HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3281 OF 2021
IN
COMMERCIAL IP SUIT NO.189 OF 2021

Asma Farid Noorani … Applicant / Plaintiff
Vs.
Haji Ali Fresh Fruit Juices and others … Defendants

WITH
INTERIM APPLICATION (L) NO.18133 OF 2021
WITH
LEAVE PETITION NO.168 OF 2021
WITH
COURT RECEIVER'S REPORT NO.340 OF 2021
IN
COMMERCIAL IP SUIT NO.189 OF 2021

Mr. Rashmin Khandekar a/w. Mr. Manish Andharia and Mr. Jay Shah i/b. Krishna and Saurastri Associates LLP for Applicant / Plaintiff.

Mr. Hiren Kamod a/w. Prem Khullar i/b. Mr. Gaurav Pande for the Defendants.

CORAM : MANISH PITALE, J.

Reserved on : 17th OCTOBER, 2022
Pronounced on : 11th NOVEMBER, 2022

P.C. :

. Two applications, one filed by the plaintiff and the other filed by the defendants, have come up for consideration. In a manner of speaking, the applications are two sides of the same coin, as the plaintiff on the one hand is seeking continuation and confirmation of ad-interim reliefs granted by this Court, while the defendants are seeking vacation of the ad-interim orders granted by this Court by invoking Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC). The defendants allege that the plaintiff indulged in falsehoods, misleading statements and suppression, indicating that the first proviso to Order XXXIX Rule 4 of the CPC is clearly applicable in the facts of the

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present case, thereby justifying the prayer for vacating the ad-interim reliefs. On the other hand, the plaintiff insists that there has been no suppression or falsehoods and that therefore, the ad-interim reliefs already granted deserve to be continued.

2. It is stated in the plaint that the father of the plaintiff opened a juice center in the year 1971, under the trading name ‘Race-View Juice Corner’, overlooking the Haji Ali Dargah along the Arabian Sea, to provide food and drink, juices, soft drinks and snacks. Around the year 1976, the plaintiff’s father adopted the mark ‘HAJIALI JUICE CENTRE’, concerning the said business in conjunction with the trading name ‘Race View Juice Corner’. In the year 1985, the plaintiff’s father changed the trading name of the establishment from ‘Race View Juice Corner’ to ‘HAJIALI JUICE CENTRE’ and around the year 1991, adopted a label mark ‘HAJIALI JUICE CENTRE’ with a device of an apple.

3. The word mark ‘HAJIALI JUICE CENTRE’ and the label ‘HAJIALI JUICE CENTRE’ with the device of the apple were registered in Classes 43 and 32 in the years 2010 and 2001 respectively. The aforesaid registered marks earned substantial goodwill over a period of time and in the year 2019-20, the turnover reached about Rs.6.05 crores compared to the earlier turnover, which was about Rs.1.93 crores for the year 2005-06. The domain name ‘www.hajialijuicecentre.in’ was also registered in the year 2013 by the plaintiff’s father, wherein information about the restaurant and hospitality business was available to the public at large. The plaintiff claims strong social media presence for the aforesaid marks on Facebook, Instagram as also Zomato and Swiggy.

4. In June 2013, the plaintiff’s father passed away and pursuant to a

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family settlement / agreement dated 03.08.2019, the plaintiff claims to have become the owner of the aforesaid trade mark 'HAJIALI JUICE CENTRE' along with the device of the apple.

5. It is the case of the plaintiff that due to the immense goodwill earned by the aforesaid registered marks over a period of time and the business generated, there have been number of instances of entities copying the marks and seeking to take illegal advantage of the aforesaid goodwill. It is on the basis of such pleadings that the plaintiff filed the aforesaid suit, claiming that sometime in March 2021, a representative of the plaintiff was informed by a licensee of the plaintiff from Kerala that the defendant was intending to open an outlet under the name and mark 'HAJI ALI' and that an advertisement in that regard was spotted on the social media platform, Facebook. Upon the representative checking the said platform and making further inquiries, it was found that the name and mark 'Haji Ali Fresh Fruit Juices' with the device of a red apple, as used in the registered mark of the plaintiff, was being used by the defendant and that an outlet was intended to be opened at Vijaywada in Andhra Pradesh. Upon further inquiries made by the representative of the plaintiff, it was found that on an earlier occasion, such an outlet with the offending mark had been already opened at Vijaywada. The plaintiff downloaded a copy of the menu card of the defendant from the website of Zomato and upon finding that identical mark was being used by the defendant, which would lead to confusion and deception in the minds of the consumers, the plaintiff was constrained to file the instant suit, as also the application for grant of ad-interim reliefs. In paragraph 36 of the plaint, the plaintiff pleaded the reasons for seeking ex-parte ad-interim reliefs, claiming that if such reliefs were not to be granted ex-parte, the whole purpose of filing the suit and the interim application may stand defeated.

