ***RBANMS Educational Institution v. B. Gunashekar & Ors.***[32] pointed out that the aforesaid legal principles for estoppel to apply were irrespective of the stage of the proceedings.

vii. He then pointed out that in the facts of ***Shantappa***, the defendant therein had on multiple occasions been led to believe by the plaintiff therein that the defendant was free to commence and operate his business of selling the same goods and services using the trademark 'ANNA'. He submitted that it was thus that the Plaintiff was estopped from claiming infringement of copyright by the defendant. He submitted that in the present case, it was not the Respondents' case that the statements made by the Applicant were the proximate cause for the Applicant adopting the SETMAX trademark to its detriment, nor was it the case of the Respondent that the truth of the matter was not known to them, which he submitted were essential requirements to prove estoppel. He then

31 (1959) 1 SCR 698

32 (2025) SCC OnLine SC 793

pointed out that the Respondents had, on the contrary, relied entirely upon Galactic's title to set up their defence and that the very fact that Galactic had sent the Applicant a Cease and Desist Notice, which the Respondents had relied upon, was infact an admission on the part of the Respondents that the marks were identical/similar and that the Respondents were aware of the truth of the matter. He thus submitted that the Respondents had failed to establish the elements of estoppel in the present case.

viii. He then, without prejudice to the above, submitted that prosecution history estoppel had no application to a claim for copyright. He argued that copyright infringement was a violation of a distinct statutory right conferred upon the Applicant by virtue of the Copyright Act and that prosecution history was not a defined exception to Section 52 of the Copyright Act, nor was it a codified defence under the Copyright Act, which was a complete Code in itself. He pointed out that the Respondents had virtually admitted to copying the Applicant's entire artwork, including the word 'Setmax', the font, the font colour, the overall colour scheme, other words on the packaging, the placement of other integers, etc., and would therefore be liable for infringement of the Applicant's copyright.

ix. Mr. Kadam then, in dealing with the contention that the Applicant had committed an offence under Section 199[33] of the IPC and was thus disentitled

33 **199. False statement made in declaration which is by law receivable as evidence**.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

to any reliefs, submitted this was not a defence taken in the Affidavit in Reply and had no foundation in pleadings. He then, without prejudice to the fact that the Respondents had not pleaded this, submitted that criminal statutes were required to be strictly construed and that an offence under the provisions of the IPC required proof of *mens rea,* which he submitted was lacking in the present case since the Applicant was not even aware of the connection between the Respondents and Galactic when the Suit was filed. He then submitted that the statement in paragraph 7 of the Plaint, which, according to the Respondent was the basis of the offence under Section 199 of the IPC, was not false *per se*. He pointed out that the Applicant had not alleged that it was granted registration of the trademark but had duly averred that objections regarding its registration were pending before the Trade Marks Registry, which was a factually correct statement. He thus submitted that the Respondent's contention that the Applicant had committed an offence under Section 199 of the IPC was fundamentally flawed and entirely lacking in merit and was urged only in an attempt to avoid addressing the issues of passing off and copyright infringement.

x. In response to the Respondents' argument that the Applicant's sale to one Malhotra Marketing Pvt. Ltd. was a mere 'stock transfer', Mr. Kadam sought to argue that this contention also had no foundation in the pleadings. He further argued that this contention was untenable since the Applicant had produced the sales invoices issued by Malhotra Marketing Pvt. Ltd., which evidenced sales to third parties, and such invoices were summarised in a statement of sales, which was duly certified by a Chartered Accountant and was annexed to the Affidavit in Rejoinder on behalf of the Applicant.

xi. He then submitted that the roaring sales of the Applicant's products in just a few months after their launch were proof of the superior quality of the Applicant's products. He thus reiterated that the Applicant had established its goodwill in the market, as also the misrepresentation on the part of the Respondents, and therefore the likelihood of loss/damage to the Applicant's reputation was to be presumed as held in the case of ***Satyam Infoway.***

xii. In dealing with the contention that the Applicant had failed to prove the frequency of advertisements, Mr. Kadam pointed out that there was no foundation for the same in the pleadings. He argued that this claim was based entirely upon the assumption that the Applicant had advertised only on TV, ignoring the fact that there were several other modes of advertisement and promotion, such as "buy one, get one free" schemes and dealer incentives, which were also to be counted as advertising expenses.

