

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 18278 OF 2025
IN
COMMERCIAL SUIT (L) NO. 18197 OF 2025
WITH
LEAVE PETITION (L) NO.18257 OF 2025**

Shoban Salim Thakur)
Individual, Indian Inhabitant)
being the Sole proprietor of)
M/s. Family Footwear Having)
Registered Office at 501,)
Hill Park, A3 Tower, Agarwal Estate,)
Jogeshwari (West), Mumbai-400102,)
Maharashtra, India Also at GALA No.104)
105, 106, Z Building, Raj Laxmi)
Compound, Kalher, Bhiwandi)
Thane 421302, Maharashtra)

Versus

1. Chaitanya Arora,)
Individual, Indian Inhabitant)
Having address at H-19/81, Top Floor,)
Rohini Sector-7, North West Delhi,)
Delhi-110085.)

2. Chaitanya Enterprises)
Having address at H-19/81, Top Floor,)
Rohini Sector-7, North West Delhi,)
Delhi-110085.)
3. Sonu Shah)
Being the sole proprietor of)

Sonu Enterprises,)
Ground Floor, Kh. No.957,)
Village Kirari Suleman Nagar,)
Landmark Near Chopal,)
New Delhi India 110086)

WITH
INTERIM APPLICATION NO.5889 OF 2025

Mr. Janak Dwarkadas a/w Namrata Vinod, Rashmin Khandekar, Pooja Jain, Bhavi Gada. Samaruddhi Naik, Suhail Shariff, Sherin Baby and Mohammad Omar Hashmi for Plaintiff.

Mr.Hiren Kamod a/w Vaibhav Keni, Neha Iyer, Prem Khullar, Vatsala Batra, Gaurav Gogia, Anees Patel, Aviral Srivastava, Rajat A. i/b Legasis Partners for Defendant.

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

CORAM : ARIF S. DOCTOR, J.

RESERVED ON: 30TH SEPTEMBER 2025

PRONOUNCED ON: 15TH OCTOBER 2025

JUDGMENT:

1. This Court had, on 30th June, 2025, passed an ex parte ad interim Order *inter alia* restraining the Defendants from using the trade mark “DOCTOR HEALTH SUPER SOFT/ DOCTOR SUPER SOFT/ DOCTOR EXTRA SOFT” in relation to the sale of footwear.
2. Defendant Nos. 1 and 2, on being served with the ex parte order have filed an Affidavit seeking to have the ex parte ad interim Order vacated under the provisions of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908

(CPC), on the ground that the Plaintiff has approached this Court with unclean hands since the Plaintiff had obtained the ex parte order by deliberately suppressing material facts and documents from this Court.

Submissions of Mr. Kamod on behalf of the Defendants

3. Mr. Kamod, Learned Counsel appearing on behalf of the Defendants submitted that the Plaintiff had suppressed the three most material facts from this Court and had on that basis not only created a false sense of urgency but also obtained relief to which the Plaintiff was not entitled. He then pointed out that the Plaintiff had suppressed the fact that (I) the Plaintiff's trade mark registration in Class 25 contained a specific limitation/disclaimer that the said registration was exclusive only to the State of Maharashtra, (II) Back in December 2024, the Defendant No. 1 had produced evidence of user of the impugned trade mark since April 2022, and (III) the Plaintiff had, in the course of its registration in Class 25, taken a diametrically opposite stand from the stand taken in the present Suit. He submitted that while any one of these grounds would be sufficient to vacate the ex parte order, the fact that the Plaintiff had suppressed all three of these material facts from this Court made evident that the Plaintiff had consciously and systematically played a fraud on this Court and on that basis obtained the ex parte ad interim Order. Mr. Kamod then made the following submissions in support of each of the three material facts which were suppressed, i.e., (I) to (III), in order to obtain ex parte ad interim relief.

I. SUPPRESSION OF THE LIMITATION/DISCLAIMER IMPOSED BY THE TRADE MARKS REGISTRY ON THE PLAINTIFF'S TRADE MARK REGISTRATION IN CLASS 25

4. Mr. Kamod at the outset pointed out that the Plaintiff had obtained 3 trade mark registrations, i.e., one each in Class 20, 25, and 35, which the Plaintiff was enforcing in the present Suit. He submitted that in the context of applying for ex parte ad interim relief, it was only the Plaintiff's registration No. 3753207 in Class 25 (**"the Plaintiff's registration in Class 25"**) which was material since the primary grievance of the Plaintiff was that the Defendants were using the impugned mark to sell footwear and that Class 25, *inter alia*, covered "*slippers, pedicure slippers, leather slippers, foam pedicure slippers, women's foldable slippers, cushion slippers, orthopedic slippers*". He thus submitted that the Plaintiff's registration in Class 25 was therefore the most relevant registration, especially in the context of the Plaintiff's application for ex parte ad interim relief.
5. Mr. Kamod then pointed out that the Plaintiff's registration in Class 25 had a specific limitation/disclaimer that the registration was exclusive only to the State of Maharashtra. He submitted that the Plaintiff's registration in Class 25 would therefore not apply outside the State of Maharashtra and that the Plaintiff did not have any registration in Class 25 beyond the territory of the State of Maharashtra. He pointed out that the said condition was clearly reflected on the online status page as well as on the advertisement of the

Plaintiff's registration in Class 25 in the Trade Marks Journal but was neither annexed to nor mentioned in the Plaint.

6. Mr. Kamod pointed out that the Plaintiff had in fact annexed a registration certificate, which contained a specific disclaimer which clearly provided that the said registration certificate was not meant for use in legal proceedings. He submitted that it was therefore incumbent upon the Plaintiff to have annexed all the relevant material in respect of the Plaintiff's registration in Class 25, the most crucial being the status page in respect of the same, since that would contain all the relevant details in respect of the said registration, including the limitation/disclaimer. He submitted that despite this, the Plaintiff had deliberately not done so. Mr. Kamod submitted that the fact that the suppression was deliberate was evident since the Plaintiff had craved leave to rely upon the legal proceedings certificate in respect of its registration in Class 25, which showed that the Plaintiff was aware of its duty to produce the legal proceedings certificate.
7. Mr. Kamod then submitted that the statutory limitation/disclaimer forming part of the Plaintiff's registration in Class 25 was a material and relevant factor, which ought to have been disclosed not only in the Plaint but also specifically brought to the attention of this Court at the time of applying for ex parte ad interim reliefs. He reiterated that the Plaintiff's failure to disclose the same was not inadvertent but was calculated and deliberate, which he submitted was evident from the fact that the Plaintiff had made detailed

averments in respect of its registration in Class 25 in the Plaint including having furnished absolutely irrelevant details about proceedings with third parties, but having omitted to mention the most crucial fact that the Plaintiff's registration in Class 25 was restricted only to the State of Maharashtra.

8. Mr. Kamod then submitted that the dishonesty of the Plaintiff was also evident from the fact that after the suppression of the disclaimer/limitation was brought to light by Defendant No. 1, the Plaintiff, instead of coming clean before this Court, had in the Affidavit in Rejoinder dishonestly contended that the suppression of the said limitation/disclaimer was an inadvertent oversight but also that such oversight did not affect the entitlement of the Plaintiff in the present proceedings. Mr. Kamod submitted that such contention was a patently false and dishonest since the Plaintiff had in the plaint (i) made extensive averments in respect of Plaintiff's registration in Class 25 (ii) produced and relied upon its registration certificate in respect of its registration in Class 25 (iii) sought and obtained an Order of injunction against the Defendants from manufacturing and selling footwear, which goods admittedly fell only under Class 25 (iv) specifically pleaded trade mark infringement by relying upon Plaintiff's registration in Class 25 (v) cited all of the Plaintiff's pending trade mark applications which were in Class 25 (vi) cited all of the oppositions (16 in total) filed by the Plaintiff against third parties, all of which were in respect of marks in Class 25 (vii) cited foreign trade mark registrations of the

Plaintiff which were also in Class 25, and finally (viii) averred that the infringement was of the Plaintiff's goods and not services and that goods were covered in Class 25 whereas services were covered in Class 35. Mr. Kamod submitted that far from being irrelevant, the Plaintiff's registration in Class 25 was infact the most crucial and relevant registration in the context of the application filed by the Plaintiff for ex parte ad interim reliefs. He also took pains to point out it was not as though the Plaintiff had multiple registrations in Class 25, and therefore details of one registration were inadvertently left out. He submitted that the Plaintiff only had the one registration in Class 25, and thus the stand taken by the Plaintiff in the Rejoinder only compounded the Plaintiff's dishonesty.