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6. On 07.06.2021, this Court considered the prayer for grant of ex-parte ad-interim reliefs, pressed on behalf of the plaintiff. Upon considering the material placed on record, it was noted that the plaintiff was claiming exclusivity in respect of the combination of the words 'HAJIALI JUICE CENTRE' with the apple device and it was found that *prima facie*, the offending mark being used by the defendant was likely to cause confusion amongst consumers. On this basis, it was found that all the three parameters for grant of ad-interim reliefs were satisfied by the plaintiff and looking to the urgency projected on behalf of the plaintiff, ex-parte ad-interim reliefs were granted, resulting in appointment of receiver and consequential directions against the defendant. The Court Receiver executed the order of this Court and submitted Court Receiver's Report No.340 of 2021 dated 13.08.2021 and recorded the manner in which the order was executed, including seizing and sealing of the offending material on the two premises of the defendant at Vijaywada.

7. The defendants filed reply affidavit to the application for grant of interim reliefs and they also filed the aforesaid application under Order XXXIX Rule 4 of the CPC, for vacating the ex-parte ad-interim reliefs granted by this Court. On 12.10.2021, this Court considered the application filed under Order XXXIX Rule 4 of the CPC and found that it was necessary to hear both the sides before passing any effective order on the said application and accordingly, time was granted to the plaintiff to respond to the said application, while tentative observations were made as to why at the said stage, the contentions raised on behalf of the defendants regarding alleged suppression on the part of the plaintiff, could not be accepted. Thereupon, the plaintiff filed reply to the said application of the defendants, to which no rejoinder affidavit was filed on behalf of the defendants. In the application for grant of interim reliefs

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filed under Order XXXIX Rules 1 and 2 of the CPC, upon the reply affidavit filed on behalf of the defendants, the plaintiff filed rejoinder affidavit. As a consequence, both the applications were taken up for consideration together.

8. Mr. Kamod, learned counsel appearing for the defendants pressed the application for vacating ad-interim reliefs filed under Order XXXIX Rule 4 of the CPC and submitted that if the contentions raised on behalf of the defendants were to be accepted, the application filed under Order XXXIX Rules 1 and 2 of the CPC deserved to be dismissed.

9. The learned counsel emphasized that the plaintiff had indulged in suppression of facts and relevant material, while approaching this Court in the present case. It was submitted that the plaintiff deliberately suppressed an earlier suit filed against defendant Nos.2 and 3 in the competent court at Ernakulam (Kerala) in the year 2011 and the entire progress of the matter till date. It was further submitted that the plaintiff also suppressed the fact that defendant No.2, as managing partner of a partnership firm 'Al-Ali Enterprises,' had filed a trade mark application for the aforesaid mark 'HAJI ALI FRESH FRUIT JUICES' with the device of red apple and the fact that the plaintiff had filed opposition proceedings therein. It was also suppressed by the plaintiff that a cease and desist notice was issued by the plaintiff on 05.11.2020 to defendant No.2, who had replied to the same and refuted the claims of the plaintiff. There was further suppression on the part of the plaintiff that a rectification petition had been filed by defendant No.2 in respect of the registration granted to the mark of the plaintiff.

10. It was submitted that the aforesaid mark, for which defendant No.2 had applied for registration, was absolutely identical to the offending mark made subject matter of proceedings in the present suit

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and the interim application, thereby indicating that despite being aware of the fact that the defendant No.2 through the partnership firm Al-Ali Enterprises, was openly using the said mark, in respect of which earlier proceedings had been initiated by the plaintiff, the same was not disclosed in the plaint, thereby demonstrating that the plaintiff was guilty of suppression of facts and hence, dis-entitled for continuation of the ad-interim reliefs granted by this Court. The entire emphasis was on the aforesaid earlier proceedings and upon an assertion that proper and reasonable enquiry on the part of the plaintiff would have shown the direct link between the outlets opened at Vijaywada in Andhra Pradesh and defendant Nos.2 to 4.

