



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.17223 OF 2025

J.B. Metal Industries Pvt. Limited

...Petitioner

V/s.

Prashant Gopal Sharma and Anr.

...Respondents

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**Mr. Gauraj Shah** with *Mr. Sameer Kolge and Mr. Priyanshu Santosh Mishra for the Petitioner.*

**Mr. Ashish Kamat**, *Senior Advocate with Ms. Huzan Bhumgara i/b. Mr. Jatin Lalwani for Respondent Nos. 1 and 2.*

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**CORAM: SANDEEP V. MARNE, J.**

**DATED: 13 MARCH 2026.**

**Judgment:**

1) By this Petition, Petitioner /Defendant challenges order dated 11 September 2025 passed by the Appellate Bench of the Small Causes Court allowing Misc. Appeal No.31 of 2024 and setting aside order dated 3 February 2024 passed by the learned Judge, Small Causes Court on Application at Exhibit-9 filed in T.E. Suit No.152 of 2022. The Appellate Court has granted temporary injunction in favour of the Plaintiffs by restraining the Defendant from dealing with, disposing of, transferring or alienating, assigning or parting with the possession of suit premises or from carrying out any work of demolition, additions, alterations or constructions therein.

2) Respondents / Plaintiffs have instituted T.E. Suit No.152 of 2022 seeking ejectment of Petitioner/Defendant from the demised property being land admeasuring 7,260 sq. yards, at Survey No.66(Part), bearing C.T.S. No.96/1 to 3, situated at Saki Village, Saki Vihar Road, Saki Naka, Mumbai- 400 072 (**suit property**). Plaintiffs have also sought direction for removal of structures from the suit property and has sought enquiry into *mesne* profits under Order XX Rule 12 of the Code of Civil Procedure, 1908 (**the Code**). It is Plaintiffs' pleaded case in the Plaint that they are owners /landlords of the suit property. It is their pleaded case that Plaintiffs' father Mr. Gopal Chandrabhan Sharma was earlier a lessee in respect of the suit property and purchased the reversionary rights in the suit property from the owners and this is how Plaintiffs' father became owner in respect thereof. After the death of their father on 31 January 1998, Plaintiffs claim ownership in the suit property. According to the Plaintiffs, the other legal heirs of Gopal Chandrabhan Sharma have executed Release Deed in respect of the suit property in their favour.

3) In the Suit, Plaintiffs have pleaded that an Indenture of sub-lease dated 25 September 1959 was executed in favour of the predecessors of the Defendant granting sub-lease in respect of the suit property for a tenure of 99 years. It is pleaded that the Defendant was permitted to put up a structure for the use as a factory for the purpose of manufacturing activities. Plaintiffs have pleaded that a construction has been put up by the Defendant unauthorisedly and in breach of covenants of lease and without consent and/or knowledge of the Plaintiffs. The Defendant has committed breach of conditions of the sub-lease by granting licenses in respect of the portions of the structure constructed on the suit property.

It is further pleaded that the Defendant has sold a portion of the land in the suit property to one 'Dankal (India) Private Limited' in the year 2006 and another portion is sold to 'Natraj Paper Box Factory' in the year 2005. It is further stated that the Defendant has further created third party rights in favour of 'SNDT Realty Private Limited', who has further created rights in favour of 'Hotel Blue Executive'.

4) The Defendant appeared in the Suit and filed its written statement. The Plaintiffs filed Application at Exhibit-9 seeking temporary injunction in the Suit in addition to various other prayers. The Trial Court however, considered the Application at Exhibit-9 only for temporary injunction. The Defendant filed purshis for treatment of the written statement as reply to the Application. After hearing the parties, the Trial Court proceeded to pass order dated 3 February 2024 rejecting the Application at Exhibit-9 and granting liberty to the Plaintiffs to file separate Application in respect of the remaining prayers other than injunction. Plaintiffs filed Misc. Appeal No.31 of 2024 before the Appellate Bench of the Small Causes Court challenging the order dated 3 February 2024. By the impugned order dated 11 September 2025, the Appellate Bench has proceeded to allow the Appeal by setting aside the order of the Trial Court. The Appellate Court has allowed the Application at Exhibit-9 to the extent of prayer clause (c) and has granted temporary injunction in favour of the Plaintiffs in following terms:

Pending the hearing and final disposal of the suit, the Defendant, its servants, agents or persons claiming through them be restrained by an order and injunction of this Hon'ble Court from dealing with, disposing off, transferring or or parting with the alienating, assigning possession or occupation of the Suit Property or any part thereof or from inducting any third party therein or from creating any third party rights, claim or interest therein or from carrying out any work of

demolition, additions, alterations or constructions in or to the Suit Property or any part thereof or from removing and/or mis-appropriating any of the Plaintiffs' property in and from the Suit Property viz. piece and parcel of land or ground admeasuring about 7260 sq. yards or thereabout covered by Survey no. 66 (Part) bearing corresponding C.T.S No. 96/1 to 3 situate lying and being at Saki village, Saki Vihar Road, Saki Naka, Mumbai-400 072.

Aggrieved by order dated 11 September 2025 the Defendant has filed the present Petition.

5) I have heard Mr. Shah, the learned counsel appearing for the Petitioner, who submits that the Appellate Court has grossly erred in reversing well-considered decision of the Trial Court. That the Trial Court denied equitable relief of temporary injunction taking into consideration gross suppression of material facts by the Plaintiffs. That the Plaintiffs suppressed from the Court that the Defendant is the owner of the structure vide Indenture dated 25 September 1959. That the Plaintiffs also suppressed the factum of filing of earlier Suit bearing R.A.E. & R. Suit No.762 of 1992. He relies on judgment of this Court in ***Elder Neutraceuticals Private Limited V/s. Elder Prroject Limited***<sup>1</sup> in support of his contention that equitable relief of temporary injunction cannot be granted in favour of the Plaintiff, who approaches the Court with unclean hands. He otherwise submitted that the Defendant has not committed breach of conditions of the lease. That the transactions in question have been effected several years ago and there was no cause for consideration of Plaintiffs' application for temporary injunction at such belated stage. He would accordingly pray for setting aside the impugned order passed by the Appellate Bench.

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1 Interim Application (L) No.35091 of 2025, decided on 9 March 2026.

6) Mr. Kamat, the learned Senior Advocate appearing for the Plaintiffs opposes the Petition submitting that the non-disclosure about Indenture dated 25 September 1959 and filing and dismissal of earlier Suit has absolutely no bearing for deciding Plaintiffs' application for temporary injunction. That this position is rightly appreciated by the Appellate Court. That the Plaintiffs have not suppressed any material fact, which was necessary for the purpose of deciding application for temporary injunction. In support, Mr. Kamat relies on judgments of the Apex Court in *S.J.S. Business Enterprises (P) LTD. V/s. State of Bihar and Others*<sup>2</sup> and *Arunima Baruah V/s. Union of India and Others*<sup>3</sup>. That the Defendant has admittedly committed breach of the terms of tenancy by creating several third-party rights in the suit property. That the Defendant represented to the world that it is owner of the demised land. That the Defendant has expanded the structure by erecting a new RCC building comprising of ground plus mezzanine, first and second floors. That in the light of brazen breaches of tenancy committed by the Defendant, it was necessary for the Court to injunct it from creating further third-party rights and putting up any additional construction in the suit property.

7) Mr. Kamat further submits that the present Suit is being prosecuted by the children of the predecessor-in-title of the land, who were not aware about filing of previous suit by their father, which is a reason why no disclosure thereabout could be made. That the said Suit was for ejectment under the old Rent Act, which applied even to vacant

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<sup>2</sup> (2004) 7 SCC 166

<sup>3</sup> (2007) 6 SCC 120

lands and is dismissed for non-prosecution and not on merits. That the current suit is under Section 41 of the Presidency Small Causes Courts Act, 1888 for ejectment of a lessee, who does not enjoy the protection of Maharashtra Rent Control Act, 1999. That the Defendant has committed acts of breach of lease post dismissal of the Suit and therefore principle of *res judicata* would not apply. He further submits that the Defendant has defaulted in payment of rent for the last several years. That the lease was earlier terminated on 18 April 1985 due to default in payment of rent since 1 January 1978. A fresh termination notice is served on the Defendant on 15 September 2022. Lastly, Mr. Kamat submits that interim injunction does not prevent the Defendant from enjoying the property and all that is does is to prevent the Defendant from creating further third party rights and from carrying out any additional construction in the suit property. He would accordingly pray for dismissal of the Petition.