xiii. To counter the Respondents' submission that this Court lacked territorial jurisdiction, Mr. Kadam submitted that Respondent Nos. 1 & 2 had themselves produced invoices showing sales within the territorial jurisdiction of this Court. He thus submitted that it was now not open to the Respondents to contest the jurisdiction of this Court. He further submitted that the question of where the Applicant's principal place of business was is a matter of fact which required evidence to be led during trial, and at this interim stage, it was sufficient for this Court to note that the heading of the Applicant's invoices clearly demonstrates that its business is conducted from Mumbai and that the Court must, at this stage, proceed on demurrer.

xiv. Mr. Kadam then argued that the Respondent's contention that the Applicant had skirted pre-institution mediation by suppressing material facts was also misconceived since the Applicant had not suppressed any material facts, and even otherwise, the question of applicability of Section 12A of the Commercial Courts Act was to be adjudged on the touchstone of whether the Plaint made out a case for the grant of urgent reliefs. In support of his contention, he placed reliance on the judgement of this Court in ***Quality Services & Solutions (P) Ltd. v. QSS Inspection***[34] to submit that the contemplation of urgent reliefs for infringement must be assessed from the viewpoint of the Applicant and further argued that the Respondents had launched their goods in the market only in December 2023 and the Suit was filed immediately thereafter in January 2024. This, he argued, was sufficient grounds to establish that the Plaint was one which contemplated urgent reliefs, and hence the Respondents' arguments that the Suit was bad for want of pre-institution mediation were also entirely lacking in merit.

xv. He then finally submitted that to argue that material suppression would not override public interest was misconceived and would be contrary to the law in ***Satyam Infoway,*** which recognised that passing off *"is an action not only to preserve the reputation of the plaintiff but also to safeguard the*

34 2024 SCC OnLine Bom 2120

public", and in ***Shaw Wallace and Company v. Mohan Rocky Spring Water Breweries Ltd.***[35] wherein this Court held as follows:

> *"14. It is clear, however, that the statement made in paragraph 3 of the plaint that on the date on which the suit was filed nobody else was using the numeral "5000" in respect of the beer is an incorrect statement made by the Plaintiffs. But in my opinion, still for that reason alone the relief of temporary injunction cannot be denied to the Plaintiff, because an order of temporary injunction in a suit for infringement of passing off is to be made not only to protect the right of the Plaintiff, but also to protect the interest of the general public. An order of temporary injunction is to be made so that the public who buys the goods involved is not deceived or misled. Therefore, had the purpose of granting temporary injunction been only to protect the interest of the Plaintiffs, then may be the temporary injunction could have been denied to the Plaintiffs, because the Plaintiffs have made an incorrect statement in the plaint. But as the purpose of granting temporary injunction in a suit for infringement of trade-mark or trade label is not only to protect the interest of the Plaintiffs, but also to protect the interest of the general public, in my opinion, denial of temporary injunction to the Plaintiffs merely because the Plaintiffs have made incorrect statement in the plaint would not be in the interest of justice."*

He submitted that the aforesaid ratio was squarely applicable to the facts of the present case, and given that the said judgement was of this Court, the same would be binding on this Court, whereas the judgements in the case of ***Vee Excel Drugs & Pharmaceuticals*** would only have persuasive value given that it is a judgement of the Delhi High Court.

xvi. Mr. Kadam then placed reliance upon the judgement of the Delhi High Court in the case of ***Sona BLW Precisions Forging Ltd v. Sona Mandhira Pvt Ltd,***[36] to submit that while deciding the present Interim Application, this Court ought to consider the principles of proportionality. He submitted that to

35 MIPR 2007 (2) 1085

36 2023 SCC Online Del 1118

dismiss the present application on the basis of suppression of material facts was wholly disproportionate. He then, in support of the contention that dismissal of the Interim Application would be wholly disproportionate, pointed out the observations of the Delhi High Court in the case of ***Sona BLW Precisions Forging Ltd,*** which held as follows:

