

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

INTERIM APPLICATION NO. 1681 OF 2025

IN

COMMERCIAL IP SUIT NO. 80 OF 2025

Innovations Garment Pvt. Ltd.]
a private limited company incorporated and]
existing under the Companies Act, 1956,]
having its registered office at, 85, Podar Centre,]
Parel Post Office Lane, Dr. B.R. Ambedkar Road,]
Mumbai-400012.]

...Applicant

In the matter of:

Innovations Garment Pvt. Ltd.]
a private limited company incorporated and]
existing under the Companies Act, 1956,]
having its registered office at, 85, Podar Centre,]
Parel Post Office Lane, Dr. B.R. Ambedkar Road,]
Mumbai-400012.]

...Plaintiff

Versus

Bhavesh Ramjibhai Gada]
An adult Indian inhabitant,]
Age: unknown]
trading under the name and style of]
M/s. Ankur]
A Hindu Undivided Family]
Bearing GST No:27AAHHB0351A1Z2]
having its shop at, 12, D3 Satellite Garden,]
Aarey Bhaskar Road,]
Goregaon (East), Mumbai-400063]

...Defendant

WITH
INTERIM APPLICATION NO. 1802 OF 2025
IN
COMMERCIAL IP SUIT NO. 294 OF 2024

Innovations Garment Pvt. Ltd.]
a private limited company incorporated and]
existing under the Companies Act, 1956,]
having its registered office at, 85, Podar Centre,]
Parel Post Office Lane, Dr. B.R. Ambedkar Road,]
Mumbai-400012.]

...Applicant

In the matter of:

Innovations Garment Pvt. Ltd.]
a private limited company incorporated and]
existing under the Companies Act, 1956,]
having its registered office at, 85, Podar Centre,]
Parel Post Office Lane, Dr. B.R. Ambedkar Road,]
Mumbai-400012.]

...Plaintiff

Versus

Ramji L. Gada]
An adult Indian inhabitant,]
Age: unknown]
Having his address at;]
having its shop at,]
Shop Number 16, Vishwakarma]
Paradise, Phase -1, Ambadi Road,]
Vasai (West), Palghar-401201.]

...Defendant No.1

And

M/s. Ankur]
A Hindu Undivided Family]
bearing GST No:27AAAHS6787E1ZS]
having its shop at,]
Shop Number 16, Vishwakarma]
Paradise, Phase -1, Ambadi Road,]
Vasai (West), Palghar-401201.]

...Defendant No.2

WITH
INTERIM APPLICATION NO. 1322 OF 2024
IN
COMMERCIAL IP SUIT NO. 101 OF 2024

Innovations Garment Pvt. Ltd.	]	
a private limited company incorporated and	]	
existing under the Companies Act, 1956,	]	
having its registered office at, 85, Podar Centre,	]	
Parel Post Office Lane, Dr. B.R. Ambedkar Road,	]	
Mumbai-400012.	]	...Plaintiff

Versus

Kashyap Rathod	]	
An adult Indian inhabitant,	]	
Age: unknown	]	
a sole proprietor of and trading as	]	
M/s. Aastha School Uniform	]	
having its shops at,	]	
1-13, Trishla Complex, Opposite	]	
Sakar School, New CG Road Chandkheda,	]	
Ahmedabad - 382424.	]	...Defendant

Dr. Virendra Tulzapurkar a/w Mr. Hiren Kamod Mr. Prem Khullar, Mr. Aditya Chitale, Mr. Prashant Shetty, Mr. Sumedh Ruikar & Saikiran Mergu i/b RK Dewan Legal Services, for the Applicant/Plaintiff.

Mr. M. M. Vashi a/w Ms. Itisha Ranka i/b M. P. Vashi & Associates, for the Defendant.

Mr. Deepak S. Bhalerao, Second Assistant to Court Receiver, present.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 16th OCTOBER, 2025

PRONOUNCED ON: 6th NOVEMBER, 2025

JUDGMENT:

1. Since the issues that arise for consideration and the submissions made in all three captioned Interim Applications are common, the captioned Interim Applications were heard together and are being disposed of by this common order.

