



2026:DHC:1507-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 145/2025, CM APPL. 60016/2025 & CM
APPL. 75892/2025

**SAUSS HOME PRODUCTS
PRIVATE LIMITED**

.....Appellant

Through: Mr. Gagan Gupta, Sr. Adv. with
Mr. Arkaj Kumar, Ms. Ramya Aggarwal,
Mr. Akshat Khanna and Ms. Srishti Arora,
Adv.

versus

**RECKITT BENCKISER INDIA
PRIVATE LIMITED**

.....Respondent

Through: Mr. C.M. Lall, Sr. Adv. with
Mr. Rahul Chaudhry, Ms. Ekta Sarin, Mr.
Nikhil Sharma and Ms. Vanshika Arora,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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07.02.2026

C. HARI SHANKAR, J.

A. The *lis*

1. CS (Comm) 539/2023¹ stands filed by the respondent against the appellant before this Court, alleging that the appellant had infringed the respondent's copyright and trade mark and had sought to pass off its mark as those of the respondent. Based on these

¹ "the suit" hereinafter



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allegations, the respondent has, in the suit, sought a permanent injunction against use, by the appellant, of the allegedly infringing mark/logo.

2. The respondent filed, with the suit, IA 14723/2023 under Order XXXIX of the CPC² seeking an interlocutory injunction restraining the appellant, pending disposal of the suit, from using the allegedly infringing mark/logo. The appellant filed IA 20814/2023, seeking return of the plaint on the ground that it was bad for want of territorial jurisdiction.

3. By judgment dated 14 August 2025, a learned Single Judge of this Court has allowed IA 14723/2023 filed by the respondent and dismissed IA 20814/2023 filed by the appellant.

4. Aggrieved thereby, the appellant has instituted the present appeal.

5. We have heard Mr. Gagan Gupta, learned Senior Counsel for the appellant and Mr. C.M. Lall, learned Senior Counsel for the respondent, at length.

6. Before advertng to the individual applications decided by the impugned judgment, it would be necessary to set out the facts of the case and the rival stands adopted before the learned Single Judge.

² the Code of Civil Procedure, 1908



B. Rival Stands before learned Single Judge

I. Case of respondent-plaintiff

7. The grievance of the respondent, as ventilated in the plaint, was



directed against the device/logo, used by the appellant. The respondent alleged that the said logo infringed the respondent's registered trade mark and copyright and also resulted in passing off, by the appellant, of its goods as those of the respondent.

8. The respondent asserted that the trade mark "ROBIN" had been adopted by the Reckitt Group in 1899, with a prominent device of a robin and that it had been using the ROBIN trade mark with the Robin device since then. The Robin trade mark, along with the Robin device, was introduced in India in 1936.

9. The respondent is admittedly the proprietor of the following trademarks, registered under Section 23 of the Trade Marks Act 1999:

Sl. No.	Registration No.	Date of Registration	Trade Mark	Class
1	2533	25 July 1942		03
2	258133	17 July 1969		03



3	402692	14 March 1983		03
4	438376	27 May 1985		01
5	455525	24 June 1986		03
6	454721	28 May 1986		03
7	535758	22 August 1990		03
8	535761	22 August 1990		03
9	797954	7 April 1998		03
10	850638	9 April 1999		03

10. Class 3, in which the Flying Bird device was registered with effect from 7 April 1998, was for “bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions and dentifrices. The registration was obtained on proposed to be used basis.



11. All the aforesaid registrations, it was submitted, were valid and subsisting at the time of filing of the suit. The respondent was the proprietor of all the said marks in the register of trade marks.



12. The respondent claimed that its earlier  device³ was redesigned, on commission, by one Mr. Shombit Ranjan Sengupta and had a unique look, design and combination of colours.

13. The plaint further pointed out that the Flying Bird device was registered under the Copyright Act, 1957, *vide* Registration No. A-59491/2001 dated 25 May 2001. Though the said registration was in the name of Reckitt & Colman India Ltd, steps were being taken to substitute the respondent as the owner.

