ASHVINI BAPPASAHEB KAKDE
Digitally signed by ASHVINI BAPPASAHEB KAKDE
Date: 2024.06.14 18:20:20 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.7958 OF 2024
IN
COMMERCIAL IP SUIT (L) NO.7897 OF 2024

ATYATI Technologies Private Limited ...Applicant /Plaintiff

V/s.

COGNIZANT Technologies Solutions US Corporation & Anr. ...Respondents /Defendants

---

Mr. Ashish Kamat, Sr. Advocate a/w. Mr. Hiren Kamod, Mr. Prem Kumar, i/b. Mr. Abhishek Adke for the Applicant/Plaintiff.

Mr. Virag Tulzapurkar, Sr. Advocate, a/w. Ms. V. Mohini, Ms. Aarti Agarwal, Mr. Karan Khiani, Aditya Mahadevia i/b. Rashmi Singh and Karan Khiani for Defendant No.1.

Mr. Rashmin Khandekar a/w. Ms. V. Mohini, Ms. Aarti Agarwal, Mr. Karan Khiani, Mr. Anand Mohan and Mr. Aditya Mahadevia i/b. Rashmi Singh & Karan Khiani for Defendant No.2.

CORAM : FIRDOSH P. POONIWALLA, J.

RESERVED ON: 10th MAY 2024

PRONOUNCED ON: 13th JUNE 2024

JUDGEMENT:

1. The present Suit is filed in respect of infringement of the Plaintiff's copyright in the ATYATI Device Mark, infringement of the Plaintiff's registered ATYATI Device Mark and ATYATI Registered

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

Marks and passing off the impugned services of the Defendants as and for the services and related products of the Plaintiff.

2. The present Suit is concerned only with the artistic work / logo and not the word mark COGNIZANT. The question before this Court at present is however limited in scope to the copyright subsisting in the artistic work/logo of the Plaintiff giving the scope of the ex-parte order that has been passed. The comparison of the rival marks / logo is depicted at page 34 of the Plaint and is reproduced herein for ease of reference

Plaintiff	Defendants
	

3. By an Order dated 19th March 2024, this Court was pleased to grant ex-parte ad-interim relief to the Plaintiff in terms of prayer clause (c) of the Interim Application, inter alia, restraining the Defendants from infringing the copyright of the Plaintiff's ATYATI device mark and from using the impugned mark / logo in any manner

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

whatsoever in relating to the impugned services until the next date of hearing, i.e. 30th April 2024, in the manner more particularly set out in the said Order.

4. The Defendants have filed an Affidavit in Reply dated 27th April 2024 praying that the ex-parte ad-interim relief granted by the Order dated 19th March 2024 ought not to be continued on the grounds of suppression and/or misstatements and/or false representations in the Plaint, which if disclosed to this Court while making the application for ad-interim reliefs without notice to the Defendants, the Court would not have granted injunctive reliefs to the Plaintiff without giving notice to the Defendants.

5. The case of the Defendant is as follows:

a. The Plaintiff has suppressed publicly available material which shows interalia that the Defendants' Enterprise is one of the largest and most reputed IT Solutions group in the world and that there was absolutely no case either in law or in equity to support the grant of ex-parte ad-interim reliefs without notice against such Defendants / business.

b. The Plaintiff has been economical with the truth and has misled the Court by suppressing publicly available material regarding the Defendants' true date of adoption/user of the

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

impugned mark as early as in March 2022 and has presented a false picture in the Plaint as to its knowledge of the impugned mark in an attempt to contrive urgency/sway the equities.

c. The Plaintiff has therefore suppressed material facts in the Plaint and the Plaint/Interim Application run foul of settled principles of equity and settled law govering the grant of ex-parte ad-interim reliefs.

6. Mr.Ashish Kamat, the learned Senior Counsel for the Plaintiff, made submissions as to why the ex-parte ad-interim relief granted by the said Order dated 19th March 2024 ought to be continued. Mr.Kamat took me through the said Order dated 19th March 2024 at length and submitted that the findings of the learned Judge therein are sufficient to grant an ex-parte ad-interim injunction. Mr.Kamat submitted that it is important to note that the said Order is on merits and the merits of the said Order are not assailed by the Defendants.

7. Mr.Kamat referred to page 34 of the Plaint where the rival marks / logo of the Plaintiff and the Defendants are set out (as depicted herein above also) and submitted that a bare look at these marks showed that the Plaintiff's logo was in the mind of the Defendants when they created their logo.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

8. Mr.Kamat also drew my attention to paragraph 10 of the Plaint and stated that the Plaintiff's said artistic work / logo was in use since 2019. Mr.Kamat further drew my attention to paragraph 12 of the Plaint which showed that, after it had developed the said logo in 2019, the Plaintiff had done substantial business, and that in the financial year 2022-23, the Plaintiff had done busines of approximately 317.54 Crores.

9. Mr.Kamat referred to the Plaintiff's cease and desist notice dated 30th October 2023 and the Defendants' reply thereto dated 1st December 2023. Mr.Kamat submitted that, from the facts narrated in the said reply dated 1st December 2023 on behalf of the Defendants, it was clear that the Defendants were big companies, and that since the said reply dated 1st December 2023 had been annexed to the Plaint, the learned Judge was aware about the stature of the Defendants.

10. Mr.Kamat also drew my attention to paragraph 7 of the Defendants' said reply dated 1st December 2023 and submitted that, in the said paragraph, the Defendants themselves had stated that they had adopted the impugned logo "most recently". Mr.Kamat submitted that, in the light of this statement made on behalf of the Defendants, there was no need for the Plaintiff to conduct any further enquiry about the period when the Defendants adopted the impugned mark.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

Mr.Kamat further submitted that paragraph 7 of the said reply dated 1st December 2023 did not state as to when the impugned logo was adopted and used by the Plaintiff. Further, Mr.Kamat submitted that the said reply did not contain an explanation as to why the Defendants had adopted this particular mark.

11. Next, Mr.Kamat drew my attention to paragraph 37 of the Plaint and submitted that the contents of paragraph 37 of the Plaint gave sufficient reasons for the Plaintiff moving ex-parte for ad-interim relief and, on that count, the learned Judge was justified in granting ex-parte ad-interim reliefs.

12. Mr. Kamat also referred to the Defendants' submissions in the Affidavit in Reply regarding suppression. Mr. Kamat reiterated that there was no question of suppression on the part of the Plaintiff and that no further inquiry was required on the part of the Plaintiff as the Defendants, by their Reply dated 1st December 2023, had stated that they had adopted the impugned logo "most recently".

