
(2025) 02 BOM CK 0734

In the Bombay High Court

Case No : Interim Application (Lodging) No. 37828 Of 2024 In Commercial Ip
Suit (Lodging) No. 32867 Of 2024

Astra Chemtech Private Limited & Ors

APPELLANT

Vs

Pidilite Industries Limited

RESPONDENT

Date of Decision : 06-02-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 4

Citation : (2025) 02 BOM CK 0734

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Dr. Virendra Tulzapurkar, Purnima Thacker, Jeyhaan Carnac, Nishi Jain, Mulla and Mulla, Sharan Jagtiani, Hiren Kamod, Nishad Nadkarni, Aasif Navodia, Khushboo Jhunjhunwala, Jaanvi Chopra, Rakshita Singh, Khaitan & Co.

Final Decision : Disposed Of

Judgement

Manish Pitale, J.

1. The defendants have filed the present application under first proviso to Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC) for vacating order dated 24th October, 2024, passed by this Court (Coram : R.I. Chagla, J.), whereby ex-parte ad-interim reliefs were granted in favour of the plaintiff. The defendants claim that the plaintiff knowingly made false and misleading statements in relation to material particulars in their pleadings while obtaining the aforesaid order dated 24th October, 2024. The defendants have principally raised two grounds in support of the said prayer. Firstly, that the plaintiff deliberately misrepresented the registered trade mark of the defendants and placed comparison between the registered trade mark of the plaintiff on the one hand and a misrepresented version of the registered trade mark of the defendants on the other, in order to obtain ex-parte ad-interim reliefs. Secondly, it is alleged that the plaintiff quoted only a portion of the reply sent on behalf of the defendants to the plaintiff to the cease and desist notice, so as to give a

distorted version of the assertions made on behalf of the defendants in the said reply, while obtaining the said ex-parte ad-interim reliefs. It is the case of the defendants that by indulging in such acts, the plaintiff violated the mandate of the law laid down in various judgments in the context of the first proviso to Order XXXIX Rule 4 of the CPC and on that basis, the defendants are seeking to vacate the order dated 24th October, 2024.

2. The pleadings in this application were completed wherein the parties have made allegations and counter allegations. The documents and material on record are sought to be interpreted by the parties in support of their respective stands. In that light the learned counsel for the parties were heard.

3. Dr. Virendra Tulzapurkar, learned senior counsel appearing for the defendants submitted as follows :

(A) The plaintiff deliberately made misleading and false statements in the plaint as well as the interim application, suppressing material facts, thereby obtaining ex-parte ad-interim reliefs as per order dated 24th October, 2024. The plaintiff deliberately depicted the trade mark of the defendants as consisting of two rhinos moving in opposite directions, thereby misrepresenting that the registered trade mark of the defendants consisted of only a pair of rhinos depicted in the aforesaid manner. The said misrepresented mark of the defendants was juxtaposed against the registered trade mark of the plaintiff, which consists of a pair of elephants pulling in opposite directions, to create an impression before this Court that there was deceptive similarity between the two. Such an assertion and distorted depiction of the registered trade mark of the defendants was repeated at various places in the plaint, as also in the interim application filed on behalf of the plaintiff.

(B) Although the registration certificate issued for the trade mark of the defendants was annexed as a document in the voluminous plaint and exhibits, while highlighting comparative analysis of the rival marks, the entire registered trade mark of the defendants consisting of six rhinos i.e. three rhinos on each side moving in opposite directions, was not placed before this Court while obtaining the order dated 24th October, 2024. This is evident from the manner in which the order dated 24th October, 2024, recorded the submissions of the plaintiff and thereupon proceeded to compare the rival marks.

(C) If the plaintiff had been fair and the entire registered trade mark of the defendants was placed before this Court in an honest manner, this Court would have had the opportunity to compare the rival marks in the correct perspective. By insisting on ad-interim reliefs without notice to the defendants and at the same time representing the registered trade mark of the defendants in a truncated manner, so as to wrongly highlight the alleged similarity between the rival marks, the defendants were deprived of an opportunity to appear before this Court and point out the correct position on facts as well as law.

(D) It was submitted that the explanation now sought to be given on behalf of

the plaintiff when the present application is filed and pressed by the defendants, to the effect that the comparison between the rival marks was given on the basis of the assertions made by the defendants in their reply to the cease and desist notice, cannot be accepted. It was submitted that even if the contents of the reply sent on behalf of the defendants is taken into consideration, the depiction of the rival marks as made by the plaintiff in the plaint and the interim application is not justified and this is another reason why the order dated 24th October, 2024, needs to be vacated because the defendants were deprived of an opportunity to demonstrate the correct position on facts. In any case, the order dated 24th October, 2024, does not show that the plaintiff had asserted that the comparison of the rival marks was being shown in a particular manner because of the assertions made in the reply sent by the defendants to the cease and desist notice.