14. The plaint also provided the sales figures of the respondent, using the Robin mark and device and stated that the Robin bird device was an integral part of the respondent's packing since 1936.

15. In May 2017, the respondent came to learn that the appellant had applied for registration of an identical logo. A comparison of the respondent's Flying Bird device and the appellant's logo is thus provided in para 28 of the plaint:

³ "the Sitting Bird device" hereinafter



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Respondent's device	Appellant's device
	

16. The application of the appellant was submitted on 31 December 2016 and claimed user of the Flying Bird device since 1 April 1976. The respondent submitted that this claim of user was false and that it filed an opposition in the office of the Registrar of Trade Marks, against the said application.

17. Despite this, the appellant obtained a registration of the Flying Bird device in Class 35 in 2019 and in Class 3 in 2021. The latter registration, which was w.e.f. 17 September 2021, was for the device



, in Class 3 for “washing soap, washing powder, detergent powder and cake”.

18. In May 2023, the appellant instituted CS (Comm) 8/2023 before the Commercial Court at Agra, seeking a permanent injunction against use of the Flying Bird device by the respondent. By order dated 29 May 2023, an ex parte *ad interim* injunction was granted, as sought, by the learned Commercial Court at Agra. The respondent challenged the said order before the High Court of Allahabad in FAOD 670/2023 which, by order dated 21 June 2023, stayed the order dated 29 May 2023 of the Agra court. FAOD 670/2023 is stated to be presently pending before the High Court of Allahabad.



19. The respondent alleged, in its plaint, that the appellant had led no evidence before the Registrar of Trade Marks to substantiate its claim of 1976 user in respect of the Flying Bird device. That being so, the respondent was clearly the adopter, as well as the prior registrant and user of the said device.

20. In view of these facts, the respondent alleged that the Flying Bird device of the appellant was identical, or at the least deceptively similar, to the Flying Bird device of the respondent. Inasmuch as both these marks were used for similar or identical goods, it was submitted that a person of average intelligence and imperfect recollection was bound to confuse one for the other, or at least presume the existence of an association between them. The use of the Flying Bird device by the appellant, therefore, constituted infringement of the registered trade mark of the respondent.

21. The respondent submitted that the Flying Bird device, when used as a trade mark for cleaning starch, was arbitrary, as the robin had nothing to do with cleaning starch and like goods. As an arbitrary mark, it was entitled to additional protection.

22. It was further submitted that the appellant's Flying Bird device was a copy of the respondent's Flying Bird device, which was an "artistic work" within the meaning of Section 2(c)⁴ of the Copyright

⁴ (c) "artistic work" means,—
(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
(ii) a work of architecture; and
(iii) any other work of artistic craftsmanship;



Act. Though the appellant also had copyright registrations, it was submitted that these registrations had been fraudulently obtained and could not constitute a defence to copyright infringement.

23. Inasmuch as the marks were visually, structurally and conceptually similar, and used for like goods, the use of the Flying Bird device by the appellant also resulted in the appellant passing off its goods as those of the respondent.

24. Based on these assertions and allegations, the respondent sought, in the suit, the reliefs already noted hereinabove.

25. The respondent further submitted that this court had territorial jurisdiction to adjudicate on the *lis* as the respondent's goods were available on the Indiamart.com website, thereby making out a case of arising of the cause of action, for instituting the suit, before this Court, in view of Section 20⁵ of the CPC.

II. Stand of appellant-defendant

⁵ 20. **Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.



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26. The appellant advanced a preliminary objection to the entertainment of the suit by this Court, on the ground that it had no territorial jurisdiction. It was pointed out that the respondent was in Gurugram whereas the appellant was in Firozabad. The submission that the appellant's goods were being sold in Delhi was denied. In so far as the availability of the appellant's goods on IndiaMart was concerned, it was submitted that IndiaMart is a B2B platform, over which no retail sales can take place.

