



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

**INTERIM APPLICATION NO. 7417 OF 2025**  
**IN**  
**COMMERCIAL IP SUIT (L) NO. 28791 OF 2025**

Apex Metchem Private Limited

***In the matter between:***

Asian Paints Limited

***Versus***

Apex Metchem Private Limited

... Applicant/  
Orig. Defendant.

... Plaintiff.

... Defendant.

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*Mr G. D. Bansal, Mr. Rishabh Bansal, Mr. Arnav Goyal, Mr. Dharmendra Gupta  
i/by Mr. Hrutik Chavan for the Applicant in IA/7417/2025.*

*Mr. Amey Nargolkar, Ms. Parveen Anand i/by Khaitanand Co. for the original  
Plaintiff.*

*Ms. E.S. D'Souza, Section officer, Office of Court Receiver, present.*

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**Coram : Sharmila U. Deshmukh, J.**

**Reserved on : February 16, 2026.**

**Pronounced on : March 30, 2026.**

**ORDER :**

1. The Interim Application has been preferred under Order 39 Rule 4 of the Code of Civil Procedure, 1908 (for short, "**CPC**") seeking vacation of the *ex parte* ad interim order dated 23<sup>rd</sup> September, 2025 passed by this Court in Interim Application (L) No.28995 of 2025.

2. By the *ex parte* ad interim order of 23<sup>rd</sup> September, 2025, this Court restrained the Defendant from using the impugned mark "APEX" or any mark identical or similar to the said trade mark so as to

infringe the Plaintiff's registered trade mark "APEX" and Court Receiver came to be appointed. The commission came to be executed and the infringing goods were seized by the Court Receiver. The Court Receiver's Report is placed on record.

**3.** The Interim Application pleads that the Defendant-Applicant is constituent part of a large, well-established family business conglomerate established by the members of Bhatia Family. The adoption of the mark "APEX", predates the Plaintiff's claimed adoption by decades. In 1966, the patriarch of the business group commenced business under name and style of M/s Apex Sales Corporation as sole proprietor and the adoption of the trade mark and trading name Apex has been continued since then. The sole proprietorship firm was converted into partnership firm retaining the original name of M/s. Apex Sales Corporation and thereafter, the present Defendant-Applicant company came to be incorporated. The Defendant's prior use of "Apex" mark is evidenced by the activities of M/s Apex Paints which was proprietorship firm established in or around the year 1980.

**4.** The earliest pre incorporation step for availability of the name is dated 4<sup>th</sup> June, 1993 and the company came to be incorporated on 2<sup>nd</sup> March, 1995. The Defendant and its predecessors have diversified their business operation under the Apex mark across various cognate

and allied industrial segments since the year 1966.

5. It is stated that the Plaintiff claims to have adopted the mark APEX in the year 1995, however the website history of the Plaintiff records that the 'APEX Textured Exterior Emulsion', was commercially launched around 2003-2004 and therefore the actual use of the Apex mark in the market postdates the Defendants continuous and documented use since 1966. The Plaintiff has suppressed the Defendant's prior long standing and open use of the mark Apex and wrongfully obtained and executed the *ex parte* ad-interim order. The Plaintiff's sudden discovery of the Defendant in August, 2025 is falsehood, as the Plaintiff was acquainted with the particulars detailing the prior existence of the Defendant annexed by the Plaintiff with the plaint. The Plaintiff's assertion that its claim trade mark Apex has achieved the status of well-known mark is factually incorrect as the list of trade mark published by the Trade Mark Registry does not include the Plaintiff's trade mark Apex.

6. Mr. Bansal, Learned counsel appearing for the Defendant-Applicant submits that it is well settled that the party seeking *ex parte* ad interim injunction must disclose all material facts to the Court. He submits that the Defendant has established prior adoption and continuous use of the trade name "Apex" since the year 1995. He submits that the Plaintiff has suppressed the prior user by the

Defendant of the Apex mark despite the incorporation date and extensive statutory records pertaining to the Defendant being available in public domain. He submits that one of the relief sought was to injunct the Defendant from using the mark as its trade name and therefore the prior corporate existence of the Defendant was material fact to be brought to the notice of the Court. He submits that the Plaintiff was aware of the Defendant's incorporation in the year 1995 as it had annexed the Defendant's website extract to the plaint. He submits that the use of the mark since the year 1995 was not brought to the notice of the Court and there is no pleading about the Defendant's incorporation in the year 1995. He submits that despite being aware of Defendant's existence through the website, the Plaintiff has falsely pleaded that it could not come across any information regarding the Defendant's period of use.