11. On this aspect of the matter, learned counsel for the defendants relied upon order dated 07.06.2021, passed by this Court in the case of *Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another*, **Interim Application (L) No.10937 of 2021 in Commercial IP Suit (L) No.10928 of 2021**. In the said order, this Court laid down key principles to be applied while considering grant of ex-parte ad-interim reliefs in such cases. Learned counsel emphasized upon paragraph 5(b) of the said order, wherein it has been stated that the applicant / plaintiff needs to disclose all that is within his knowledge, or that which, with reasonable efforts, he could discover. It was also laid down therein that material in the public domain, including in open registries, falls within this class of factual material. Learned counsel for the defendants submitted that the plaintiff in the present case did not even make enquiries in the public domain, including the internet, despite the fact that the plaintiff was pursuing opposition proceedings in the application for registration of the aforesaid mark filed by the defendants.

12. Learned counsel for the defendants also relied upon a recent

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judgment dated 07.10.2022, passed by the Division Bench of this Court in the case of *Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd.*, **Commercial Appeal (L) No.31992 of 2022** wherein apart from the aforesaid principles recognized in the case of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** *(supra)*, the Division Bench took into consideration principles laid down by Justice Carr in Division Bench judgement of the High Court of England and Wales in the case of *Alexendar Tugushev Vs. Vitaly Orlov and others*, **[2019] EWHC 2031 (Comm)**. According to learned counsel for the defendants, as per the principles laid down by Justice Carr in the said judgment, the primary question was whether in such circumstances, the effect was such as to mislead the Court on material aspects of the matter. It was emphasized, by applying the said principles to the facts of the present case, that the application filed by the defendants under Order XXXIX Rule 4 of the CPC deserved to be allowed and the application for grant of interim reliefs filed under Order XXXIX Rules 1 and 2 of the CPC deserved to be dismissed. Learned counsel also emphasized upon the position of law clarified in the said judgment of the Division Bench of this Court to the effect that in such a situation where ex-parte ad-interim reliefs were granted in favour of the plaintiff and the first proviso to Order XXXIX Rule 4 of C.P.C. is applicable, a separate application for vacating the interim order was not necessary and that if the defendants were able to show in their affidavit in reply to the application under Order XXXIX Rules 1 and 2 of the CPC that there was indeed suppression of facts and that the plaintiff had indulged in falsehoods and in misleading the Court, the ex-parte ad-interim reliefs could certainly be vacated.

13. Learned counsel for the defendants submitted that the law regarding suppression on the part of the plaintiff was clear and the

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consequence was also clear, for the reason that nothing could be allowed to pollute the stream of justice as the plaintiff, or any litigant for that matter, is obliged to disclose all facts to the Court. It was submitted that in the present case, the entire emphasis on the part of the plaintiff was to suppress the material facts, so as to give a wrong impression to this Court that the defendants were fly-by-night operators, while claiming ex-parte ad-interim reliefs. In support of the aforesaid contentions, learned counsel for the defendants relied upon judgments of the Supreme Court in the case of *Dalip Singh Vs. State of U.P.*, **(2010) 2 SCC 114**; *Ramjas Foundation and others Vs. Union of India and others*, **(2010) 14 SCC 38** and *Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others*, **(2013) 11 SCC 531**. Learned counsel also relied upon judgment dated 05.01.2021 passed by this Court in the case of *Kamruddin I. Mehsaniya Vs. Sarah International*, **Interim Application (L) No.1 of 2021 in Commercial IP Suit (L) No.6425 of 2020**.

14. Learned counsel for the defendants also referred to the aspect of acquiescence in the present case, asserting that the defendants had been openly using the said mark with the apple device since the year 2010, about which the plaintiff was aware. It was emphasized that the suit filed by the plaintiff in the year 2011 in the Court at Ernakulam (Kerala) was allowed to be dismissed in default. Thereupon, the matter was not pursued any further, thereby indicating that the plaintiff had acquiesced to the presence of the defendants with the aforesaid mark in the market. In support of the said contention, learned counsel for the defendants relied upon judgment of this Court in the case of *Essel Propack Limited Vs. Essel Kitchenware Limited and others*, **2016 (3) BomCR 466**.