27. The appellant also pleaded delay, acquiescence and waiver.

28. On merits, the appellant submitted that it had created and adopted the Flying Bird mark in 1976 and was, therefore, the prior user and adopter of the mark, as the respondent had admittedly adopted the mark only after April 1998. It was pointed out that the trade mark applications of the respondent dated 7 April 1998 and 9 April 1999 were on "proposed to be used" basis. In fact, submitted the appellant, there was no proof of any user, by the respondent, of the Flying Bird device. It was only in or around 2023, when the appellant learnt of the use of the said device, that the Agra suit came to be instituted.

29. As against this, it was asserted that there were several documents evidencing use of the Flying Bird mark by the appellant since 1976.



30. In as much as the appellant was the registered proprietor of the Flying Bird device, it was submitted that no infringement action was maintainable.

31. The appellant further denied the respondent's assertion that the Flying Bird device had been created by Shombit Ranjan Sengupta and submitted that no material to substantiate this contention had been placed on record by the respondent. As against this, the appellant asserted that it had adopted the Flying Bird mark in 1976 for washing soap, washing powder, detergent and associated products through its predecessor Sabun Oudyogic Utpadan Sahakari Samiti Ltd.

32. The appellant also claimed to have copyright registrations in the Flying Bird mark. The appellant contested the validity of the Flying Bird trademark registrations of the respondent, in respect of which a rectification filed by the appellant was pending.

33. The appellant submitted that the Flying Bird device of the respondent was deceptively similar to that of the appellant and would result in likelihood of confusion and that, as the appellant was the prior adopter and user of the mark, the registration of the Flying Bird device in favour of the respondent was liable to be rectified.

34. Predicated on these assertions, it was submitted that the suit was devoid of merits and was required to be dismissed.

C. The impugned judgment



35. The learned Single Judge, after recording the facts and the rival contentions of the parties, proceeded to observe and hold as under:

(i) The Flying Bird device mark was registered in favour of both the appellant and the respondent.

(ii) The Flying Bird marks of the appellant and respondent were practically identical in appearance, in shape, colour scheme and lay out. They were used for identical goods. The fact that the simultaneous co-existence of both the marks was likely to result in confusion was, therefore, self-apparent. The only question, therefore, was of priority of adoption.

(iii) The respondent's contention that the Flying Bird device had been conceptualized and created by Shombit Ranjan Sengupta, whose services the respondent had commissioned for the said purpose, was borne out by an interview of Shombit Ranjan Sengupta carried by the Hindu Business Line on 1 July 1999. In the said interview, Shombit Ranjan Sengupta explained the process by which he created the Flying Bird device. The same article stated that products bearing the Flying Bird device were rolled out for sale nationally from November 1998.

(iv) Besides, the respondent had placed on record a Chartered Accountant Certificate dated 2 August 2023, certifying the sales of goods bearing Flying Bird device, by the respondent, from 2000-2023. In 2022 alone, sales of cleaning starch



manufactured and sold by the respondent under the Flying Bird device had resulted in returns of as much as ₹23 Crores.

(v) Thus, the goodwill and reputation of the respondent in the Flying Bird device was *prima facie* established, and user had been shown in the said user at least since 2000.

(vi) As against this, the earliest evidence of use by the appellant of the Flying Bird device was of 22 June 2006. Though the appellant was claiming user since 1 April 1976, there was no evidence of any such user. The appellant had placed reliance on two pages from the Sainik Newspaper Agra dated 21 September 1997 as proof of 1976 user. These news papers were *prima facie* fabricated as they contained reports of events which took place much after 1997. In this context, we deem it appropriate to reproduce paras 33 to 36 of the impugned judgment thus:

“33. The ‘Sainik Newspaper’ filed by the defendant is dated 21st September, 1997. Pertinently, the newspaper carries news reports in respect of events which happened much after the year 1997, as detailed below.