(E) It was submitted that the explanation now sought to be given on behalf of the plaintiff can also not be accepted that on the label on the defendant's product as placed on the circular plastic jar or bucket shows that from the front angle only two rhinos in a fighting posture are seen and this can confuse the consumer. This was not the assertion made before this Court when the ex-parte ad-interim order dated 24th October, 2024, was passed.

(F) It was further submitted that the plaintiff deliberately quoted only a portion of the entire sentence contained in the reply sent by the defendants on 19th May, 2022, to the cease and desist notice of the plaintiff. This was done with the deliberate intention of the plaintiff to portray before this Court, when ex-parte ad-interim order was obtained, that the defendants had admitted to the likelihood of confusion between the rival marks / products. It was submitted that a reading of the entire sentence in the relevant portion of the reply i.e. paragraph No.3(k) thereof, would show that there was no such admission on the part of the defendants. This clearly amounts to false and misleading statements being made about material particulars and therefore, a strong ground is made out for vacating the order dated 24th October, 2024.

(G) It was further submitted that even with regard to the mark "SH", the plaintiff falsely claimed that the defendants were using the mark "SH" as such, while the defendants used the mark "SH", always in conjunction with other words. It was further claimed that "SH" was common to trade. It was emphasized that if the defendants were put to notice all these factors could have been placed before this Court at the time of considering the prayer for ad-interim reliefs made on behalf of the plaintiff

(H) The learned senior counsel for the defendants submitted that the aforesaid acts on the part of the plaintiff amount to fraud committed on this Court. He submitted that as per the law laid down by the Supreme Court in the case of S.P. Chengalvaraya Naidu Vs. Jagannath (1994) 1 SCC 1, since fraud vitiates everything, the order dated 24th October, 2024, passed in favour of a dishonest litigant like the plaintiff herein, ought to be vacated forthwith.

(I) The learned senior counsel appearing for the defendants also relied upon judgment of the Supreme Court in the case of Ramrameshwari Devi & Ors. Vs. Nirmala Devi & Ors. (2011) 8 SCC 249, in support of his contention that the better course for the Court is to give a short notice to hear both parties and then pass suitable bipartite orders and that in any case, the Court has to be cautious and extremely careful while granting ex-parte ad-interim injunctions.

(J) Reliance was further placed on judgment of the Division Bench of this Court in the case of Kewal Ashokbhai Vasoya & Anr. Vs. Surabhakti Goods Pvt. Ltd. 2022 SCC Online Bom 3335 to submit that the Court, while considering such an application under Order XXXIX Rule 4 of the CPC, is required to consider various factors, including the aspect as to whether the plaintiff has neutrally and objectively presented all disclosures, that there is material to support the insistence of the plaintiff for such ex-parte urgent ad-interim reliefs, that the plaintiff has disclosed before the Court anticipated defence or arguments likely to be taken in opposition and that attention of the Court is invited to all factual, legal or procedural issues. The emphasis is on ensuring the integrity of the process of the Court. It was submitted that the plaintiff in the present case violated the integrity of the process of the Court by indulging in such truncated pleadings and failing to honestly and correctly place the entire facts before this Court while obtaining the order dated 24th October, 2024. In this regard, reliance was also placed on judgment of the Delhi High Court in the case of Kent Ro Systems Ltd. & Anr. Vs. Gattubhai and Ors. 2022 SCC OnLine Del 791 Reliance was placed on judgments of this Court in the cases of RKRM International Products Private Limited & Ors. Vs. Laser Shaving (India) Private Limited (Order dated 02nd May, 2024 passed in Interim Application (Lodging) No.7226 of 2024 in Commercial IP Suit No.44 of 2024), Pidilite Industries Limited Vs. Chirpal Industries Limited, (order dated 09th March, 2023, passed in Interim Application (Lodging) No.12828 of 2021 in Commercial IP Suit No.452 of 2021) and ATYATI Technologies Private Limited Vs. COGNIZANT Technologies Solutions US Corp. and another 2024 SCC OnLine Bom 1680

4. On the other hand, Mr. Sharan Jagtiani, learned Senior Counsel appearing for the plaintiff made the following submissions :

(A) It was asserted that the plaintiff did not make any false and misleading statements in the plaint in relation to the representation of the trade mark of the defendants. Much emphasis was placed on the reply dated 19th May, 2022, sent on behalf of the defendants to the cease and desist notice wherein, according to the plaintiff, the defendants themselves countered the assertions made on behalf of the plaintiff by referring to and relying upon only a pair of rhinos in a fighting posture. It was submitted that when the understanding of the defendants about their own mark was depicted in the said reply and in that backdrop, the cease and desist notice was resisted, the plaintiff was entitled to place its case for grant of ex-parte ad-interim reliefs by comparing the registered trade mark of the plaintiff with the said depiction of the mark of the defendants.