15. It was further submitted on behalf of the defendants that the words ‘Haji Ali’ were *publici juris* and that the plaintiff could not claim

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exclusivity with regard to the same, particularly because Haji Ali Dargah is a revered shrine on the Arabian Sea at Mumbai, which has numerous followers. Reliance was placed on judgment of this Court in the case of *Freudenberg Gala Household Product Pvt. Ltd. Vs. GEBI Products*, **MIPR 2017 (3) 246**. On the basis of the aforesaid contentions, learned counsel for the defendants submitted that the application filed under Order XXXIX Rule 4 of the CPC deserved to be allowed and consequently, the application under Order XXXIX Rules 1 and 2 of the CPC deserved to be dismissed.

16. On the other hand, Mr. Khandekar, learned counsel appearing for the plaintiff submitted that the entire case of the defendants, while pressing the application under Order XXXIX Rule 4 of the CPC, was based on the alleged connection of defendant Nos.2 to 4 with defendant No.1 and the establishments at Vijaywada in Andhra Pradesh. It was submitted that there was nothing in the public domain to indicate any link between the establishments at Vijaywada, using the offending mark, and defendant Nos.2 to 4. Much emphasis was placed on behalf of the plaintiff on the presence of its establishment since the year 1971 in the market and the fact that the word mark as well as the label along with the apple device were registered in favour of the plaintiff for a considerable period of time. It was submitted that the said mark was being misused by a number of entities and that the plaintiff had been constrained to initiate proceedings against such entities from time to time. On this basis, it was submitted that merely because the offending mark being used in the establishments in Vijaywada was the same as the mark being used by defendant No.2 in Kerala, it could not be presumed that there was a direct link between defendant Nos.2 to 4 and the establishments at Vijaywada.

17. Learned counsel for the plaintiff invited attention of this Court to

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the material placed on record along with the plaint to show the proceedings initiated against numerous entities using the words 'Haji Ali', including cease and desist notices and proceedings initiated before the competent courts and the orders passed therein. In this regard, learned counsel for the plaintiff invited attention of this Court to the application filed under Order XXXIX Rule 4 of the CPC, as well as the affidavit in reply filed on behalf of the defendants in the interim application filed by the plaintiff. It was submitted that, even according to the defendants, the establishments at Vijaywada were being operated by defendant No.2 through an unregistered partnership firm 'F&M Enterprises'. It was submitted that all such documents, including the unregistered partnership deed, were private documents, not in the public domain and therefore, there was no way in which the plaintiff could have the knowledge about link between the establishments at Vijaywada and defendant Nos.2 to 4. Much emphasis was placed on the fact that even the Facebook page and the contact details given therein did not lead to defendant Nos.2 to 4. On this basis, it was submitted that there was no question of any suppression on the part of the plaintiff and that therefore, reliance placed on the line of judgments in that regard on behalf of the defendants was irrelevant.

18. On the aspect of acquiescence, learned counsel appearing for the plaintiff relied upon the Division Bench judgment of this Court in the case of *Torrent Pharmaceuticals Limited Vs. Wockhardt Limited and another*, **2017 SCC OnLine Bom 9666,** to contend that the principle of acquiescence would not at all apply in the facts of the present case. It was submitted that series of proceedings initiated on behalf of the plaintiff from time to time clearly indicated the manner in which the plaintiff had zealously taken steps to protect its exclusivity in the said registered mark and there was no question of acquiescence on the part of

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the plaintiff. Reliance was also placed on judgment of the Supreme Court in the case of *Midas Hygiene Industries (P) Ltd. and another Vs. Sudhir Bhatia and others*, **(2004) 3 SCC 90**, to contend that in cases of infringement of trade mark, normally an injunction must follow and mere delay in bringing an action would not be sufficient to defeat the grant of injunction.

19. Learned counsel for the plaintiff then relied upon the judgment of this Court in the case of *Pidilite Industries Limited Vs. Jubilant Agri & Consumer Products Limited*, **2014 (57) PTC 617 [Bom]** as also judgment in the case of *Ultra Tech Cement Limited Vs. Alaknanda Cement Private Limited*, **2011 (5) Bom.C.R. 588,** to contend that when essential features of the mark were adopted in the offending mark, it was enough to show infringement and that therefore, in the facts of the present case, the ex-parte ad-interim reliefs granted by this Court were fully justified.