2. This Court on 7th May 2024 passed an ex parte ad interim Order by which the Defendants in the captioned Interim Applications were, *inter alia*,

restrained from using the trade mark  ("the said trade mark") in relation to manufacturing, selling, advertising, distributing, marketing, exhibiting for sale or otherwise dealing in garments/uniforms ("the impugned goods"). The Defendants, on being served with the ex parte ad interim Order, have filed an Affidavit in Reply in Interim Application No. 1681 of 2025 invoking the provisions of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 ("CPC"), to have the ex parte ad interim Orders set aside on the ground that the Plaintiff had obtained the same by suppression of material facts.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS.

3. Mr. Vashi, Learned Senior Counsel appearing on behalf of the Defendants, at the outset submitted that the Plaintiff had falsely stated in the Plaint that the cause of action arose in the fourth week of April 2024, and

that it was on this basis, by creating a false sense of urgency, that the Plaintiff obtained ex parte ad-interim relief.

4. Mr. Vashi then submitted that the Plaintiff had suppressed the fact that in an earlier Suit¹, ("the First Suit"), filed by one Anandilal and Ganesh Poddar Society ("the Society") as Plaintiff No. 1, in which the present Plaintiff was arrayed as Plaintiff No. 2, the same reliefs had been sought for. He submitted that the First Suit had been filed against unknown persons, i.e., 'John Doe/Ashok Kumar' Defendants, in which ad interim relief had been refused by this Court by an order dated 28th February 2018.

5. Mr. Vashi pointed out that the Plaintiffs had thereafter filed a Chamber Summons seeking to implead four additional parties as Defendants to the First Suit, one of whom, i.e., 'Ankur', is the Defendant in two of the captioned Suits, namely, Suit No. 80 of 2025 and Suit No. 294 of 2024. He submitted that the Chamber Summons was allowed, and accordingly, 'Ankur', i.e., the Defendant to the Suit Nos 80 of 2025 and 294 of 2024, was impleaded as Defendant No. 4 to the First Suit. For ease of reference, the Defendants in Suit Nos. 80 of 2025 and 294 of 2024 shall hereinafter be referred to as the Defendants.

6. Mr. Vashi then also pointed out that in the First Suit, it had been specifically pleaded that the present Plaintiff was a licensee of the Society in respect of the said trade mark which was directly contrary to the stand taken by the Plaintiff in the present Suit, where the Plaintiff has claimed to be the registered proprietor of the same trade mark. He submitted that the First Suit

¹ Writ Petition No. 2845 of 2002

was eventually dismissed for default, yet the Plaintiff, in the present Suit had once again impleaded 'Ankur' as a Defendant without making any reference to the First Suit.

7. Mr. Vashi then submitted that the Plaintiff had deliberately suppressed the First Suit and thus created a false sense of urgency basis which the Plaintiff had obtained the ex parte ad interim orders dated 7th May 2024. He submitted that such suppression amounted to a concealment of material facts, and on this ground alone, the ex parte ad interim order dated 7th May 2024 was required to be set aside. In support of his contention that suppression of material facts is sufficient to warrant the setting aside of an ex parte order, he placed reliance upon the judgement of this Court in ***Pidilite Industries Limited v. Astra Chemtech Private Limited & Ors.***

8. Mr. Vashi then also placed reliance upon the decision of the Delhi High Court in the case of ***Reliance Big Entertainment Pvt. Ltd. v. Jyoti Cable Network & Ors.*** to point out that the Delhi High Court had recognised and affirmed the practice of granting injunctions in Suits filed against unknown or unidentified defendants, commonly referred to as "John Doe" or "Ashok Kumar". He pointed out that the Delhi High Court held that 'John Doe/Ashok Kumar' orders were preventive in nature and were intended to safeguard a Plaintiff's proprietary and statutory rights against potential infringers whose identities were not known at the time of the filing of such Suit. He thus submitted that since the First Suit was instituted for infringement of the same trade mark, it was directed against all infringers, whether known or

unknown, and would therefore necessarily include the present Defendants and thus ought to have been disclosed.