> *"48. Having said the above, however, in my view, the concealment made by the plaintiffs in every case would not result in an automatic dismissal of the Plaint and/or of the applications filed by the plaintiffs seeking interim relief. In law, an injunction against infringement and passing off is granted not only to protect the proprietary rights of the plaintiffs but also to protect an ordinary unwary consumer who may be deceived due to adoption of a similar mark for similar goods by the defendant. There is, therefore, an element of public interest also to be protected, Facts of each case would, therefore, have to be considered to determine the effect of concealment/misstatement therein*
>
> *49. In the present case, as is being explained hereinbelow, the change of the corporate name by the defendant no. 1 is bordering on malafide. There is no reason given by the defendant no. 1 for the sudden change of its corporate Name so as to adopt the word 'SONA' therein. This coupled with the fact that earlier the defendant no. 1 was, in fact, also working for the plaintiffs, which relationship has been terminated by the plaintiffs, makes such adoption of the mark further deceptive. Prima facie, therefore, the draw of equity is against the defendants and in favour of the plaintiffs.*
>
> *50. In my view, in the facts of the present case, therefore, for the above acts of concealment, the plaintiffs can be visited with exemplary costs rather than dismissing its suit and/or application seeking interim relief on account of their acts of concealment and misstatement."*

xviii. He then submitted that even assuming there was suppression on the part of the Applicant, the Applicant had already suffered the consequences of the same since the *ex parte* ad interim had been vacated on this count. He reiterated that if the present Interim Application was dismissed on the ground of suppression, the same would be disproportionate, as held by the Delhi High Court in the case of ***Sona BLW Precisions Forging Ltd (supra)***, especially when the suppression alleged did not materially/fundamentally alter the outcome of the case on merits. He submitted that the facts of this case required that the Respondents be restrained from committing their tortious acts and cheating the public in the larger interest of the public. He submitted that the Respondents' intentions were plainly dishonest by virtue of not even arguing a positive case and that they had clearly acted with malafide intentions and hence cannot be allowed to escape the clutches of the law on the basis of one stray statement made in paragraph 7 of the Plaint.

40. In conclusion, he relied on the judgment of the Hon'ble Supreme Court in ***Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia***[37], from which he pointed out that the Hon'ble Supreme Court held that in cases of infringement of trademark or copyright, the grant of an injunction should ordinarily follow and that where the adoption of the mark appears, *prima facie*, to be dishonest, the injunction must necessarily be granted. Relying on this principle, he submitted that the Respondents had offered no justification for adopting an identical mark and that their conduct was thus patently dishonest. He thus submitted that in the facts of the present case, it was imperative that the Interim Application be allowed as prayed for.

Submissions on behalf of the Respondents in Sur-Rejoinder:

37 (2004) 3 SCC 90

41. Mr. Patel submitted that the Applicant's reliance on the judgement in ***BSK Realtors*** was misplaced and that the said judgement infact supports the Respondents case of material suppression. He then pointed out that the Hon'ble Supreme Court had in paragraph 37 of the said judgement held as follows:

> *"37. Law is well settled that the fact suppressed must be material in the sense that it would have an effect on the merits of the case. The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust. Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judici*al process."

From the above, he submitted that it was clear that the Hon'ble Supreme Court had held that the suppression must be of a material fact, and not a mere concealment of facts. He pointed out that in the fact of the present case, the suppression by the Applicant of the fact that they had taken a diametrically opposite stand in respect of the very same trademark before the Trade Marks Registry and had also received a cease and desist notice calling upon them to stop using the very same trademark was a material fact which was suppressed. He thus submitted that this was not, therefore, mere concealment of facts by the Applicant but suppression of material facts.

42. He further pointed out that the judgement of this Court in the case of ***Shantappa*** also squarely covered the issue of how suppression of

material facts would disentitle the Applicant to any relief. From the said judgement, he placed reliance upon the following paragraphs:

> "***58.*** *Now the conduct of Plaintiff in not disclosing its replies filed before the Trade Marks Registry and effect of such non-disclosure on his entitlement for temporary injunction needs to be examined. Admittedly, Plaintiff did not disclose letters dated 5 February 2013 and 15 April 2016 along with the plaint. The same were brought on record by the Defendant The learned District Judge has treated such conduct of the Plaintiff as an attempt to play fraud upon the Court by declining discretionary relief of temporary injunction. Mr. Kamod has submitted that there is no willful suppression on the part of the Plaintiff as the documents relating to registration proceedings are under public domain and that in absence of any willful suppression, the judgment of the Division Bench of the Delhi High Court in S. K. Sachdeva would have no application. In support of this contention, Mr. Kamod has relied upon the judgment of Single Judge of Delhi High Court in Teleecare Network. However as observed above, the ratio of judgment in Teleecare Network has not been agreed by the Division Bench in Raman Kwatra. Even otherwise, in my view, reliance of the Plaintiff on the judgment of Teleecare Network would not absolve him of the consequences arising out of the stand taken by him before the Trade Marks Registry that there is no resemblance in the two Marks. There could be myriad reasons why Plaintiff believed at the relevant time that there is no resemblance in two marks. He may have believed that the words 'Idli' and 'Idli Gruha' are absent in the marks of the Defendant, who uses the mark 'ANNA'. He may have also believed that addition of words 'Idli' or 'Idli Gruha' to the word 'Anna' would distinguish his mark from that of the cited marks. He might have noticed operation of several eateries in the country using the name 'Anna'. He may have believed that the peculiar design or artwork adopted by him for marks , 'ANNA IDLI GRUHA' or would be sufficient for the customers to distinguish its eateries, goods and services. He may have considered the generality with which the word 'Anna' is widely used in the restaurants serving south Indian food. Whatever could be the reason why*

made representations twice before the trademark registry about non-resemblance between his and Defendant's marks, that stand would continue to haunt him in present proceedings. It was therefore necessary for Plaintiff to disclose the replies filed by him with the trademark registry in the Suit. Therefore, even though Plaintiff has successfully demonstrated prior use of his trademarks, since he himself has represented before the Trade Marks Registry that the two marks do not resemble each other, he cannot now be permitted to seek any restraint order against the Defendant in the form of temporary injunction. Though the documents relating to the registration process may be available in public domain, it was necessary for the Plaintiff to disclose the stand taken by him before the Trade Marks Registry in his plaint.

59. Temporary injunction is a discretionary relief. The learned District Judge, in the present case, has refused to grant temporary injunction in favour of the Plaintiff by considering his conduct in suppressing the replies filed before the Trade Marks Registry. Plaintiff has been registering various trademarks over the period of years. His last application in respect of the Mark being still pending. Despite facing objections from the Trade Marks Registry about registration of several trademarks with the name 'Anna', particularly that of Defendant, the Plaintiff has repeatedly represented before the Trade Marks Registry that his mark does not resemble with that of the Defendant though both the marks are in respect of the same Class of goods and services. The District Judge has rightly considered this conduct of the Plaintiff in not disclosing repeated stands taken before the Trade Marks Registry for refusing the discretionary relief of injunction. It was obligatory for Plaintiff to disclose all the relevant material in the Plaint. He could not have suppressed the contradictory stand taken in his replies dated 5 February 2013 and 15 April 2016 on a specious plea that the same is in public domain. In this regard, reliance of Mr. Soni on the judgment of the Apex Court in Bhaskar Laxman Jadhav (supra) appears to be apposite wherein it is held that it is not for a litigant to decide what is to be disclosed and what not. The Apex Court has held in para 44 as under:

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners

> *have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality."*

From the above, he submitted that there could be no manner of doubt that given the stand taken by the Applicant before the Trade Marks Registry the Applicant was now estopped from taking a contrary stand in the Plaint in respect of the very same trademark.

43. Mr. Patel then further submitted that the Applicant's reliance on the judgement of the Hon'ble Supreme Court in the case of ***RBANMS Educational Institution*** was also misplaced, as the same was rendered in the context of an application filed under the provisions of Order VII Rule 11 of the CPC, on the grounds that the defendants therein were only agreement holders and not owners of the suit property therein. He argued that there were no legal principles referred to or laid down therein which could apply to the facts of the present case.

44. Equally, he submitted that the judgements in the case of ***Kishori LAL*** and ***Chhaganlal Keshavlal Mehta*** were also entirely inapplicable to the facts of the present case since they were rendered in the context of Appeals against final decrees and not in the context of Interim Application seeking discretionary reliefs. He thus submitted that the judgement in the case of ***Tilaknagar Industries (supra)*** would squarely apply.