34. The ‘Sainik Newspaper’ carries an Article which states that on September 20, 1997, Pakistan conducted tests of its Babar missile. The plaintiff has placed on record news articles from reputed national newspapers [Hindustan Times (English edition), PDF page 1360, Volume 2 of the plaintiff’s documents and Navbharat Times (Hindi edition), PDF page 1360, Volume 2 of the plaintiff’s documents] that show that the test of Babar missiles by Pakistan occurred on 12th August, 2005.

35. Similarly, the ‘Sainik Newspaper’ carried another Article relating to an attack on the USA’s Ambassador’s in



car in Peshawar, Pakistan. As per newspapers placed on record by the plaintiff, [Hindustan Times (English edition), PDF page 1457, Volume 2 of the plaintiff's documents], the event occurred on 4th September, 2012 and not in 1997.

36. Counsel for the defendant does not dispute that the aforesaid events reported in the 21st September, 1997 edition of the 'Sainik Newspaper' occurred at a much later point in time. The only defence offered by the defendant is that the defendant cannot be held responsible if the newspaper has published false news of events which happened much after the date of publication. It is submitted that the newspaper editor can be summoned and an explanation can be sought from him."

The appellant did not dispute the fact that the newspaper, though dated 21 September 1997, referred to events which took place thereafter. This indicated that the newspaper was *prima facie* fabricated.

(vii) The appellant had also sought to place reliance on a sales tax certificate issued by the Office of the Deputy Commissioner dated 20 January 2009, which purported to refer to sales by the appellant from 1975 to 2009. These documents, however, only refer to the mark "Pooja". There was no reference to the Robin device mark.

(viii) The appellant also referred to a CA certificate dated 3 May 2023 which, too, only refer to the sales figures of the appellant from 2017 to 2023.

(ix) *Prima facie*, therefore, the claim of 1976 user of the appellant was not acceptable.



(x) In that view of the matter, as the user of the respondent was prior to that of the appellant, and the respondent had made out a *prima facie* case of goodwill in the mark, the learned Single Judge held that the respondent had succeeded in establishing passing off, on the part of the appellant, of its goods as those of the respondent. On that basis, the learned Single Judge proceeded to grant injunction as sought by the respondent in the following terms:

“49. Accordingly, the defendant, its directors, employees, agents, servants, dealers, distributors, stockists, licensees and all persons and/or entities claiming through it are restrained from passing off the plaintiff’s registered trademarks as detailed in paragraph 10 of the plaint,



including the ‘Robin’ bird device mark , or any other identical/deceptively similar mark, in any manner whatsoever, till the final adjudication of this suit.

50. Further, the defendant, its directors, employees, agents, servants, dealers, distributors, stockists, licensees and all persons and/or entities claiming through it are restrained from infringing the plaintiff’s copyright in artistic work registered under no. A-59491/2001 by reproducing, printing, publishing, using and/or communicating to the public the device of



bird and/or any other work which is a reproduction of the artistic work comprised in the plaintiff’s copyright or any substantial part thereof, in any manner whatsoever, till the final adjudication of this suit.”

(xi) The application of the appellant under Order VII Rule 10



of the CPC was also dismissed as the respondent had placed, on record, an invoice to show that the appellant's products had been shifted to a consignee in Delhi for purposes of sale and further, in the Agra suit, the appellant had specifically averred that its goods bearing the Flying Bird device were sold all over India.

D. Rival contentions before this Court

I. Submissions of Mr. Gagan Gupta for the appellant

36. It is admitted, in the written submissions filed by Mr. Gupta, that, as the appellant and the respondent were both registrants of the Flying Bird device mark, the only issue for adjudication was with respect to priority of user.

37. Having so admitted, the appellant advances a preliminary objection to the learned Single Judge having adjudicated the Order XXXIX application of the respondent even while IA 20813/2023 filed by the appellant under Section 10⁶ of the CPC, seeking stay of the suit in view of the prior litigation in Agra, remained undecided. Reliance has been placed, by Mr. Gupta, on the judgment of the High Court of Orissa in *Bansidhar Pradan v. Kalinga Institute of Mining Engineering & Technology*⁷, for the proposition that, when trial of a

⁶ **10. Stay of suit.**— No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before [the Supreme Court].

