

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL (L) NO.19140 OF 2024
WITH
INTERIM APPLICATION (L) NO.19143 OF 2024
IN
COMMERCIAL APPEAL (L) NO.19140 OF 2024

Atyati Technologies Private Limited

...Appellant
(original Plaintiff)

V/s.

1.Cognizant Technology Solutions
U.S. Corporation.

2. Cognizant Technology Solutions
India Private Limited

...Respondents

Mr. Ravi Kadam, *Senior Advocate with Mr. Hiren Kamod i/b Mr. Abhishek Adke for the Appellant.*

Mr. Virag Tulzapurkar, *Senior Advocate with Mr. Rashmin Khandekar, Ms. V. Mohini, Ms. Aarti Aggarwal & Mr. Karan Khiani & Mr. Rohan Lopes i/b. Ms. Rashmi Singh & Mr. Karan Khiani for Respondent No.1.*

Mr. Rashmin Khandekar *with Ms. V. Mohini, Ms. Aarti Aggarwal, Mr. Karan Khiani, and Mr. Rohan Lopes i/b. Ms. Rashmi Singh and Mr. Karan Khiani for Respondent No.2.*





CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Judgment reserved on: 19 AUGUST 2025.
Judgment pronounced on: 26 AUGUST 2025.

Judgment : (*PER: SANDEEP V. MARNE, J.*)

1) This is an Appeal under the provisions of Section 13(1-A) of the Commercial Courts Act, 2015 challenging the order dated 13 June 2024 passed by the learned Single Judge of this Court in Interim Application (Lodging) No.7958 of 2024 in Commercial IP Suit (L) No.7897 of 2024, by which the ad-interim injunction granted in favour of the Appellant/Plaintiff on 19 March 2024 has been discontinued.

2) The Suit is instituted by the Appellant-Plaintiff alleging infringement of its copyright in 'ATYATI' Device Mark, infringement of the Plaintiff's registered ATYATI Device Mark and ATYATI registered Trademark as well as for the tort of passing off Plaintiff's impugned services and related products. In the Suit, Plaintiff has filed Interim Application (L) No.7958 of 2024 seeking temporary injunction. The comparison of the marks/logos of the rival parties is as under:

Plaintiff	Defendant
	
	

3) By order dated 19 March 2024, learned Single Judge of this Court granted ex-parte ad-interim relief in terms of prayer clause (c) of the Interim Application by restraining the Defendants from infringing Plaintiff's copyright in the artistic work comprised in ATYATI Device Mark and from reproducing /copying the said artistic work or any substantial part of the same in respect of Defendants' impugned services. Defendants appeared in the Suit and filed affidavit-in-reply dated 27 April 2024 praying that ex-parte ad-interim injunction granted vide order dated 19 March 2024 ought not to be continued on the ground of suppression and misstatement and/or false representation in the Plaint. Defendants contended that if the correct information was disclosed to the Court, the Court would not have been persuaded to grant ex-parte ad-interim injunction in Plaintiff's favour. Defendants mainly contended that Plaintiff had acquired knowledge about the adoption/use of the impugned Mark in March-2022 and by suppressing the said information, it presented a false picture in the Plaint for the purpose of securing ex-parte ad-interim injunction.

4) By impugned order dated 13 June 2024, the learned Single Judge has accepted the contention of the Defendants and has refused to continue ad-interim injunction granted vide order dated 19 March 2024 holding that the Plaintiff had suppressed material information from the Court, which if disclosed, would have resulted in a situation of the Court not granting any ex-parte ad-interim injunction. Plaintiff is aggrieved by non-

continuation of ad-interim injunction vide impugned order dated 13 June 2024 and has accordingly filed the present Appeal.

5) Mr. Kadam, the learned Senior Advocate appearing for the Appellant/Plaintiff would submit that the learned Judge has erroneously accused Plaintiff of making false statement about the acquisition of knowledge of Defendants using the impugned mark in October -2023. That the learned Judge has misconstrued the statement made in Cease-and-Desist Notice dated 30 October 2023. That the said notice issued by the Plaintiff merely copied the information appearing in a magazine published on 1 October 2023 showing use of impugned mark by the Defendants since the year 2022. That even if the use of the impugned mark by the Defendants since 2022 is momentarily accepted, what needs to be noted is the fact that the Plaintiff acquired knowledge of such use only in October-2023. That there is no admission on the part of the Plaintiff in Cease-and-Desist Notice dated 30 October 2023 that it acquired knowledge of the Defendants using the impugned Mark since the year 2022. He also invited our attention to the response given by Advocate of Defendants on 1 December 2023, in which it specifically averred that the Defendants had remodelled its brand and created artistic representations of the trade mark/name to better convey its business goals by using the impugned mark “most recently”. That the learned Single Judge, while granting ad-interim relief, had considered the response given by the Defendants about recent adoption of the impugned Mark /Logo. That once

Defendants themselves made a statement about recent adoption of the impugned Mark/ Logo in reply dated 1 December 2023, it was erroneous on the part of the learned Single Judge to arrive at a finding that the Plaintiff had learnt about Defendants using the Mark in the year 2022. That the learned Judge has erroneously accused Plaintiff of non-disclosure of the website of Logos-World.net ignoring the position that concerned article came to be published on website on 1 October 2023. That therefore there is no suppression of fact by the Plaintiff and all the relevant material was placed before the learned Single Judge, who had passed ex-parte ad-interim injunction after consideration of the same.