(B) It was submitted that the defendants cannot claim that the plaintiff had tucked away the registration certificate of the trade mark of the defendants and buried it in the voluminous plaint, for the reason that the entire registered trade mark of the defendants was shown as it is in paragraph No.46 of the plaint, giving entire honest disclosures. As a result, even in the ex-parte ad-interim order dated 24th October, 2024, the entire registered trade mark of the plaintiff showing all six rhinos was referred to in paragraph No.24 of the order with a specific mention of the details of the registrations of the trade marks of the defendants at paragraph No.46 of the plaint being noticed in the said order. According to the learned senior counsel appearing for the plaintiff, this clearly demonstrates the fact that the contentions raised on behalf of the defendants are without any substance.

(C) As regards the allegation that the plaintiff placed only part of a sentence contained in the reply sent by the defendants to the cease and desist notice of the plaintiff and slicing the sentence while quoting the same in the plaint, it was submitted that the relevant paragraph of the plaint i.e. paragraph No.37 would show that before quoting part of the sentence from the reply of the defendants dated 19th May, 2022, the plaintiff paraphrased the stand of the defendants, thereby placing before this Court the meaning of the entirety of paragraph No.3(k) of the reply. It was submitted that the quotation in paragraph No.37 cannot be read out of context to claim that the plaintiff misled this Court in any manner. It was submitted that in any case, the aforesaid quoted portion of part of the reply of the defendants is not the basis for this Court to have passed the ex-parte ad-interim order dated 24th October, 2024. On this basis, it was submitted that such ground is also without any substance and there is no question of suppression or misrepresentation on the part of the plaintiff.

(D) It was further submitted that the defendants are wholly unjustified in claiming that the ex-parte ad-interim order granted in the context of mark "SH" deserves to be vacated, for the simple reason that while making such a claim the defendants are seeking to enter into the merits of the matter, which is impermissible in such an application filed under Order XXXIX Rule 4 of the CPC. It was submitted that the defendant cannot claim that the mark "SH" is descriptive in nature or that it is common to trade, as any enquiry into the said aspect of the matter would necessarily touch upon the merits. Therefore, the contention that the defendants by using the mark "SH" in conjunction or combination with other trade marks demonstrates that there is no infringement, cannot be considered at all in the present application.

(E) It was submitted that the stand now being taken on behalf of the defendants in respect of the trade mark "SH" is absolutely dishonest, as it is diametrically opposite to their stand in the reply to the cease and desist notice, wherein they conceded that they would stop using the said mark. It was submitted that the defendants are in the habit of indulging in such dishonest conduct because they have been caught using infringing marks and when caught on the wrong foot

they are in the habit of giving undertakings to discontinue use of such infringing marks. Therefore, it was submitted that it cannot lie in the mouth of such defendants to claim any relief in the instant application.

(F) It was further submitted on behalf of the plaintiff that the first proviso to Order XXXIX Rule 4 of the CPC specifically provides that the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice. In this regard reliance was placed on judgment and order dated 20th December, 2023, passed by this Court in Interim Application (Lodging) No.26759 of 2023 in Commercial IP Suit (Lodging) No. 22293 of 2023 (K.L.F. Nirmal Industries Pvt. Ltd. Vs. Marico Limited). It was submitted that the ex-parte ad-interim order cannot be vacated on the basis of conjectures and surmises and that even if the plaintiff makes an incorrect or inadvertent statement, it cannot constitute a ground for vacating such an order. Reliance was also placed on judgment and order dated 22nd December, 2022, passed by this Court in Interim Application (Lodging) No.37027 of 2022 in Commercial IP Suit (Lodging) No. 26527 of 2022 (Farooq Usman Batliwala Vs. Hindustan Unilever Limited), to contend that the ex-parte ad-interim order can still be continued in the interest of justice. Further reliance was placed for the said proposition on the order passed in the case of Asma Farid Noorani Vs. Haji Ali Fresh Juices and Others 2022 SCC OnLine Bom 4995, as also order passed in the case of Dharampal Satyapal Foods Ltd. Vs. Parle Products Private Limited and Anr. 2024 SCC OnLine Bom 3452