8) Rival contentions raised on behalf of the parties now fall for my consideration.

9) The Plaintiffs have filed the Suit for ejectment of the Defendant, who is inducted in respect of the open land vide Indenture of sub-lease dated 25 September 1959. It appears that the Plaintiffs' father was the original lessee, who executed sub-lease in favour of the predecessor in title of the Defendant. Plaintiffs' father subsequently purchased the suit property vide Conveyance Deed dated 30 March 1964.

10) On 25 September 1959 two documents were executed. Firstly, an Indenture of sub-lease was executed with the sublessee -Chandrabhan Sharma, to which 'International Structure Engineering Work Private

Limited Company' was a confirming party. By a second document branded as Indenture dated 25 September 1959, the Petitioner's predecessor-in-title purchased from the International Structure Engineering Work Private Limited' the buildings standing on the demised land (suit property). This is how Petitioner's predecessor-in-title became lessee in respect of the suit property but owner in respect of the structures standing thereon.

11) In their Complaint however, Plaintiffs have conveniently disclosed execution of only the Indenture of sub-lease dated 25 September 1959 and suppressed the factum of purchase of buildings vide separate Indenture dated 25 September 1959 by the predecessor-in-title of the Petitioner/Defendant. Going further, it *prima facie* appears that the Plaintiffs have pleaded a false case in the Complaint that the Defendant has constructed a structure of approximately 38860 sq.ft. on the suit property without the consent and /or knowledge of the Plaintiffs. The pleaded case of the Plaintiffs in paragraph 5 of the Complaint is as under:-

5. ...The Plaintiffs state that in defiance to the above agreed clause of said Agreement, the Defendant has constructed a structure of approx. 38860 sq.ft. on the Suit Property without the consent and/or knowledge of the Plaintiffs. The Plaintiffs further state that, the Defendant has, in flagrant violation of the Plaintiffs rights, continued to put up illegal and unauthorised constructions on the Suit Property whereas at the initial stage of execution of the said Agreement the Defendant was allowed to, and subject to permissions of statutory authority/s, put up a structure intended to be used as their factory, for purposes of manufacturing, the Defendant notwithstanding the knowledge that the said Agreement subsisting by and between the parties hereto had come to an end and by reason of the laches as above, persisted in putting up constructions on the Suit Property. ...

12) Thus, Plaintiffs have *prima facie* indulged in gross suppression of the fact that the buildings were already standing on the demised land and that the predecessor-in-title of the Defendant has purchased the said buildings for valuable consideration vide a separate Indenture dated 25 September 1959 executed by the erstwhile owner- International Structure Engineering Work Private Limited Company. Instead of disclosing that the Defendant is the owner in respect of the structures purchased vide Indenture dated 25 September 1959, the Plaintiffs have *prima facie* falsely pleaded that the construction on the demised land is unauthorised. Far from disclosing that there were buildings on the demised land at the time of execution of Indenture of sub-lease dated 25 September 1959, the Plaintiffs have further falsely pleaded that '*at the initial stage of execution of the said Agreement the Defendant was allowed to, and subject to permissions of statutory authority/s, put up a structure intended to be used as their factory*'. Thus, the Plaintiffs' *prima facie* appears to be replete with blatantly false statements. The Plaintiffs have also suppressed the factum of filing of RAE and R. Suit No.762 of 1992 by their father against the Defendant for recovery of possession of the suit premises and dismissal of the said Suit in default by order dated 5 July 1993.

13) The Trial Court, in my view, had rightly refused to exercise discretion in favour of the Plaintiffs for granting the equitable relief of temporary injunction. The Trial Court has also rightly taken into consideration the fact that the Defendant has purchased the structure on the suit property and there is no documentary proof to show that any transaction is done by it in respect of the land beneath such structure.