9. Mr. Vashi additionally submitted that the Plaintiff's case was also replete with contradictions. He pointed out that, in paragraph 6 of the Rejoinder, the Plaintiff had asserted that the Plaintiff had been using the trade mark since 2013 and had obtained registration thereof on 12th December 2017. He, however, pointed out that, contrary to such assertion, the record showed that on 8th February 2018, the Society had executed a user agreement in favour of the Plaintiff in respect of the very same trade mark which evidenced that the Plaintiff was only a permitted user of the mark and not the proprietor of the said trade mark. This user agreement, he submitted, was subsequently cancelled by the Society through its letter dated 25th August 2018. He further pointed out that the Society had also, by an earlier resolution dated 18th May 2015, resolved to grant a licence to the Plaintiff to use the said trade mark. He thus submitted that ownership of the said trade mark clearly vested in the Society, not in the Plaintiff. He submitted that the Plaintiffs had not only failed to reconcile all these contradictions and inconsistencies but had also totally suppressed them. He submitted that such conduct amounted not only to suppression but to a deliberate attempt to mislead the Court by presenting inconsistent and mutually destructive pleas in two different proceedings.

10. Mr. Vashi submitted that, on one hand, the Plaintiff was seeking to enforce rights in respect of a registered trade mark and copyright, while on

the other hand, the school run by the Society had issued a circular, making it optional for students to purchase stationery and uniforms from the Plaintiff. He pointed out that this circular was issued pursuant to a directive of the Deputy Director of Education, which prohibited schools from compelling students to purchase uniforms or educational materials exclusively from the school or specific vendors nominated by it. He pointed out that such a circular had been issued pursuant to the Order dated 10th April 2003 passed by this Court in a Writ Petition² filed in the public interest, wherein this Court had taken note of complaints from parents that students were being compelled to purchase uniforms and educational material directly from schools.

11. Basis the above, he submitted that, given that the Plaintiffs had suppressed all of the above material facts from this Court, the ex parte ad interim orders dated 7th May 2024 were required to be set aside.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF .

12. Dr. Tulzapurkar, Learned Senior Counsel appearing on behalf of the Plaintiff, at the outset submitted that the Defendants' contention of suppression of material facts by the Plaintiff was wholly misconceived and devoid of merit. He submitted that the Defendant's sole intention was to divert the attention of the Court from the fact that the Defendant had absolutely no answer to the Plaintiff's claim on the merits. He took pains to point out that the Defendant had not even attempted to offer any justification

² paragraph 7

for the continued and blatant infringement of the Plaintiff's registered trade mark and copyright. He submitted that it was thus clear that the Defendants were rank infringers, and the allegations of suppression made by the Defendants were entirely baseless and misconceived, both in fact and in law.

13. He then pointed out that the Plaintiff is not only the registered proprietor of the said trade mark but also the registered owner of the copyright subsisting in the artistic work bearing registration No. A-136633/2021 ("the Copyright"). He submitted that both the trade mark and the copyright registrations were valid and subsisting and thus constituted a statutory recognition of the Plaintiff's exclusive proprietary rights in the said mark and artistic work.

14. Dr. Tulzapurkar then submitted that since the year 2013, the Plaintiff was engaged in the business of manufacturing and selling clothing, including uniforms and ready-made garments, and has been continuously using the said trade mark in relation to these goods and services. He submitted that as a result, the Plaintiff had built substantial goodwill and reputation in the said mark, which was both long-standing and well established. In contrast, he pointed out that the Defendants were rank infringers who had adopted an identical or deceptively similar mark to the Plaintiff's registered trade mark without any licence, authority, or assignment from the Plaintiff. He therefore submitted that the Defendants' actions amount to both infringement and passing off, and that the ex parte ad interim orders dated 7th May 2024 had been rightly granted since this

Court was satisfied that the Plaintiff had established a strong *prima facie* case and that the balance of convenience was entirely in favour of the Plaintiff.