9. Mr. Kamod then placed reliance upon the decision of the Delhi High Court in the case of *Om Prakash Gupta v. Praveen Kumar*¹ and pointed out that the Delhi High Court had, in the said case, held that the limitation/disclaimer imposed on the trade mark registration being enforced by a Plaintiff in a suit for infringement of trade mark was a material and relevant factor which ought to have been disclosed to the Court, especially at the time of making an application for ex parte ad interim reliefs. He also pointed out from the said judgement that the Delhi High Court had also held that suppression of a material fact would warrant dismissal of the Suit itself.

¹ 2000 SCC Online Del 397

10. Mr. Kamod submitted that the Plaintiff's reliance upon trade mark registration bearing No. 4877429 in Class 20 and registration No. 5273690 in Class 35 was really of no relevance since these registrations were in respect of different goods and services which were not the subject matter of the present proceedings. He thus submitted that the Class 35 and Class 20 trade mark registrations were inconsequential in the context of the present proceedings.

II. SUPPRESSION OF COUNTERSTATEMENT AND EVIDENCE FILED BY THE DEFENDANT NO. 1 IN OPPOSITION PROCEEDINGS PENDING BETWEEN PLAINTIFF AND DEFENDANT NO. 1

11. Mr. Kamod then pointed out that the Plaintiff in paragraph 30 of the Plaint, had made a false statement by stating that the Plaintiff had become aware of the Defendants' use of the impugned mark only on 6th March 2025. He submitted that the Plaintiff was well aware that the Defendants had asserted prior user of the impugned trade mark since Defendant No. 1 had filed a Counter Statement and Evidence Affidavit in the opposition proceedings which were pending between the Plaintiff and Defendant No. 1 before the Trade Mark Registry in respect of the impugned trade mark wherein Defendant No. 1 had produced evidence of user of the impugned trade mark since April 2022. Mr. Kamod submitted that it was only to create a false sense of urgency, that the Plaintiff had annexed neither the Counter

Statement dated 19th July 2024 nor the Evidence Affidavit dated 24th December 2024, filed by Defendant No. 1.

12. Additionally, Mr. Kamod pointed out that the Plaintiff had, before the Trade Marks Registry responded to the Counter Statement and Affidavit of Evidence filed by Defendant No. 1, and was thus undoubtedly aware that the Defendants were asserting user of the impugned trade mark since the year 2022. He submitted that the Plaintiff was also cognisant of the fact that the opposition proceedings and the evidence filed by the Defendant No. 1 therein were relevant for the consideration of this Court and therefore had referred to the same in the plaint without, however, producing the same. Mr. Kamod submitted that despite the substantial documentary evidence produced by Defendant No. 1 to show its use of the impugned trade mark since April 2022, the Plaintiff had in paragraph 30 of the Plaint knowingly falsely asserted that Defendant No. 1 had failed to establish any credible evidence or bona fide use of the impugned trade mark.
13. Mr. Kamod then pointed out that the Plaintiff had, in paragraph 4(m) of the Affidavit in Rejoinder, in fact admitted that the documentary evidence produced by Defendant No. 1 established the Defendants' use of the impugned trade mark. He submitted that in view thereof, the averments made in the Plaint in paragraph 30 were ex facie false to the knowledge of the Plaintiff and had been made solely to mislead this Court. Mr. Kamod took pains to point out that the Plaintiff had offered no explanation/justification

for not producing the evidence of Defendant No. 1, which was filed before the Trade Marks Registry.

III. SUPPRESSION OF THE CONTRARY STAND TAKEN BY THE Plaintiff IN THE COURSE OF THE REGISTRATION IN CLASS 25.

14. Mr. Kamod then, in addition to the suppression as detailed in (I) and (II) above submitted that the Plaintiff was also guilty of suppressing the fact that at the stage of examination of the Plaintiff's trade mark Application in Class 25, the Registrar of Trade Marks had issued a Preliminary Examination Report dated 27th April 2016, wherein the Registrar had cited earlier third-party conflicting marks, namely, "DOCTOR PLUS" and "DOCTOR SOFT" which contained "DOCTOR", "PLUS" and "SOFT" as one of their leading and essential features and on this basis raised objections under Section 11 of the Trade Marks Act, 1999 to the registrability of the Plaintiff's trade mark. Mr. Kamod pointed out that the Plaintiff, in the Reply to the Preliminary Examination Report, had specifically stated that both phonetically and in pronunciation, its trade mark was dissimilar to the cited trade marks i.e., "DOCTOR PLUS" and "DOCTOR SOFT". Mr. Kamod submitted that it was on the basis of this specific stand that the Plaintiff was granted the registration in Class 25.

15. Mr. Kamod further pointed out that, given the above stand taken by the Plaintiff before the Trade Mark Registry the Plaintiff had admitted to the fact that the presence of the words "DOCTOR" and "SOFT" was not at all

determinative of the similarity between the Plaintiff's trade mark and the earlier cited marks. He submitted that the Plaintiff in the stand taken before Trade Marks Registry, had made it clear that the Plaintiff was not claiming any exclusive right in the words "DOCTOR" or "SOFT" but only in the specific composite label "DOCTOR EXTRA SOFT". Mr. Kamod then pointed out that the Plaintiff had, in the present Suit, taken the diametrically opposite stand to the one taken before the Trade Mark Registry in the year 2018 without disclosing the previous stand in the present Suit.

16. Mr. Kamod submitted that the Plaintiff, having received registration in Class 25 on the basis of the stand taken before the Registrar of Trade Marks, could not now contend that the Plaintiff's mark and the Defendants' mark were similar because of the presence of the common words "DOCTOR" and "SOFT" in respect of which the Plaintiff had not claimed exclusivity. He submitted that the Plaintiff could not approbate and reprobate by now seeking to enforce exclusivity over the very same elements the Plaintiff had disclaimed before the Trade Marks Registry as being non-confusing and non-exclusive. He submitted that the Plaintiff was therefore estopped from asserting any monopolistic or exclusive rights over the generic and commonly used terms "DOCTOR" or "SOFT". He submitted that it was in this context that the stand taken by the Plaintiff before the Registrar of Trade Marks was absolutely relevant for the purpose of the grant of any interim injunction, particularly the grant of an ex parte ad interim injunction.

17. Mr. Kamod pointed out that the most important factor which had in fact weighed with the Learned Judge while passing the ex parte ad interim Order was that the Learned Judge had prima facie found that the words “DOCTOR” and “SOFT” were the essential features of the Plaintiff’s mark which was diametrically opposite to the stand taken by the Plaintiff before the Trade Mark Registry. He submitted that had notice been given to the Defendants, the Defendants would have pointed out this contrary and inconsistent stand of the Plaintiff. In support of his contention that the stand taken by the Plaintiff before the Trade Mark Registry during the course of the Plaintiff’s Class 25 registration proceedings was a relevant factor he placed reliance upon the decision of this Court in the case of *PhonePe Private Limited v. Resilient Innovations Private Limited*² He submitted that whether or not the representation made by the Plaintiff to the Trade Marks Registry would amount to an estoppel or not was a secondary factor; however, it was the duty of the Plaintiff to have placed the same before the Court and more so when the Plaintiff was moving for ex parte ad interim relief.
18. Mr. Kamod additionally submitted that it was well settled that it was not for a litigant to decide what was to be disclosed and what not. He submitted that the Hon’ble Supreme Court had time and again held that a litigant is not entitled to pick and choose what facts are to be placed before the Court but is required to place all the material facts before the Court and then leave it for the Court to decide. In support of his contention, he

² 2023 SCC Online Bom 764

placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Bhaskar Laxman Jadhav v. Karamweer Kakasaheb Wagh Education Society***³ He also placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Prestige Lights Ltd. v. State Bank of India***⁴ which *inter alia* held that where there is suppression of material facts, the Court may refuse to entertain such a case without entering into the merits.

19. Mr. Kamod then placed reliance upon the decision of the Division Bench of this Court in the Case of ***Kewal Ashokbhai Vasoya v. Surabhakti Goods Pvt Ltd.***⁵ to point out that since the Plaintiff had moved for ex parte ad interim relief, it was incumbent upon the Plaintiff to have, *inter alia* (i) fairly and evenly made all the necessary disclosures and statements on the basis of any anticipatory defences or arguments likely to be made by the opposite party, (ii) placed all the material within the knowledge of the Plaintiff before the Court (iii) presented the case neutrally and objectively and (iv) crucially, since the present Suit was a trade mark Suit, to have disclosed whether the Plaintiff's registration was with or without any disclaimer.