20. On the aspect of the words ‘Haji Ali’ being *publici juris*, learned counsel for the plaintiff submitted that there was no substance in the aforesaid contention, for the simple reason that the defendants themselves had sought registration of their mark, of which the words ‘Haji Ali’ formed an integral part. It was further submitted that the plaintiff’s mark not only consisted of the words ‘Haji Ali’ but the words ‘Haji Ali Juice Centre’ along with the device of red apple in combination, while the mark being used by the defendants using such a combination was identical and deceptively similar to the registered mark of the plaintiff, which was specifically noted by this Court while granting ex-parte ad-interim reliefs by order dated 07.06.2021. Reliance was also placed on number of judgments to emphasize that the aforesaid trade mark of the plaintiff being registered was an aspect correctly taken into consideration while granting ex-parte ad-interim reliefs, which

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deserved to be confirmed. By relying upon the aforementioned recent judgment of the Division Bench of this Court in the case of **Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd.** *(supra)*, learned counsel for the plaintiff emphasized upon that part of first proviso to Order XXXIX Rule 4 of the CPC, wherein it is specified that the Court may not vacate injunction already granted if it considers that it is not necessary so to do in the interest of justice. By emphasizing upon the same and the principles laid down by Justice Carr in the case of **Alexendar Tugushev Vs. Vitaly Orlov and others** *(supra)*, learned counsel for the plaintiff submitted that in any case, in the interest of justice, the ad-interim injunction already granted by this Court did not deserve to be vacated.

21. Having heard learned counsel for the rival parties and upon perusal of the material placed on record, it would be necessary to refer to the position of law relied upon by the rival parties, particularly in the light of the aforesaid recent judgment of the Division Bench of this Court in the case of **Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd.** *(supra)*.

22. In the said judgment, the Division Bench of this Court analyzed as to the circumstances in which an ex-parte ad-interim order granted by the Court could be vacated, particularly when allegations of falsehood, misleading and suppression were raised against the plaintiff. A perusal of the said judgment shows that the principles culled out in the earlier judgment in the case of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** *(supra)* were reiterated and reference, with approval, was made to the principles laid down by Justice Carr of the Division Bench of the High Court of England and Wales in the case of **Alexendar Tugushev Vs. Vitaly Orlov and others** *(supra)*. The general principles culled out from the

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judgment of Justice Carr are found in paragraph 16 of the said judgment. It is noted that issuing ex-parte ad-interim reliefs is an exception, to be resorted to in cases of extreme urgency or the need for secrecy; the plaintiff is required to give full disclosure and make a fair presentation of facts while seeking such extra-ordinary orders and that the duty to disclose facts extends to matters which the applicant / plaintiff would have been aware, had reasonable enquiries been made; the aforesaid would include a duty on the part of the applicant / plaintiff to make the Court aware of the issues likely to arise, although a dispute about full and frank disclosure ought not to be allowed to run into a mini trial on the merits of the case; the applicant / plaintiff could be deprived of any advantage derived from ex-parte ad-interim orders, if it is established that there was material non-disclosure, thereby indicating that this was a penal approach to deter applicant / plaintiff from indulging in such suppression and that such ex-parte ad-interim reliefs need not be vacated in every case as the Court would be required to examine as to whether the interest of justice would require such order to be continued, considering that discharge of such an order may cause injustice to the plaintiff and leave the defendants free to dissipate assets, keeping in mind that non-disclosure on the part of the applicant / plaintiff could be dealt with by other means, including imposition of costs.

23. The Division Bench of this Court also found that in so far as the first proviso to Order XXXIX Rule 4 of the CPC is concerned, involving alleged falsehoods and misleading statements by the plaintiff, as is alleged in the present case, a separate application under Order XXXIX Rule 4 of the CPC for vacating the ad-interim relief was not necessary and that the defendant could file reply affidavit in the application filed under Order XXXIX Rules 1 and 2 of the CPC, contending that such order did not deserve to be continued. The aforesaid position of law

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clarified by the Division Bench of this Court needs to be applied to the facts of the present case.