15. Dr. Tulzapurkar submitted that the entire foundation of the Defendant's case was that the Plaintiff had suppressed the existence of the First Suit, which, according to the Defendant, amounted to suppression of a material fact. He pointed out that this was based on two alternative contentions (i) that the Defendants were expressly impleaded as parties to the First Suit, and (ii) even assuming otherwise, since the First Suit was instituted as a 'John Doe/Ashok Kumar' action, it was an action in rem and would therefore encompass all infringers, including the present Defendants. He submitted that both these contentions were fundamentally misconceived, factually incorrect, and legally untenable.

16. Dr. Tulzapurkar, in dealing with the Defendants' first contention, namely, that the Defendants were a party to the First Suit submitted that such an assertion was plainly false and misleading. He pointed out, from the cause titles of both Suits, that the entity "Ankur", impleaded as Defendant No. 4 in the First Suit, was a separate and distinct entity from the Defendants in the present Suits. He pointed out that this was evident from the fact that the addresses as well as the GST numbers of each of the entities named 'Ankur' were different. He therefore submitted that, apart from a mere similarity in name, the Defendants to the present Suits and Defendant No. 4 in the First Suit were distinct and independent legal entities. Dr. Tulzapurkar also took pains to point out that the Defendants had failed to produce any material to

demonstrate even a nexus or relationship between the Defendants in the present Suits and Defendant No. 4 in the First Suit, much less to establish that they were one and the same entity.

17. Dr. Tulzapurkar then submitted that the Defendants had deliberately withheld the complete set of papers and proceedings in the First Suit in order to create a false impression that the Defendants in the present Suits were party to the First Suit. He pointed out that the Plaintiff, in the Affidavit in Rejoinder, had annexed the entire record of the First Suit, which clearly reflected that not only were the present Defendants not parties to the First Suit, but also that no summons or notice was ever issued to any of the Defendants in the First Suit, nor was any relief sought or granted against Defendant No. 4 in the First Suit.

18. Dr. Tulzapurkar submitted that the Defendants had also conveniently failed to disclose that the First Suit had been dismissed for default, and thus there had been no adjudication on the merits of the claims made in the First Suit. He therefore pointed out that there were no findings which were binding on the parties and which would in any manner affect or impact the present Suit. He submitted that even assuming, without admitting, that the Defendants in the present Suits were party to the First Suit, the dismissal of the First Suit for default rendered it *non est* in the eyes of law. He submitted that a Suit dismissed for default does not operate as res judicata, nor does it create any estoppel or bar against subsequent proceedings on the same cause of action. Accordingly, he submitted that the Defendants' reliance on the

First Suit was entirely misplaced, as it had no relevance to the present proceedings. He then submitted that the First Suit was wholly immaterial and hence was not required to have been disclosed in the present Suit.

19. Dr. Tulzapurkar also pointed out that the provisions of Order XXXIX Rule 4 of CPC could only be invoked if it was established that the injunction was obtained by suppression of material facts. He submitted that the existence of an earlier Suit which was dismissed for default and did not concern the Defendants in the present Suits would not constitute a material fact, the non-disclosure of which would vitiate the ex parte ad interim order. It was thus that he submitted that the Defendants' first contention was, therefore, based entirely on conjecture, a misreading of the record, and deliberate suppression of context.

20. Dr. Tulzapurkar then, in dealing with the next contention, i.e., that the First Suit was an action in rem and would therefore also include the Defendants in the present Suits, submitted that such contention was based on a complete misunderstanding of the nature and scope of 'John Doe/Ashok Kumar' actions as recognised under Indian law. He pointed out that a 'John Doe/Ashok Kumar' Suit was a procedural innovation intended to enable a Plaintiff to obtain protective orders against unknown infringers whose identities were not ascertainable at the time of filing the suit. He submitted that such suits were not and could never be treated as actions *in rem* but were actions *in personam*. He submitted that it was only because, at the stage of institution of such suits, the identity of the infringers was unknown that

such suits were instituted by arraying the infringers as 'John Doe/Ashok Kumar'. He submitted that upon discovery of the identity of the infringers, the pleadings were amended, and the infringers were then joined by name.