7. He points out to the pleadings in paragraph 18 of the plaint that the search was conducted of the Defendant's website and points out page No.262 of the plaint which shows that the company was started in the year 1995 for manufacturing of industrial paints, solvents and thinner used in various segments of industries. He submits that the infringement, which is being claimed, is by use of the domain name and there is no document to show the Plaintiff's user since the year 1995. He points out to the specimen invoices annexed

to the plaint to contend that the invoices do not demonstrate the use of the mark Apex. He submits that the sales invoice at page 131 shows the use of the mark Apex for the first time in the year 2017 and no prior user is shown.

**8.** He would further point out the pleading in paragraph 14 of the plaint and the submission recorded in paragraph 8 of the *ex-parte* ad-interim order dated 23<sup>rd</sup> September, 2025 to contend that in the list published by the Trade Mark Registry the Plaintiff's mark is not declared as a well-known mark. He submits that under Section 47 of the Trade Marks Act non user of the trade mark for five years will entail removal from the register and imposition of limitation and that no exclusive use can be granted in respect of such trade mark. He submits that the sales invoices, if any, is shown only till the year 2020 and there is nothing further till the filing of the suit which was in the year 2025.

**9.** He submits that the registration of device mark of Apex under Registration No.857108 and 2130509 does not grant an exclusive monopoly over the word Apex. The trade mark registered under Registration No.2723456 and 2723457 are on proposed to be used basis which cannot override actual long standing prior user. He submits that the Registrations Nos.2130514 and 2130524 are registration in Class 19 which do not cover the relevant goods. He

submits that the Defendant is an established entity with turnover of over Rs.80 Crores and not fly by night operator. He submits that the *ex parte* order obtained by suppression has crippled a legitimate business. In support, he relies upon the following decisions:

(i)	Kewal Ashokbhai Vasoya v. Suarabhakti Goods (P) Ltd. [2022 SCC OnLine Bom 3335]
(ii)	M/s. Wheels India vs. S.Nirmal Singh and Anr. [2009 SCC OnLine Del 3251]
(iii)	Neon Laboratories Ltd. v. Medical Technologies Ltd., [(2016) 2 SCC 672]
(iv)	S. Syed Mohideen v. P. Sulochana Bai, [(2016) 2 SCC 683]
(v)	State Bank of Travancore v. Kingston Computers (I) (P) Ltd., [(2011) 11 SCC 524]
(vi)	Kewal Ashokbhai Vasoya v. Suarabhakti Goods (P) Ltd., [2022 SCC OnLine Bom 3335]
(vii)	Shoban Salim Thakur v. Chaitanya Arora, [Bombay High Court] Order dated 15 <sup>th</sup> October 2025 in IA (L) No. 18278 of 2025 in Comm. Suit. (L) No. 18197 of 2025
(viii)	HAB Pharmaceutical and Research Limited v Sunrise Remedies Private Limited, [Bombay High Court] Order dated 11.11.2022 in Interim Application (L) No. 26835 of 2022 in Commercial IP Suit (L) No. 26827 of 2022
(ix)	Mittal Electronics v. Sujata Home Appliances (P) Ltd., [2020 SCC Online Del 2658]
(x)	Century Traders v. Roshan Lal Duggar & Co., [1977 SCC OnLine Del 50]
(xi)	VGN Projects Estate Private Limited v. M/s. VGK Builders Pvt. Ltd. And others, [2025 NCMHC 705]
(xii)	Jindal Industries (P) Ltd. v. Jindal Sanitaryware (P) Ltd., [(2024) 3 HCC (Del) 742]
(xiii)	Campus Activewear Ltd. v. Rama Shankar Garg, [2023 SCC OnLine Del 1384]