6) Mr. Kadam further submits that the learned Single Judge could not have discontinued the ad-interim injunction merely on account of allegation of suppression of information relating to the date of acquisition of knowledge of use of the mark /logo by the Defendants. That there is no suppression of material, which is relevant for the purpose of deciding application for temporary injunction and therefore ad-interim injunction could not have been vacated only on allegation of suppression relating to securing of ex-parte order. That the Defendants did not file an application for vacation of ad-interim injunction under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (**the Code**) and that the learned counsel appearing for the Defendants made a specific statement that the Defendants were not presented the case for ex-parte ad-interim injunction under Order XXXIX Rule

4 of the Code. That in absence of such an application under Order XXXIX Rule 4 of the Code, the learned Single Judge could not have discontinued operation of ad-interim injunction and ought to have instead decided the Interim Application for temporary injunction finally. Mr. Kadam would pray for setting aside the impugned order discontinuing the ad-interim injunction.

7) Mr. Tulzapurkar, the learned Senior Advocate appearing for Respondent No.1 would oppose the Appeal submitting that the Plaintiff has indulged in gross suppression of material information while securing ex-parte ad-interim injunction in its favour. That there is specific admission in the Cease-and-Desist Notice dated 30 October 2023 about Defendants using the impugned mark /logo since the year 2022. That contrary to the statement made in the said notice dated 30 October 2023, Plaintiff made a false averment in the Plaint about acquisition of knowledge about use of mark/logo in October 2023. Inviting our attention to the provisions of Order XXXIX Rule 3 of the Code, Mr. Tulzapurkar would submit that in all cases the Court must direct notice of application to the opposite party unless an opinion is recorded that the object of granting injunction would be defeated by delay. That in the present case no opinion is recorded by the learned Single Judge while granting ex-parte ad-interim injunction that object of granting injunction would be defeated by delay. That no reasons are recorded in the ad-interim injunction order dated 19 March 2024

as to why the mandatory notice under Order XXXIX Rule 3 was dispensed with. That the statement made by the Plaintiff in the Notice dated 30 October 2023 is a statement of fact and not a statement of acquisition of knowledge through any other material. He would explain the contents of paragraph 7 of reply dated 1 December 2023 by contending that the words “most recently” used therein are on account of use of the similar words in Plaintiff’s notice dated 30 October 2023. That in any case the words “most recently” does not mean “very recently”. That the Defendants had filed caveat in the Court at Bangalore on 1 December 2023 anticipating the Suit being filed in Bangalore Court on account of location of Head Offices of the Plaintiff and the Defendants in Bangalore. That the Suit was filed in March 2024 i.e. five months after issuance of notice dated 30 October 2023. That in such circumstances, the learned Judge ought to have issued notice to the Defendants instead of believing false story of Plaintiff about acquisition of knowledge by it of use of the impugned Mark by the Defendants in October 2023. That Plaintiff did not press temporary injunction in respect of its claim of infringement of Trade Mark or Device Mark or in respect of claim of passing off. That temporary injunction was sought selectively in respect of prayer of infringement of copyright in the Device Mark. That in such circumstances, there could be no extreme urgency for grant of ex-parte ad-interim injunction in Plaintiff’s favour in respect of said grievance of infringement of copyright in Device Mark.

8) Mr. Tulzapurkar would submit that the learned Single Judge has used his discretion while not continuing the ad-interim injunction after noticing that Plaintiff did not make full disclosure of the material information. That if the Court was made aware of the acquisition of knowledge of Defendants using the impugned Mark from the year 2022, the Court would not have granted ex-parte ad-interim injunction in Plaintiff's favour. He would submit that the learned Judge has correctly relied on judgment of this Court in ***Kewal Ashokbhai Vasoya and Another V/s. Suarabhakti Goods Pvt. Ltd.***¹ He would also rely on judgment of the Apex Court in ***Shiv Kumar Chadha V/s. Municipal Corporation of Delhi and Others***² in support of his contention that the courts need to be more cautious when power of grant of injunction is exercised without notice of hearing to the parties, who are affected by orders passed. Mr. Tulzapurkar would submit that temporary injunction has been discontinued on 13 June 2024 and instead of determining correctness of the impugned order, the learned Single Judge can be requested to decide application for temporary injunction finally. He would accordingly pray for dismissal of the Appeal.

9) Mr. Khandekar, the learned counsel appearing for Respondent No.2 would also oppose the Appeal submitting that date of acquisition of knowledge of Defendants using the impugned Mark constitutes material particular within the meaning of Order XXXIX Rule 4 of the Code. That if material

¹ 2022 SCC OnLine Bom 3335

² (1993) 3 SCC 161

particular is suppressed, the Court is duty bound to vacate ad-interim injunction. That the present case involves clear suppression of material information by the Plaintiff and making of false statement of acquisition of knowledge of Defendants using the mark since October-2023. That the Plaintiff misled the learned Single Judge at the time of securing ex-parte ad-interim injunction by inviting attention to the pleading that it acquired knowledge of use of mark by Defendants “very recently”. He would submit that in such circumstances discontinuing ex-parte ad-interim injunction order warrants no interference in exercise of appellate jurisdiction of this Court.