5. The instant application is to be considered on the touch stone of the first proviso to Order XXXIX Rule 4 of the CPC, whereby the Court can vacate, vary or set aside an order of injunction granted without notice to the opposite party, provided it is demonstrated that the applicant obtained the order of injunction by knowingly making a false or misleading statement in relation to a material particular. According to the defendants herein, the applicant/plaintiff in the present case indulged in such conduct and that this Court was misled into granting ex-parte ad-interim injunction by order dated 24th October, 2024. The aforesaid provision is based on the general principle that fraud of any nature would vitiate everything. The learned senior counsel appearing for the defendants is justified in relying upon judgment of the Supreme Court in the case of S.P. Chengalvaraya Naidu Vs. Jagannath (supra), to contend that if it is demonstrated that a party has obtained a particular order or any manner of relief by committing fraud on the Court, such an order needs to be recalled forthwith, as deception and fraud practiced on the Court cannot be tolerated. In this context, the extent of care and caution required to be exercised by the Court while granting ex-parte ad-interim injunctions is also indicated in the judgment of the Supreme Court in the case of Ramrameshwari Devi & Ors. Vs. Nirmala Devi & Ors. (supra). The said judgment emphasizes that ordinarily the Court is required to issue notice, even if a short notice, to the opposite party so that both parties can be heard and then a suitable bipartite order can be passed in a given case.

6. It is in this backdrop that the material placed on record in the present case needs to be appreciated, particularly in the light of the said position of law being explained in detail in the Division Bench judgment of this Court in the case of Kewal Ashokbhai Vasoya & Anr. Vs. Surabhakti Goods Pvt. Ltd. (supra). In the said judgment, the Division Bench has heavily relied upon the principles distilled from the judgment of the Division Bench of Commercial Court of England and Wales in the case of Alexendar Tugushev v. Vitaly Orlov (2019) EWHC 2031 (Comm). The Division Bench also referred to the judgment of a learned Single Judge of this Court in the case of Sun Pharmaceutical Industries Ltd. V. Emil Pharmaceutical Industries Pvt. Ltd. & Anr. (order passed in Interim Application (Lodging) No.10937 of 2021 in Commercial IP Suit (Lodging) No.10928 of 2021). The principles culled out in the aforesaid Division Bench judgment in the case of Kewal Ashokbhai Vasoya & Anr. Vs. Surabhakti Goods Pvt. Ltd. (supra), are elaborate and they cover multiple situations where the Court can be faced with a prayer for discharging, varying or modifying an ex-parte ad-interim order on the ground that either false statements were made or that the Court was misled into passing such an order.

7. It would be appropriate to specifically refer to some of those principles, which in the opinion of this Court, can be said to be relevant for the factual position that has emerged on the basis of the documents and facts brought to the notice of this Court by the parties. The said principles specifically relevant for the facts of this case are as follows :

(i) The fundamental and the most important aspect in such cases is the high duty on the part of the litigants before this Court to ensure the integrity of the process of the Court.

(ii) The party approaching the Court seeking urgent ex-parte ad-interim reliefs is not expected to act with the design of only promoting its own interests but such a party is expected, in a fair and evenhanded manner to draw the attention of the Court to the relevant material and also arguments that can reasonably be anticipated in the absence of the opposite party.

(iii) A high duty is cast upon the party seeking such ex-parte ad-interim reliefs to disclose all such matters of which it is expected to be aware on making reasonable enquiries. The material that has been disclosed through such reasonable enquiries is required to be placed in all fairness and without any attempt at presenting such material in a particular manner, with the sole intention of promoting its own interests.

(iv) It is not enough for such a party seeking ex-parte ad-interim reliefs to place documents on record amongst voluminous exhibits, without highlighting the most crucial aspects of the matter. It is expected to clearly place before the Court the possible arguments that can be raised by the opposite party. This is crucial because such ad-interim reliefs are sought without notice and in the absence of the opposite party. All the issues that the opposite party could raise if

notice was to be issued must be placed in an objective and neutral manner by the party seeking such ex-parte ad-interim reliefs.

(v) The party seeking such ex-parte ad-interim reliefs cannot merely highlight before the Court what it believes or interprets to be the effect of the documents and material placed on record, as this would encourage the tendency of such a party deliberately giving a spin to the material on record, so as to somehow lead the Court to grant such reliefs.

(vi) Any act on the part of the party seeking to obtain ex-parte ad-interim reliefs by misleading the Court in the aforesaid manner, after the same is brought to the notice of the Court in such a proceeding under Order XXXIX Rule 4 of the CPC, should result in such ex-parte ad-interim reliefs, being vacated or varied.