13. Mr. Kamat then referred to the judgement of the Supreme Court in ***Laxmikant V. Patel v. Chetanbhai Shah***[1], on the proposition that there is a practice to grant appropriate ex-parte injunction if a case of infringement was made out.

1(2002) 3 SCC 65

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

14. Mr. Kamat also referred to the judgement of this Court in **Marico Limited vs. KLR Nirmal Industries Pvt. Ltd.** (IA(L) No.26759 of 2023 in Commercial IP (L) Suit No. 2293 of 2023) and submitted that, in the said judgement, the Court had emphasized that the overriding consideration would always be the interests of justice. Relying on this judgment he submitted that the substance of the matter is paramount, and that if the Defendants have no answer to the Plaintiff's case for infringement, then the ex-parte ad interim injunction already granted should be continued.

15. Next Mr. Kamat submitted that if this Court is not at variance with the finding in the Order dated 19th March 2024 granting the ex-parte ad interim injunction in respect of deceptive similarity, then the said ex-parte ad interim injunction should be continued. In this context, he also submitted that the Defendants had given no explanation for adoption of the impugned logo and therefore dishonesty should be presumed. He further submitted that, if the Defendants have tried to deceive the public, then there is no reason for the ex-parte ad interim order not to continue.

16. In this context, Mr. Kamat referred to the judgement of the Supreme Court in **Gujarat Bottling Co. Ltd. vs. Coca Cola Company**[2]

2(1995) 5 SCC 545

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

and submitted that, as per what is laid down in the said judgement, the Court would always look at the conduct of the party invoking the jurisdiction of the Court for seeking vacating of an injunction or the non continuance thereof.

17. In conclusion, Mr. Kamat submitted that the ex-parte ad-interim relief granted by this Court by its Order dated 19th March 2024 should be continued by this Court.

18. On the other hand, Mr. Virag Tulzapurkar, the learned Senior Counsel appearing on behalf of the Defendant, submitted that the present case was not a case for vacating an ex-parte ad interim injunction under Order 39 Rule 4 of the Code of Civil Procedure, 1908 ("the CPC").

19. Mr. Tulzapurkar referred to the judgment of the Supreme Court in **Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors.**[3] to submit that the Courts should be extremely careful in granting ex-parte ad interim injunctions.

20. Mr. Tulzapurkar referred to Order 39 Rule 3 of the CPC and stated that the said provisions provided for only one exception where notice of the Application was not to be given to the opposite party-that is where it appears that the object of granting the injunction itself

3 (2011) 8 SCC 249

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

would be defeated by delay. He submitted that the said exception did not apply in the present case as the giving of a notice to the Defendants would not have defeated the object of granting the injunction, if any.

21. Mr. Tulzapurkar referred to the judgement of the Supreme Court in **Morgan Stanley Mutual Fund vs. Kartick Das**[4], and in particular to paragraph 36 thereof, which lays down the factors which would weigh with the Court in the grant of ex-parte injunction.

22. Mr. Tulzapurkar then referred to a judgement of this Court in **Kewal Ashokbhai Vasoya and Anr. Vs. Saurasbhakti Goods Pvt. Ltd.**[5] and submitted that the said judgement clearly lays down, in paragraphs 16 and 17 thereof, the duties that an applicant had while applying for an ex-parte ad-interim injunction.

23. Next Mr. Tulzapurkar submitted that the Defendants are only companies which provide services and do not manufacture goods. Therefore, there was no question of the Defendants flooding the market with goods if notice was given to the Defendants. He submitted that this was one more reason as to why notice ought to have been given to the Defendants.

---

4 (1994) 4 SCC 225

5 (2022) SCC Online Bombay 3335

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

24. Mr. Tulzapurkar submitted that, on a perusal of pages 23 and 24 of the Plaint, it was clear that the Plaintiff's logo is not a "C", while the Defendants' logo is a "C" as the name of the Defendants starts with a "C".

25. Mr. Tulzapurkar then referred to Exhibit-M to the Plaint (at page 251 to the Plaint), which was the Defendants' Application for International Registration Designating India ("IRDI"). He submitted that the said Application mentioned "Proposed to be used" as there was no user detail column in the said form MM2.

26. Next, Mr. Tulzapurkar referred to paragraph nos.21 and 22 of the Plaint and stated that the Plaintiff had given a Cease and Desist Notice dated 30th October 2023 to the Defendants which had been replied to by a letter dated 1st December 2023. The Suit was filed on 4th March 2024, i.e., 3 months after the Defendants reply. Despite the same, the Plaintiff did not give notice of the Application for ad-interim relief to the Defendants.

27. Next, Mr. Tulzapurkar referred to paragraph 24 of the Plaint which stated that the Defendants had filed a Caveat in the City Civil Court at Bengaluru, anticipating legal proceedings from the Plaintiff. However, the Plaintiff had not been served with any Caveat by the Defendants filed before this Court. In this context, Mr. Tulzapurkar

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

submitted that the Caveat of the Defendants is dated 1st December 2023. This Caveat was filed in Bengaluru as the Plaintiff's registered office is in Bengaluru and the Defendants have business in Bengaluru. He submitted that a Caveat was also filed in Chennai because the Defendant No.2 had a registered office in Chennai. Mr. Tulzapurkar submitted that the Plaintiff evaded these Caveat by filing the present Suit in this Court. Mr. Tulzapurkar submitted that the fact of the Defandants having filed Caveats in Bengaluru and Chennai would be relevant in the context of granting an ex-parte ad interim injunction and therefore should have been pointed out to the Court when the Court passed the Order dated 19th March 2024. He submitted that a perusal of the said Order dated 19th March 2024 showed that this fact was not pointed out to the Court.

28. In this context, Mr. Tulzapurkar referred to an Order dated 24th September 2021 passed by this Court in **Prepladder Private Limited and Anr. vs. Medical Joyworks, LLC** (Appeal from Order No.281 of 2021).