10) Rival contentions of the parties now fall for our consideration.

11) In Plaintiff’s Suit for seeking perpetual order and injunction against the Defendants, who have allegedly infringed Plaintiff’s registered trademark and copyright and are accused of tort of passing off, Plaintiff filed application for temporary injunction under Order XXXIX Rules 1 and 2 of the Code. Though Plaintiff sought temporary injunction against the Defendants in respect of infringement of its registered Trade Mark and in respect of tort of passing off, it pressed ad-interim ex-parte injunction only in terms of prayer clause (c) before the learned Single Judge on 19 March 2024. That learned Judge was persuaded to pass an order of ex-parte ad-interim injunction on 19 March 2024 in terms of prayer clause (c). Prayer clause (c) of the Interim Application reads thus:

c. Pending the hearing and final disposal of the suit, the Defendants, their directors, affiliates/subsidiaries, owners, key managerial personnel, servants, employees, subordinates, representatives, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyright in the artistic work comprised in the ATYATI Device Mark and from reproducing/copying the said artistic work or any substantial part of the said artistic work in respect of the Defendants' Impugned Services or any catalogues, brochures, websites, service literature, advertising material and all other things used in connection with or intended to be used in connection with the advertising, marketing or offering/rendering of any services upon or in relation to which the said artistic work has been reproduced or substantially reproduced or by issuing copies of such work or communicating such work in any manner to the public;

12) After the Defendants caused appearance in the Suit, they were advised not to file application under Order XXXIX Rule 4 of the Code for discharge of the order of ad-interim injunction. Instead, Defendants filed an affidavit-in-reply dated 27 April 2024 running into 38 pages but describing the same as 'limited affidavit-in-reply' opposing continuation of ad-interim relief. Thus, instead of filing affidavit-in-reply opposing the Interim Application (L) No.7958 of 2024 or filing an application for discharge of ad-interim injunction under Order XXXIX Rule 4 of the Code, Defendants chose to oppose continuation of ad-interim injunction through a limited affidavit-in-reply dated 27 April 2024. Plaintiff filed a detailed rejoinder on 3 May 2024, and this is how the Court was required to consider whether ad-interim injunction granted on 19 March 2024 could be continued in view of the limited affidavit-in-reply filed by the Defendants

and rejoinder filed by the Plaintiffs. By impugned order dated 13 June 2024, the learned Single Judge has refused to continue the ad-interim injunction by holding that Plaintiff has indulged in suppression of material facts. The learned Single Judge has held that the Court was persuaded to pass ex-parte ad-interim injunction vide order dated 19 March 2024 only on the basis of Plaintiff's representation of acquisition of knowledge about use of impugned marks by the Defendants in October 2023. The learned Single Judge has found the said representation made by the Plaintiff to be false to the knowledge of the Plaintiff. The learned Single Judge has recorded following findings in paragraph 63 of the order for the purpose of arriving at a conclusion that statement made by the Plaintiff about acquisition of knowledge of use of the mark by the Defendants in October 2023 is a false statement to the knowledge of the Plaintiff:

63. Although the Order dated 19th March 2024 does not specifically record the reasons for granting an ex-parte ad interim injunction without notice, it is recorded in the Order that the Plaintiff learnt about the Defendants' use of the mark only in October 2023. Therefore, it is obvious that the Court was persuaded to pass the Order dated 19th March 2024 without notice on that basis. The statement of the Plaintiff that the Plaintiff learnt about the Defendants' use of the mark only in October 2023 is a false statement to the knowledge of the Plaintiff. This can be seen from the following:-

(a) In the Cease and Desist Notice dated 30th October 2023 issued by the Plaintiff it has categorically stated that the Defendants adopted the Plaintiff's well known trademark in the year 2022. Therefore, in its own notice, the Plaintiff has made a statement that the Defendant was using the impugned logo since 2022.

(b) In the Cease and Desist Notice dated 30th October 2023, the Plaintiff has reproduced a diagram which shows that the impugned said diagram is obviously copied from the website of Logos-World.net. The relevant pages of the website of Logos-World.net clearly shows that from 1994 to 2018 a different logo and trademark are being used by the Defendants, that from 2018 to 2022 another trademark was being used by the Defendants and from 2022 to present the impugned logo along with the trademark was being used by the Defendants. Reading of the said contents of the said website make it very clear that the Defendants were using the impugned logo since 2022. Despite being aware of the said website, from which it copied the said diagram in its notice dated 30th October 2023, the Plaintiff did not disclose the said website or the fact that the Defendants had started using the impugned log in 2022. Having itself suppressed the website Logos-World.net from which it copied the said diagram, in my opinion, it is not open for the Plaintiff to now contend that the website of Logos-World.net should not be looked at as it has not been put on Affidavit by the Defendants. As per the principles laid down hereinabove, it was the duty of the Plaintiff to disclose the relevant pages of the said website, and having failed to do so, the Plaintiff cannot now contend that the said website should have been put on Affidavit. It is obvious that the Plaintiff has raised the said defence because it has not been able to explain as to why it did not disclose the website of Logos-World.net.