Submissions on behalf of the Applicant in Sur-Sur-Rejoinder

45. Mr. Kadam, in response, submitted that the Respondents' reliance on ***Tilaknagar Industries*** to (i) state that the principles of estoppel would not

apply at the Interim Application stage, and (ii) distinguish the decisions in ***Kishori LAL*** and ***Chhaganlal Keshavlal Mehta (supra),*** was misconceived and untenable. He submitted that the central issue in the case of ***Tilaknagar Industries*** was the title of the plaintiff therein, i.e., Tilaknagar, to the trademarks 'MANSION HOUSE' and 'SAVOY CLUB' in light of a conditional assignment agreement executed between the parties thereto. He thus submitted that the judgement in ***Tilaknagar Industries*** was rendered only in the context of the peculiar facts of that case and could not be read as having laid down any broad or sweeping proposition to the effect that the ingredients of estoppel need not be established at the interlocutory stage. He thus further submitted that paragraph 136 of the judgement, distinguishing the judgement of the Hon'ble Supreme Court in ***Kishori LAL*** and consequently the judgement in ***Chhaganlal Keshavlal Mehta,*** was obiter at best. He further submitted that accepting the Respondents' reading of the judgement in ***Tilaknagar Industries*** would be in the teeth of the judgement in ***Pidilite Industries*** and ***RBANMS Educational Institution,*** which clearly held that the ratio of a judgement would apply irrespective of the stage of the proceedings.

Conclusion:

46. Having considered the submissions made by Learned Counsel for the Parties as also the case law upon which reliance has been placed, I have no hesitation in holding that the Applicant is not entitled to any relief. My reasons are as follows:

A. ***First***, this Court has already, in these very proceedings, by a detailed Order dated 2nd May, 2024, found that the Applicant has held back material facts from this Court. It is useful to refer to some of the observations made by the Learned Judge (Manish Pitale, J.) in the Order dated 2nd May, 2024, which, in my view, are crucial as they pertain to the conduct of the Applicant:

> "*28. … the plaintiff itself had referred to the proceedings before the Trade Marks Registry in paragraph 7 of the plaint. The said proceedings pertain only to Galactic and having mentioned the said proceedings in the plaint, it was incumbent upon the plaintiff to have produced such material before this Court. The stand taken by the plaintiff before the Trade Marks Registry, while pursuing its application for registration of its word mark and device mark, at one place is diametrically opposite to the stand taken in the plaint as regards identity and/or deceptive similarity with the mark of Galactic. It is the stand of the plaintiff in respect of the two trademarks that is significant and crucial.*
>
> *37. The pleadings in the plaint and the said cease and desist notice, reply thereto and the reply of the plaintiff to the examination report of the Registrar of Trademarks, all pertaining to November 2023 and December 2023, indicate that such material held back by the plaintiff, was indeed relevant and it should have been placed before this Court. The absence of such material gave a different colour to the claims made by the plaintiff and this is the only relevant factor while deciding the present application filed under Order XXXIX Rule 4 of the CPC. Hence, the aforesaid judgement in ….*
>
> *38. As regards the judgment in the case of Sabmiller India Ltd. v/s. Jagpin Breweries Ltd. (supra), this Court, inter alia, held that there is no rule that the plaintiff has to disclose entire history of its trademark while filing a suit before any Court, especially when it is irrelevant. In the facts of the said case, this Court found that such history was irrelevant to the case. But, in the present case, this Court finds that such material pertaining to the history of the trademark of the plaintiff, particularly its stand before the Trade Marks Registry, was relevant, specifically on the question as to whether ex-parte ad-interim reliefs could be granted without notice to the defendants. Thus, the said judgment also cannot take the case of the plaintiff further.*
>
> *39. On the aspect of copyright, it is urged on behalf of the plaintiff that even if non-disclosure of prosecution history pertaining to proceedings before the*

Trade Marks Registry could be said to be relevant in the context of the trademark, the same was wholly irrelevant for the infringement of copyright of the artistic work of the plaintiff. … In any case, as noted hereinabove, the suppression of vital material vitiates everything and it would equally apply to the claim of copyright made on behalf of the plaintiff, in the context of its right for ad-interim reliefs without notice to the defendants."

(Emphasis Supplied)

While the aforesaid observations were undoubtedly made in the context of the Respondents' Application under Order XXXIX Rule 4 of the CPC, I find that they would be equally applicable and relevant when assessing the Applicant's entitlement to discretionary and equitable interim relief. This Court has already held that the Applicant secured the *ex parte* ad interim Order by holding back material facts. Thus, clearly the Applicant had obtained the *ex parte* ad interim Order thereby by practising a fraud on this Court. Hence, on this basis alone, the Applicant is, in my view, not entitled to any equitable and discretionary interim relief.