29. Mr. Tulzapurkar further referred to the Cease and Desist Notice dated 30th October 2023 issued by the Plaintiff to the Defendants. He submitted that the diagram in the Plaintiff's Cease and Desist Notice dated 30th October 2023, which found at page 229 of the Plaint,

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

clearly showed that the Plaintiff was aware that the Defendants were using the impugned logo from 2022 onwards. He submitted that, in the paragraph below the diagram, the Defendant had clearly stated that the Defendant had adopted the impugned logo in the year 2022. He submitted that, despite the same, in the Plaint, the Plaintiff has wrongly and dishonestly stated that it came to know about impugned mark of the Defendants only in October 2023. He further stated that the ex-parte Order dated 19th March 2024 also recorded, in paragraph 10, that the impugned mark/logo was adopted very recently as a part of the Defendants' remodeling exercise. He submitted that this clearly showed that the Plaintiff had misrepresented to the Court that the Defendants had started using the mark very recently, when, in fact, the Defendant, to the knowledge of the Plaintiff, was using the logo since 2022.

30. With further reference to the diagram which forms a part of the Plaintiff's Cease and Desist Notice dated 30th October 2023, Mr. Tulzapurkar submitted that the said information contained in the diagram had been obtained by the Plaintiff from the website of Logos-World.net. Mr. Tulzapurkar submitted that the said website contained a history of the mark/logo adopted by the Defendants from 1994 to 2018, the mark adopted by the Defendants from 2018-2022 and the

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

mark and logo adopted by the Defendants from 2022 to the present, which was the impugned logo. Mr. Tulzapurkar submitted that the said website puts it beyond any doubt that the impugned logo was adopted by the Defendants in 2022. He submitted that, despite copying the said diagram in the Notice dated 30th October 2023 from the said website, Logos-World.net, the Plaintiff chose to suppress the material on the said website in the Plaint. If the material on the said website had been produced in the Plaint, the same would have clearly shown that the Defendants had used different marks and logos at different times and that the impugned logo was adopted and used by the Defendants from 2022 onwards.

31. Mr. Tulzapurkar referred to Exhibit-A to the Application which has been filed by the Plaintiff under Order 39 Rule2-A in this Court. He submitted that the said document, which was a "brief note" which was presented to the Court at the time of passing the ex-parte ad-interim Order dated 19th March 2024, clearly showed that the Plaintiff was aware of the Defendants' Trademark Application in respect of the said logo. Mr Tulzapurkar pointed out that the impugned logo was advertised in the Trademark Journal on 13th March 2023. He submitted that, since the Plaintiff was aware of the Trademark Application of the Defendants, the Plaintiff would be aware of the fact

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

that the impugned logo was advertised in the Trademark Journal on 13th March 2023. Mr. Tulzapurkar submitted that this fact had also been suppressed by the Plaintiff from this Court whilst obtaining an ex-parte ad interim injunction.

32. Mr. Tulzapurkar submitted that, if the Plaintiff had given notice to the Defendants, then all these facts could have been pointed out by the Defendants to the Court.

33. Mr. Tulzapurkar further referred to paragraph 26 of the Plaint. Mr. Tulzapurkar submitted that paragraph 26 of the Plaint referred to the websites of the Defendants. He submitted that, despite accessing the Defendants' website, the Plaintiff had annexed as Exhibit "O" to the Plaint only a part of the website and not other relevant material which was there on the website.

34. Mr. Tulzapurkar also referred to paragraph 37 of the Plaint. Mr. Tulzapurkar stated that, in paragraph 37 of the Plaint, the Plaintiff had stated that, if notice was given to the Defendants, then the same would defeat the rights of the Plaintiff, that the Defendant may destroy crucial evidence relevant to the Plaintiff's claim in the Suit and further that there was a strong likelihood of the Plaintiff's customers being deceived and confused into believing that the Defendants were in some manner connected with the Plaintiff. Mr. Tulzapurkar

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

reiterated that the Defendants were involved in providing services and that there was no question of the Defendants destroying any crucial evidence.

35. Next Mr. Tulzapurkar referred to the judgment of the Supreme Court in **Modi Entertainment Network & Anr. Vs. W.S.G. Cricket Pte.Ltd.**[6], and submitted that an Order passed without hearing would never be conclusive.

36. Further, Mr. Tulzapurkar referred to certain documents filed on behalf of the Defendants. He pointed out that the Defendants' LinkedIn page also showed that the Defendants had used the impugned logo as early on 20th June 2022 and 21st July 2022. He further pointed out that the Defendants' Facebook page showed that the Defendants had used the impugned logo since 23rd March 2022. Mr. Tulzapurkar submitted that it is obvious that the Plaintiff was aware of all these facts and that is the reason why, in its Notice dated 30th October 2023, the Plaintiff had categorically stated that the Defendants had adopted the impugned logo in the year 2022. Despite the same, the Plaintiff did not point out this fact in its Plaint. Mr. Tulzapurkar submitted that if this fact was disclosed in the Plaint, and

6(2003) 4 SCC 341

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

pointed out to the Court, then it is highly probable that the Court would have refused to grant ad interim relief without notice.

37. Further, Mr. Tulzapurkar also referred to a list of further additional documents filed on behalf of the Defendants. He referred to the Parent Country Application made by the Defendants for the impugned logo in USA on 20th April 2022. He further pointed out that this Parent Country Application showed that the Defendant had disclosed that it had first used the impugned logo on 21st March 2022 and that it has also been used in commerce on 21st March 2022. Mr. Tulzapurkar submitted that these various documents clearly showed that the Plaintiff was using the mark since 2022.

38. Mr. Tulzapurkar relied upon the following judgements to show as to what the Courts have done when the Plaintiff has not moved with candour or has suppressed facts.

(a) **HAB Pharmaceutical and Research Limited and Anr. Vs. Sunrise Remedies Private Limited** (Comm. IP Suit No.26827 of 2022, Bombay High Court)

(b) **Franco-Indian Pharmaceuticals Pvt. Ltd. vs. Hamdard Laboratories** (India). (Interim Application No.1 of 2020 in Commercial IP Suit (L) No. of 2020 in Bombay High Court)

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

(c) **Laser Shaving (India) Private Limited vs. RKRM International Products Private Limited & Ors.** (Comm IP Suit NO.44 of 202, Bombay High Court)

(d) **Rochem Separation System (India) Pvt. Ltd. vs. Nirtech Private Limited and Ors.** (Comm. IP Suit (L) no.29923 of 2022, Bombay High Court).

(e) **Maganlal Kuberdas Kapadia Vs. Themis Chemicals Ltd.** (Appeal No.332 of 1991in Suit No.1532 of 1990, Bombay High Court).