(c) The extracts of the Defendant's LinkedIn account show that the Defendants had used the impugned logo on 20th June 2022 and 21st July 2022. As stated in the judgements referred to hereinabove, before filing the Suit it was the duty of the Plaintiff to make proper investigation and inquiry. It is obvious that either the Plaintiff has not made such an inquiry, or that despite being aware of the Defendants' LinkedIn account showing use of the impugned logo on 20th June 2022 and 21st July 2022, the Plaintiff chose to suppress it in the Plaint.

(d) The Defendants' impugned mark was advertised in the Trademark Journal on 13th March 2023. The Plaintiff was aware of the Defendant's rademark application and therefore it is not possible that the Plaintiff would not know that the Defendants' impugned mark was advertised in the Trademark Journal on 13th March 2023. Despite the same, the Plaintiff has chosen to suppress the same.

(e) The Defendants' Parent Country Application made on 20th April 2022 in the USA shows first use on 21st March 2022 and use in commerce on 21st March 2022. This fact has also been suppressed by the Plaintiff.

13) The learned Single Judge thereafter held that no explanation was pleaded by the Plaintiff as to why and how it acquired knowledge of use of the impugned mark by the Defendants in October-2023. The learned Single Judge has refused to accept explanation given by the Plaintiff about Defendants' stand in reply dated 1 December 2023 of remodelling of brand and use of the concerned mark i.e. "most recent". The learned Judge held that the context in which words "most recently" are used in the said reply by the Defendants meant that the impugned logo was their recent logo and not that they had started using the recent logo very recently. The learned Single Judge held that if the Plaintiff was to disclose the fact that the Defendants were using the impugned mark as logo since 2022 the Court would have directed issuance of notice instead of granting ad-interim ex-parte relief. The learned Judge has held in paragraph 65 as under:

65. If the Plaintiff had disclosed these facts, and especially the fact that the Defendants were using the impugned logo since 2022, then the Court would have directed the Plaintiff to give notice and would not have granted ad interim reliefs without notice on the basis of urgency. Even otherwise there is suppression of material facts by the Plaintiff and, therefore on the principles laid down in the judgments referred to above, in my view, the ex-parte injunction granted to the Plaintiff by the said Order dated 19th March 2024 should not be continued.

14) Thus, ad-interim injunction granted in favour of Plaintiff by order dated 19 March 2024 has been discontinued by the learned Single Judge on a singular factum of non-disclosure of factum of Defendants using impugned mark /logo since 2022. As observed above, the Defendants did not file application under Order XXXIX Rule 4 of the Code, which provides for discharge, variance or setting aside order for injunction. Rule 4 of Order XXXIX provides thus:

4. Order for injunction may be discharged, varied or set aside-

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, 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:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.

(underlining supplied)

15) The first Proviso to Rule 4 of Order XXXIX deals with a situation where injunction is granted without issuing notice to opposite party. Thus an ex parte order of injunction can be discharged, varied or set aside if it is found that in the

application for temporary injunction or in any affidavit supporting such application, Plaintiff has knowingly made a false or misleading statement in relation to a material particular. For vacation of ex parte injunction, the Court needs to arrive at a conclusion that the material particular considered by it while granting temporary injunction was premised on a false or misleading statement. Thus if twin requirements of (i) court making an order of injunction without issuing notice to opposite party and (ii) Plaintiff making false or misleading statement relating to material particular, are fulfilled the ex-parte injunction can be vacated. However, in the present case, Defendants did not file application under Order XXXIX Rule 4 of the Code, but applied for discontinuation of ex-parte ad-interim injunction by filing limited affidavit-in-reply. This course of action appears to have been approved in various judgments of this Court including the judgment in ***Kewal Ashokbhai Vasoya*** (supra).

16) Under Order XXXIX Rule 3 the Code, the Court is mandated to direct issuance of notice to the opposite party 'in all cases' before granting injunction. This requirement is dispensed with only in a case where the Court records an opinion that object of granting injunction would be defeated by the delay. The provisions of Order XXXIX Rule 3 of the Code are as under:

Rule 3. Before granting injunction, Court to direct notice to opposite party-

The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party :

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

- (i) a copy of the affidavit filed in support of the application;
- (ii) a copy of the plaint; and
- (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

17) In the present case, Defendants sought discontinuation of ad-interim injunction by alleging suppression about date of acquisition of knowledge by Plaintiff in respect of Defendants' use of the impugned mark/logo. It is Defendants' case that though Plaintiff acquired the knowledge of Defendants' use of the impugned mark/ logo in the year 2022, it falsely pleaded in the Plaint that such knowledge was acquired in October-2023. According to Defendants, if the Court was made aware of the position of Defendants' use of the mark/logo since 2022, the Court would have issued notice under Order XXXIX Rule 3 of the Code and would not have granted ex-parte

injunction in Plaintiff's favour. Thus, the allegation of suppression raised by Defendants is relevant for the purpose of formation of opinion by the learned Single Judge under proviso to Rule 3 of Order XXXIX of the Code. According to Defendants, the learned Single Judge proceeded to pass ex-parte ad interim injunction under Proviso to Rule 3 on account Plaintiff's misrepresentation that it acquired knowledge of Defendants' use of impugned mark /logo in October-2023.