24. The bedrock of the contentions raised on behalf of the defendants regarding falsehoods, misleading statements and suppression on the part of the plaintiff, is the alleged knowledge that the plaintiff had about the connection and link between the establishments at Vijaywada using the offending mark and defendant Nos.2 to 4. According to the defendants, the plaintiff was knowing fully well or ought to have known through reasonable enquiries as contemplated in the judgments of this Court in the cases of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** *(supra)* and **Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd.** *(supra)*, that there was indeed a direct link between the establishments at Vijaywada, against whom the plaintiff was seeking ex-parte ad-interim reliefs and defendant Nos.2 to 4. If there is material on record to indicate that the plaintiff was indeed aware, or ought to have been aware through reasonable enquiries, about the aforesaid connection or link between the establishments at Vijaywada and defendant Nos.2 to 4, it can be said that the plaintiff had indulged in suppression, amounting to falsehood and misleading statements, thereby bringing the case under the first proviso to Order XXXIX Rule 4 of the CPC.

25. For rendering any finding on that aspect of the matter, it would be necessary to consider the material on record. In the plaint, the plaintiff has claimed that it was in March 2021, that one of the representatives of the plaintiff informed that there was an advertisement on Facebook regarding proposed opening of an outlet at Vijaywada, using the mark ‘Haji Ali Fresh Fruit Juices’ along with the device of red apple. According to the plaintiff, on further enquiries, it was found that there was already an establishment functioning under the said mark at

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Vijaywada and this was the second establishment proposed to be inaugurated. It is significant that in the reply filed to the application for vacating interim reliefs, the plaintiff specifically stated that there was no material available in the public domain for the plaintiff to trace a connection of the establishments at Vijaywada with defendant Nos.2 to 4 or the partnership firm of defendant No.2 i.e. Al-Ali Enterprises. It was specifically stated in the reply that on the Facebook page of the establishment at Vijaywada there was no such section as 'Contact Us' and that the mobile number appearing on the Facebook page of the said establishment at Vijaywada showed only the name 'Hajiali' as per the application 'Truecaller', without reflecting the name of any individual. Even the email address viz. hajialivijaywada@gmail.com appearing on the Facebook page did not claim to be operated by an individual. It is on the basis of such statements that the plaintiff claimed that there was nothing in the public domain to connect the establishments at Vijaywada with defendant Nos.2 to 4. It is significant that the defendants chose not to file a rejoinder to the said specific stand taken on behalf of the plaintiff in the reply filed to the application under Order XXXIX Rule 4 of the CPC. In other words, the said specific statements made on behalf of the plaintiff regarding absence of any material in the public domain, including the Facebook page of the establishments at Vijaywada, about any link or connection between the said establishments at Vijaywada and defendant Nos.2 to 4, remained uncontroverted.

26. In this backdrop, it needs to be appreciated that the predecessor of the plaintiff and the plaintiff claim to be in the market since the year 1971, with the registered trademark 'Haji Ali Juice Centre' and the label with the device of the red apple for considerable number of years. There is material on record indicating the extent of goodwill of the plaintiff in the market. The plaintiff also placed on record a number of proceedings

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initiated against the entities that were illegally using the mark ‘Haji Ali’ in respect of juice centers, cream centers, etc. throughout the country, including issuance of cease and desist notices to such offenders. There is nothing brought on record on behalf of the defendants to controvert the same, except to say that some of the orders on which the plaintiff placed reliance were passed by this Court after the order dated 07.06.2021, was passed in the present matter granting ex-parte ad-interim reliefs in favour of the plaintiff.

27. This Court has considered the material on record and it is found that the plaintiff has been resisting such misuse of its registered trade mark by initiating proceedings much prior to the suit filed in the present case, thereby indicating that there have been cases of establishments using identical or deceptively similar marks to the registered trade mark of the plaintiff. This includes the suit filed by the plaintiff in the Court at Ernakulum where defendant No.2 was also added as a defendant. It is significant that in the said suit, one of the defendants was stated to be an ex-employee of the plaintiff. Merely because the said suit remained pending, which was subsequently dismissed in default, could not be the sole basis to indicate that in respect of every such establishment using a mark identical to or deceptively similar to the registered trade mark of the plaintiff, it ought to have been presumed or concluded by the plaintiff that the same would have a link or connection with defendant Nos.2 to 4.