14) The Appellate Bench of the Small Causes Court has egregiously erred in condoning the Plaintiffs' conduct of indulgence in gross suppression. The Appellate Court has emphasised the fact that a party invoking the equitable jurisdiction must itself act equitably by approaching the Court with clean hands and that suppression of material facts disentitles a party from seeking discretionary relief. Findings recorded by the Appellate Court in paragraphs 16 and 29 in the impugned order read thus:

16. At the same time, this Court is conscious of the well-settled principle that an injunction is an equitable relief. A party invoking equity must itself act equitably and approach the Court with clean hands. If any party has suppressed material facts or indulged in inequitable conduct, it disentitles itself from such discretionary relief. Importantly, injunction is not a matter of right but lies within the sound discretion of the Court.

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29. In our considered view, therefore, the rejection of the injunction application solely on the ground of concealment was improper. The Trial Court ought to have examined the matter in light of the established principles governing injunctions.

15) Despite emphasising the principle that suppression of material facts disentitles a Plaintiff from seeking equitable and discretionary relief of injunction, the Appellate Court has still proceeded to grant one in Plaintiffs' favour. The Appellate court has grossly erred in assuming that the Defendant has sought to deny Plaintiffs' title. Plaintiffs' title is denied in respect of the structures purchased by the Defendant vide Indenture dated 25 September 1959. Thus, the impugned order is passed by the Appellate Court based on totally erroneous assumptions. The Defendant has merely dealt with contents of paragraphs 2 and 3 of the Plaint relating to Conveyance Deed dated 30 March 1964 and based on the averments in paragraph 13 of the written statement, it is difficult to

arrive at a conclusive finding at this stage that there is any denial of title in respect of the land on the part of the Defendant.

16) The Appellate Court has taken into consideration the suppressed document, being Indenture dated 25 September 1959, and has recorded a finding in paragraph 26 that '*while the defendants may have purchased certain structures from the Company, they acquired no independent title in the land*'. However, the Appellate Court has glossed over the fact that the Defendant has not claimed any title in the land. The findings of the Appellate Court that the '*sub-lease and the Purchase Deed being contemporaneous documents, the latter cannot dilute the legal relationship established by the former*.' is recorded in ignorance of the fact that the Plaintiffs have alleged breach of conditions of sub-lease in respect of activities of the Defendant in respect of the structure and that therefore ownership of structure by Defendant is a relevant factor to be considered. On the basis of further erroneous finding that '*as the relationship between the parties flows from the Sub-lease alone*', the Appellate Court has absolved the Plaintiffs from the responsibility of pleading the factum of Defendant having been purchased the structure vide Indenture executed on 25 September 1959. The findings recorded by the Appellate Court in paragraph 26 of the impugned order read thus:

26. Thus, while the defendants may have purchased certain structures from the Company, they acquired no independent title in the land. The plaintiffs' grandfather, as lessee under the head lease, retained reversionary rights, which later passed by conveyance to the plaintiffs' father. **The Sub-lease and the Purchase Deed being contemporaneous documents, the latter cannot dilute the legal relationship established by the former. Consequently, the plaintiffs were not obliged to plead the Purchase Deed in their plaint, as the relationship between the parties flows from the Sub-lease alone.** The

Trial Court's view that suppression of this document was fatal is, therefore, untenable.

*(Emphasis added)*

17) Similarly, the Appellate Court has opened an escape door for the Plaintiffs in respect of their act of suppression about filing of RAE & R. Suit No.762 of 1992 by holding in paragraph 27 as under:

27. Similar is the position regarding the alleged concealment of R.A.E. & R. Suit No. 762 of 1992, filed by the plaintiffs' father against the defendants. The said suit was admittedly dismissed for default. No material has been placed on record to show how such dismissal affected the plaintiffs' rights. Mere non-disclosure of a suit that ended in default cannot, by itself, defeat their present claim.

18) The entire approach of the Appellate Court is thus faulty. It has proceeded to reward a litigant who has indulged in gross suppression of material facts by granting the discretionary relief of temporary injunction.