18) Thus, the allegation of suppression raised by the Defendants does not relate to material particular, on the basis of which the learned Single Judge could have applied the triple test of *prima facie* case, balance of convenience and irreparable loss. Allegation of suppression is relevant only to the aspect of Court getting convinced about the need for dispensation of the notice under Order XXXIX Rule 3 of the Code. As observed above, the Defendants have not filed application under Order XXXIX Rule 4 of the Code, which requires proof of Plaintiff knowingly making a false or misleading statement in relation to material particular on which the injunction is premised. Defendants' choice of not applying for vacation of ad-interim injunction under Order XXXIX Rule 4 of the Code can possibly be attributed to their belief that the suspension had no bearing on merits of Plaintiff's entitlement for injunction. This is also clear from the fact that in the 'limited affidavit' filed by Defendants, there is no allegation that Plaintiff suppressed information or document relating to merits of its claim. All that is done by filing 'limited affidavit'

seeking discontinuation of ex-parte ad-interim injunction was to inform the Court that it was misled in dispensing with notice under Order XXXIX Rule 3 of the Code. Thus, if true disclosure of alleged information of Defendants' use of the mark /logo since the year 2022 was made, all that would have happened was issuance of notice by the learned Judge to the Defendants under Order XXXIX Rule 3 of the Code before making an order of ad interim injunction. Making of such disclosure would not have any effect on *prima facie* determination by the learned Single Judge of the Plaintiff's entitlement of ad-interim injunction. In other words, though the learned Single Judge could have passed an order of ad-interim injunction, such order could not have been made 'ex-parte'. The allegation of suppression is thus relevant only for the purpose of deciding the factor as to whether the learned Single Judge was justified in proceeding ex-parte while passing the order dated 19 March 2024.

19) When Plaintiff moves an application for ad interim injunction and urges the Court to grant the same without issuing notice to the Defendants, the Court institutes twin inquiries. It first inquires whether Plaintiff has satisfied the trinity test of *prima facie* case, balance of convenience and irreparable loss, which is 'Inquiry No. 1'. If Plaintiff passes the muster of Inquiry No. 1, the Court then inquires whether it is necessary to issue notice to Defendants or whether the requirement of issuance of notice needs to be dispensed with in the facts of the case, which is 'Inquiry No. 2'. As observed above,

if the suppression is of material particular on which the order of injunction is premised (i.e. the one, if disclosed, would have affected the Court's mind while conducting Inquiry No. 1), the injunction needs to be vacated/discontinued. However, if the allegation of suppression is relevant only to Inquiry No. 2, it has bearing on only the aspect of need for issuance of notice to Defendants. In a given case, if there is no allegation of suppression *qua* Inquiry No. 1 and the Defendant has not even pleaded or urged before the Court that the outcome of Inquiry No. 1 is erroneous on merits, but the Defendant approaches the Court levelling allegation of suppression *qua* only Inquiry No. 2, vacation of injunction already granted would not be warranted in each case and it would depend on facts and circumstance of each case. In the present case, the allegation of suppression has relevance only to Inquiry No. 2 and the same is not relevant for Inquiry No.1. Defendants, as of now, have not even filed Affidavit-in-Reply opposing the Application for temporary injunction on merits.

20) No doubt, a party to litigation has a duty to disclose true and correct information and the relief of temporary injunction, being discretionary and equitable, can be denied to a Plaintiff indulging in suppression of material information. However, it must also be examined as to in respect of which inquiry, the alleged suppressed information would have affected the mind of the Court. If there is suppression of material information affecting Inquiry No. 1, discharge of injunction is

warranted. However, if there is allegation of suppression (and which is debatable) *qua* only Inquiry No. 2 (relating to need for dispensing with notice to Defendants), whether the case would call for discharge of injunction already granted becomes questionable and the issue needs to be decided in facts of each case. Once it is observed that allegation of suppression is relevant only for the purpose of formation of opinion under proviso to Rule 3 of Order XXXIX of the Code and not for deciding Plaintiff's entitlement on merits for grant of ad-interim injunction, the suppression, in our view, must be of a very high degree for the purpose of revoking or discontinuing the ad-interim injunction already granted. To paraphrase, the degree of suppression needs to be comparatively higher when it has connection with formation of opinion for dispensing with the notice under proviso to Rule 3 of Order XXXIX of the Code (Inquiry No. 2) as compared to the suppression of material particular on the basis of which the very order of ad-interim injunction is premised (Inquiry No. 1). This is because the ad-interim injunction is granted by the Court after satisfying itself about existence of *prima facie* case and the other two tests of irreparable loss and balance of convenience being met. Though notice to opposite party was dispensed with, the Court can always hear the opposite party on the next date and decide whether to continue the ex-parte injunction or not. Therefore, the Court ordinarily needs to concentrate more on deciding Plaintiff's entitlement for continuation of ex-parte injunction on merits rather than vacating the same only on the ground that it was

misled in dispensing with notice. However, it is not that in every case where the allegation of suppression has relevance only to Inquiry No. 2, the Court can ignore the allegation of suppression and continue the ad interim ex-parte injunction already granted. It all depends on facts of each case. In a given case, where the suppression *qua* Inquiry No. 2 is of a very high degree, deliberate and undebatable, the Court would be justified in discontinuing the discretionary and equitable relief of interim injunction already granted.

21) Keeping in mind the above discussed principles, we now proceed to examine the allegation of suppression raised by the Defendants.