39. Mr. Tulzapurkar has also relied upon the following judgments for the proposition that, if the Court is granting an ex-parte ad interim injunction without notice, then the Court must record the reasons as to why no notice was being given.

(a) VRB Consumer Products Pvt. Ltd. vs. Capital Foods Private Limited[7]

(b) Golden Ocean Group Ltd. vs. Salgaocar Mining Industries Pvt. Ltd. And Ors[8].

7 2023 SCC Online Bom 24
8 2010(7) Mh.L.J.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

40. In conclusion, Mr. Tulzapurkar submitted that the Plaintiff, while approaching this Court for grant of ex-parte ad interim relief, had suppressed various material and relevant facts, and, therefore, this ad interim relief should not be continued further by this Court.

41. In rejoinder, Mr. Kamat submitted that, even if everything stated by the Defendants is correct, even then, considering the similarity of the logos of the Plaintiff and the Defendants, it is not in the interest of justice to discontinue the ex-parte ad interim injunction granted on 19th March 2024. In this context, Mr. Kamat submitted that no argument was advanced by the Defendant about the similarity of the logos. Further, there was no explanation from the Defendants as to how they adopted a similar logos even in their reply dated 1st December 2023 to the Cease and Desist Notice dated 30th October 2023 and in the Affidavit in Reply filed to the present Interim Application. Mr. Kamat submitted that deception and dishonesty was implicit in adoption by the Defendants of the impugned logo.

42. In support of this submission, Mr. Kamat relied upon the judgement of this Court in Encore **Electronics Ltd. vs. Anchor Electronics & Electricals Pvt. Ltd**[9].

9 2007 SCC Online Bom 147

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

43. Mr. Kamat submitted that, in the said Order dated 19th March 2024, this Court has taken a particular view whilst granting ex-parte ad interim relief, and this view has not been controverted by the Defendants.

44. Further, Mr. Kamat relied upon a judgement of this Court in **Shaw Wallace and Company Ltd. And another Vs. Mohan Rocky Spring Water Breweries Ltd**[10] and submitted that in trademark Suits mere incorrect statements cannot non-suit the Plaintiff if there is deception.

45. Mr. Kamat once again referred to the judgement of this Court in **Marico Limited** (supra), and particularly to paragraph 73 thereof, and submitted that in the said judgement the Court had held that the decision to continue the injunction, or impose a fresh injunction despite a failure to disclose, is at the discretion of the Court. Although this discretion should be sparingly exercised, the overall consideration would always be the interests of justice. Mr. Kamat submitted that, in that case, the Court held that, presuming there was suppression, it was a fit case for the Court to exercise its discretion to continue the injunction in view of the overriding consideration which is always the interest of justice.

10 2006 SCC Online Bom 393

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

46. Mr. Kamat next submitted that the Plaintiff has not knowingly made any false statement. He submitted that, after issuing the said Cease and Desist Notice dated 30th October 2023, the Plaintiff had seen the IRDI Application of the Defendants which showed that they proposed to use the logo. Further, in their own reply dated 1st December 2023, the Defendants had stated that they "most recently" adopted the impugned logo. It is in the light of these facts that the Plaintiff had made the statement in the Plaint that Defendants has used the mark since October 2023.

47. As far as the website of Logos-World.net, which have been referred to by Mr. Tulzapurkar, is concerned, Mr, Kamat submitted that the said document does not form a part of the Affidavit in Reply of the Defendants, nor is it included in the two compilation of documents produced by the Defendant, and, therefore, the same should be ignored. In support of this submission he relied upon an Order of the Delhi High Court in **Tenxc wireless inc. & Ors. Vs. Amdrew LLC & Ors.**[11]

48. Further Mr. Kamat submitted that paragraphs 13 to 15 of the Order dated 19th March 2024 of this Court set out the subjective

11 2010 SCC online Delhi 4558

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

satisfaction of this Court which was required under Order 39 Rule 3 of the CPC .

49. In support of his submissions in respect of the Cease and Desist Notice dated 30th October 2023 issued by the Plaintiff and the Reply dated 1st December 2023 thereto by the Defendants, Mr. Kamat relied upon an Order dated 10th March 2021 of this Court in **Prince Pipes And Fittings Ltd. vs. Prince Platinum Pipes and Fitting (A-Division of Vigor Plast India Pvt. Ltd) & Ors.** (IA(L) No.5290 of 2021 in Comm. IP Suit (L) no.5286 of 2021).

50. Next Mr. Kamat submitted that it was not correct to state that no ex-parte ad interim Orders can be granted in service matters. He submitted that no authority was cited in that regard by the Defendants. In this context, he further submitted that Section 135 of the Trademarks Act, which provides for reliefs in suits for infringement or passing off, does not make any distinction between a trademark on goods or services.

51. Mr. Kamat further submitted that the Defendants' website was not fully annexed by the Plaintiff as it was being used only for the purposes of jurisdiction.

52. Mr. Kamat also referred to the Guidelines For Functioning under the Madrid Protocol issued by the Trademark Registry, and in

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

particular to paragraph 7.3.15 thereof, which provides for an amendment or limitation requested by the holder of the international registration being incorporated in the Record of Particulars of International Registration, and submitted that the Defendants should have amended their IRDI registration and removed the words "Proposed to be used". Since the Defendants had not done so, they must stand by their representation.

53. Mr. Kamat also submitted that none of the judgments cited by Mr. Tulzapurkar were applicable in the present case as, in the present case, the Plaintiff was relying upon the Defendants' response in its Reply dated 1st December 2023 that it had started using the impugned logo most recently.