20. Basis the above, Mr. Kamod submitted that the conduct of the Plaintiff in deliberately suppressing material facts and then moving for ex parte ad interim reliefs plainly amounted to playing a fraud upon this Court. He submitted that the Plaintiff had thus clearly polluted the pure stream of

³ (2013) 11 SCC 531

⁴ (2007) 8 Supreme Court Cases 449

⁵ 2022 SCC Online Bom 3335

justice and was an unscrupulous litigant. He then placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Ramjas Foundation and Another v. Union of India and Others***⁶, from which he pointed out that the Hon'ble Supreme Court had, in the context of unscrupulous litigants, *inter alia*, held as follows:

"21. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case".

21. Mr. Kamod then submitted that, given the facts of the present case, there could be no doubt that the Plaintiff had suppressed material facts from this Court, the Suit itself was required to be dismissed. He pointed out that both, this Court in the case of ***Nagina Ramsagar Choube & Ors. v. Ajay Mohan & Ors.***⁷ and the Delhi High Court in the case of ***Om Prakash Gupta*** had dismissed Suits at the interlocutory stage on finding that the Plaintiff in both cases had suppressed material facts from the Court. Alternatively, Mr. Kamod submitted that in the event the Court was not inclined to dismiss the Suit itself, then the Interim Application ought to be dismissed on the ground

⁶ 2010 SCC Online SC 1254

⁷ Order dated 24th June 2025 in Interim Application No.2143 of 2025 in Suit No.130 of 2025

of suppression of material facts. In support of his contention, he placed reliance upon the decision of this Court in the case of ***Rochem Separation Systems (India) Ltd. v. Nirtech Private Limited & Ors.***⁸ from which he pointed out that this Court had dismissed the Interim Application on the ground that the Plaintiff had obtained an ex parte ad interim by withholding material information from the Court. He also placed reliance upon the decisions of this Court in the case of ***Laser Shaving (India) Private Ltd. v. RKRM International Products Pvt Ltd.***⁹ and ***Atyati Technologies Private Limited v. Cognizant Technologies Solutions US Corporation & Anr.***¹⁰ to point out that when there has been material suppression of facts, the Court, on that ground alone, vacated the ex parte ad interim Order without going into the merits of the matter.

22. Mr. Kamod then submitted that the present Suit, being a Commercial Suit, was governed by the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Commercial Courts Act") Section 35 of the CPC, as amended by Section 16 of the Commercial Courts Act, would apply, entitling the Defendants to an order of costs. He pointed out that under the scheme of the Commercial Courts Act, this Court had the power to award costs at any stage of the proceedings. He pointed out from Section 35 of the amended CPC that the costs contemplated thereunder would include legal fees and all other

⁸ Order dated 30th March 2023 in Interim Application (I) No.29924 of 2022 in Commercial IP Suit (L) No.29923 of 2022.

⁹ 2024 SCC Online Bom 4079

¹⁰ 2024 SCC Online Bom 1680

expenses incurred in connection with the proceedings. He pointed out that Section 35(3) of the amended CPC provides that while awarding costs, due regard was also required to be had to the conduct of the parties. Mr. Kamod then placed reliance upon the decisions of the Delhi High Court in *Sai Trading Co. v. KRBL Limited*¹¹ and of this Court in *Dashrath B. Rathod v. Fox Star Studios India Pvt. Ltd.*¹² and pointed out that both these decisions reiterated the principle that litigants who approach the Court by suppressing material facts not only abuse the process of law but also waste the valuable time of the Court. He thus submitted that, given the conduct of the Plaintiff, not only were the Defendants entitled to an order of costs, but they were also entitled to an order of exemplary costs. He submitted that such an order was required to be passed to curb the menace of unscrupulous litigants abusing the process of this Court and of law.

23. Mr. Kamod in support of his contention that exemplary costs in this case must be awarded, highlighted that (i) the Plaintiff had made a calculated attempt to deceive and defraud this Court in passing the ex parte ad interim order dated 30th June 2025 (ii) the Defendants' business had been crippled after the ex parte Order had been passed (iii) the Defendant Nos. 1 and 3 had placed on Affidavit along with a Chartered Accountant's Certificate certifying the sales figures of the Defendant Nos.1 and 3 were ₹3,65,16,676/- and ₹2,46,65,198/-, respectively, totalling up to ₹6,11,81,874/- (Rupees Six Crores Eleven Lakhs Eighty-One Thousand

¹¹ 2024 SCC Online Del 5222

¹² 2017 SCC Online Bom 345

Eight Hundred and Seventy-Four only), (iv) in addition to monetary loss, the Defendants had also suffered embarrassment/irreparable injury to their goodwill and reputation in the market due to the abrupt halt in the Defendants' business and the Impugned ex parte Order being brought to the knowledge of their distributors, dealers, partners and other persons connected with them in course of trade (v) the Plaintiff had deliberately derailed the hearing of the Defendants' Order XXXIX Rule 4 Application by vexatiously agitating its Order XXXIX Rule 2A Application on frivolous grounds to be heard on first priority (vi) the Plaintiff had during oral submissions, admitted that the order of infringement could not have been passed against the Defendants for the entire country in view of the disclaimer on its registration (vii) that the Plaintiff had not, despite accepting that the Plaintiff was not entitled to an injunction for infringement beyond the State of Maharashtra never pointed this out to the Court and had the Order varied.

24. Mr. Kamod then pointed out that the Plaintiff had, in paragraph 61 of the Interim Application given an undertaking in terms of Rule 126(IX)A¹³ of the Bombay High Court Rules by which the Plaintiff had thus specifically undertaken to pay, by way of damages or costs, as the Court may award on account of the prejudice caused by the ex parte ad interim Order.

¹³ 126 IX-A. Signed undertaking required – Every Interim Application shall, in addition to the above, contain, in the body of the Interim Application, a signed statement of the party making such Application undertaking to pay such sum by way of damages or costs as the Court may award as compensation in the event of a party affected sustaining prejudice by any order that might be made on such Interim Application. The Court may, in its discretion, while making the order on the Interim Application dispense with undertaking.

25. Mr. Kamod pointed out that in addition to the costs as contemplated under the Commercial Courts Act, this Court also had the inherent power under Section 151 of CPC to grant exemplary costs against the Plaintiff in order to curb the menace of parties attempting to play a fraud upon the Court and filing false affidavits/pleadings. He then placed reliance upon the decision of the Hon'ble Supreme Court in *Dnyandeo Sabaji Naik v. Mrs. Pradnya Prakash Khadekar and Ors.*¹⁴ which had been followed by this Court in *Dashrath B. Rathod*, from which he pointed out that in matters of fraud and gross suppression such as the present case, this Court ought to exercise its power under Section 151 to impose exemplary costs against the erring party.
26. Basis above, Mr. Kamod submitted that given that the Plaintiff had wilfully suppressed material facts from this Court as detailed in (I), (II) and (III) above and had on that basis obtained an ex parte ad interim order by playing a fraud on this Court, the Suit was required to be dismissed with exemplary costs.

Submissions of Mr. Dwarkadas on behalf of the Plaintiff

27. *Per contra*, Mr. Dwarkadas, Learned Senior Counsel appearing on behalf of the Plaintiff, at the outset, submitted that the Plaintiff had at all times acted with full transparency and had neither wilfully nor deliberately concealed

14 2017 MhIJ OnLine (S.C.) 4

any material fact from this Court.

28. Conversely, Mr. Dwarkadas submitted that it was, in fact, the Defendants who were in clear violation of Sections 28 and 29 of the Trade Marks Act, 1999 ("TMA"), since the Defendants had infringed the Plaintiff's statutory rights. He pointed out that Section 28 of the TMA conferred upon the registered proprietor of a trade mark the exclusive right to use the mark in relation to the goods or services for which it is registered and correspondingly entitled such registered proprietor to seek relief in the event such right was infringed. He submitted that the Plaintiff, having been granted registration in Class 25, was therefore exclusively entitled to use the said trade mark. He submitted that despite this statutory protection, the Defendants had sold products bearing the impugned trade mark within Mumbai and elsewhere in Maharashtra and were therefore guilty of infringement of the Plaintiff's registered trade mark under Section 29 of the TMA. He submitted that it was well settled that a party who was guilty of a breach of statute could not seek any equitable relief from this Court.
29. Mr. Dwarkadas then submitted that the disclaimer/limitation was wholly irrelevant since the Plaintiff had filed the present Suit within the territorial jurisdiction of this Court within which the infringement had admittedly taken place. At this stage, I enquired of Mr. Dwarkadas as to where this admission of infringement by the Defendants was to be found. Mr. Dwarkadas clarified that there was no such admission in the pleadings.