(vii) At the same time, the first proviso to Order XXXIX Rule 4 of the CPC leaves enough scope for the Court, not to vacate the ex-parte ad-interim order either fully or partly if the Court thinks it necessary to do so in the interest of justice. This Court is of the opinion that by leaving such a scope for the Court to ensure justice in the facts and circumstances of each individual case, the aforesaid provision ensures that a balanced approach is adopted and in a given case such an ex-parte ad-interim order can be only partly vacated instead of the entire order being vacated or set aside.

8. Keeping in mind the aforesaid principles, this Court proceeds to now deal with the material on record in the light of the rival submissions. While the learned senior counsel appearing for the defendants submits that in the light of the plaintiff having misled this Court into passing the ex-parte ad-interim order, the entire order stands vitiated, it is submitted on behalf of the plaintiff that in the facts and circumstances of the present case, firstly, there is no ground for vacating the ex-parte ad-interim order and that in any case, that part of the order pertaining to the registered trade mark "SH" of the plaintiff deserves to be retained without any interference.

9. The thrust of the submissions made on behalf of the defendants is that while the registered trade mark of the defendants consists of six rhinos, three on each side facing in the opposite directions, the plaintiff deliberately projected the trade mark of the defendants in a truncated manner, showing only a pair of rhinos facing each other in a fighting posture. This was done deliberately to compare the same with the pair of elephants forming part of the registered trade mark of the plaintiff, in order to allege that the defendants had made an attempt to come as close as possible with the registered trade mark of the plaintiff. In this regard much emphasis was placed on the number of times the plaintiff showed only a pair of rhinos as the registered trade mark of the defendants and particularly the manner in which the same was depicted in the comparative table in the plaint. In this regard, a perusal of the plaint shows that at several places in the plaint, the plaintiff has indeed boldly asserted that the registered trade mark of the defendants consists of a pair of rhinos facing each other in a fighting pose i.e. .

10. It is also a matter of record that the certificate of registration of the entire trade mark of the defendants consisting of six rhinos was indeed placed on record as an Exhibit alongwith the plaint. But, it is to be appreciated that the same is part of the voluminous plaint running into hundreds of pages. It is to be noted that while making specific allegations against the defendants in the plaint with regard to infringement of the registered trade mark of the plaintiff or with regard to the action of passing off, at every place the plaintiff depicted the registered trade mark of the defendants as . In fact, the aforesaid depiction of the trade mark was shown in conjunction with other trade marks of the defendants consisting of pair of animals i.e. facing in a opposite directions and also . In paragraph No.42 of the plaint, the plaintiff specifically placed a table of comparison between its registered trade marks and the alleged infringing trade marks of the defendants. In this table also, on the one hand the plaintiff depicted its registered trade mark consisting of two elephants pulling in the opposite directions and on the other hand the registered trade mark of the defendants was depicted as consisting only of a pair of rhinos, without any reference to the fact that the two rhinos facing each other in a fighting pose formed only a truncated part of the entire registered trade mark of the defendants consisting of six rhinos. Although in paragraph No.46 of the plaint, the plaintiff has shown the registered trade mark of the defendants consisting of six rhinos, but its depiction is in a smaller version and in any case it is not highlighted as compared to the manner in which only a pair of rhinos is shown.

11. These pleadings in the plaint are reflected in the contents of the ex-parte ad-interim order dated 24th October, 2024 in all the paragraphs leading up to paragraph No.29 of the order, except paragraph No.24 thereof. This Court in the order dated 24th October, 2024 has recorded the assertions made on behalf of the plaintiff consisting of two elephants pulling in the opposite directions i.e. and it has considered and analyzed it in the context of only the truncated version of the registered trade mark of the defendants i.e. . In the said order, while recording the assertions made on behalf of the plaintiff, it has been repeatedly recorded that defendants have been using the logo/device of . This Court is of the opinion that the manner in which the trade mark of the defendants has been appreciated, examined and analyzed by this Court, while comparing the same with the registered trade mark of the plaintiff, particularly in paragraph No.29, which contains the comparative table, it becomes clear that the conclusion regarding infringement was reached on the basis of such comparison, without any reference to the entirety of the registered trade mark of the defendants i.e. .

12. Although in paragraph No.24 of the ex-parte ad-interim order dated 24th October, 2024, this Court has recorded that attention was invited to paragraph No.46 of the plaint, which consisted of various trade marks of the defendants found in the Trade Mark Registry, including the aforesaid trade mark consisting of six rhinos, its depiction is in an extremely small size, in black and white and there is nothing to indicate that the comparison between the two marks was made on the basis of the entirety of the registered trade mark.