(xiv)	Vasundhara Jewellers (P) Ltd. v. Kirat Vinodbhai Jadvani, [2022 SCC OnLine Del 3370]
(xv)	Sanjha Chulha v. Sanjha Chulha, [2022 SCC OnLine Del 3616]
(xvi)	Sabu Trade Private Limited v. Rajkumar Sabu, [2019 (2) CTC 672]
(xvii)	Hastsun Agro Product v. Sri Ganapathy Dairy, Madras High Court Order dated 14.09.2021, in CS. No. 748 of 2018
(xviii)	Crayons Advertising Ltd. v. Crayon Advertising, [2014 SCC OnLine Del 218]
(xix)	Wheels India v. S. Nirmal Singh, [2009 SCC OnLine Del 3251]
(xx)	Narendra Kumar and Co. v. Everest Beverages and Food, [2008 SCC Online Del 1759]
(xxi)	C. Krishniah Chetty v. Deepali Co. (P) Ltd., [2021 SCC OnLine Kar 12513]

**10.** *Per contra*, Mr. Nargolkar, learned counsel appearing for the Plaintiff/Respondent submits that there are sufficient disclosures in the plaint and points out paragraph 18 of the plaint. He submits that the Plaintiff has annexed printout from the Defendant's website and third party website which clearly mentions that the Defendant Company was started in the year 1995 and hence there is no suppression. He submits that the Plaintiff did not press for relief of ad interim injunction against use of the corporate name and domain name of the Defendant. He would submit that in paragraph 18, it is specifically pleaded that it never came across the impugned goods until it got information from its investigating agency and despite

conducting inquiries about the Defendant in the market, the Plaintiff could not come across any information regarding the period since when the Defendant have commenced the infringing activities in relation to the impugned goods. He would submit that there is nothing on the Defendant' website to indicate the use of the word mark Apex as trade mark for its product.

**11.** He submits that the Plaintiff has not pleaded that it has been declared a well-known trade mark by the Trade Mark Registry and it is specifically pleaded that the trade mark is declared well-known by this Court in the orders annexed at Exhibit "F" of the plaint.

**12.** He would further point out the news articles and the advertisement annexed at page No.86 to 88 of the plaint, showing the use of the mark Apex by the Plaintiff in the year 1997. He submits that in the trade mark application the user is claimed since 24<sup>th</sup> February, 1995. He points out that the sales and advertisement figures have been furnished from 1995 till 2020.

**13.** He would further submit that the contention of non-user is not the pleaded case of Defendant. He submits that there has been continuous and uninterrupted use of the trademark by the Plaintiff, and there are new variants of the trade mark launched.

**14.** He submits that the Defendant was incorporated in the year 1995 and there is no document to establish devolution of rights in

respect of the impugned mark from the concerns relied upon the interim application and there is not a single document produced showing use of the impugned mark in course of the trade since the year 1995.

15. I have considered the submissions and perused the record.

16. The present application has been filed under Order 39 Rule 4 of the CPC, which reads as under:

***“ORDER XXXIX - Temporary Injunctions and Interlocutory Orders. Temporary injunctions -***

***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 interests 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 the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.”*

17. Plain reading of Order 39 Rule 4 of CPC makes it evident that the eventuality contemplated therein is existence of an intentional false or misleading statement in relation to material fact which would lead to vacation of the ad interim order. Despite existence of such circumstances, the Court has the discretion not to vacate the injunction in interest of justice upon recording reasons for the same.

18. In the case of ***Kewal Ashokbhai Vasoya vs Suarabhakti Goods Pvt Ltd*** (supra), the Hon'ble Division Bench of this Court considered the provisions of Order 39 Rule 4 of CPC in respect of the trade mark infringement and summarized the duties that fall on the applicant while applying for injunction without notice as set out in paragraph No.15 and 16 of the plaint. The Hon'ble Division Bench held that the applicant seeking 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. It held the duty of disclosure includes matter of which the applicant would have been aware had he made reasonable inquiries. In context of trade mark infringement the disclosure was as to whether the defendant had sought registration and when and with what effective date, with or without disclaimer. There must be market information too as to how long has the defendant been in the market with the rival product and mark and in what area and in what manner. It held

that the phrase “knowingly made a false or misleading statement in relation to a material particular” occurring in Order 39 Rule 4 as being the requirement of fair disclosure.