22) Defendants have alleged that Plaintiff was aware of the Defendants' use of the mark since the year 2022, but falsely pleaded in the Plaint that it acquired such knowledge in October -2023. On the other hand, it is Plaintiff's case that irrespective of the date from which Defendants actually started using the impugned mark / logo, Plaintiff acquired knowledge of such use only in October -2023. The allegation of suppression raised by the Defendants is premised essentially on following statements made by the Plaintiff in its Advocate notice dated 30 October 2023:

“The device mark adopted by you is a blatant and an exact copy of our Client's mark/ device, which demonstrates your malafide intention to trade and cash upon our Client's goodwill and reputation. It is pertinent to highlight that you

had adopted and used different trademarks/ devices for your company before you blatantly adopted our client's highly profiled well-known trademark, in the year 2022. You have only adopted our client's mark with the goal to obtain notoriety through our client and to incur significant financial damage, after understanding that our client is one of the leading technology service providers in India.

23) Plaintiff explains the above statement in the notice dated 30 October 2023 by contending that the above statement refers to screen shot of Defendants' most recent use of Plaintiff's logo. The said screen shot is copied by Plaintiff from the website of *Logos-World.net*. Plaintiff however contends that the concerned article/ web page was published on 1 October 2023 and that therefore Plaintiff noticed the said use only in October- 2023 upon visiting the concerned web page.

24) There is thus debate between the parties about the exact meaning of the statement in the Notice that "*It is pertinent to highlight that you had adopted and used different trademarks/ devices for your company before you blatantly adopted our client's highly profiled well-known trademark, in the year 2022.*" Plainly read, the statement means that the Defendants adopted the mark in the year 2022. The notice is silent about the date of acquisition of knowledge by Plaintiff of such use. In the Plaintiff the time of acquisition of such knowledge is disclosed as October 2023. The issue is whether the statement made in the Plaintiff about acquisition of knowledge about Defendants' use of mark/logo in October 2023 can be termed as 'false' on the basis of contents of the Notice? The answer to the question, to our mind,

does not emphatically appear to be in affirmative. If Plaintiff was to make a statement in the notice that it learnt about Defendants' use of the mark in 2022, its statement in the Plaint could be termed as a false statement. However, the Notice is silent about the time when Plaintiff acquired the knowledge.

25) Therefore, though Plaintiff made a statement in the notice that Defendants started using the impugned mark since the year 2022, the said statement does not automatically ascribe knowledge to the Plaintiff of such use since the year 2022. Defendants' use of the mark since the year 2022 is an altogether different concept than Plaintiff acquiring knowledge of such use from a particular date. It is Plaintiff's case before us that irrespective of the actual date of commencement of use of the mark/logo by Defendants, Plaintiff acquired knowledge of such use in October -2023. On the other hand, Defendants have interpreted the above quoted statement in the Notice to mean acquisition of knowledge by Plaintiff of use of the mark/logo by Defendants since the year 2022. Without delving deeper into this controversy, it is suffice to observe that the allegation of suppression is debatable.

26) One may expect Plaintiff to be clearer in the pleadings. Plaintiff could have pleaded in the Plaint that though Defendants started using the impugned logo/mark in 2022, Plaintiff acquired knowledge of such use only after visiting the concerned website in October-2023. Instead of pleading so,

Plaintiff has chosen to plead a plain and simple case of it acquiring knowledge of Defendants' use of the mark in October-2023. The reason for such conduct is discussed in the latter part of the judgment. The case, in our view, does not involve a very high degree of suppression as the allegation of suppression itself is debatable. At the highest, Plaintiff can be accused of not raising a correct and clearer pleading, but it is debatable as to whether Plaintiff can be held guilty of suppression of such a degree that ad-interim relief granted in its favour was required to be withdrawn only because disclosure of such information would have led to issuance of notice under Rule 3 of the Order XXXIX of the Code.

27) Also of relevance is the statement made by the Defendants in their reply dated 1 December 2023, in which it was contended that the Defendants had remodelled their brand and created artistic representation of its trademark and name to better convey its goal and accordingly three marks of the Defendants were reflected in paragraph 7 of the reply. In respect of the last mark / logo, Defendants chose to describe adoption of the said mark /logo 'most recently'. In the impugned order, the learned Single Judge has held that use of the words 'most recently' in paragraph 7 of the reply refers to the concerned logo being the most recent logo and that the said words do not convey /imply the timeline from which the impugned logo was put to use. While the learned Single Judge may not be entirely wrong in observing so, use of the said words 'most recently' may also

create an impression that the impugned mark was put to use by the Defendants not very long time ago. Defendants also did not state in the said reply that the use of the impugned mark started in the year 2022. Thus, absence of specific statement about use of the mark from the year 2022 coupled with use of the words ‘most recently’ in paragraph 7 of the reply has created an impression in Plaintiff’s mind that the Defendants had started using the impugned mark / logo ‘very recently’. The allegation of suppression needs to be understood in the context of manner in which the reply of Defendants dated 1 December 2023 was couched. If Defendants were to make an assertive statement in the said reply that the use of the impugned mark started in the year 2022, perhaps Plaintiff could have been expected to be clearer by pleading in the Plaint that though use may have started in the year 2022, knowledge of such use was acquired only in October -2023.