30. Mr. Dwarkadas then pointed out that the Defendants had not denied knowledge of the Plaintiff's registered trade mark and had, in the present Interim Application, proceeded entirely on the basis of a demurrer. Mr. Dwarkadas then drew my attention to the ex parte order and pointed out that the same had conclusively found the Defendants guilty of infringement and that the Defendants had not preferred any appeal against the ex parte order. He submitted that this clearly demonstrated acquiescence on the part of the Defendants and reinforced the validity of the Plaintiff's claim.
31. Mr. Dwarkadas then, without prejudice to the aforesaid, submitted that the suppression alleged was neither wilful nor deliberate. He pointed out that Plaintiff had in the Affidavit in Rejoinder specifically stated that the Plaintiff had inadvertently missed specifically mentioning the disclaimer in the Plaint. He submitted that it was well settled that inadvertent errors do not amount to suppression of material facts sufficient to warrant vacation of an ex parte order. In support of his contention, he placed reliance upon the decision of this Court in the case of *K.L.F. Nirmal Industries Pvt. Ltd. v. Marico Limited*¹⁵ and pointed out that this Court had in the said case categorically held that an incorrect or inadvertent statement, which was not knowingly or wilfully made, cannot constitute a ground for vacating an injunction under Order XXXIX Rule 4. He submitted that the said ratio would squarely apply to the facts of the present case, as the suppression

15 2023 SCC OnLine Bom 2734

alleged on the part of the Plaintiff was neither wilful nor deliberate.

32. Mr. Dwarkadas then submitted that the Plaintiff had in the Plaint fully disclosed all relevant facts, registrations, oppositions, rectifications, and ancillary proceedings relating to its registration in Class 25, including (i) details in respect of all registered marks in Class 25 that could be relevant to the present proceedings, (ii) all the oppositions filed by or against the Plaintiff in respect of Class 25 trade marks applications along with annexures, and (iii) rectifications, corrections, or disclaimers in respect of Class 25 marks were accurately described. He thus submitted that the omission to mention the said disclaimer/limitation in the Plaint was purely inadvertent, and thus the judgements in the case of *Ramjas Foundation, Bhaskar Laxman Jadhav, Kewal Ashokbhai Vasoya, Laser Shaving (India) Private Ltd., Om Prakash Gupta, Atyati Technologies Private Limited, Rochem Separation Systems (India) Ltd.* and *Nagina Ramsagar Choube & Ors.* upon which reliance was placed by the Defendants would not apply. Mr. Dwarkadas submitted that, in any event, the said omission had been immediately clarified by the Plaintiff and hence the same could not be said to have been wilful or deliberate. I asked Mr. Dwarkadas when this immediate clarification was issued and where it was to be found. Mr. Dwarkadas pointed out that the same was to be found in the Affidavit in Rejoinder dated 13th August 2025.

33. Mr. Dwarkadas then submitted that even if this Court found that there was

suppression on the part of the Plaintiff, the Court had the discretion to continue the ex parte order if the interest of justice so demanded, as specifically held in the case of ***Kewal Ashokbhai Vasoya***. He pointed out that in the present case the interest of justice would require the injunction to continue since (i) the Plaintiff is the registered proprietor of the mark “DOCTOR EXTRA SOFT” in Class 25, albeit with exclusive rights in the State of Maharashtra (ii) by virtue of Section 28 of the Trade Marks 1999, the Plaintiff has the exclusive right to use the registered mark and to seek relief against infringement (iii) the registration operates not only in favour of the proprietor but also in the public interest; (iv) vacating the ad interim order would cause grave prejudice to the Plaintiff and would also result in deception and confusion amongst unsuspecting consumers, and (v) setting aside the injunction would, in effect, nullify the statutory exclusivity conferred upon the Plaintiff as registered proprietor and would give a licence to the Defendants to continue infringement even within Maharashtra.

34. Mr. Dwarkadas then also placed reliance upon the decision of this Court in the case of ***Asma Farid Noorani v. Haji Ali Fresh Fruit Juices***¹⁶ and pointed out that this Court had in the said case not vacated the ex parte ad interim order in the interest of justice even though there had been some suppression on the part of the Plaintiff. He then, without prejudice to his submission that the ex parte ad interim order ought not to be set aside, submitted that this

16 2022 SCC OnLine Bom 4995

Court always had the power to mould the reliefs and thus could vary the ex parte ad interim order so as to make it applicable to the State of Maharashtra if the Court felt that the suppression of the limitation/disclaimer was a material factor. He submitted that this would safeguard the Plaintiff's statutory rights and also be equitable.

35. Mr. Dwarkadas then placed reliance upon the decision of this Court in the case of ***K.L.F. Nirmal Industries Pvt. Ltd.*** and pointed out that this Court had emphasised that the purpose of granting a temporary injunction in a suit for infringement of trade mark was not confined to safeguarding the rights of a Plaintiff alone but extended equally to protecting the interest of the general public. He pointed out from the said judgement that the Court held that denial of a temporary injunction merely because the Plaintiff had made an incorrect statement in the plaint would not be in the interest of justice. Mr. Dwarkadas then also pointed out that the Plaintiff was also the registered proprietor in Class 35, which registration did not have any territorial disclaimer. He thus submitted that the injunction cannot and ought not to be vacated since the Plaintiff would also be entitled to assert its right under Class 35.

36. Mr Dwarkadas, then, in dealing with the contention that the Plaintiff was aware that the Defendants were using the impugned mark since 2022 and had suppressed this fact from the Plaint, submitted that such contention was plainly false. In support of his contention, he invited my attention to

paragraph 28 of the Interim Application and paragraph 30 of the Plaintiff to point out that the Plaintiff had specifically adverted to the Defendants' filings before the Trade Mark Registry. He thus submitted that there was no suppression of these facts.

37. Mr. Dwarkadas, then, pointed out that the Defendant Nos. 1 and 2 had filed the following three trade mark applications:

Sr No.	Application No.	Class	Mark	Filing Date	Claimed User Date	Status
1.	4988169	25		29.05.2021	Proposed to be used	Pending
2.	5288145	25		17.01.2022	Proposed to be used	Published on 11.03.2024; Opposed by Plaintiff on 07.05.2024 which is pending
3.	6653161	35		03.10.2024	Proposed to be used	Pending

From the above, Mr. Dwarkadas pointed out that though the Defendant No.1 had filed the application for registration of  in Class 25 on a proposed to be used basis on 17th January 2022, it was only on 24th December 2024 that Defendant No. 1 filed the Affidavit of Evidence claiming alleged user of the  trade mark since April 2022. He then submitted that the evidence produced by the Defendants to support user of the  trade mark was entirely lacking in credibility since (i) the GST certificates produced by the Defendants had an address different from the address mentioned in the original Trade Mark Application No. 5288145, as also in the invoices produced to prove user (ii) the journal copy cited by the Defendants did not show the actual sale, distribution or branding of goods under the trade mark “Doctor Health Super Soft” since 2022 (iii) only 17 purchase orders bore the trade mark “Doctor Health Super Soft”; (iv) the balance purchase orders related to other marks and were thus wholly irrelevant; (v) the entries were non-certified, computer-generated Excel sheets that could be easily manipulated; (v) no complete information about CGST/SGST for Delhi and IGST for interstate sales was furnished; (vi) no evidence of actual transactions of use  was furnished; and (vii) that only Flipkart portal listings do not constitute user.

38. He then pointed out that in the Affidavit in Reply Defendant Nos. 1 and 2 had falsely asserted that the  trade mark was in use since April 2022, even when the documents appended to the Affidavit of Evidence and the Counter Statement filed by the Defendants in the opposition proceedings before the Registry pertained only to the  trade mark. Mr. Dwarkadas then pointed out that it was the  label, which was actually affixed and used on the Defendant's goods, giving rise to the filing of the present Suit and not the  mark. He submitted that by claiming that evidence pertaining to  substantiated use of  since 2022, the Defendants have deliberately misrepresented material facts and suppressed the true chronology and nature of commercial use.
39. Mr. Dwarkadas then submitted that although both marks contained the words "Doctor Health Super Soft", they differed in creative expression, visual presentation, and overall commercial impression. He submitted that the mark  cannot legally or factually be treated as proof of prior use of , which is the mark actually affixed to and used on goods in the market. He submitted that attempting to equate the two marks distorted the record, undermined the opposition proceedings, and amounted to misleading the Court.