**19.** There is a greater duty imposed on the Plaintiff who seeks to move without notice to the Defendant, which is an exception to the rule of hearing both the parties. The Plaintiff must be shown to have made necessary and proper enquiries, which if made, would have resulted in the Plaintiff knowing about the adoption, use and registration of the rival mark by the Defendant. The Plaintiff coming with a case of trade mark infringement and seeking to move without notice must make necessary reasonable enquiries and must not only place all material facts before the Court, but also draw attention of the Court to all material facts, which would *prima facie* show that the Defendant would have no defence to the claim of infringement. The passing of an ad interim injunction without notice has the ability to cripple the Defendant’s business and therefore all facts must be placed before the Court to satisfy that the injunction is *prima facie* necessary to prevent violation of the Plaintiff’s statutory and common law rights. As held in ***Kewal Ashokbhai Vasoya*** (supra), in IPR matters, the reasonable inquiry and disclosure would contemplate a complete disclosure as to the date of adoption, use and registration, if any, of the rival mark. It is well settled that prior user of the trade

mark/trade name constitute a valid defence to infringement action.

**20.** The submissions of the Plaintiff as recorded in the order of 23<sup>rd</sup> September, 2025 is that the trade mark Apex is in use by the Plaintiff since the year 1995. The registration certificates, specimen advertisement, promotional material, specimen tax invoices, sales figure from 1994-1995 were stated to be appended to the plaint. It was submitted that the Apex trade mark has been declared as well known trade mark by the Bombay High Court.

**21.** The disclosure about the Defendant was that the Defendant apart from using the mark Apex in respect of paints, thinners, lacquers etc was also using the mark as part of its trading name. It was submitted that there is no application for registration of the infringing mark and that the Defendant's details are available on its website as well as third party websites. It was submitted that the Plaintiff never came across the impugned goods until it got information from its investigation agency. The pleading in paragraph 17 of the plaint is that the knowledge of the impugned goods was acquired in the third week of August, 2025, that the Defendant had not filed any application for trade mark registration and that the details of the Defendant are available on its website. It is specifically pleaded in paragraph 18 that despite conducting inquiries about the Defendant in the market, the Plaintiff could not come across any

information regarding the period when the Defendant have commenced the infringing activities in relation to its impugned goods.

**22.** There is no pleading about the nature of inquiries conducted by the Plaintiff as in today's era of advanced technology, information is available at a click of the button. The Defendant is incorporated as private limited company and the details about the business, incorporation etc would be available within public domain and the information would be easily accessible. The Defendant's Corporate existence since the year 1995 in paint industry would impose a greater obligation on Plaintiff to take all efforts to trace the period of use of trademark by Defendant. Considering the long standing existence of Defendants, it is not sufficient to make a bald assertion that despite conducting enquiries, the Plaintiff could not come across any information about Defendant's period of use of the trademark. There is no pleading in the plaint as to the enquiries carried out by Plaintiff as it is difficult to accept that the Defendant has been incorporated since the year 1995 and no information is available in public domain. The importance of disclosure cannot be undermined when considered in the context of consequences which entail upon injunctive relief being granted.

**23.** The Plaintiff seeks an order restraining the Defendant from using the impugned mark Apex in respect of the impugned goods

which are paints, thinners and lacquers, etc. To the plaint are annexed the colour photographs/representation of the impugned goods at Exhibit 'G' and Exhibit 'H' is an extract of the Defendant' website. The products depicted on the Defendant's website are the same products which are set out at Exhibit 'G'. The website of Defendant clearly mentions the Defendant's corporate name and introduces itself as under:

"APEX Metchem Pvt Ltd is a private limited company started in the year 1995 for the manufacturing of Industrial Paints, Solvents & Thinner used in various segment of Industries."