⁷ **2010 SCC OnLine Ori 159**



suit stands stayed under Section 10 of the CPC, every interim application filed in the suit cannot be adjudicated, and the Court would have to examine whether adjudication of the interim application would touch on the merits of the suit.

38. Mr. Gupta advances another preliminary submission to the effect that the suit was bad for want of territorial jurisdiction. He submits that a meaningful reading of the plaint in the suit would indicate that this Court has no territorial jurisdiction to adjudicate it. He relies, for the purpose, on *Banyan Tree Holding v. A. Murali Krishna Reddy*⁸ and the judgment of a learned Single Judge of this Court in *Vikrant Chemico Industries v. Shri Gopal Engineering & Chemical Works*⁹.

39. On merits, Mr. Gupta submits that, as both parties had registered marks, the learned Single Judge ought to have noticed that triable issues, including the issue of honest and concurrent user, arose, in view of Sections 28(3)¹⁰, 30(2)(e)¹¹ and 31(1)¹² of the Trade Marks Act and ought not to have granted interim injunction solely on the

⁸ (2010) 42 PTC 361

⁹ 2025 SCC OnLine Del 5562

¹⁰ (3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

¹¹ (2) A registered trade mark is not infringed where—

(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

¹² 31. **Registration to be prima facie evidence of validity.** –

(1) In all legal proceedings relating to a trade mark registered under this Act (including applications under Section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof.



ground of passing off.

40. Mr. Gupta further submits that the documents filed with the plaint clearly established priority of user of the Flying Bird device by the appellant over the respondent and that the respondent had failed to establish its user claim of 1998. In this context, Mr. Gupta points out that the date of publication of the respondent's Flying Bird logo was mentioned as 2000 in the copyright registration dated 25 May 2001, Applications Nos. 797954 and 850638, dated 7 April 1998 and 9 April 1999, filed by the respondent for registration of the Flying Bird logo under the Trade Marks Act were all on "proposed to be used" basis and the user date was mentioned as 1 January 2017 in Trade Mark Application No 5838728 dated 7 March 2023. In view of the requirement of declaring user, in Section 18(1)¹³ of the Trade Marks Act, this declaration bound the respondent. There were, therefore, diverse dates of user declared by the respondent. As against this, the learned Single Judge relied on the article in the addition of The Hindu dated 1 July 1999. This was merely an interview with Shombhit Ranjan Sengupta, and was not a news report. It could not, therefore, constitute evidence of user, by the respondent, of the Flying Bird device. Besides, submits Mr. Gupta, the respondent had itself written to the Registrar of Trade Marks, apropos Application No. 797954 for incorporation, in the Register of Trade Marks, of the date of user of the mark as 1997, which was incompatible with the stand that Shombhit Ranjan Sengupta created the mark in 1998.

¹³ 18. **Application for registration.**—

(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.



41. Apropos the Sainik newspaper article produced by the appellant, Mr. Gupta submits that the appellant had filed IA 48587/2024, seeking summoning of the editor-in-chief of the newspaper. Besides, he submits that an investigation had been conducted by the respondent and the affidavit filed by the investigator revealed that no question was asked to the authorities at the Sainik newspaper regarding the said article.

42. Mr. Gupta also submits that, as the suit was considerably delayed, the respondent was not entitled to interim injunction. He submits that the respondent became aware of the use, by the appellant, of the Flying Bird device in May 2017 and August 2022, but the suit was filed only in August 2023. In such circumstances, he submits that the judgment of the Supreme Court in *Midas Hygiene Industries v. Sudhir Bhatia*¹⁴ would not apply.