13. Therefore, this Court is of the opinion that the manner in which the case has been pleaded by the plaintiff in its plaint, particularly the manner in which only the truncated version of the registered trade mark of the defendants i.e. has been highlighted, it can be said that the plaintiff knowingly made a misleading statement in relation to the most material particular in the present case i.e. the true description and depiction of the registered trade mark of the defendants. This Court is not impressed with the contention of the plaintiff that the comparison table given in the plaint, which was reflected in the ex-parte ad-interim order also, was based on the contents of the reply dated 19th May, 2022 sent by the defendants to the cease and desist notice of the plaintiff. It was claimed that since the defendants themselves perceived their trade mark as consisting of a pair of rhinos while denying the claims made in the cease and desist notice, the plaintiff was entitled to plead its case by treating the trade mark of the defendants as consisting of only two rhinos facing each other in a fighting pose.

14. This Court has perused the contents of the reply dated 19th May, 2022, sent by the defendants to the cease and desist notice. The contents thereof in no manner demonstrate any concession made on behalf of the defendants or any impression given by them to the plaintiff that their trade mark consisted of only two rhinos i.e. . In fact, the contents of the reply indicate a vehement denial on the part of the defendants with regard to the allegation of infringement. It is not enough for the plaintiff to claim that since copy of the reply dated 19th May, 2022, was annexed as exhibit to the plaint, it cannot be said that the plaintiff made any attempt to mislead the Court. This is for the simple reason that nowhere in the pleadings in the plaint is it stated that although the registered trade mark of the defendants consists of six rhinos, three on each side facing in the opposite directions i.e. , the plaintiff is claiming infringement on the basis that even the defendants have treated their trade mark in a truncated manner consisting of only two rhinos facing each other in a fighting pose. In the absence of such pleadings, this Court finds that the defendants are justified in claiming that throughout the pleadings in the plaint and considering the number of times the plaintiff depicted the registered trade mark of the defendants only as , an impression was sought to be created that the defendants had made an attempt to come as close as possible to the registered trade mark of the plaintiff i.e. . This is also reflected in the contents of the order dated 24th October, 2024 and therefore, this Court is of the opinion that the plaintiff did make the aforesaid misleading statements with regard to the material particular of the true nature the registered trade mark of the defendants.

15. This Court is also unable to accept the contention of the plaintiff that since the registered trade mark of the defendants consisting of six rhinos is depicted on the label wrapped around a circular jar in which the adhesive product of the defendants is sold, from a particular angle only two of the six rhinos are visible to the consumer. In that regard, reliance was sought to be placed on exhibits showing the impugned goods of the defendants. This Court is of the opinion that

the plaintiff has nowhere pleaded in the plaint that although the registered trade mark of the defendants consists of six rhinos, it is seen and observed by the consumer only in the form of a pair of rhinos on the label affixed in the alleged impugned goods of the defendants. It is not the projected case of the plaintiff in the plaint at all. In fact, even when the interim application of the plaintiff was taken up for consideration urgently on 24th October, 2024, it was not argued in this manner and hence, it is not even reflected in the ex-parte ad-interim order dated 24th October, 2024. It is only when the defendants have filed the present application under Order XXXIX Rule 4 of the CPC that the plaintiff has come up with the said arguments, obviously as an afterthought and as an attempt to justify its conduct of depicting the registered trade mark of the defendants in a truncated manner at various places in the plaint. This further reinforces the conclusion of this Court that the plaintiff in that regard did indulge in making misleading statements in respect of the most material particular in the facts and circumstances of the present case. This is completely covered under the first proviso to Order XXXIX Rule 4 of the CPC.

16. The second aspect highlighted by the defendants is that the plaintiff deliberately quoted only part of a sentence from their reply dated 19th May, 2022 in response to the cease and desist notice of the plaintiff and that this was done with the intention of creating a wrong impression before this Court. It was emphasized that by slicing the entire sentence and quoting only part of it, the plaintiff deliberately sought to give an impression that the defendants had conceded to the plaintiff's claim that the registered mark of the defendants had a tendency of creating confusion in the minds of the consumers when compared with the registered trade mark of the plaintiff. The plaintiff has resisted the aforesaid contention by claiming that in the paragraph of the plaint in which a part of the sentence from the reply of the defendants was quoted, the entire stand of the defendants in the said part of their reply was paraphrased and thereafter, a part of the sentence was quoted.

17. This Court is of the opinion that the aforesaid explanation sought to be given on behalf of the plaintiff can also be said to be an afterthought, after the defendants have caught the plaintiff on the wrong foot. Here again the plaintiff is not justified in contending that since the entire copy of the reply dated 19th May, 2022 was placed as an exhibit with the plaint, it cannot be said that any misleading statement was made by the plaintiff.