28) The learned Single Judge has also considered the position as to whether it was otherwise possible for Plaintiff to acquire knowledge of Defendants’ use of the mark/logo since 2022. The learned judge has considered the aspect of Plaintiff copying the mark of the Defendants from the journal *Logos.World.net* which shows use of the marks since 2022. However, Plaintiff has invited our attention to the print out of the concerned web page showing the date of publication of the Article as 1 October 2023, which aspect appears to have been ignored by the learned Single Judge. The other material

considered by the learned Single Judge for arriving at a finding of suppression is (i) Defendants' LinkedIn account showing use of the logo on 22 June 2022 and 21 July 2022, (ii) advertisement of the impugned mark in Trademark Journal in March 2023 and (iii) Defendants' Parent Company Application dated 20 April 2022 in USA showing first use on 21 March 2022. The learned Single Judge has accused Plaintiff of not making the required inquiries and accordingly the finding of suppression is recorded. In absence of any material to hold that the Plaintiff actually had noticed the three documents or acts, the learned Single Judge has expected high degree of diligence on the part of the Plaintiff, which, if exercised, would have enabled Plaintiff to acquire knowledge about Defendants' use of the mark since the year 2022. Order XXXIX Rule 4 of the Code requires the act of 'knowingly' making a false statement. True it is that it is Plaintiff's duty seeking ex-parte ad-interim orders to ensure that information about the defendant and the offending product, available on a reasonable inquiry, is honestly disclosed and placed on record before the Court. However, present case involves a peculiar fact where the Defendants have evolved their marks/logos over a period of time. Admittedly they were using different mark/logo till 2022. Defendants are global IT services leaders and are not fly-by-night companies. Business operations of Defendants must be in knowledge of Plaintiff, both being in the same services related business. However admittedly Defendants were using a different mark/logo earlier. Defendants themselves claim that they started using the mark/logo in the

year 2022. Thus, this is not a case where Defendants have been using the impugned mark/logo for the last several years. The use is attributed to three documents pertaining to March/April 2022 (Defendants' Parent Company Application in USA), 22 June/21 July 2022 (Defendants' LinkedIn account) and March 2023 (advertisement of the impugned mark in Trademark Journal). The last document is of March 2023 and Plaintiff's claim of acquisition of knowledge is October 2023. In the peculiar facts of the present case where the Defendants, who were using a different mark/logo for several years, adopted the impugned mark in 2022, some delay in noticing of adoption of the impugned mark/logo by Plaintiff cannot be a ground to infer that Plaintiff has indulged in suppression.

29) In our view therefore, the case does not involve very high degree of suppression on the part of the Plaintiff, and in any case suppression to the extent of warranting discontinuation of ad-interim injunction granted in its favour. The learned Single Judge ought to have used his discretion and called upon the Defendants to file reply to application for temporary injunction and ought to have decided the same.

30) As observed above, the impugned order dated 13 June 2024 does not record any finding that the allegation of suppression has any bearing on Plaintiff's entitlement for ad-interim injunction. The allegation of suppression has relevance

only to Plaintiff's act for pressing its application ex-parte on 19 March 2024. In that view of the matter, reliance by the Defendants on judgment of Division Bench of this Court in ***Kewal Ashokbhai Vasoya*** (supra) is inapposite. In case before the Division Bench, an appeal was filed challenging order granting ad-interim injunction without notice whereas the present case involves moving an application before the learned Single Judge for discontinuation of ad-interim injunction alleging suppression of material particulars. In ***Kewal Ashokbhai Vasoya***, the order granting ad-interim injunction was challenged before the Appellate Court accusing the Plaintiff of suppressing information about Defendant being the registered proprietor of rival mark and non-production of any material to indicate filing of application for cancellation of Defendant's mark. The order granting ad-interim injunction was thus questioned before the Appellate Court on the ground that such order would never have been made if the Court was informed of Defendant being the registered proprietor of the rival mark. Thus, the allegation of suppression in ***Kewal Ashokbhai Vasoya*** (supra) had a direct bearing on Plaintiff's entitlement to seek ad-interim injunction, which is not the case in the present Appeal, where the allegation of suppression is limited only to the aspect of non-issuance of notice by the learned Single Judge before making ex-parte ad-interim order. The findings recorded by the Division Bench therefore needs to be appreciated in the light of this fundamental distinction between the two cases. In ***Kewal Ashokbhai Vasoya*** (supra) disclosure of information relating to Defendant's

proprietaryship in the rival mark would have resulted in refusal of an order of injunction whereas the disclosure of the alleged suppressed material in the present case would have at the highest resulted in issuance of notice to the Defendant under Order XXXIX Rule 3 of the Code. Also, while discussing the principles governing grant of ad-interim injunction without notice to the Defendants, the Division Bench ultimately did not interfere in the order passed by the learned Single Judge and left a liberty for Defendant open to move the learned Single Judge opposing Plaintiff's application for temporary injunction. In our view, there is a fundamental difference in the exact effect of disclosure of alleged suppressed information in the case before the Division Bench in *Kewal Ashokbhai Vasoya* (supra). Also, in *Kewal Ashokbhai Vasoya* the Division Bench has noted the principles discussed in English judgment in *Alexendar Tugushev V/s. Vitaly Orlov*³ in which one of the principles is as under:

xii) **The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose.** Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) **the importance of the facts not disclosed to the issues before the judge** ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a