43. With respect to the details of sales returns provided by the respondent of products using the Robin bird device from 2000 to 2023, Mr. Gupta submits that it is not clear whether the device used in the products thus sold was of the Sitting Bird or the Flying Bird. Similarly, the submissions regarding goodwill and reputation, in the plaint, do not make it apparent as to the device to which they relate.

44. Mr. Gupta submits that the Sitting Bird and Flying Bird devices are clearly different in appearance and, consequently, the goodwill, if any, earned by the Sitting Bird device cannot benefit the Flying Bird

¹⁴ (2004) 3 SCC 90



device.

45. On his attention being invited to the restricted scope of interference by this Court, with interim orders of the learned Commercial Court under Order XXXIX of the CPC, as set out in para 14 of *Wander India Ltd v. Antox India (P) Ltd*¹⁵, Mr. Gupta submits that *Wander* was a case in which the application under Order XXXIX was rejected by the learned Commercial Court and could not, therefore, be applied in a case where the application had been allowed. Mr. Gupta submits that there is a qualitative distinction between these two situations, as injuncting an enterprise from carrying on its business results is akin to civil death.

46. On an overall conspectus of the circumstances, Mr. Gupta submits that the impugned order cannot sustain.

II. Submissions of Mr. Chander M. Lall for the respondent

47. Responding to Mr. Gupta, Mr. Chander M. Lall submits that none of Mr. Gupta's contention answer the issue of the respondent's entitlement to interim injunction on the ground of copyright infringement. Para 5 of *Midas Hygiene*, he submits, entitles a plaintiff to immediate injunction in a case of copyright infringement, and delay in institution of the proceedings is no impediment.

48. Mr. Lall submits that the present case is clearly one of copyright infringement, as the respondent is the holder of a registered copyright

¹⁵ 1990 Supp SCC 727



in the Flying Bird device, granted in 2001 against an application of 2000. He submits that the appellant has provided no explanation for adopting an identical Flying Bird device.

49. Mr. Lall further submits that the production of the Sainik newspaper was not innocent, but cleverly strategized. He submits that it was only when, after three oppositions and the Agra suit, in none of which the Sainik newspaper article found any mention, the appellant was directed, by order dated 8 August 2023 of the learned Single Judge, to produce his best evidence of prior user, that he filed the 1997 Sainik newspaper, so as to trump the claimed 1998 user of the respondent.

50. Mr. Lall also submits that, in the plaint, it has been specifically averred that the respondent was using the changed Flying Bird logo from the date of change.

51. The use of the Flying Bird logo by the appellant, submits Mr. Lall, is clearly dishonest, as there is no connection with the bird, which is a robin, and the mark of the appellant, which is POOJA.

E. Analysis and Findings

I. Misstatement by the appellant

52. We are of the opinion that the filing by the appellant, of the Sainik Newspaper article dated 21 September 1997 by itself completely disentitled the appellant from any interim relief under



Order XXXIX Rules 1 and 2 of the CPC. It is settled that a party who does not approach the Court with clean hands *ipso facto* disentitles itself from any relief under Order XXXIX of the CPC, in which equity is inherent. Para 30 of *Seema Arshad Zaheer v. Municipal Corpn. of Greater Mumbai*¹⁶ clearly expounds this position:

“30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a *prima facie* case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.”

53. It is *prima facie* obvious that the Sainik newspaper article was either fabricated, or that the author was blessed with the gift of clairvoyance, of which the latter option is, unfortunately, not available to a Court taking judicial notice of facts before it. The article quoted events which transpired after the date of the article. The appellant was not able to dislodge this fact either before the learned Single Judge or before us. Mr. Gagan Gupta, who appears for the appellant, too, was unable to tender any explanation therefor. He merely submits that, on this aspect being brought to the attention of the appellant, the appellant had filed an application for summoning the Editor-in-Chief of the Sainik Newspaper, which was pending. Without summoning the

¹⁶ (2006) 5 SCC 582



Editor-in-Chief, Mr. Gupta contention is that the learned Single Judge ought not to have arrived at a finding that the article was fabricated.