54. Before dealing with the issue as to whether the ex-parte ad interim injunction granted by the Order dated 19th March 2024 should be continued, it should be noted that, in paragraph 24 of the judgement of this Court in **Kewal Ashokbhai Vasoya and Anr.** (supra), this Court has held that continuation of an ex-parte ad interim relief can be opposed by filing an Affidavit in Reply and it was not necessary for the Defendants to file an Application under Order 39 Rule 4 of the CPC. Paragraph 24 of the said judgement reads as under:-

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> **"24.** The two provisos are exactly in line with the formulation of Carr J set out earlier. It is true that Order 39 Rule 4 speaks of an 'application'. But the first and second provisos are exceptions. They operate in distinct fields. The first proviso is a situation where an injunction has been obtained without notice. The second proviso contemplates a situation where an injunction has been made after notice and both sides were heard. We are of the considered view that an Order 39 Rule 4 substantive application by the defendant is not invariably necessary or mandatory where a case falls under the first proviso. To be perfectly plain about this, when there is a time-limited ad interim injunction and the matter is listed on a specific date, it is open to the defendant to file an Affidavit in Reply to show on that day why that ad interim order should not be continued or should be varied. After all, the purpose of listing the matter after a few days is precisely to consider whether the ad-interim injunction ought or ought not to be continued. The court is not denuded of the power to continue the injunction irrespective of any questions of disclosures if it feels that the interest of justice so demands — and this is precisely the summation by Mrs. Justice Carr in the case referred to above. Nothing prevents the defendants from filing an Order 39 Rule 4 application, but we hold that this is not a requirement that can be insisted on. The submissions in the Affidavit in Reply by a defendant opposing the continuance of a without notice ad-interim time-limited injunction cannot be ignored by a court on the basis that no substantive application under Order 39 Rule 4 has been filed."

55. In order to consider as to what are the principles on which the Court can refuse to continue ad interim relief granted earlier without notice, I will have to consider the judgements cited on that point by the parties. In this context, paragraphs 16 and 17 of the judgement of this Court in **Kewal Ashokbhai Vasoya and Anr** (supra) are relevant and are set out hereunder:-

> "**16.** While we take these principles as settled, they appear to us to indicate that in applying for an injunction without notice, there is a duty that falls on the applicant. These duties and their underlying principles were culled out in paragraph 5 of *Sun Pharmaceuticals*:
>
> > 5. To avoid ambiguity, I take the liberty of briefly summarizing the key principles I believe apply to every ex parte application. I do so because I believe an application for leave to

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

move ex parte can never be granted for the asking or automatically.

(a) The general principle is that the Court will hear both sides before rendering a decision. This is the essence of any adversarial justice-delivery process and based on the fundamental rule of natural justice and fairness, audi alteram partem. An ex parte application, without notice to or hearing, the other side is, therefore, the exception, a derogation from this general principle.

(b) It is every advocate's and every court's paramount duty, of the very first importance, to ensure the integrity of the judicial process. When, therefore, a court is asked to depart from the general and general rule, it must be able to rely on the applicant (who or which is appearing without an opponent on notice) to present its case fairly and evenly. This means that the applicant's case must contain a disclosure or statement of an anticipated defence or arguments likely in opposition. In turn, this means that an applicant seeking an ad-interim relief without notice must make a full and reasonably accurate disclosure of material facts and must invite the court's attention to factual, legal and procedural issues. On the factual issues to be disclosed, the applicant need only disclose as much — but every bit as much — as is within his knowledge, or that which, with reasonable efforts, he could discover. Material in the public domain, including in open registries, falls within this class of factual material.

(c) The disclosure and statement in the application or plaint must be neutrally and objectively presented so that the court has confidence in the case brought. Merely annexing a slew of documents does not, of itself, serve this purpose.

(d) Necessarily, this means that the applicant must be shown to have made the necessary and proper enquiries, within the bounds of reason, before making the application. This material can be in a supporting affidavit, but it must be before the court. Some level of investigation and enquiry must be demonstrated. This duty of disclosure includes matters of which the applicant would have been aware had he made reasonable enquiries. Specific to IPR matters, for instance, is the requirement for a search in the registry as to what, if anything, the defendant has done in regard to the competing mark, service, product or thing. For trademarks : has the defendant sought registration? When and with what effective date? With or without a disclaimer? There must be market information too : how long has the defendant

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

been in the market with the rival product and mark? In what area? In what manner?

(e) Ex parte applications are, by definition, moved in urgency. This must be demonstrated too. The compilation of relevant material may be less than optimally organized in view of the urgency, but the urgency does not excuse the need for a sufficient disclosure. The requirement is not of the fullest and most complete disclosure but enough to make the court cognisant of the likely issues and possible defences. A detailed analysis of every single possible point is not required. Undoubtedly, the requirement of disclosure relates to relevant material, and kept within sensible limits. The disclosure must be proportionate, and the task is not the pursuit of perfection (for it will always be argued that the disclosure might have been bettered). The disclosure requirement is, above all, a safeguard to ensure that the court is not misled on a material and relevant aspect.

(*Emphasis added*)

17. We believe this to be only a summation of long-settled law. It has been the law in this country and in England, where orders without notice are common. These include freezing orders in Mareva injunctions, frequently granted without notice on affidavit material alone, and Anton Piller search-and-seizure orders, typically without notice. The underlying principles were succinctly set out in a decision of 26th July 2019 by the Hon'ble Mrs. Justice Carr, sitting in the Commercial Court of England and Wales, a Division of High Court in *Alexendar Tugushev* v. *Vitaly Orlov* She had before her a non-disclosure application, i.e., an application saying that the plaintiff had failed to make the required disclosures. Saying the law was not contentious, Carr J set out the general principles in this way:

7. The law is non-contentious. The following general principles can be distilled from the relevant authorities by way of summary as follows:

i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

viii) In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;

xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;

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 strong case on the merits will never be a good excuse for a failure to disclose material facts;

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> xiii) **The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure.**
>
> (See in particular *Memory Corporation plc* v. *Sidhu (No 2)*, [2000] 1 WLR 1443 at 1454 and 1459; *Behbehani* v. *Salem*, [1989] 1 WLR 723 at 735 and 730; *Congentra AG* v. *Sixteen Thirteen Marine SA (The Nicholas M)*, [2008] EWHC 1615 (Comm); (2009) 1 All ER 479 (Comm) at [62]; *Bank Mellat* v. *Nikpour*, [1985] FSR 87 at 89 and 90; *Kazakhstan Kagazy plc* v. *Arip*, [2014] EWCA Civ 381; [2014] 1 CLC 451 at [36] and [42] to [46]; *Todaysure Matthews Ltd.* v. *Marketing Ways Services Ltd.*, [2015] EWHC 64 (Comm) at [20] and [25]; *JSC BTA Bank* v. *Khrapunov*, [2018] UKSC 19; [2018] 2 WLR 1125 at [71] and [73]; *Banca Turco Romana SA* v. *Cortuk*, [2018] EWHC 662 (Comm) at [45]; *PJSC Commercial Bank Privat Bank* v. *Kolomoisky*, [2018] EWHC 3308 (Ch) at [72] and [73] to [75]; *National Bank Trust v. Yurov*, [2016] EWHC 1913 (Comm) at [18] to [21]); *Microsoft Mobile Oy* v. *Sony Europe Ltd.*, [2017] EWHC 374 (Ch) at [203].)