40. He submitted that it was because the evidence produced by Defendant No. 1 was lacking in credibility that the Plaintiff had, both in the Interim Application (paragraph 28) and in the Plaint (paragraph 30), highlighted the Defendants failure to establish credible use since 2022. He thus submitted that there had been no suppression or concealment in this regard and that the Plaintiff had acted with full transparency before this Court. He reiterated that by equating  evidence with  use, it was the Defendants who had misled this Court and attempted to distort the factual record.

41. He then also pointed out that the application filed by the Defendants was on a “proposed to be used” basis, which itself made evident that there was no prior commercial adoption. It was for this reason that he submitted that the evidence produced by the Defendants would never have met the standard for bona fide use. Mr. Dwarkadas pointed out that the Plaintiff had made a full and transparent disclosure of these facts and that there had been no suppression, concealment, or misrepresentation of material facts before this Court.

42. He then submitted that the Plaintiff had discovered the infringing goods in the market only in March 2025, and thus the cause of action to file the present suit arose only then and was distinct from any prior registration proceedings. He submitted that it was well settled that trade mark

infringement and passing off were recurring violations, and each sale of the infringing goods constituted a separate wrongful act. He submitted that therefore, far from acquiescing, the Plaintiff had actively protected its rights by filing oppositions against conflicting applications and had in fact obtained an interim injunction in the year 2024.

43. Mr. Dwarkadas then dealing with the third contention, namely failure to disclose the prior stand taken by the Plaintiff during the course of the Plaintiff Class-25 registration, submitted that this stand was wholly unrelated to the present suit. He submitted that the question of the Plaintiff having to make reference to the said stand did not arise since that was in the context of proceedings to which the Defendants were admittedly not a party. He, therefore, submitted that the question of prosecution history estoppel applying therefore did not arise in the present case. He submitted that even in the judgement relied upon by the Defendants namely ***PhonePe Private Limited***, the question of prosecution history estoppel arose since it was between the same parties. He submitted that this was not so in the present case, and hence, there was no question of the Plaintiff having to disclose the stand taken during its registration in Class 25 proceedings when the Plaintiff applied for ex parte ad interim relief.

44. He then reiterated that the Plaintiff was the registered proprietor of the device mark DOCTOR EXTRA SOFT, and, by virtue of Section 28 of the Trade Marks Act, 1999, the Plaintiff had a statutory right to the exclusive right to

use of the trade mark and to seek relief for its infringement. Mr. Dwarkadas submitted that it was well settled that there can be no estoppel against statute, and ultimately, the question of deceptive similarity lies within the exclusive domain of this Court. It was in this context that he submitted that isolated submissions made in unrelated proceedings cannot divest the Plaintiff of its rights granted under statute and that the invocation of the doctrine of estoppel in the present case was thus wholly misconceived.

45. He pointed out that for the doctrine of estoppel under Section 115 of the Evidence Act to apply, the Defendants must necessarily show (i) a representation by the Plaintiff, (ii) reliance by the Defendants upon the representation made, and (iii) that the Defendants had altered its position or had occasioned prejudice by such representation. Mr. Dwarkadas reiterated that the Defendants were not a party to the Plaintiff's registration in Class 25 proceedings and additionally had not shown what reliance the Defendants had placed upon the representation made by the Plaintiff in those proceedings or what prejudice had been caused to the Defendants on account of such representation. He submitted that due to the absence of these three mandatory requirements, the question of there being any estoppel did not arise.

46. Mr. Dwarkadas then submitted that even the doctrine of approbation and reprobation, which was only a species of estoppel, was also similarly confined to the parties *inter se* who had acted and/or altered their position

to their detriment. He submitted that it was not open for a third party to allege approbation and/or reprobation on the part of the Plaintiff, let alone to whittle down statutory rights flowing from registration under the Trade Marks Act.

47. Mr. Dwarkadas then submitted that it was well settled that while a litigant may take different stands at different times, a party cannot take contradictory positions in the course of the same proceeding. He submitted that a party cannot therefore be permitted to approbate and reprobate and adopt inconsistent shifting stands in the course of the same proceeding. In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Suzuki Parasrampuriah Suitings (P) Ltd. v. Official Liquidator*¹⁷, from which he pointed out that the Hon'ble Supreme Court had laid down that the doctrine of approbation and reprobation applied to contradictions made in the course of the same proceeding.

48. Mr. Dwarkadas reiterated that in the present case, the Plaintiff had not taken any inconsistent stand, and thus the Defendants' reliance on submissions made in unrelated proceedings could never constitute prosecution history and were thus misplaced and legally untenable. He also pointed out that the Plaintiff's prior submissions regarding unrelated third-party marks were context-specific and procedural and cannot legally or factually operate as estoppel against the Defendants in the present case.

¹⁷ (2018) 10 SCC 707

49. Mr. Dwarkadas pointed out that Defendants' mark was distinct in visual, phonetic, and commercial impression from those conflicting third-party marks. He thus submitted that the Plaintiff had therefore not taken any contradictory stand in relation to the Defendants' Marks. He submitted that the Defendants' contention of approbation and reprobation was unsustainable, and the Plaintiff's action was bona fide and aimed solely at protecting the Plaintiff's trade mark and preventing consumer confusion.
50. Mr. Dwarkadas then finally submitted that this Court was also, when considering an application under the Order XXXIX Rule 4 of the CPC, required to take into consideration the conduct of the Defendants. He then pointed out from the Court Receiver's Report that the Defendants had engaged in deliberate and wilful obstruction of the Court's process by obstructing the Court Receiver in the discharge of his duties in executing the ex parte ad interim order. He submitted that such conduct on the part of the Defendants clearly amounted to interference in the administration of justice and infact constituted criminal contempt. In support of his contention, he placed reliance on the decision of this Court in the case of ***Kilachand Devchand & Co. Ltd. v. Ajudhia Prasad Sukhanand & Co.***¹⁸ Mr. Dwarkadas also placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Gujarat Bottling Co. Ltd. v. Coca Cola Co.***¹⁹ from which he pointed out that the Hon'ble Supreme Court had held that a party invoking or

¹⁸ 1934 SCC OnLine Bom 7

¹⁹ (1995) 5 Supreme Court Cases 545

resisting an injunction must show that its conduct is fair, honest and free from blame. He submitted that in the present case, given the conduct of the Defendants in obstructing the Court Receiver, the Defendants had neither acted in a manner that was fair, honest or free from blame. He thus submitted that the ex parte ad interim order ought not to be vacated.

Submissions in Rejoinder

51. Mr. Kamod submitted that the Plaintiff's contention that the Defendants had infringed the Plaintiff's statutory rights under Sections 28 and 29 of the Trade Marks Act, 1999, and were therefore disentitled to relief under the provisions of Order XXXIX Rule 4 of the CPC, was entirely untenable and, in fact, absurd. He submitted that the question of whether any infringement had occurred was yet to be adjudicated upon, and though it was orally argued that the Defendants had admittedly infringed the Plaintiff's trade mark, there was, in fact, no such admission. He submitted that if the Plaintiff's interpretation of Sections 28 and 29 of the TMA was to be accepted, then in every suit for infringement, the Defendants would automatically be deemed guilty of infringement merely because a registered proprietor had filed a suit for infringement. He submitted that this would not only open a Pandora's box, allowing parties like the present Plaintiff to make knowingly false statements and on that basis obtain ex parte relief, but would also effectively render the provisions of Order XXXIX Rule 4 of the

CPC otiose. It was thus that he submitted that the Plaintiff's interpretation of Sections 28 and 29 of the TMA is entirely untenable.

52. Mr. Kamod then, in dealing with the submission that this Court, in the facts of the present case, ought to mould the ex parte ad interim order by restricting its operation to the State of Maharashtra, submitted that such a contention was also misconceived and untenable. He submitted that the Plaintiff had miserably failed to offer any credible or tenable explanation for its suppression of any of the suppressed facts as set out in (I) to (III) above. He submitted that the Defendants had adequately established that the suppression by the Plaintiff was not only wilful and deliberate but also calculated, and hence the Plaintiff was disentitled to any equitable relief from this Court. He then submitted that there was no question of moulding the reliefs in favour of a party who had played a fraud on this Court. He additionally submitted that the Plaintiff, in the Affidavit in Rejoinder, failed to furnish any particulars explaining how or why the alleged inadvertent error occurred. He submitted that had there been the slightest bona fides on the part of the Plaintiff, then the Plaintiff ought to have brought the disclaimer/limitation to the attention of the Court and moved to have the ex parte order modified if not set aside. He pointed out that the Plaintiff did neither and, when caught out, simply pleaded inadvertence without so much as even attempting an explanation, let alone giving a cogent explanation for the same.