18. This Court has perused the relevant paragraph of the reply dated 19th May, 2022, i.e. paragraph No.3(k). The entire portion from which only part of the sentence is quoted in the plaint, reads as follows:

"k. With reference to point 11 statements made are not only false but faux and erroneous in nature. We do not agree to anything mentioned here from any length and breadth. The trademarks used by our clients are honestly coined, conceived, continually used on bonafide grounds since inception and they are only connected to our client's company. Person with any kind of intellect/stature

can very much differentiate or register some aspects of the product very much that can maintain one's identity and not correlate or associate with each other's product i.e. the tradenames/ labels/ devices/ packaging/ size/ color combination/ shape of the container/ quantity of the products etc. We have no doubt in regards to any educated person getting confused while buying your products/brands but when it comes to an average person like a carpenter or construction worker, possibly they may forget the names but will surely register/remember the device mark/colour of packaging etc. and can very well tell the shop vendor to give either Hippo/ Rhino/ Elephant items without any apprehension/confusion. We are living in 21st century and in such high-tech world where everyone learnt to use smart phone, device, gadgets, digital transactions etc. do you honestly feel such things matter or really consumer will be misguided or will fall prey to wrong products or associate between two products and companies. Thus, our client is not able to understand how using of their own coined marks be unauthorized that could lead to civil and criminal offense? Rather our client's feel the matter is unnecessarily hyped/publicized with wrong intentions. Your client is trying to monopolize the market and eat away all small/average size manufacturers and traders by sending such notices."

19. A perusal of the above quoted entire paragraph No.3(k) of the reply dated 19th May, 2022, would show that the defendants nowhere conceded that their trade mark could be said to be infringing the registered trade mark of the plaintiff and the entirety of the sentence, only part of which is quoted in the plaint, specifically asserts that the persons, who actually go to buy the products would be able to distinguish between the products of the plaintiff on the one hand and the those of the defendants on the other, without any apprehension or confusion. This Court is of the opinion that by quoting only part of the sentence, the plaintiff can be said to have made an attempt to give an impression that the defendants had admitted the charge levelled against them about having adopted the impugned trade mark in order to create confusion amongst the consumers. The attempt on the part of the plaintiff to claim that it had paraphrased the meaning of the aforesaid paragraph No.3(k) of the reply dated 19th May, 2022 in its plaint, can be of no consequence, as this Court finds that the plaintiff was expected to honestly reproduce the entire sentence, or better still, the entire paragraph in the plaint, if at all it did choose to incorporate part of the reply dated 19th May, 2022, in its pleadings in the plaint. Such pick and choose and slicing of sentences does constitute an act on the part of the plaintiff to mislead or to present the stand of the defendants in a manner that would advance only the interests of the plaintiff, without giving a balanced and appropriate depiction of the same. Hence, the aforesaid second ground raised on behalf of the defendants while alleging that the plaintiff indeed made misleading statements, also deserves to be accepted.

20. This Court is the opinion that the entire thrust in the aforementioned provision i.e. first proviso to Orde XXXIX Rule 4 of the CPC and the settled position of law recognized in the various judgments, particularly in the Division

Bench judgment of Kewal Ashokbhai Vasoya & Anr. Vs. Surabhakti Goods Pvt. Ltd. (supra), is on maintaining the integrity of the process of the Court. Hence, any attempt on the part of the plaintiff to pollute the process, is to be frowned upon and the plaintiff cannot claim that it innocently placed the aforementioned comparison of the two marks, in the facts of the present case, on its interpretation of the reply of the defendants dated 19th May, 2022, to the cease and desist notice. Once it is found that the plaintiff indulged in an act which has the effect of polluting the process of the Court, the consequences as indicated in Order XXXIX Rule 4 of the CPC must follow. It is for this reason that in the case of Ramrameshwari Devi & Ors. Vs. Nirmala Devi & Ors.(supra), the Supreme Court has cautioned that the better course for the Court is to give a short notice and then to pass suitable bipartite orders. It is also observed that experience has shown that ex-parte ad-interim injunction orders in some cases can create havoc and to get them vacated or modified in our existing judicial system has become a nightmare. Consequently, the burden on the plaintiff approaching the Court for ex-parte ad-interim reliefs is that much more and any impression gathered by the Court that the plaintiff indulged in acts that could be said to be misleading the Court into granting ex-parte ad-interim injunctions must result in adverse orders against such a plaintiff.