> 8. There is no suggestion that the same principles do not apply to a without notice application for permission to serve out as they do on a without notice application for a freezing order (as confirmed for example in *PJSC Commercial Bank Privat Bank* v. *Kolomoisky* (supra) at [169] and *Sloutsker* v. *Romanova*, [2015] EWHC 545 (QB) at [52])."

56. Paragraphs 20 to 24 and 33 and 34 of the judgement of this Court in **HAB Pharmaceutical and Research Limited and Anr.** (supra) are relevant and are as under:-

> "20. In this regard, reference made to the judgment of the Supreme Court in the case of Anuradha Bhasin Vs. Union of India (supra), on behalf of the defendant, appears to be relevant, for the reason that the Supreme Court has indeed taken note of the fact that internet has now become a very important tool for trade and commerce. The Supreme Court has observed that non-recognition of technology in the sphere of law is unacceptable and that the importance of internet cannot be underestimated as number of activities including basic activities, are now encapsulated within the

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

cyberspace enabled by the use of internet. It is an accepted position that lot of products, including pharmaceutical and medicinal products, are traded on various platforms on the internet and plaintiffs have not been able to deny that they are also selling their products on the internet. Therefore, the plaintiffs cannot claim that while they would want to take advantage of facility of selling their products on the internet, at the same time, they would stall any information available on the internet, as regards a competitor in the same business, from being taken into consideration if a dispute arises, solely on the ground that information available on the internet has no evidentiary value. This Court is of the opinion that information available on the internet, in the context of the dispute that has arisen between the parties in the present case, is not to be strictly viewed from the angle of its evidentiary value, but on the basis as to whether such information would be available to the plaintiffs under the concept of reasonable enquiry recognized in the aforementioned judgments of this Court in case of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** (supra) and **Kewal Ashokbhai Vasoya and another Vs. Suarabhakti Goods Pvt. Ltd. (supra).**

21. The question is whether the march of technology can be completely ignored while applying the concept of reasonable enquiry. It is significant that in case of **Sun Pharmaceuticals Industries Limited Vs. Emil Pharmaceutical Industries Pvt. Ltd. and another** *(supra)*, in paragraph 5(b), this Court has referred to the material available in the public domain, including open registries. It would be inappropriate to hold in this day and age that material available at the click of a button in a search on the internet does not qualify as material available in the public domain. This is crucial because, as per the position of law laid down in the aforementioned judgment of this Court, it is the paramount duty of the plaintiff seeking ex-parte ad-interim orders to ensure that the integrity of the judicial process is maintained, which includes honestly disclosing and placing on record before the Court, information about the defendant and the offending product that would be available on a reasonable enquiry on the part of the plaintiffs. This Court is of the opinion that since ex-parte ad-interim orders are an exception to the rule of hearing both the parties before passing such orders, the obligation and responsibility on the plaintiff seeking such exceptional orders is of a very high degree. In that context, the contention raised on behalf of the plaintiffs is not appropriate that since the search results on internet depend upon meta tags used by search engine on which no party has any control, the information available on the internet as regards the offending product and the defendant / contesting party, need not be placed before the Court. While there might be material to indicate that search on the internet may have a slant or bias, the question is, as to whether the plaintiffs approaching the Court for grant of ex-parte ad- interim reliefs would be justified in contending that they will not make any effort to gather information about the defendant on the internet and then claim that even if such information was

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

available through reasonable enquiry on the internet, they cannot be held guilty of suppression when such information is not placed before the Court. The answer has to be in the negative.

22. In the present case, the force of the aforesaid contention raised on behalf of the plaintiffs, on the aspect of search on the internet, is taken away by pleadings in paragraph 3 of the plaint, wherein the plaintiffs themselves claim to have visited the defendant's official website. It is claimed that information available on the website of the defendant and also on the website of the relevant government department divulged the licence on the basis of which the defendant was manufacturing the offending product and the fact that such product was being exported. If the plaintiffs could make the effort of visiting the defendant's official website, it cannot be believed that the plaintiffs, as part of reasonable enquiry about the defendant, would not have gathered information as regards the defendant's existence in the pharmaceutical and medicinal products industry since the year 1984 with various medicinal products, including the offending product.

23. The defendant has specifically relied upon documents in four compilations placed before this Court. Even if the contention of the plaintiffs that other than compilation (I), none of the other compilations can be looked at because only the said compilation was permitted to be placed before this Court without affidavit as per the order dated 30.09.2022, passed by the Division Bench of this Court, a look at the documents in compilation (I) would show that internet search would have revealed sufficient information about the defendant; its presence in the said industry as also its products, including the offending product. Documents in compilation (I) itself would show that the defendant's website displayed the alleged offending product of the defendant and the manner of its packaging. Such information about the defendant's product i.e. 'PREBASUN' is shown to be available on platforms like Facebook, Twitter and Instagram, displaying blister packaging of 15 capsules, which are half red and half white with the word *'Sunrise'* written on them. Documents in compilation (I) also show such capsules being half red and half white pertaining to similar medicinal preparation being sold by different entities in the market. The trade magazine 'Drug Today' also shows presence of the defendant's product in the market and in this regard, learned counsel for the defendant is justified in relying upon judgment of this Court in the case of **Medley Pharmaceuticals Limited Vs. Khandelwal Laboratories Limited** *(supra)*, wherein it has been held that presence of the product in such trade magazines is a relevant factor. The information in such trade magazine would certainly be available to the plaintiffs upon reasonable enquiry, particularly because the plaintiffs are also in the same trade and industry.

24. In response to all such documents that show availability of information on reasonable enquiry on internet pertaining to defendant's product, as also similar products of various entities, it

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

has been repeatedly stated on behalf of plaintiffs that such information on the internet, including on social media platforms, cannot be looked at because it has no evidentiary value and it is unsolicited information. As noted above, it is not the evidentiary value of such information available on the internet, which is to be strictly taken into consideration while applying the concept of reasonable enquiry in such matters, but the question is whether the plaintiffs, while seeking such extra-ordinary ex-parte ad-interim reliefs, honestly disclosed information available on the internet, which is certainly a part of public domain, for maintaining the integrity of the judicial process. In a given case, upon the plaintiffs honestly placing such information, they may still be able to convince the Court to grant ex-parte ad-interim reliefs. But, the real question is when the plaintiffs withhold such information, whether ex-parte ad-interim reliefs granted by the Court deserve to be continued or not. This Court is of the opinion that in the present case, while seeking ex-parte ad- interim reliefs, the plaintiffs did not place on record relevant material about the defendant, which would have come to their knowledge on reasonable efforts and enquiry in the public domain, including search on the internet.