54. Having produced *prima facie* fabricated article, it was for the appellant which sought to rely thereon to explain it. There was no responsibility on the Court to summon the Editor-in-Chief of the Newspaper. Indeed, if the article was fabricated, there might even have been some part played by the authorities in the office of the Newspaper in providing such an article. In any event, if it was the case of the appellant that an answer would be forthcoming from the office of the newspaper, the appellant was bound to place that evidence on record – though, frankly, we are unable, *prima facie*, to envisage any possible explanation. The appellant could not call upon the Court to conduct a roving enquiry.

55. In this context, the facts stated by Mr. Lall, which Mr. Gupta was unable to dislodge, was also significant. Mr. Lall pointed out that the article never surfaced at any point in the proceedings, despite three oppositions and the suit at Agra having been filed. It was only after the respondent claimed 1998 user and, by order dated 8 August 2023, the learned Single Judge called upon the parties to produce their best evidence to establish priority of user, that the Sainik Newspaper article surfaced, purportedly to vouchsafe 1997 user of the appellant. That the article may have thus been strategically filed by the appellant is also, therefore, a distinct possibility.

56. Once it was *prima facie* found that the appellant had resorted to filing fabricated documents before the Court, there was no question of



the appellant being entitled to any relief under Order XXXIX of the CPC.

57. We, therefore, are of the opinion that the impugned order of the learned Single Judge does not merit interference even by reason of the appellant having sought to rely on the Sainik Newspaper article dated 21 September 1997.

II. Re. plea based on Section 10 of the CPC

58. Mr. Gupta sought to contend that the learned Single Judge ought not to have adjudicated on the respondent's Order XXXIX application when the appellant's application under Section 10 of the CPC was still pending disposal. He has relied for this purpose on the judgment of the High Court of Orissa in *Bansidhar Pradan*.

59. This proposition is clearly unacceptable in view of the judgment of the Supreme Court in *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.*¹⁷, paras 7 and 8 of which read thus:

“7. Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word “trial” is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster's Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an

¹⁷ (1998) 5 SCC 69



issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edn.), a “trial” is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Thus in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the court. Whether the widest meaning should be given to the word “trial” or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it is used.

8. Therefore, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to “proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit”. The object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. *The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters.* It is not a bar to the institution of a suit. *It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment.* The course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. *In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word “trial” in Section 10 is not used in its widest sense.”*

(Emphasis supplied)

60. Thus, as the Supreme Court has clearly held that Section 10 merely stays the trial in the suit and does not inhibit the Court from deciding any interlocutory application, including an application under Order XXXIX of the CPC, we cannot accept Mr. Gupta’s contention that the learned Single Judge ought not to have passed the impugned order while the appellant’s Section 10 application was pending adjudication.



III. Re. Territorial jurisdiction

61. On the aspect of territorial jurisdiction, the Division Bench of this Court has already held in *Kohinoor Seed Fields India Pvt Ltd v. Veda Seed Sciences Pvt Ltd*¹⁸ that the availability of the products of the appellant on the India Mart website would by itself confer jurisdiction on any Court within which the website was accessible. In this context, we may also reproduce para 22 of the judgment of the Division Bench of this Court in *Tata Sons (P) Ltd. v. Hakunamatata Tata Founders*¹⁹, in which it was held:

“22. We are in complete agreement with the above view of the English court. Even if a website is not directed at customers in a particular country, *the fact that they are not restricted by the website to have access to it, is enough to characterise it as targeting*. Targeting need not be a very aggressive act of marketing aiming at a particular set of customers. *Mere looming presence of a website in a geography and ability of the customers therein to access the website is sufficient, in a given case*. It may not be forgotten that in the matters of infringement of trade mark, it is the possibility of confusion and deception in the mind of public due to infringing trade mark that is good enough for the court to grant injunction.”