B. ***Second***, even on an independent consideration of the suppressed material[38] none of which is either disputed or denied, I have no hesitation in holding that there has been a suppression of material facts by the Applicant. The Applicant has, without so much as even the semblance of an explanation, in respect of the very same trademark, taken a diametrically opposite stand in the Plaint from the stand taken by the Applicant before the Trade Marks Registry. Hence, even accepting the Applicant's contention that the Applicant

38 (i) The Examination Reports dated 7th November 2023 and 20th November 2023; (ii) the Applicant's replies thereto; (iii) the Cease and Desist Notice dated 28th November 2023; and the stand taken by the Applicant qua the trademark before the Trade Marks Registry.

was unaware of the connection between the Respondents and Galactic, what is crucial to note is how the Applicant could, in respect of the very same trademark before the Trade Marks Registry, contend that the said mark was "*not identical/similar and were thus unlikely to deceive the public or create confusion on the part of the public in the market*" and yet in the Plaint in respect of the very same trademark in the Plaint state that the said mark is "*identical with/closely and deceptively similar with the Plaintiffs said packaging/trade dress/trademark….*"

C. *Also* equally important is the fact that the Applicant had, in respect of the very same trademark, received the Cease and Desist Notice, to which the Applicant had responded by taking a contrary stand to what was stated in the reply to the Examination Report dated 7th November 2023. It is also pertinent to note that the Applicant had infact received the Cease and Desist Notice prior to the Applicant's response to the Examination Report dated 7th November 2023, and both responses were merely 6 days apart.

D. Thus, what is crucial is the suppression of the Applicant's diametrically opposite stand taken before the Trade Marks Registry in respect of the very same trademark. Hence, the Applicant's contention that the Applicant was not aware of the connection between Galactic and Respondent No. 1 is really a red herring. In my view, the reason for suppressing these facts from the Plaint was only so that the Applicant could move *ex parte* for ad interim relief.

E. ***Third,*** the Suit, being a Commercial Suit the Applicant was required to have, as per the provisions of Order XI Rule 1(3) of the CPC as amended by the Commercial Court Act, 2015, along with the plaint, annexed (i) all documents in the power, possession, control or custody of the Applicant, *irrespective of whether the same is in support of or adverse to the plaintiff's case* and (ii) make a declaration that the Applicant does not have any other documents in its power, possession, control or custody. The Applicant hasnot annexed or disclosed along with the Plaint the material documents pertaining to the Application filed by Galactic in respect of the very same trademark, including the Applicant's response to the Examination Report, the Cease and Desist Notice and the Applicant's response thereto. Thus, clearly, the Applicant has not complied with the provisions of Order XI of the CPC as applicable to Commercial Suits. Hence, the declaration made by the Applicant, as extracted above, is clearly a false and/or incorrect declaration.

F. *Additionally,* and even independent of the provisions of Order XI of the CPC as amended by the Commercial Courts Act and as held by the Hon'ble Supreme Court in the case of ***Bhaskar Laxman Jadhav,*** it is not for the litigant to decide what facts are material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of the case and leave the decision-making to the Court. Given the averment in paragraph 7[39] of the

39 "7. The Plaintiff has applied for registration of the said artistic packaging/ trade dress under Application No. 6115810 in Class 08 and the said trade mark SETMAX (word per se) under Application No. 6093233 in Class 08, under the provisions of Trade Marks Act, 1999. The aforesaid applications are pending registration. The Plaintiff has duly replied to the objections raised by the Examiner of Trade Marks in the respective Examination Reports issued in respect of the aforesaid applications. The Plaintiff craves leave to rely upon and refer to the aforesaid Examination Reports and the

Plaint, it is to my mind clear that the Applicant has consciously not annexed *inter alia* the Applicant's response to the Examination Report as well as the Cease and Desist Notice issued by Galactic. Thus, the suppression by the Applicant is clearly wilful and deliberate.