28. In this connection, the statement made on behalf of the defendants in the application under Order XXXIX Rule 4 of the CPC is significant, as it is stated that the establishments at Vijaywada are run by a partnership firm called ‘F&M Enterprises’ and the earlier establishment at Vijaywada is allegedly being run by a partnership firm called ‘K. K. Enterprises’, further claiming that defendant No.2 was a partner in both

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the firms. It was the stated case of the plaintiff that all such internal arrangements of defendant No.2 with the said partnership firms were not in the public domain at all and that even with reasonable efforts and enquiry, such details were not available. As noted above, the plaintiff specifically stated as to the lack of any information in the public domain regarding link or connection between the establishments at Vijaywada and defendant Nos.2 to 4, which remained uncontroverted on the part of the defendants. In such a situation, only because there was an ongoing litigation between the plaintiff and defendant No.2 in the court at Ernakulum in Kerala and that there were other proceedings in the form of opposition to the application for registration of trade mark of defendant No.2, as also rectification proceedings initiated by the said defendant as regards the registered marks of the plaintiff, it could not lead to an obvious conclusion that the establishments at Vijaywada using the identical or deceptively similar mark were necessarily linked with defendant Nos.2 to 4. Therefore, the sole basis on which the defendants have alleged suppression of facts, falsehoods and misleading statements on behalf of the plaintiff, is found to be unsustainable. Once this conclusion is reached, the first proviso to Order XXXIX Rule 4 of the CPC cannot apply and the very basis for seeking vacation of the ad-interim reliefs is taken away.

29. Apart from this, it is found that there is indeed substance in the contentions raised on behalf of the plaintiff as regards the aspect of the acquiescence, adoption of essential features of the registered trade mark of the plaintiff and the inapplicability of the concept of *publici juris* in the facts of the present case. It must be remembered that the plaintiff has placed on record documentary material to show that its word mark and also the label consisting of the device of the red apple, are registered in favour of the plaintiff and a bare look at the mark being used by the

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defendants shows that the same is prima facie identical and deceptively similar to the registered marks of the plaintiff. As noted above, this Court, while granting ex-parte ad-interim reliefs by order dated 07.06.2021, specifically noted that the plaintiff is claiming exclusivity as regards the combination of the words 'HAJIALI JUICE CENTRE' with the device of the red apple, thereby showing that the concept of *publici juris* is inapplicable. In any case, the defendants themselves having applied for registration of their mark consisting of the words 'Haji Ali,' shows that they are blowing hot and cold at the same time. In this backdrop, this Court is of the opinion that the plaintiff has indeed made out a case in her favour for continuation of the ad-interim reliefs in the interest of justice.

30. Having reached the said conclusion, the emphasis placed on the aforementioned judgments of the Supreme Court on behalf of the defendants as regards the aspect of the stream of justice being polluted by false statements, the obligation on the part of the plaintiff to have disclosed all facts etc. is rendered irrelevant and not helpful for the defendants while insisting upon vacating the order granting ex-parte ad-interim reliefs. The emphasis placed on cease and desist notice issued on behalf of the plaintiff and the reply sent thereto on behalf of the defendants is also rendered irrelevant in the facts of the present case, for the reason that despite a reasonable enquiry, the plaintiff could not have gained knowledge about the link and connection between the establishments at Vijaywada and defendant Nos.2 to 4. Hence, the principles laid down in the cases of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** *(supra)* and **Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd.** *(supra)* would apply in favour of the plaintiff. Although the observations made by this Court in the order dated

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12.10.2021 were tentative in nature, it was found that since the plaintiff was fighting off several imitators of its registered trade mark, unless there was material that was available or could have been available to the plaintiff on reasonable enquiry, about link between the establishments at Vijaywada and defendant Nos.2 to 4, it could not be said that the plaintiff had indulged in non-disclosure of relevant material or suppression of material facts.

31. Therefore, it is abundantly clear that the defendants in the present case have failed to demonstrate that the requirements of Order XXXIX Rule 4 of the CPC, particularly the first proviso thereto, were satisfied for claiming that the ad-interim reliefs deserve to be vacated. Having considered the entire material on record, this Court is convinced that the ex-parte ad-interim reliefs granted by this Court deserve to be continued and confirmed.

32. In the light of the above, Interim Application (L) No.18133 of 2021 filed under Order XXXIX Rule 4 of the CPC seeking an order for vacating the ad-interim reliefs is dismissed and the ad-interim reliefs granted by this Court are continued and confirmed. Interim Application No. 3281 of 2021 filed under Order XXXIX Rules 1 and 2 of the CPC shall now be listed after two weeks alongwith the leave petition for further consideration.

(MANISH PITALE, J.)

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