53. He then, in dealing with the judgements in the case of ***K.L.F. Nirmal Industries Pvt. Ltd.*** and ***Asma Farid Noorani*** submitted that there was no quarrel with what had been held by the Court in both cases but submitted that neither would apply to the facts of the present case since in the present case the suppression of material facts was wilful and deliberate unlike in both the cases relied upon. He then pointed out that in the case of ***K.L.F. Nirmal Industries Pvt. Ltd.*** , the Plaintiff had produced documentary evidence demonstrating that its interactions with the Defendant were limited in nature and were governed by a specific confidentiality arrangement. Moreover, the employee alleged to have knowledge of the Defendant's activities had already left the Plaintiff's employment by the time the suit in that case was filed and it was in those circumstances that the Court held that the Plaintiff's non-disclosure of its past dealings was inadvertent and not deliberate. Similarly, from the judgement in the case of ***Asma Farid Noorani*** , he pointed out that although the Defendant had alleged suppression on the ground that the Plaintiff had failed to disclose a prior suit, the Court observed that the earlier action had been instituted against a party under a different name, and hence Plaintiff could not have known that the Defendant in the earlier suit and the subject suit were the same and hence it was held that there was no deliberate non disclosure on the part of the Plaintiff after also noting that the Plaintiff was pursuing independent actions against distinct infringers using identical marks. Mr. Kamod then pointed out that both ***K.L.F. Nirmal Industries*** and ***Asma Farid Noorani*** had been considered and distinguished in later decisions of this

Court in the case of *Atyati Technologies Private Limited* and *Laser Shaving (India) Private Limited*, where the Court had vacated ex parte ad interim injunctions solely on the ground of suppression of material facts.

54. In response to the Plaintiff's contention that the stand taken before the Trade Marks Registry in 2018 was wholly unrelated to the present proceedings, Mr. Kamod submitted that the Plaintiff had completely misconstrued the Defendants' contention on this aspect. He submitted that whether or not the prior stand of the Plaintiff would constitute estoppel was not the issue and would ultimately be decided in the course of trial. He however, submitted that the stand taken by the Plaintiff in the course of obtaining registration in Class 25 was a relevant fact which was required to have been disclosed as held by this Court in the case of *PhonePe Private Limited* more so when the Plaintiff was moving ex parte. Mr. Kamod took pains to point out that the Plaintiff had sought to distinguish the decision in the case of *PhonePe Private Limited* by submitting that in the case of *PhonePe* the parties to the Suit and before the Trade Mark Registry were the same. However in the present case, the Defendants were not a party before the Trade Mark Registry during the course of the Plaintiff's Class 25 registration proceedings and hence the question of prosecution history applying did not arise. Mr. Kamod then pointed out that this distinction was factually incorrect since in the case of *PhonePe Private Limited* the concerned trade marks also belonged to third parties who were not parties to the Suit, as was clear from paragraph 27 of the said decision.

55. Mr. Kamod thus submitted that the Plaintiff by suppressing the stand taken before the Trade Mark Registry in obtaining its registration in Class 25 had effectively misled this Court into granting the ex parte order since what had weighed with the Learned Judge while granting such relief was that the words “DOCTOR” and “SOFT” were essential and distinctive features of the Plaintiff’s mark, which was diametrically opposite to the stand taken by the Plaintiff in the course of obtaining its registration in Class 25.
56. Mr. Kamod submitted that the contention of the Plaintiff that the Defendants had for the first time in the Affidavit of Evidence dated 24th December 2024 asserted its user of the impugned trade mark since April 2022 was false on the face of the record. He pointed out that a bare perusal of the Counter Statement filed by Defendant No. 1 on 19th July 2024 clearly showed that Defendant No. 1 had asserted the use of the impugned trade mark since April 2022.
57. Mr. Kamod then, in dealing with the contention that the evidence produced by Defendant No. 1 before the Trade Mark Registry failed to show user of the impugned trade mark by the Defendants since the year 2022, submitted that inherent in such contention of the Plaintiff was an admission of the fact that Defendant No. 1 had in fact produced documents on record to show use of the trade mark DOCTOR HEALTH SUPER SOFT by the Defendants since April 2022. He submitted that the Plaintiff was attempting to trivialise the evidence of user produced by the Defendant No. 1 by stating that there were only 17 orders shown in the purchase order, thus accepting that such orders

infact did exist, and the Plaintiff was aware of the same. Mr. Kamod submitted that even one instance of use was enough to show that the Defendants were using the impugned trade mark since April 2022, and hence the assertion that the Plaintiff became aware only in March 2025 was a patently false statement.

58. He further reiterated that what was relevant when moving for ex parte ad interim reliefs was the fact that this evidence ought to have been both annexed and pointed out to the Court at the time when the Plaintiff applied for the ex parte ad interim order, which was admittedly not done. He submitted that the evidentiary value of the Defendant's evidence was something that would be adjudicated and would be adjudicated upon in the proceedings before the Trade Mark Registry.
59. Mr. Kamod submitted that the contention of the Plaintiff that Flipkart portal listings do not constitute use was not only unsubstantiated but plainly dishonest since the Interim Application (L) No. 26177 of 2025 filed by the Plaintiff under the provisions of Order XXXIX Rule 2A of the CPC specifically relied upon the Flipkart portal listings of the Defendants to allege that the Defendants continue to use the impugned trade mark after the impugned ex parte Order.
60. Mr. Kamod then, in dealing with the contention that the Plaintiff had before the Trade Mark Registry produced evidence of user in respect of



and not  pointed out that a bare perusal of the Plaint and Interim Application, especially the prayers, showed that the grievance of the Plaintiff against the Defendants pertained to the use of the trade mark DOCTOR HEALTH SUPER SOFT by the Defendants. He pointed out that even prayer clause (a) of the Interim Application, in terms of which the ex parte ad interim injunction had been granted, was in respect of the mark DOCTOR HEALTH SUPER SOFT. He submitted that there could be no quarrel with the fact that the leading and essential feature of both  and  was the trade mark DOCTOR HEALTH SUPER SOFT. He thus submitted that the Plaintiff was only attempting to create an artificial distinction between the Defendants' label marks only to suit its case. He submitted that the evidence produced by the Defendants to show use of either of the two label marks established use of the trade mark DOCTOR HEALTH SUPER SOFT by the Defendants. Mr. Kamod then, as and by way of illustration, submitted that if an injunction was granted against the use of the trade mark "McDonald", the fact that the Defendant against whom such injunction has been granted uses a yellow or red or any other colour label to display the trade mark "McDonald" would make no difference, and the injunction will operate against the use of any label which comprises the trade mark "McDonald" word *per se*. He thus submitted that the attempt of the Plaintiff to distinguish between the Defendants' use of the  and  labels was plainly absurd and really a red herring.

61. Mr. Kamod also submitted that it was relevant to note that the trade mark application filed by the Defendants for  on a proposed to be used basis under No. 6653161 was in Class 35, which is a separate and distinct Class as compared to Class 25, in which Class Defendant No. 1 had filed its trade mark application under No. 5288145 for , along with evidence to show user since April of the year 2022.
62. Mr. Kamod then, in dealing with the contention that the Defendants were not entitled to any reliefs in view of the conduct of the Defendants submitted that these contentions were not only meritless but also plainly outside the scope of the present application under Order XXXIX Rule 4 of CPC. He thus submitted that the same was not being dealt with in this application.
63. Mr. Kamod reiterated that in the facts of the present case, this Court should dismiss the Suit itself however, if the Court was not so inclined, then the Interim Application ought to be dismissed on the ground of material suppression alone without going into the merits of the case.

Reasons and Conclusion

64. After having heard Learned Counsel for the parties and having considered the material and case law relied upon, my findings are as follows:

A. **First**, on the aspect of whether there has been suppression of material facts by the Plaintiff, in my view, not only has there been suppression, but there has been gross suppression of material facts. I say so for the following reasons:

- i. Disclaimer/limitation: though in the present Suit the Plaintiff has sought to enforce rights in respect of the registrations obtained by the Plaintiff in Class 20, 25 and 35, in the context of the application for ex parte ad interim relief, it is only the Plaintiff's registration in Class 25 that is relevant. This is so because Class 25 is in respect of goods and covers "footwear", whereas Class 35 is in respect of services, and it was the Plaintiff's specific case that the Defendants were infringing the Plaintiff's trade mark by selling footwear, i.e., goods, under the impugned trade mark. Thus, the very basis of the Plaintiff's claim for seeking ex parte ad interim relief was the Plaintiff's registration in Class 25 and not Class 35. It is not in dispute that the Plaintiff's registration in Class 25 contained a specific limitation/disclaimer by which the operation/validity of the said registration was specifically restricted to only the State of Maharashtra. The Plaintiff has, in the course of oral submissions, in fact conceded that in view of the limitation/disclaimer, the Plaintiff on the basis of the Class 25 registration would not have been entitled to an injunction for infringement of trade mark which would operate beyond the State of Maharashtra. Thus, while it is unstateable to contend, as the Plaintiff has, that non-disclosure of

the limitation/disclaimer was an inadvertent oversight, it is plainly dishonest for the Plaintiff to have submitted that the said limitation/disclaimer did not affect the Plaintiff's entitlement in the present proceedings.