³ [2019] EWHC 2031 (Comm)

strong case on the merits will never be a good excuse for a failure to disclose material facts;
(*emphasis and underling supplied*)

31) Plaintiff had drawn attention of the learned Single Judge to the judgment in ***Merico Ltd. V/s. KLR Nirmal Industries Pvt. Ltd***⁴ in which the above principle in ***Alexendar Tugushev V/s. Vitaly Orlov*** (supra) and ***Kewal Ashokbhai Vasoya*** was applied and the Court held as under:

73. In the decisions of this Court in ***Kewal Ashokbhai Vasoya*** (supra), this Court has held that “the Court nevertheless has discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice.” Although, in my view, there has been no suppression of any material particular, **presuming that there was a suppression, this is a fit case for this Court to exercise its discretion to continue the injunction (or impose a fresh injunction), in view of the overriding consideration which is always the interest of justice.**

(*emphasis added*)

32) Thus, in appropriate cases, the Court can use its discretion and refuse to vacate the ad-interim injunction despite noticing suppression. In our view, this is the fit case where the ad-interim injunction ought not to have been vacated only on the ground of allegation of suppression, which is not only debatable, but which relates only to the aspect of dispensation of notice to Defendants.

⁴ IA (L) No. 26759 of 2023 in Commercial IP (L) Suit No. 2293 of 2023

33) Reliance by Defendants on the Supreme Court judgment in ***Shiv Kumar Chadha*** (supra) again does not provide any assistance for deciding the present Appeal. The Apex Court has emphasized the importance of issuance of notice to the Defendants in all cases under Order XXXIX Rule 3 of the Code. The judgment highlights the importance of recording of reasons by the Judge while forming opinion for dispensing with the notice under proviso to Rule 3 of Order XXXIX of the Code. However, in the present case, Defendants did not challenge the order of the ex-parte ad-interim injunction dated 19 March 2024 by filing appeal, but chose to move the learned Single Judge for discontinuation of ex-parte ad-interim injunction order. The learned Single Judge while passing order dated 13 June 2024 was obviously not sitting in appeal over order passed by another Single Judge on 19 March 2024. Therefore, order dated 13 June 2024 rightly does not deal with the need of recording of reasons for formation of opinion for dispensing with the notice to the opposite party as required under Rule 3 Order XXXIX of the Code. Therefore, it is not necessary in the present Appeal to delve deeper into the issue of requirement to record of reasons by the learned Single Judge while passing order dated 19 March 2024.

34) In our view, considering the peculiar facts of the case where the allegation of suppression raised by the Defendants had little relevance to the issue of determining Plaintiff's entitlement to injunction order under Order XXXIX Rules 1 and 2 of the

Code, it would have been more appropriate for the Court to take up Interim Application (L) No.7958 of 2024 for final decision rather than entertaining Defendants' prayer for discontinuation of ad-interim injunction.

35) As observed above, on the basis of material placed by the Defendants, it is difficult to conclusively hold that the Plaintiff has indulged in deliberate act of suppression of information about date of acquisition of knowledge about Defendant's use of the impugned mark / logo. Even if non-disclosure of full and complete information is to be remotely attributed to Plaintiff, such allegation would be relevant not for the purpose of determining Plaintiff's entitlement for temporary injunction but would have been relevant only for the purpose of deciding whether issuance of notice under Order XXXIX Rule 3 of the Code to the Defendants was necessary or not. Also, the allegation of suppression in the present case is debatable and not so serious that the same warranted discontinuation of ad-interim injunction only because notice was not served on the Defendants. In other words, allegation of suppression having relation to the issue of requirement of issuing notice to the Defendants, the same cannot be used for the purpose of assessing Plaintiff's entitlement for temporary injunction. In our view therefore the order dated 13 June 2024 discontinuing the order of ad-interim injunction is indefensible and liable to be set aside.

36) We are conscious of the position that the impugned order was passed on 13 June 2024, and more than a year has passed since discontinuation of the ad-interim injunction. Therefore, Defendants have urged for direction to the learned Single Judge for decision of the main application by continuing the position as it stands today. The Appeal was however filed by the Plaintiff immediately after passing of the impugned order and therefore pendency thereof for last more than a year cannot be held against the Plaintiff. Merely because some time has elapsed after passing of the impugned order, Plaintiff cannot be made to suffer the consequences of erroneous findings of the Court about suppression. Since discontinuation of the ad-interim injunction is found to be erroneous, the position as it stood prior to the passing of order dated 13 June 2024 needs to be restored.

37) The Appeal accordingly succeeds, and we proceed to pass the following order:

- a) Judgment and Order dated 13 June 2024 passed by the learned Single Judge is set aside.
- b) Order dated 19 March 2024 shall continue to operate during pendency of Interim Application (L) No.7958 of 2024.
- c) The learned Single Judge is requested to expedite decision of Interim Application (L) No.7958 of 2024 and to make an endeavour to decide the same in an expeditious manner.

38) With the above direction, Appeal is allowed. There shall be no orders as to costs.

39) With the disposal of the Appeal, Interim Application does not survive and the same stands disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]