19) Injunction is an equitable relief and party seeking the same must approach the Court with clean hands. If the court notices that the Plaintiff has approached it with unclean hands and by suppressing the material facts and documents, the Court can straightaway refuse to grant temporary injunction in favour of the Plaintiff without even looking into the merits of the case. Law in this regard is well settled by several judgments of the Apex Court. Reference in this regard can be made to the judgments in *Ramjas Foundation and another V/s. Union of India and others*<sup>4</sup> and *Prestige Lights Limited V/s. State Bank of India*<sup>5</sup>. Plaintiffs cannot indulge in suppression of material facts and then seek to explain that what is suppressed is not material. In *Bhaskar Laxman Jadhav and*

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4 (2010) 14 SCC 38

5 (2007) 8 SCC 449

***Others V/s. Karamveer Kakasaheb Wagh Education Society and Others***<sup>6</sup>

the Apex Court has held that it is not for a litigant to decide what factor is material for adjudication of a case and what is not. It is an obligation of a litigant to disclose all facts of a case and leave the decision making to the Court. Recently, this Court had an occasion to deal with the effect of suppression on Plaintiff's entitlement to temporary injunction in ***Elder Neutraceuticals Private Limited*** (supra), in which this Court has surveyed various decisions and has held in paragraph 42 to 46, 51, 52 and 53 as under:

**EFFECT OF SUPPRESSION**

**42)** It is well settled position that injunction is an equitable relief and a party seeking the same must approach the Court with clean hands. The relief of temporary injunction can be denied to a party only on the ground of he not approaching the Court with clean hands. An instructive judgment on the issue is ***Abdul Cadur Allibhoy*** (supra) in which the Full Bench of this Court has emphasized the requirement of Plaintiff approaching the Court with clean hands. In relation to use of trademark, the Court observed that if the Plaintiff himself is found selling goods of another or if his trademark gives a false description of the article, he violates the rule on which he seeks relief against the Defendant.

**43)** In ***Ramjas Foundation*** (supra), the Apex Court has held that it is the duty of the plaintiff to state the whole case fully and fairly before the Court. It has held that when Defendant applies for vacation of injunction on the ground that material fact has been suppressed or has not been properly brought forward, the Plaintiff must be told that the Court would not decide as the faith of the Court is broken and the injunction must be vacated. It is held in paras-21, 22, 23 and 24 as under:

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 others 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

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6 (2013) 11 SCC 531

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 a bearing on adjudication of the issue(s) arising in the case.

**22.** In *Dalglish v. Jarvie* [(1850) 2 Mac & G 231 : 42 ER 89] , Mac & G at p. 238, Lord Langdale and Rolfe, B. observed: (ER p. 89)

“It is the duty of a party asking for an injunction to bring under the notice of the court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.”

**23.** In *Castelli v. Cook* [(1849) 7 Hare 89: 68 ER 36] , Hare at p. 94, Wigram, V.C. stated the rule in the following words: (ER p. 38)

**“... a plaintiff applying ex parte comes ... under a contract with the court that he will state the whole case fully and fairly to the court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the court will not decide on the merits, and that, as he has broken faith with the court, the injunction must go.”**

**24.** In *Republic of Peru v. Dreyfus Bros. & Co.* [55 LT 802] , LT at p. 803, Kay, J. held as under:

**“I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith in the Court when ex parte applications are made.”**

*(emphasis added)*

**44)** In *Prestige Lights Limited* (supra), while dealing with the issue of suppression in a petition filed before the High Court under Article 226 of the Constitution of India, the Apex Court has held in paras-33 and 34 as under:

33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a

High Court, he must place all the facts before the Court without any reservation. **If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.**

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)], in the following words:

**“it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.”**

*(emphasis supplied)*

45) Though the above observations are made in the context of a Writ Petition filed under Article 26 of Constitution Of India, the same has been repeatedly followed by this Court while dealing with the issue of vacation of *ex-parte* injunction based on suppression in suits as well.