- ii. *Additionally*, the fact that in a suit for infringement of trade mark, any disclaimer is a material and relevant fact is no longer res integra. The Delhi High Court in the case of ***Om Prakash Gupta*** has specifically held that the limitation/disclaimer imposed on the trade mark registration in a suit for infringement of trade mark is a material and relevant factor which ought to have been disclosed to the Court, especially at the time of making an application for ex parte ad interim reliefs. Furthermore, as noted by the Division Bench of this Court in the case of ***Kewal Vasovya***, a Plaintiff who seeks to move for ex parte ad interim reliefs “*must be shown to have made the necessary and proper enquiries, within the bounds of reason, before making the application. This material can be in supporting affidavit, but it must be before the court. Some level of investigation and enquiry must be demonstrated. This duty of disclosure includes matters of which the applicant would have been aware had he made reasonable enquiries. Specific to IPR matters, for instance, is the requirement for a search in the registry as to what, if anything, the defendant has done in regard to the competing mark, service, product or thing. For Trade marks: has the defendant sought registration? When and with what effective date?*

With or without a disclaimer? There must be market information too : how long has the defendant been in the market with the rival product and mark? In what area? In what manner?”²⁰

- iii. Prior knowledge : It is an admitted position that Defendant No. 1 had, prior to the filing of the present Suit, filed a Counter Statement and an Affidavit of Evidence before the Trade Marks Registry in the opposition proceedings initiated by the Plaintiff against Defendant No. 1’s trade mark application. In those proceedings, Defendant No. 1 had produced evidence in support of user of the impugned trade mark since April 2022. Although paragraph 30 of the Complaint makes a passing reference to these proceedings, neither the Counter Statement nor the Affidavit of Evidence has been annexed. Further, despite the Plaintiff’s admitted knowledge of the said Affidavit of Evidence, the same has neither been explained nor dealt with in any meaningful manner in the Complaint. A reading of paragraph 4(m) of the Rejoinder makes it evident that the Plaintiff has merely brushed aside the Defendants’ evidence by baldly asserting that it lacked credibility, without furnishing any cogent reason for such an assertion. This omission is particularly striking given that while the Plaintiff had debunked a large portion of the evidence produced by Defendant No. 1, the Plaintiff had neither disputed nor denied the fact that the Defendants had produced 17 invoices evidencing sales from April 2022 onwards, as well as listings on Flipkart all of which

²⁰ Paragraph 15(d) of *Kewal Vasoya*

were prior to the filing of the Suit. This material, which the Plaintiff was admittedly aware of, directly contradicts the Plaintiff's assertion that the Plaintiff first became aware of the Defendant's use of the impugned mark only in March 2025. In these circumstances, it is impossible to accept that the Counter Statement and Affidavit of Evidence filed before the Trade Marks Registry were not material facts requiring disclosure in the Plaintiff.

- iv. Prior Stand: It is not in dispute that the Plaintiff, during the course of obtaining registration in Class 25, had specifically taken the stand that the Plaintiff was not claiming any exclusive right in the words "DOCTOR" or "SOFT", and on the basis of which, the Plaintiff had secured registration under Class 25. As held by this Court in ***PhonePe Pvt. Ltd.***, the stand taken by a Plaintiff before the Registrar of Trade Marks during prosecution of its own trade mark application is a relevant factor. The Plaintiff's contention that the decision in ***PhonePe Pvt. Ltd.*** is inapplicable on the ground that the Plaintiff had not made any representation to the Defendants and that any representation made by the Plaintiff to a third party in the course of the registration proceeding would be wholly inapplicable and accordingly irrelevant to the present case. This contention has, however, been answered by this Court in the case of ***PhonePe Pvt. Ltd.*** in which this Court has noted that "*The Plaintiff is not justified in contending that once it has obtained registration for its trade mark, the stand taken on its behalf in the proceeding leading upto*

*grant of such registration cannot haunt the Plaintiff in subsequent legal proceedings.*²¹ Thus, clearly, the stand taken by the Plaintiff in the course of obtaining its Class 25 registration was a relevant material fact which was required to have been disclosed by the Plaintiff more so since the Plaintiff was moving for ex parte ad interim relief. Hence, the decision of the Hon'ble Supreme Court in the case of *Suzuki Parasrampuriah Suitings (P) Ltd.*, upon which reliance was placed by the Plaintiff, would not apply since the question which presently falls for consideration is not whether the Plaintiff would be bound by such a stand qua the Defendant, but whether the stand taken by the Plaintiff was a relevant factor which the Plaintiff was required to disclose.

B. **Second**, the contention that the non-disclosure of the disclaimer or limitation was "inadvertent" is wholly untenable. As already noted, the Plaintiff's registration in Class 25 formed the very foundation of the Plaintiff's claim for ex parte ad interim relief. Also, the Plaintiff contains extensive and largely irrelevant details concerning the Plaintiff's registration in Class 25; however, the three most material aspects pertaining to such registration, namely, (i) the territorial limitation/disclaimer, (ii) the evidence of prior user by the Defendants of the impugned trade mark, and (iii) the Plaintiff's prior stand before the Trade Marks Registry, are all absent. It is inconceivable that the omission of all these three material facts was the result of inadvertence. To even

²¹ Paragraph 28 of *PhonePe Pvt. Ltd*

suggest this would, in my view, is an affront to the Court and to condone such “inadvertence” would amount to putting a premium on dishonesty since it would embolden other dishonest litigants to obtain ex parte orders by suppressing material facts and then simply plead “inadvertence”. Also, it is not in dispute that the Plaintiff has only one registration in Class 25 and not multiple registrations. Had the Plaintiff had multiple registrations in the same Class, and had the Plaintiff omitted to produce the status in respect of only one, such contention might have been plausible, however, not so when the Plaintiff admittedly has only one registration and has kept back three material facts in respect of that one registration. Thus, I have no hesitation in holding that the Plaintiff has deliberately suppressed material facts from this Court.

C. **Third**, as observed by the Division Bench of this Court in *Kewal Vasoya*, a Plaintiff seeking to move ex parte is under a strict obligation to act with the utmost good faith and to make a full, fair, and frank disclosure of all material facts, including those that may be adverse to its own case. In the present matter, given that the Suit is a Commercial IP Suit, and that the Plaintiff was moving for ex parte ad interim relief, it was incumbent upon the Plaintiff to have disclosed whether the Plaintiff’s registration in Class 25 was subject to any disclaimer. *Crucially*, the Plaintiff has at no point denied knowledge of the said limitation/disclaimer or that the same applied only to the State of Maharashtra but has simply stated that the non-disclosure of the same was ‘inadvertent’. Thus there is no

explanation even offered by the Plaintiff as to why, despite being fully aware of the fact that the Plaintiff's Class 25 registration would apply only to the State of Maharashtra, this was not even pleaded. The Plaintiff has not only failed to make such disclosure but has relied upon a registration certificate that was not intended for use in legal proceedings without annexing the status page of the Plaintiff's registration in Class 25, which would have all the relevant details pertaining to the said registration. It was on the strength of this defective and incomplete disclosure that the Plaintiff applied for an ex parte ad interim injunction, which admittedly operated beyond the State of Maharashtra, a relief that, as conceded by the Plaintiff during oral submissions, the Plaintiff would never have been entitled to on the strength of the Plaintiff's registration in Class 25.

D. **Fourth**, by suppressing the Counter Statement and Affidavit of Evidence filed by Defendant No. 1, both of which evidenced user of the impugned trade mark since April 2022, and then asserting that the Plaintiff became aware only in March 2025 of the use of the impugned trade mark the Plaintiff has not only created a false sense of urgency but, in my unhesitating view, made a false and misleading statement. The complete lack of bona fides on the part of the Plaintiff is also manifest from the fact that the Plaintiff had, during the course of the Plaintiff's application for registration in Class 25, not claimed exclusivity over the words "DOCTOR" and "SOFT" and on that basis obtained registration in Class 25.