33. Thus, it is sufficiently clear that if the plaintiffs, upon reasonable enquiry, including search results from internet, had placed material before this Court, pertaining to the defendant and its product, particularly in the backdrop of allegations pertaining to infringement, this Court would have preferred placing the defendant on notice before considering the prayer for grant of ad-interim reliefs claimed by the plaintiffs. It is significant that documents in compilation (I) placed on record on behalf of the defendant, would show that application of the defendant for registration of its trademark 'PREBASUN' is pending consideration before the Registrar of Trademarks, although it is opposed by two entities. The Plaintiffs, on reasonable enquiry in the Trademarks Registry, could certainly have come across the said information, which ought to have been placed before this Court. If such material was placed on record on behalf of the plaintiffs, in the opinion of this Court, it would have warranted putting the defendant to notice before considering grant of ad-interim / interim reliefs.

34. In the light of the above, this Court is of the opinion that the plaintiffs are not justified in claiming that in the facts of the present case, by applying the first proviso to Order XXXIX Rule 4 of the CPC, the ad- interim reliefs already granted need to be continued in the interest of justice. The defendant is justified in contending that the plaintiffs did create an impression as if the defendant is a fly-by-night operator. There is substance in the contention raised on behalf of the defendant that its business came to a grinding halt due to the ex-parte ad-interim reliefs granted by this Court vide order dated 30.08.2022, which was executed by the Court Receiver. The defendant's products, ready to be released in the market and exported to entities abroad, all stood seized and sealed, without the plaintiffs having properly disclosed the entire information about the

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> defendant and its product. The plaintiffs would certainly be entitled to appropriate reliefs, if they are able to prove their case in the suit, including being compensated for loss, if any, but continuance of order dated 30.08.2022, is not justified in the facts and circumstances of the present case."

57. Paragraph 9 of the Order of this Court in **Franco-Indian Pharmaceuticals Pvt. Ltd.** (supra) is relevant and is set out hereunder :-

> "9. Having heard the counsels, I am satisfied that plaintiff should have brought to the notice of the Court the facts that Dr. Saraf raised because all those were available in the website relied upon by plaintiff. Conveniently plaintiff has annexed only the page in which defendant's product is advertised but the continuation pages are not produced, which if produced would have probably alerted the Court to direct notice be given to defendants. Parties should make diligent efforts to find details about defendants and also provide proper description of the efforts made. Considering the nature of the business of defendants, I do not think defendant would have dumped the products in the market to defeat the rights of the plaintiff."

58. Paragraphs 37,40 and 42 of the Order in **Laser Shaving (India) Private Limited** (supra) are relevant and are set out hereunder:-

> "37. The pleadings in the plaint and the said cease and desist
> notice, reply thereto and the reply of the plaintiff to the examination report of the Registrar of Trademarks, all pertaining to November 2023 and December 2023, indicate that such material held back by the plaintiff, was indeed relevant and it should have been placed before this Court. The absence of such material gave a different colour to the claims made by the plaintiff and this is the only relevant factor while deciding the present application filed under Order XXXIX Rule 4 of the CPC. Hence, the aforesaid judgment in the case of ***Asma Farid Noorani v/s. Haji Ali Fresh Fruit Juices & Ors.*** (supra), is distinguishable.
>
> 40. The failure on the part of the plaintiff to place the aforesaid material on record along with the plaint and/or

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> with the application for interim reliefs does make out a case for the defendants to claim applicability of the first proviso of Order XXXIX Rule 4 of the CPC, thereby justifying its prayer for vacating the ex-parte ad-interim order. This has nothing to do with the merits of the rival claims and it has everything to do with ensuring the integrity of the judicial process. Therefore, the present application deserves to be allowed.
>
> 42. The said order is vacated only on the short ground that the plaintiff held back relevant material due to which this Court was unable to examine the necessity of issuing notice to the defendants before considering ad-interim reliefs. If the said material was placed before this Court, notice would have been issued to the defendants before considering the question of granting ad- interim/interim reliefs. This Court is not making any observations on the merits of the entitlement of the plaintiff to interim reliefs."

59. Paragraph 22 of the judgement of this Court in **Rochem Separation System (India) Pvt. Ltd.** (supra) is relevant and is set out hereunder:-

> "22. In the rejoinder affidavit, the plaintiff tried to distinguish the drawings pertaining to the aforesaid patent and the drawing at page 72, which is claimed to be the original work of the plaintiff. Apart from the fact that the drawing itself prima facie appeared to be similar to the drawings pertaining to the expired patent available in the public domain, this Court is of the opinion that the plaintiff in all fairness ought not to have suppressed such information from this Court while seeking ex-parte ad-interim reliefs. This Court was not made aware about the fact that the connection flanges manufactured on the basis of such drawings were part of the public domain for a long period of time. The impression given to this Court was that the drawing at page 72 was an original work of the Managing Director of the plaintiff and that defendant Nos.2 and 3 had gained knowledge about the same during the course of their employment, which they had specifically misused by making the copy at page 76 of the plaint. This Court is of the opinion that the plaintiff did withhold relevant and necessary information from this Court, while obtaining ad-interim reliefs. This shows that such ad-interim reliefs do not deserve to be confirmed. In other words, the application itself ought to be dismissed on this count."

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

60. From a reading of these judgments, it is clear that when a party is applying to the Court for an injunction without notice then that party's case must contain disclosure or statement of an anticipated defence or arguments likely in opposition. This means that such a party seeking an ad interim relief without notice must make a full and reasonably accurate disclosure of material facts and must invite the Court's attention to factual, legal and procedural issues. Material in the public domain, including in open registries, should be disclosed. The disclosure and statement in the Application or Plaint must be neutrally and objectively presented so that the Court has confidence in the case brought. Merely annexing a slew of documents does not by itself serve this purpose. Further, such a party must be shown to have made the necessary and proper enquiries, within the bounds of reason, before making the Application. Some level of investigation and enquiry must be demonstrated. The duty of disclosure includes matters of which the Applicant would have been aware had he made reasonable enquiries. Further, the urgency in making an ex-parte Application must be demonstrated. While making a disclosure in the Plaint and Application, the material available on the internet is also relevant.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

61. Keeping these principles in mind I have to consider as to whether the Plaintiff is entitled to continuation of ad interim relief granted to it by Order dated 19th March 2024 without notice to the Defendants.