**24.** The website was therefore a clear indicator about the existence of the Defendant company since the year 1995, and the marketing of identical/similar products of paints, thinners etc. There is not a single averment in the Plaint as regards the incorporation of the Defendant in the year 1995 and this fact was not specifically brought to the notice of the Court while obtaining *ex parte* ad interim relief. It is the Plaintiff's case in paragraph 8 of the Plaint that in or around 1995, the trade mark "APEX" was conceived and adopted for use in relation to the Plaintiff's product. The use of the impugned trade name, at least from the Defendant's website, appears to be in proximity with the Plaintiff's adoption and use. The website specifically mentions that the Defendant commenced its operations in the year 1995 for the

manufacturing of Industrial Paints, Solvents & Thinner used in various segments of Industries. The submissions canvassed conveyed an impression that it is only in 3<sup>rd</sup> week of August, 2025 that the infringing products were found, leading to an impression about the Defendant being a late entrant in the market.

**25.** In event, the attention of the Court would have been drawn to the Defendant's website and the Court would have been made aware of the Defendant's existence since the year 1995, it could have been possible that notice would have been issued to the Defendant. The Plaintiff not only seeks injunctive relief against the use of the trade mark but also against use of the trade name. It was the duty of the Plaintiff to point out to the Court that the Defendant has been incorporated with the registered mark being part of its trade name since the year 1995, which has not been disclosed.

**26.** A prior user of the trade mark interdicts the Plaintiff's statutory right to claim exclusive use of its mark and was a material fact to be brought to the notice of the Court and be adjudicated upon before injunctive relief could be granted. The advertisement placed on record is of the year 1997 and subsequent thereto. The invoice annexed at page 85 is of the year 2007. The invoice annexed at Exhibit "D" from pages 113 are illegible and it is difficult to ascertain the year of the invoices and whether the invoices are in respect of Apex trademark.

The legible invoices are post the year 2015. The only document certifying the sale under the trade mark Apex since 1994-1995 is the Chartered Accountant's certificate. The registration of the device mark of Apex was applied on 20<sup>th</sup> May, 1999 with user detail since 24<sup>th</sup> February, 1995. The sales turnover could be certified for the year 1995-1996 and not for year 1994. Perusal of the order dated 23<sup>rd</sup> September, 2025 does not reflect that the attention of the Court was specifically drawn to invoices raised in the year 1995 to show adoption and use, which was material in light of Defendant's incorporation in the year 1995. The rival user have to be weighed carefully before injunctive relief could be granted. As the Plaintiff failed to bring the necessary material facts to notice of the Court, no such exercise could be carried out by the Court.

**27.** It is no answer to say that no *ex parte* ad-interim relief was granted restraining the Defendant from use of the domain name. The mark "Apex" is an essential feature of the Defendant's trade name and would be indistinguishable from the trade mark. If the attention of the Court would have been drawn to the longstanding use of the trade name, it was possible that relief without notice to the Defendant could have been declined. There is substance in contention of the Defendant that the Plaintiff has suppressed material facts from this Court while obtaining the ad interim relief without notice to the

Defendant.

**28.** The Plaintiff has failed to bring to the notice of the Court, the relevant material facts evident from the Defendant's website that the Defendant was incorporated in the year 1995 and was using the mark as part of its trade name dealing in identical/similar goods. The Plaintiff has failed to discharge its duty to take reasonable steps to make necessary inquiries about the period of use of the mark by Defendant despite being aware of the Defendant's incorporation in the year 1995. The Court's attention was not specifically drawn to Plaintiff's documents to show user since 1995.

**29.** In light of the above, the Interim Application is allowed. The order dated 23<sup>rd</sup> September, 2025 is not continued and stands vacated. The Defendant's product which are seized and sealed by the Court Receiver shall stand released forthwith.

**[Sharmila U. Deshmukh, J.]**

**30.** At this stage, a request is made for stay of the present order. The order is stayed for a period of four weeks.

**[Sharmila U. Deshmukh, J.]**