G. ***Fourth***, the Applicant having in paragraph 7 of the Plaint specifically stated that the application for registration of the trademark "SETMAX" was pending, cannot be heard to say that the Applicant was not aware of the connection between Galactic and Respondent No.1. A bare perusal of the packaging used on the impugned products manufactured and sold by the Respondents reveals the use of the symbol 'TM' alongside the mark 'SetMax'. Thus, any search of the mark 'SetMax' taken in the Trade Marks Registry would have revealed that the mark 'SetMax' used on the impugned products manufactured by Respondent No. 1 was pending registration in the name of Galactic.

H. *Also*, the Applicant, despite admittedly being aware that Galactic had filed an application for registration in respect of the very same trademark, had chosen not to make Galactic a party to the Suit. The reason is not far to seek, since had Galactic been made a party, the Applicant could never have moved for *ex parte* ad interim relief. Thus, the judgement of the Hon'ble Supreme Court in ***Dalip Singh*** and of the Delhi High Court in the case of ***Lightbook & Anr*** would squarely apply.

Plaintiffs Replies thereto, when produced."

I. ***Fifth,*** given the stand taken by the Applicant before the Trade Marks Registry in respect of the very same trademark, I find that the Applicant is now estopped from, in respect of the very same trademark, asserting to the contrary. The judgement of this Court in the case of ***Shantappa*** would thus squarely apply. The Applicant's contention that, in the case of ***Shantappa,*** the representation was made on multiple occasions and thus the same would not apply is, in my view, untenable. As already noted above, what is relevant and is not disputed is the fact that the Applicant has, in respect of the very same trademark, asserted that the same was "*not identical/similar and were thus unlikely to deceive the public or create confusion on the part of the public in the market".* Thus, merely because, in the facts of ***Shantappa,*** such representation was made on more than one occasion does not mean that in every case a party is required to make multiple representations for estoppel to apply. What is material is the fact that such a representation was infact made and was consequently acted upon as set out in paragraph (K) below.

J. *Equally* untenable is the Appellant's contention that in the present case, prosecution history estoppel would not apply since the representation was not made to Respondent No. 1 but was made to Galactic. What is crucial to note is the fact that the Applicant had, in respect of the very same trademark before the Trade Mark Registry, asserted that the said mark was not identical and/or similar to the Applicant's mark. Thus, as already noted above in paragraphs (D), (G) and (H), the Applicant's contention that the Applicant was not aware of the relationship between Respondent No. 1 and the Applicant is really a red herring, as what remains undisputed and entirely unexplained is the Applicant's complete volte face in respect of the very same trademark.

K. Respondent No. 1 is, admittedly, the licensee of Galactic in respect of the very same trademark. The Respondents have commenced sale of the impugned products, bearing Galactic's Trademark, in December 2023, i.e., after the Applicant's representation to Galactic. Therefore, Galactic and the Respondents have clearly acted upon such representation. Thus, in my view, the contention of the Applicant that the Respondents have not satisfied the elements of estoppel as laid down in the judgements in the case of ***Kishori LAL*** and ***Chhaganlal Keshavlal Mehta*** would not be acceptable, aside from the fact that the judgements were in the context of Appeals against final decrees and not in the context of Interim Applications seeking discretionary reliefs, as observed in ***Tilaknagar Industries***.

L. ***Sixth***, in view of the findings in (A), (B) and (F) above, I find the Respondent's reliance upon the judgements of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu*** and ***Amar Singh*** are entirely apposite. This Court has, by the Order dated 2nd May 2024, set aside the *ex parte* ad interim Order after observing that the Applicant had held back material facts from this Court and also categorically observed that *the suppression of vital material vitiates everything*. Thus, the fact that the Applicant had played a fraud on this Court by applying for ex parte ad interim relief by suppressing material facts is now established by the findings recorded in the Order dated 2nd May 2024.

M. ***Seventh***, in the aforesaid context, the Applicant's contention that even assuming there was suppression, the Applicant had "paid the price" since the *ex parte* ad interim Order had been vacated, needs only to be stated to be rejected. To accept such a contention would not only be directly contrary to what has been laid down by the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu***, ***Amar Singh,*** and a catena of judgements but would, infact, amount to putting a premium on dishonesty by giving an impetus to unscrupulous litigants to approach this Court by suppressing facts and, on that basis, move *ex parte* or attempt to obtain relief by suppressing material facts. Such a practice should not only be discouraged but should be strongly deprecated. One cannot lose sight of the effect and serious consequences that such *ex parte* orders can have. In some cases, such orders could, infact, be crippling and possibly spell the death knell, especially for a small business. Thus, in the present case, even assuming the necessary elements of prosecution history estoppel do not exist, the Applicant is disentitled to any reliefs on the ground of suppression of material facts, as noted above.