62. In paragraph 19 of the Plaint, the Plaintiff has stated that it came to know about the Defendants' impugned logo in or about October 2023. It is obvious that, in paragraph 37 of the Plaint, the Plaintiff has made out a case for prompt and urgent reliefs on that basis. The relevant portion of paragraph 37 of the Plaint reads as under:-

> "37 .....In view of the dishonest intentions and trade practice of the Defendants it is imperative that prompt and urgent reliefs be granted to the Plaintiff. In case notice is given to the Defendants before the grant of ad-interim reliefs the Plaintiff apprehends that the Defendants shall use all possible means to defeat the right of the Plaintiff and cause damage to the reputation and goodwill developed by the Plaintiffs in the ATYATI Device Mark. The Plaintiff respectfully submits that this Hon'ble Court be pleased to dispense with the giving of the notice to the Defendants before the grant of ad-interim reliefs. If notice is given, the Defendants may destroy crucial evidence relevant to the Plaintiffs claim in the present suit. Further, given the identity/similarity between the rival marks/logos and the rival services, there is a strong likelihood of the Plaintiff's customers being deceived and confused into believing that the Defendants are in some manner connected with or that their services originate from the Plaintiff, thereby causing grave harm, loss and injury to the Plaintiff and to its reputation and goodwill in the ATYATI Registered Marks

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> and the ATYATI Device Mark. The activities of the Defendants as evident from the slavish imitation call for strong deterrent action. In order, not only to protect the Plaintiff's rights but also to prevent deception and confusion of the consumers and the public it is in the interest of justice that ad-interim orders be granted to the Plaintiff without notice to the Defendants."

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

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

logo was being used by the Defendants from 2022 to the present. The 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

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

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.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

64. The Plaintiff has not been able to offer any explanation as to why, despite the aforesaid, the Plaintiff stated in the Plaint that it came to know about the Defendants' use of the mark in or about October 2023. The only explanation that is attempted by the Plaintiff is that in paragraph 7 of its Reply dated 1st December 2023 to the Plaintiffs' Cease and Desist Notice dated 30th October 2023 the Defendants had stated that "most recently" they were using the impugned logo. A perusal of paragraph 7 of the said letter shows that, in the said paragraph, the Defendants have stated that, with time, the Defendants had remodelled their brand and created artistic representations of their trademark/name to better convey their business goals, and then have referred to their earlier two trademarks, and after that stated that "most recently" they were using the impugned logo. The context in which the words "most recently" have been used by the Defendants shows that the Defendants were conveying that the impugned logo was their most recent logo and not that they had started using the impugned logo very recently. In any case, in the light of the knowledge of the Plaintiff that the Defendants were using the impugned log since 2022, there is no way in which the Plaintiff could have read the words "most recently" in the manner that is suggested by the Plaintiff. In these circumstances, it is not possible to accept the

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

submission of the Plaintiff that it had stated in the Plaint that it had come to know about the Defendant's use of the impugned logo in or about October 2023 due to what was stated in paragraph 7 of the said Reply dated 1st December 2023.

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.

66. Mr. Kamat has referred to paragraph 73 of the judgement in **Marico Limited** (supra) and has submitted that, presuming that there was some suppression, the Court should continue the ex-prate ad interim relief in the interest of justice as there is no doubt that the Defendants' impugned logo is deceptively similar to the logo of the Plaintiff. Paragraph 73 of the judgement in **Marico Limited** (supra) reads as under::-

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

> "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."

67. The findings of the learned judge in paragraph 73 of **Marico Limited** (supra) are based on the decision of this Court in **Kewal Ashokbhai Vasoya and Anr** (supra). In paragraph 73 of the judgement in **Marico Limited** (supra) this Court has quoted the relevant part from the judgement in **Kewal Ashokbhai Vasoya and Anr** (supra). The portion that has been quoted in paragraph 73 of the judgment in **Marico Limited** (supra) is found in sub paragraph (xii) of paragraph 7 of the English judgement referred to in paragraph 17 of **Kewal Ashokbhai Vasoya and Anr**(supra). The said sub paragraph (xii), the English quote has held that such consideration would 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 and (iv) the injustice to a claimant which may occur if an order is discharged leaving a Defendant free to dissipate assets, although a

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

strong case on the merits will never be a good excuse for a failure to disclose material facts.

68. In my view if these principles are considered then it is definitely not in the interests of justice to continue the ex-parte ad interim injunction. In the present case, there is no doubt that the facts which have not been disclosed are important to the issues before the judge. There can also be no doubt that there is a need to encourage proper compliance with the duty of full and frank disclosure and to deter non compliance. Further, as held by me hereinabove, the suppression of facts on the part of the Plaintiff was deliberate, and therefore the failure is culpable. As far as the injustice which may be caused by leaving the Defendant free to dissipate the assets is concerned, as submitted by Mr. Tulzapurkar, the Defendants are not manufacturing goods but providing services, and, therefore, the question of dissipating assets does not arise. In my view, in these circumstances, even in the interests of justice, the ex-parte ad interim relief granted without notice by Order dated 19th March 2024 should not continue.

69. For all the aforesaid reasons, I am of the view that the ad-interim relief granted by the Order dated 19th March 2024 should not be continued.

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25

70. This matter was reserved for passing of Orders on 10th May 2024. For this reason, the ad interim relief granted by the said Order dated 19th March 2024, which was to expire on 30th April 2024, and which had been continued thereafter as the matter was being heard, was continued till the passing of the reserved order.

71. In the light of the aforesaid discussion, and for the aforesaid reasons, the ad interim reliefs granted by the Order dated 19th March 2024 shall not continue.

(FIRDOSH P. POONIWALLA, J.)

Mr. Kamat, the learned Senior Counsel appearing on behalf of the Plaintiff, requests for a stay of this order.

In the light of the reasons given in this order regarding non-continuation of the ad-interim relief, in my view, it would not be in the interests of justice to grant any stay of this order. Hence, the request made for stay of this order is refused.

(FIRDOSH P. POONIWALLA, J.)

Uploaded on - 07/07/2026 Downloaded on - 25/09/2026 10:09:25