21. He submitted that the Defendants' interpretation would lead to an absurd and legally impermissible result, namely that a single 'John Doe/Ashok Kumar' suit would perpetually cover all future infringers. He submitted that if such a contention were to be accepted, then a Plaintiff could proceed indefinitely against all infringers, whether related or not, without ever instituting fresh proceedings. He submitted that this would not only be contrary to Order I Rule 3 of the CPC but also the fundamental principles of natural justice, as it would deem a person/entity to be bound by a decree in proceedings to which such person/entity had no opportunity to contest.

22. Dr. Tulzapurkar then submitted that 'John Doe/Ashok Kumar' jurisprudence had been developed by the Courts to balance enforcement of intellectual property rights with procedural fairness, and not to obliterate it. It was thus he submitted that the Defendants' contention that a 'John Doe/Ashok Kumar' suit was an action *in rem* was misconceived and legally untenable.

23. Dr. Tulzapurkar submitted that the Defendants' reliance on the circulars prohibiting schools from insisting that students purchase goods from appointed vendors was wholly irrelevant to the present proceedings. He pointed out that the Plaintiff is neither an educational institution nor a body governed by such circulars. He pointed out that the Plaintiff is a separate

legal entity, distinct from the Society, and is engaged in the lawful business of manufacturing and selling clothing, garments, and uniforms in the open market. He pointed out that the Plaintiff being the registered proprietor of the said trade mark, there was no legal prohibition preventing the Plaintiff from carrying on its legitimate trade and business.

24. He further submitted that the scope of the present Suit was strictly confined to issues of infringement of the Plaintiff's registered trade mark, copyright, and passing off under the Trade Marks Act, 1999, and the Copyright Act, 1957, and that the Defendants' attempt to rely on circulars issued by the education authorities and thereby convert these proceedings into a public interest litigation was entirely misconceived and legally impermissible.

25. He also pointed out that the Defendants' contentions were self-contradictory, inasmuch as, on the one hand, the Defendants claimed to have been impleaded as Defendant No. 4 to the First Suit, while on the other hand, have asserted that since the First Suit was a 'John Doe/Ashok Kumar' action, the same would cover all unknown infringers, including the Defendants. He submitted that these contentions were mutually destructive and thus exposed the falsity of the Defendant's case. He reiterated that the Plaintiff had neither suppressed any material fact nor misled this Hon'ble Court in any manner.

26. Dr. Tulzapurkar then invited my attention to Order XXXIX Rule 4 of the CPC and pointed out that an order of injunction granted under Rules 1 or 2 may be discharged, varied, or set aside by the Court upon an application

made by any party dissatisfied with such order. He, however, pointed out that the proviso to Rule 4 specifically stipulated that where an injunction has been granted without notice to the opposite party, such injunction shall not be discharged, varied, or set aside unless the Court is satisfied that the party obtaining the injunction has misrepresented or concealed material facts. He submitted that the scope and object of Order XXXIX Rule 4 was, therefore, limited, and the inquiry contemplated under this provision was confined solely to examining whether the injunction was obtained by misrepresentation or suppression of material facts and did not extend to a reconsideration of the underlying merits of the case. In support of this submission, Dr. Tulzapurkar placed reliance on the decisions of this Court in *Laser Shaving (India) Pvt. Ltd. v. RKR International Products Pvt. Ltd. and K.L.F. Nirmal Industries Pvt. Ltd. v. K.L.F. Nirmal Industries Pvt. Ltd.*

27. Basis the above, he submitted that the Defendants cannot, under the guise of an application under Order XXXIX Rule 4 of the CPC, seek to reopen or argue issues of infringement, ownership, or validity of the Plaintiff's statutory rights and that the merits of the Plaintiff's claim were to be tested at the stage of deciding the Plaintiff's application under Order XXXIX Rule 1 and 2 and not by invoking the provisions of Order XXXIX Rule 4. He thus submitted that the Defendants' attempt to use Order XXXIX Rule 4 as a means to revisit the substantive merits of the Plaintiff's infringement action is wholly impermissible and contrary to the legislative intent of the provision.