N. ***Eight***, in the context of the above, I find that the Applicant's reliance upon the judgement of the Hon'ble Supreme Court in the case of ***BSK Realtors LLP & Anr.*** to be entirely misplaced. *Firstly*, and crucially, as noted by the Hon'ble Supreme Court in paragraph 37 of the said judgement, "*the concept of suppression or non-disclosure of facts transcends mere concealment; it* *necessitates the deliberate witholding of material facts- those of such critical import that their absence would render any decision unjust*". Hence, in view of the findings of material suppression by the Applicant in the present case in (A), (B) and (F) above, it is clear that this is not a case of "*mere concealment of facts*" but a case of suppression of material facts. *Secondly*, the said judgement was neither in the context of a Commercial Suit nor in the context of deciding an interlocutory application but was in the context of a Civil Appeal in deciding an issue of land acquisition.

O. ***Ninth,*** the principles laid down by the Hon'ble Supreme Court in the case of ***Amar Singh (supra)*** and ***S.P. Chengalvaraya Naidu*** have been consistently followed even in cases of disputes regarding trademarks and copyright, as can be seen from the judgement of the Delhi High Court in the case of ***Vee Excel Drugs & Pharmaceuticals Ltd.***, ***BDA Private Ltd.,*** and the Madras High Court in the case of ***Poppat Jamal & Sons***. These decisions clearly hold that a Plaintiff who has suppressed material facts is disentitled to having their case adjudicated on merits at the interlocutory stage.

P. ***Tenth***, while there can be no dispute with the legal principles laid down in the case of ***Satyam Infoway***, ***Shaw Wallace and Company***, and ***Sona BLW Precisions Forging Ltd***, the said judgements cannot be used as a shield to protect a party who has withheld material facts to obtain an unfair advantage or relief to which such a party would not have otherwise been entitled. The conduct of the Applicant in the present case, as noted above, is clearly wilful and deliberate, unlike in the case of ***Sona BLW Precisions Forging Ltd,*** wherein the material facts, though not pleaded, the relevant documents had been annexed with the Plaint.

Q. *Also*, crucially, in none of the aforesaid cases did the Plaintiffs obtain ex parte ad interim relief by willfully suppressing material facts. Thus, in the fact of the present case, it is the Applicant's iniquitous conduct which has disentitled that Applicant to any relief. I thus find that reliance by the Respondents upon the judgements of the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu, Amar Singh,*** and the Delhi High Court in ***Vee Excel Drugs & Pharmaceuticals Ltd*** and ***Lightbook & Anr*** to be entirely apposite.

R. I also find that the Applicant has failed to establish a *prima facie* case that public interest would be prejudiced if interim relief is not granted. While the Applicant has claimed that the impugned products are of an inferior quality, the Respondents have expressly denied this. The Applicant has also not relied up any material or produced any evidence to show that the Respondents' products were in any way of inferior quality or how public interest at large would be affected if an injunction is not granted. Crucially, it was fairly conceded during arguments that the Respondents' products are, infact, substantially more expensive than the Applicant's. Therefore, at best, it is only the Applicant's commercial interests (if at all), and certainly not the public interest at large, that could possibly be affected.

S. ***Eleventh***, on the aspect of copyright, I find that the Applicant would be disentitled to any discretionary and equitable relief in view of the Applicant's iniquitous conduct and suppression of material facts. However, even on merit, I find that the Respondents have placed on record, vide their Affidavit in Reply, material to show that the impugned packaging/trade dress is one which is commonly used in the trade and was infact being used even prior in time to the Applicant's claim of being the original owners of the same. Hence, given this, in my view, a triable issue would arise in this regard.

47. In view of the reasons as recorded above, the interim reliefs in terms of prayer clause (a), (b) and (c) are hereby rejected.

48. The Interim Application is accordingly dismissed.

49. All observations made are *prima facie* and for the purposes of disposing of the present Interim Application.

50. All rights and contentions of all parties are expressly kept open to be decided during the trial of the Suit.

(ARIF S. DOCTOR, J.)