46) In *Bhaskar Laxman Jadhav* (supra), the Apex Court has held that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of the case and leave the decision making to the Court. It is held that it is a duty of the litigant to come upfront and clean with all material facts and then leave it to the Court to determine whether or not a particular fact is relevant for arriving at the decision. It has held in paras-44 and 47 of the judgment as under :-

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

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. **It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision.** Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

*(emphasis added)*

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51) The law thus is fairly well settled that Plaintiff has a duty to make full disclosure of all material facts and it is not for the Plaintiff to decide which fact is material and which is not. Plaintiff cannot first indulge in suppression of facts and upon being caught, raise a defense that what is suppressed is not material. Mr. Tamboly has relied upon judgment of this Court in ***International Association of Lions Club*** (supra) in support of his contention that to arrive at a case of suppression of facts which disentitles party to any relief, the facts suppressed must be material to the outcome of the dispute. In case before this Court, the Defendants therein had accused Plaintiff of non-disclosure of facts of institution of civil suit before the District Court of Jabalpur and it was contended that Plaintiff was not entitled to discretionary relief of injunction on account of suppression. This Court considered whether Plaintiffs were obliged to disclose the fact of institution of the said suit filed in representative capacity by another person under Section 120 of the Trade and Merchandise Marks Act, 1950, which provision envisaged for a direction against a person who threatens an action or proceeding for infringement of trademark. This Court referred to various judgments and held that the scope of such suit was very limited where only justifiability of threats given by the Defendant could be adjudicated therein. This Court further held that any other finding recorded in such a Suit becomes irrelevant in the context of limited scope of enquiry. It is in the light of these peculiar facts that this Court held that it was not necessary for the Plaintiff therein to disclose filing of the suit before Jabalpur Court. Therefore, the judgment in ***International Association of Lions Club*** is clearly distinguishable and would have no application to the facts of the present case, where there is suppression of material necessary for deciding Plaintiff's entitlement to temporary injunction.

52) Mr. Tamboly has also relied on judgment of the Apex Court in ***Government of NCT of Delhi*** (supra) in support of the contention that the suppression must be of facts material to the dispute. Referring to its judgments in ***S.J.S. Business Enterprises (P) Limited***

*Versus. State of Bihar and others*<sup>7</sup> and *Arunima Baruah Versus. Union of India and others*<sup>8</sup> the Apex Court has held in para 33 to 37 as under:

**F.2. *Suppression of material facts by appellants***

33. The counsel on behalf of the landowners have contended that the conduct of the appellants disqualifies them from seeking any relief. They assert that the appellants filed the present appeals, specifically under Group B-1, without disclosing that civil appeals filed by another appellant/authority against the same impugned order has already been dismissed. Furthermore, this action is deemed as providing an inaccurate declaration under Order XXI Rule 3(2) of the Supreme Court Rules, 2013.

34. Before addressing the aforesaid contention, we may refer to the law laid down in this regard.

35. A Bench of two Hon'ble Judges of this Court in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* held that **a fact suppressed must be material; that is, if it had not been suppressed, it would have influenced the merits of the case.** It was held thus

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. **But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken** [*R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] ...

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36. Further, a Bench of two Hon'ble Judges of this Court in *Arunima Baruah v. Union of India* following the aforesaid dictum, held thus :

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of **material fact**. What would be a material fact, suppression

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7(2004) 7 SCC 166

8 (2007) 6 SCC 120

whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. **Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction.** It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

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

*(emphasis added)*

53) Thus, as held in *Government of NCT of Delhi*, material facts refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. In the present case, I am fully convinced the material relating to (i) ownership and use of ‘ELDER’ mark by EPL, (ii) four adverse orders passed by Delhi High Court, (iii) relationship of directors of Plaintiff and Defendant with each other and with EPL and (iv) proceedings before Official Liquidator possess the potential to significantly influence the decision-making process. If the above material was disclosed, this Court would not have granted *ex-parte* ad-interim injunction in favour of the Plaintiff and would have issued notice to Defendant. In my view therefore, the ad-interim injunction granted in favour of the Plaintiff deserves to be vacated under Order 39 Rule 4 of the Code.