21. In this regard, it is also to be appreciated that if notice was to be issued to the defendants, they could have remained present before this Court to indicate their stand in the matter and to highlight the fact that their registered trade mark consists of six rhinos facing each other and not just a pair of rhinos in a fighting pose. The defendants were deprived of this opportunity and this led to a situation where the plaintiff walked away with an ex-parte ad-interim order, which perhaps may not have been granted, had the defendants been given an opportunity to appear before the Court. It is a different manner that this Court even after the hearing the defendants may well have found it fit to grant ad-interim reliefs, but the crucial aspect in such cases is that the defendants are deprived of an opportunity to place their version before the Court. If only the defendants were put to notice, they could have very well relied upon their own reply dated 19th May, 2022, to demonstrate that the plaintiff cannot claim any act of infringement on their part on a proper comparison of the registered trade mark of the defendants with the registered trade mark of the plaintiff. It cannot be said that the plaintiff in the present case truthfully and honestly stated the possible defense of the defendants, which was reflected in their reply dated 19th May, 2022, sent to the cease and desist notice. This Court is unable to accept the contention of the plaintiff that the stand of the defendants in their reply to the cease and desist notice indicated that they themselves were treating only the pair of rhinos as their registered trade mark.

22. But, at the same time, this Court finds that the defendants cannot claim that if notice was issued to them, they could have given their own version in respect of the registered trade mark "SH" also. In the reply dated 19th May, 2022, to the cease and desist notice, the defendants themselves specifically stated in

paragraph No.3(e) that they would be removing the mark "SH" from all their products. This was also stated in paragraph No.3(c) of the reply and it was asserted that the defendants have agreed to stop using the "SH" mark to avoid confusion or chaos in the business and trade circles.

23. Having taken such a stand in the reply dated 19th May, 2022, the defendants in the present application cannot be heard to say that they are entitled to use their "SH" mark, as it is used in conjunction with other marks or that such a mark can be said to be common to trade. This is because such contentions would invite this Court to enter into the merits of the matter, which is impermissible in the present application. Even if notice was to be served on the defendants before considering ad-interim reliefs, in the light of their own stand in the reply dated 19th May, 2022, concerning the trade mark "SH" and the specific statement that they had agreed to stop and they would stop using the said mark, the defendants may not have been able to resist ad-interim reliefs in the face of the documents placed on record by the plaintiff as regards its registrations for the trade mark "SH". To that extent, the plaintiff is justified in contending that this Court may consider retaining that portion of the ex-parte ad-interim order, which concerns the registered trade mark "SH", even if this Court were to partly vacate or vary the ex-parte ad-interim order dated 24th October, 2024. This Court is of the opinion that the first proviso to Order XXXIX Rule 4 of the CPC leaves enough power with the Court to stop short of vacating the entire ex-parte ad-interim order for reasons to be recorded and where it considers that it would be in the interest of justice so to do.

24. The judgments and orders relied upon by the plaintiff in this context i.e. K.L.F. Nirmal Industries Pvt. Ltd. Vs. Marico Limited (supra) and Asma Farid Noorani Vs. Haji Ali Fresh Juices and Others (supra), are apposite and this Court is inclined to follow the dictum to partly retain the effect of the ex-parte ad-interim order dated 24th October, 2024.

25. While reaching the conclusion that this Court in the facts and circumstances of the present case ought to exercise power under first proviso to Order XXXIX Rule 4 of the CPC to partly vacate the ex-parte ad-interim order dated 24th October, 2024, the position of law clarified in the judgments in the case of Kent Ro Systems Ltd. & Anr. Vs. Gattubhai and Ors. (supra), ATYATI Technologies Private Limited Vs. COGNIZANT Technologies Solutions US Corp. and another (supra), RKRM International Products Private Limited & Ors. Vs. Laser Shaving (India) Private Limited (supra) and Pidilite Industries Limited Vs. Chirpal Industries Limited (supra), is being followed.

26. In view of the above, the application is partly allowed by directing that ex-parte ad-interim order concerning the registered trade mark of the defendants is vacated, with the result that the ad-interim relief granted in terms of prayer clause (c) is entirely vacated, while the ad-interim order granted in terms of prayer clauses (e) and (h) stands vacated to the extent that it concerns the aforesaid registered trade mark of the defendants consisting of six rhinos .

27. At the same time, the ex-parte ad-interim reliefs granted in the context of registered trade mark "SH" of the plaintiff are maintained. As a consequence, the goods of the defendants that were seized and sealed by the Court Receiver while executing the ex-parte ad-interim order dated 24th October, 2024, which bear the registered trade mark of the defendants consisting of six rhinos i.e. , shall be de-sealed and handed over to the defendants. It is made clear that all such goods of the defendants that were seized and sealed by the Court Receiver while executing the said order, which bear the mark "SH" shall continue to be seized and sealed and in the constructive possession of the Receiver until further orders in Interim Application (Lodging) No.33054 of 2024.

28. The instant application i.e. Interim Application (Lodging) No.37828 of 2024, stands disposed of in above terms