

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO. 1322 OF 2019

IN

COMMERCIAL IP SUIT NO. 300 OF 2020

Amazon Seller Services Pvt. Ltd.

...Applicant/Orig.
Defendant No.2

IN THE MATTER BETWEEN :

Vikram Mohanlal Nahar

...Applicant/Plaintiff

Versus

Celebration Gifts LLP & Anr.

...Defendants

- Mr. Gautam Panchal i/by Gautam & Co., for the Applicant/Plaintiff.

CORAM : MANISH PITALE, J

DATE : 25th JANUARY, 2023.

P. C. :

1. Not on board. Mentioned along with *praecipe*, seeking minor correction in paragraph no. 4 of the order dated 19th January, 2023, whereby this Court dismissed interim application No. 1322 of 2019.

2. It is pointed out that although the claim is pertaining to registered design, inadvertently in paragraph no. 4, this Court recorded registered trademark in respect of the product.

3. Considering the documents on record, this Court is of the opinion that the aforesaid error needs to be corrected.

4. Hence, the corrected paragraph no. 4 of the order dated 19th January, 2023 shall read as follows :

“4. The Plaintiff has opposed the present application by filing affidavit-in-reply. It is stated that the presence of Defendant No. 2 is necessary and further that it is not an intermediary. It is further submitted that the presence of Defendant No.2 is necessary for the reason that as on today, there are products displayed on the website of the said defendant, that are allegedly identical to the product of the plaintiff bearing the registered design. It is further submitted that in the conditions of use highlighted on behalf of the Defendant No. 2, there is no mention of the proprietary rights under the Designs Act, 2000. This Court has considered the rival submissions. Even if the defendant No.2 is to be treated as an intermediary, for the present, ignoring the objection raised on behalf of the plaintiff, this Court is of the opinion that as per settled law pertaining to Section 79 of the Information Technology Act, 2000, read with judgment of the Hon’ble Supreme Court in the case of *Shreya Singhal Vs. Union of India*¹, the presence of defendant No.2 would be necessary for issuing appropriate directions / orders in case there is allegation on the part of the plaintiff of violation of its registered design due to infringing products being displayed on the website of defendant No.2. It is only when orders are issued by the Court that the defendant No.2, as an intermediary, would act.”

1 AIR 2015 SC 1523

5. Correction be carried out and the order be uploaded on the website of this Court.

(MANISH PITALE, J.)