28. Dr. Tulzapurkar submitted that the Defendants had failed to make out

any case for setting aside the ex parte ad interim order dated 7th May 2024. He reiterated that the Defendants' contentions rested on misconceived legal propositions, misstatements of record and extraneous considerations wholly irrelevant to the limited inquiry under Order XXXIX Rule 4 of the CPC. He submitted that the Plaintiff had made a full and fair disclosure of all material facts relevant to the present Suit and that the Plaintiff, being the registered proprietor of the said trade mark as also the owner of the said copyright, had made out a strong *prima facie* case for protection of its registered trade marks and copyrights. He submitted that both the balance of convenience and equity lie entirely in favour of the Plaintiff, and that it was imperative for this Court to confirm the ex parte ad interim Order to prevent irreparable injury to the Plaintiff more so when the Defendant did not have nor had asserted even the semblance of any right to use the Plaintiff's registered trade mark and copyright.

REASONS AND CONCLUSIONS.

29. Having heard the Learned Senior Counsel for the parties and upon carefully considering their rival submissions as well as the case law relied upon, I have no hesitation in rejecting the Defendant's contention that the Plaintiff had obtained the ex parte ad interim order by suppression of material facts for the following reasons.

- A. At the outset, it is pertinent to note that the sole case put forth in the Affidavit in Reply rests on an allegation of suppression of material facts by the Plaintiff and on no other ground. The Defendants have

not even attempted to offer any justification or explanation for their use of the impugned trade mark of which the Plaintiff is the registered proprietor, as clearly evidenced from the copyright certificate which can be found at Exhibit-B of the present suits. Thus, the Defendants, on their own showing, are rank infringers.

- B. On merits, the contention that failure to disclose the First Suit amounted to a material suppression of fact is also entirely devoid of any merit. The material placed on record by the Plaintiff clearly establishes that, apart from the similarity in name, the Defendants in the present Suits and Defendant No. 4 in the First Suit are entirely separate and distinct legal entities. This is evident from the fact that their respective addresses and GST registration numbers are different. Crucially, the Defendants have not produced a shred of evidence to show how the Defendants to the present Suits are even connected to Defendant No. 4 in the First Suit, let alone that they are the same entity.
- C. The contention that the First Suit was an action *in rem* and would therefore bind the Defendants in the present Suit is also thoroughly misconceived. John Doe/Ashok Kumar suits are instituted against unidentified persons who are infringers or potential infringers and whose identities are unknown at the time of filing of such suit. The object of these suits is to enable a Plaintiff to obtain preventive or

protective relief against such unknown persons to prevent infringement. Such unknown infringers upon identification are then impleaded by name as Defendants, and any orders passed are applicable to them. It is, therefore, not the anonymity of the defendant that defines the nature of such an action, but rather the individual acts of infringement or apprehended infringement which do. Even though the defendants are unnamed at the stage of institution of the suit, the cause of action arises from their specific acts of infringement or apprehended acts of infringement. Consequently, any injunction or relief granted in a John Doe or Ashok Kumar action operates personally against those infringers and not against the public at large.

- D. To accept the Defendants' contention that 'John Doe/Ashok Kumar' suits are actions *in rem* would lead to untenable and absurd consequences. It would imply that a single 'John Doe' order could operate in perpetuity, binding all infringers known or unknown, present or future, without notice or opportunity of hearing. Such a position would be in direct contravention of Order I Rule 3 of the CPC, which mandates that persons against whom a right to relief is claimed must be properly joined and served, and would also be in violation of the principles of natural justice. As rightly submitted on behalf of the Plaintiff, 'John Doe/Ashok Kumar' jurisprudence is intended to supplement procedural fairness and not to supplant or

override it. Accordingly, the First Suit cannot, either in fact or in law, be construed as having been instituted against the Defendants in the present proceedings.