The Plaintiff, however, did not disclose this stand in the Plaint and then, on the basis of a diametrically opposite stand to the stand taken by the Plaintiff at the time when the Plaintiff had applied for the Class 25 registration, obtained ex parte ad interim relief. The deliberate and selective withholding of such material, namely (i) the territorial limitation/disclaimer, (ii) the evidence of prior user by the Defendants of the impugned trade mark, and (iii) the Plaintiff's stand before the Trade Marks Registry while obtaining registration in Class 25, is, in my view, clearly a fraud which has been played on this Court by the Plaintiff only to obtain the ex parte ad interim order. Thus the conduct of the Plaintiff is plainly dishonest and, infact, unscrupulous.

E. **Fifth**, the Plaintiff's dishonest and unscrupulous conduct is further manifest from the fact that, (i) though the Plaintiff in the course of oral arguments, contended that the Plaintiff had immediately clarified the omission of the limitation/disclaimer, there was infact no immediate clarification. It was only after the suppression was pointed out by the Defendants in the Affidavit in Reply, did the Plaintiff in the Affidavit in Rejoinder state that the omission was inadvertent and nothing more (ii) even after the Defendants brought the limitation/disclaimer on record, the Plaintiff made no attempt to modify and/or restrict the operation of the ex parte order to only the State of Maharashtra, despite subsequently in the course of oral arguments conceding that Plaintiff would not have on the

basis of the Class 25 registration been entitled to an injunction for infringement beyond the geographical limits of the State of Maharashtra (iii) the Plaintiff then after the suppression of the disclaimer was pointed out alleged contempt on the part of the Defendants and filed an application under the provisions of Order XXXIX Rule 2A of the CPC on 18th August 2025 (iv) in the contempt proceedings, the Plaintiff filed multiple affidavits (on 2nd, 12th, and 24th September 2025) alleging aggravated contempt on the part of the Defendants clearly only to delay the matter. This conduct clearly shows that even after the limitation/disclaimer was brought on record by the Defendants, the Plaintiff did everything possible to ensure that the ex parte ad interim order continued. Crucially, during the oral arguments, the Plaintiff contended that the limitation/disclaimer was “wholly immaterial” since the Suit was filed with the State of Maharashtra, initially overlooking but then conceding to the fact that the injunction operated pan India and was not confined in its operation to only the State of Maharashtra. Hence, the Plaintiff not only obtained the ex parte ad interim injunction by playing a fraud upon this Court but has also, thereafter, when the same was brought on record, brazenly sought to ensure that the same continued.

F. **Sixth**, I find no merit in the content that, in the facts of the present case, it would be in the interest of justice that the ex parte ad interim order be either continued or moulded to apply only to the State of Maharashtra.

The Plaintiff's dishonest and unscrupulous conduct has disintitiled the Plaintiff to such relief, even assuming the Plaintiff had made out a case in support of such relief. Furthermore, this contention of the Plaintiff is premised entirely on the assumption that the Defendants have infringed the Plaintiff's statutory rights under Sections 28 and 29 of the Trade Marks Act, 1999, and are therefore disintitiled to any relief under Order XXXIX Rule 4 of the CPC. This contention was premised entirely on the basis that the Defendants had "admittedly" infringed the Plaintiff's statutory rights when, infact, there is no admission of infringement, as conceded by the Plaintiff. Thus, merely because the Plaintiff has filed a Suit for infringement does not automatically mean that the Defendants have committed infringement. If the Plaintiff's contention is to be accepted, then in every suit for infringement, the Defendant would automatically be deemed to be guilty of infringement on the filing of a Suit by a registered proprietor. Such an interpretation of Sections 28 and 29 of the Trade Marks Act is plainly untenable, as a Defendant would be deemed guilty of having committed infringement simply on the Plaintiff's ipse dixit. Hence, for these reasons, the Plaintiff's reliance upon the judgement in the case of **Kewal Vasoya** in support of the proposition that a Court has the discretion to continue an ex parte order even when there is suppression if the interests of justice so require is entirely misplaced.

- G. **Seventh**, equally untenable is the Plaintiff's submission that the ex parte ad interim order had "*conclusively found the Defendants guilty of infringement and that the Defendants had not preferred any appeal against the ex parte order*". Such a contention needs only to be stated to be rejected since (i) the question of there being any conclusive findings rendered in an ex parte ad interim order does not arise, (ii) the order was obtained by playing a fraud upon this Court, and (iii) the Defendants have taken recourse to the provisions of Order XXXIX Rule 4 of the CPC to set aside the ex parte ad interim order. Hence, it is absurd to suggest that there has been any acquiescence on the part of the Defendants.
- H. **Eighth**, in light of what is held by me in (A), (B) and (D) above, the judgements in the case of ***K.L.F. Nirmal Industries Pvt. Ltd.*** and ***Asma Farid Noorani*** upon which reliance was placed by the Plaintiff will not apply since in the present case the suppression is wilful and deliberate. Also, I find that there is nothing in the conduct of the Defendants so as to warrant denial of the reliefs which have been sought for by the Defendants. The overarching issue before the Court is the dishonest and fraudulent conduct of the Plaintiff and the manner in which the ex parte order has been obtained, the ex parte. This is something that cannot be condoned. Hence, the judgements in the cases of ***Gujarat Bottling Co. Ltd.*** and ***Kilachand Devchand & Co. Ltd*** relied upon by the Plaintiff are of no assistance to the Plaintiff in the facts of the present case.

I. **Ninth**, the Hon'ble Supreme Court, in the case of ***Ramjas Foundation v. Union of India***, has held that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatements or by suppressing facts which have a bearing on the adjudication of the issues arising in the case. The Hon'ble Supreme Court has also, in the case of ***Prestige Lights Ltd.***, held that suppression of material facts by a litigant justifies outright dismissal of proceedings. Both this Court in the case of ***Nagina Ramsagar Choube*** and the Delhi High Court in the case of ***Om Prakash Gupta*** have, at the interlocutory stage itself, dismissed suits on finding that the Plaintiff had suppressed material facts.

J. **Tenth**, on the aspect of costs, I must only note the observations of the Hon'ble Supreme Court in the case of ***Dnyandeo Sabaji Naik***, in which the Hon'ble Supreme Court has, *inter alia*, held as follows:

"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth."

14. ...this tendency can be curbed only if Courts across the system adopt an institutional approach which penalizes such behaviour. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that Courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all Courts here and now our society will breed a legal culture based on evasion instead of abidance."

Also, since the present Suit is a Commercial Suit the conduct of the Plaintiff which I have already noted above, is also a relevant factor when considering the aspect of costs. Additionally, since the present Suit is a Commercial Suit, the question of costs is to be considered in light of Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015, which would also necessitate the conduct of the Plaintiff to be taken into account. This position has been recognised in *Sai Trading Co. v. KRBL Ltd.*, and *Dashrath B. Rathod v. Fox Star Studios India Pvt. Ltd.* The Plaintiff has also given an undertaking in terms of Rule 126(ix)(a) of the Bombay High Court (Original Side) Rules, 1980, to pay damages or costs as may be directed by the Court, should the Defendants suffer any prejudice by reason of such interim order. Thus the Plaintiff was therefore fully aware of the consequences that would ensue in the event of any prejudice being caused to the Defendants by the grant of such ex parte relief. The Defendants have set out that their entire business has come to a standstill by virtue of the ex parte ad interim Order, and Defendant Nos. 1 and 3 have also on Affidavit setting out the sales figures duly certified by a chartered accountant for the month of June 2025, i.e.,

the month prior to the passing of the ex parte Order. Hence an Order of costs must follow.

65. In the aforesaid circumstances, I pass the following order:

ORDER

- i. The suit is dismissed.
- ii. The Plaintiff shall pay a sum of Rs. 25,00,000/- each to Defendant Nos. 2 and 3, as and by way of cost.
- iii. The Court Receiver is discharged without passing account, subject to payments of all costs, charges and expenses by the Plaintiff.
- iv. The goods which have been seized by the Court Receiver pursuant to the ex parte ad interim Order shall be returned to the Defendants forthwith with prior notice to the Plaintiff.
- v. In view of the dismissal of the suit, Interim Application (L) No.18278 of 2025 and Interim Application No.5889 of 2025, Leave Petition (L) No.18257 of 2025 and Court Receiver Report No.327 of 2025 do not survive and stand disposed of.

(ARIF S. DOCTOR,J.)