20) In *Elder Neutraceuticals* (supra) the Plaintiff therein made a similar attempt, which Mr. Kamat has made before me, by contending that suppression must be of material fact and that if the allegation of

suppression is not with regard to a material fact, which does not possess the potential to significantly influence the decision making process or alter its trajectory, the Court cannot refuse to exercise discretionary jurisdiction. Reliance is placed by Mr. Kamat on judgments of the Apex Court in ***S.J.S. Business Enterprises (P) LTD.*** and ***Arunima Baruah*** (supra). Both the judgments have been taken into consideration by this Court in ***Elder Neutraceuticals***. In the present case, I have little doubt in my mind that the material suppressed by the Plaintiffs in respect of (i) Indenture dated 25 September 1959, (ii) factum of existence of buildings on the demised land at the time of execution of sub-lease and ownership thereof by the Defendant, (iii) filing and dismissal of R.A.E. & R. Suit No.762 of 1992, have the potential of significantly influencing the decision making process and altering its trajectory. Apart from suppression, Plaintiffs have walked a step ahead and have knowingly and consciously made false averments in the Plaint that the demised land was vacant piece of land and Defendant's predecessor-in-title was granted permission to put up a factory therein. This projections in the Plaint by the Plaintiffs is false to the factual position about existence of buildings on the demised land, which were purchased by Defendant's predecessor in title for consideration of Rs.1,75,000/-on 25 September 1975. The Plaintiffs have created a false picture as if Defendant has breached condition of lease by erecting a building thereon. Plaintiffs have falsely suggested in the Plaint that initial permission in the year 1959 was only for erection of a factory, whereas the Defendant constructed a RCC building comprising of ground plus mezzanine, first and second floors. Unfortunately, this false story projected by the Plaintiffs is accepted by the Appellate Bench by holding in paragraph 34 of the impugned order as under:-

34. The Agreement further records that the defendants had constructed an RCC building comprising ground, mezzanine, first and second floors. If such construction was indeed carried out, it was incumbent upon the defendants to demonstrate that it was with the consent of the landlords. Their bare denial cannot override the documentary evidence produced by the Plaintiffs.

21) It is sought to be suggested by Mr. Kamat during the course of his submissions that the Defendant has expanded originally purchased structure by adding /constructing fresh RCC building comprising of mezzanine and two floors. However, this is not the pleaded case of the Plaintiffs. They have not pleaded that some buildings already existed on the demised land and that the Defendant illegally expanded the said buildings by constructing any additional structure on the demised land. Since there are no pleadings about construction of any 'additional structure', there is no question of Plaintiff making any attempt to prove the same. Without appreciating this position, and particularly the position that the Defendant is the owner of the structure, the Appellate Court has erroneously held that covenants of sub-lease are broken by the Defendant by indulging in unauthorised construction and by unauthorisedly parting with the possession. So far as the induction of licensees and selling of the part of the structures are concerned, *prima facie* Defendant is the owner of the buildings constructed on the demised land vide Indenture dated 25 September 1959. In that view of the matter, Defendant's conduct of selling, parting with possession or inducting licensees in the structure may not *prima facie* constitute breach of conditions of the sub-lease. As rightly held by the Trial Court, there is nothing on record to indicate that Defendant has sold or assigned any rights in the land.

22) Apart from the aspect of suppression, Plaintiffs have otherwise failed to make out *prima facie* case for grant of temporary injunction. Defendant is the owner of the structure and *prima facie* there is nothing in the two Indentures which prevent the Defendant from dealing with the structure. Most of the transactions have taken place in the year 2005 or 2006 as pleaded by the Plaintiffs themselves and the Plaintiffs have failed to move the Court with the necessary alacrity. No irreparable loss is demonstrated as no right in the demised land is created by the Defendant. The balance of convenience is also not in Plaintiffs' favour. Thus apart from indulgence in gross suppression, Plaintiffs have otherwise failed to satisfy the classic trinity test.

23) Considering the above position, I am of the view that the Appellate Bench of the Small Causes Court has egregiously erred in allowing the Appeal preferred by the Plaintiffs and in granting injunction in favour of the Plaintiffs, who have indulged in gross suppression of facts and documents and pleaded a blatantly false case. Impugned order dated 11 September 2025 is thus unsustainable and is liable to be set aside.

24) Petition accordingly succeeds, and I proceed to pass the following order:

- (i) Order dated 11 September 2025 passed by the Appellate Bench of the Small Causes Court in Misc. Appeal No.31 of 2024 is set aside.
- (ii) Misc. Appeal No.31 of 2024 is dismissed.

25) Writ Petition is allowed and **disposed of** in above terms. There shall be no orders as to costs.

**[SANDEEP V. MARNE, J.]**