- E. The decision of the Delhi High Court in the case of ***Reliance Big Entertainment Pvt. Ltd. v. Jyoti Cable Network*** also does not support the Defendants' contention that a 'John Doe/Ashok Kumar' Suit is an action *in rem*. On the contrary, the said judgement specifically records that "*Since names and addresses of such cable operators/persons are not known, they have been collectively arrayed as defendant nos. 6 to 30 in the assumed name of 'Mr Ashok Kumar'*".³ Thus there is no finding or even suggestion that the order passed in a 'John Doe/Ashok Kumar' would bind the world at large. On the contrary, it envisaged that such unknown persons would be identified and joined as defendants in due course.
- F. The contention that the Plaintiff has taken inconsistent or contradictory stands in the First Suit and the present Suits is both untenable and wholly irrelevant. The Defendants, being both rank infringers and not parties to the First Suit, have no locus to raise such an objection. In any event, as clarified in the Plaintiff's Affidavit in Rejoinder, the First Suit was a joint action instituted by the Plaintiff and the Society to protect their respective trade marks

³ Suit No. 837 of 2018

against unknown infringers. The record further sets out, that the user agreement dated 8th February 2018 has been cancelled. The registration certificates dated 12th December 2017, in Classes 18, 21, 25, 26, and 35, confer upon the Plaintiff statutory proprietary rights under the Trade Marks Act, 1999, including the exclusive right to use the said mark and to seek relief against infringement thereof. The causes of action in the First Suit and the present Suit are distinct and arising at different points in time, against different parties. Thus there is, no inconsistency or misrepresentation on the part of the Plaintiff as alleged.

- G. Also, it is undisputed that the First Suit was dismissed for default, prior to which no summons or notice was served upon Defendant No. 4 in the First Suit. Hence, the filing of the First Suit is entirely inconsequential to the present Suits and is far from being a material fact which ought to have been disclosed by the Plaintiff in the present Suit. Accordingly, the decision in the case of *Pidilite Industries Ltd. v. Astra Chemtech Pvt. Ltd.* relied upon by the Defendants is entirely inapplicable to the facts of the present case.
- H. As regards the reliance placed by the Defendants on circulars issued by educational authorities, such reliance is entirely misconceived. The circulars in question are wholly extraneous to the issues which fall for consideration in the present Suit, namely infringement of the

Plaintiffs' statutory rights as registered proprietors of the said trade mark and copyright . The Plaintiff is a private limited company engaged in the manufacture and sale of uniforms and garments; it is neither a school nor an educational institution nor an authority to which the said circulars apply. These administrative directives, issued in the context of regulating school practices, cannot be invoked to justify or condone infringement of a registered trade mark, nor can they serve as a basis for vacating an injunction granted to protect statutory intellectual property rights. The protection conferred under the Trade Marks Act, 1999, arises from statute and cannot be diluted or overridden by departmental circulars of non-binding character.

- I. It is well settled that the power under Order XXXIX Rule 4 of the CPC is circumscribed by the proviso which states that an ex parte injunction can be vacated only if the Court is satisfied that the order was obtained by misrepresentation or concealment of material facts. The enquiry under Rule 4 does not involve a re-examination on the merits. The object of Order XXXIX Rule 4 is limited to ensure that the Court is not misled into granting a protective order on the basis of deliberate or material non-disclosure.

30. Given that in the facts of the present case I am satisfied that the ex parte ad interim order dated 7th May 2024 was not obtained by either misrepresentation or concealment of material facts. Hence the question of setting aside/vacating the said Order under the provisions of Order XXXIX Rule 4 does not arise. As already noted above, the Defendants are rank infringers who do not have a semblance of a right to use the Plaintiff's registered trade mark and copyright, despite which the Defendants have done so with impunity. Hence, I pass the following order:

ORDER

- i. The Defendants' application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908, for setting aside the Order dated 7th May 2024 is rejected.
- ii. The Interim Application is allowed in terms of prayer clauses (a), (b) and (c).

[ARIF S. DOCTOR, J.]