(Emphasis supplied)

62. The law has, thus, travelled from *Banyan Tree Holding to World Wrestling Entertainment v. Reshma Collection*²⁰ and thereafter to *Tata Sons*. In view of the fact that the appellant’s product was admittedly available on the India Mart platform, it could not be said that the appellant was not carrying on business within the

¹⁸ 2025 SCC OnLine Del 8727

¹⁹ 293 (2022) DLT 760

²⁰ (2014) 60 PTC 452 (Del-DB)



jurisdiction of this Court. The fact that the Indiamart platform may have been a B2B²¹ platform rather than a B2C²² platform, cannot make any substantial difference to this legal position in view of the law as it has developed on the aspect of territorial jurisdiction.

63. Another factor which prompted the learned Single Judge to hold that this Court would have territorial jurisdiction in the matter was the representation, by the appellant, in the Agra Suit, to the effect that the appellant's products were sold all over India. Mr. Gupta has sought to contend that this finding was factually incorrect, as the statement of the appellant, in the Agra Suit, was that the appellant's goods were advertised all over India. This cannot, to our mind, make any substantial difference, as advertisement of the allegedly infringing mark would also constitute part of the cause of action for the respondent to institute the suit.

64. Besides, the aspect of territorial jurisdiction was being decided in an application under Order VII Rule 10²³ of the CPC, which has to be decided solely on the basis of the averments in the plaint.

65. We, therefore, concur with the learned Single Judge in his *prima facie* finding that this Court has territorial jurisdiction to deal with the matter.

²¹ "Business To Business"

²² "Business To Consumer"

²³ **10. Return of plaint.** –

(1) Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation. – For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.



IV. Scope of interference

66. The Supreme Court has, in *Wander*, clearly delineated the boundaries of interference, by a Court exercising appellate jurisdiction over an Order XXXIX decision, thus:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion *except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle.* Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below *if the one reached by that court was reasonably possible on the material.* The appellate court would normally not be justified in interfering with the exercise of discretion under appeal *solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.* If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*²⁴:

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton*²⁵ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

67. *Pernod Ricard v. Karanveer Singh Chhabra*²⁶ reiterates the principle:

²⁴ AIR 1960 SC 1156

²⁵ 1942 AC 130

²⁶ 2025 SCC OnLine SC 1701



“19.8. In *Wander Ltd.*, this Court elaborated the principles governing the grant or refusal of interim injunctions in trademark infringement and passing off actions. It was underscored that appellate courts ought to be circumspect in interfering with the discretionary orders of lower courts in such matters. Interference is warranted only where the discretion has been exercised arbitrarily, capriciously, perversely, or in disregard of settled legal principles.”

68. There can be no question of this Court reading down the above enunciation of the law by the Supreme Court, which is clear.

V. On merits

69. Insofar as the merits of the controversy are concerned, as the appellant and respondent were both registered owners of the Flying Bird device mark, no action for trademark infringement could be maintained. Insofar as the rival trademarks were concerned, therefore, the respondent could only maintain an action for passing off against the appellant.

70. The rival marks are practically identical, and were used for identical goods. The likelihood of confusion, in the mind of a consumer of average intelligence and imperfect recollection, if both the marks were allowed to co-exist in the market is, therefore, self evident.

71. The learned Single Judge has held that, in these circumstances, the only aspect which was required to be examined was priority of user. This position has been accepted, before us, by both learned Counsel, *ad idem*. We may, however, modify this observation of the



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learned Single Judge, to the extent that the issues which would survive for consideration would be priority of user *and existence of goodwill by the respondent, prior to adoption and user of the mark by the appellant. Mere* priority of user would not entitle the respondent to an injunction on the basis of passing off, unless the respondent could establish, *prima facie*, that, before commencement of user by the appellant, the respondent had sufficient goodwill in the market.

72. The learned Single Judge has held, on both the aspects of priority of user as well as the existence of the requisite goodwill in the respondent's Flying Bird mark, in favour of the respondent and against the appellant. Having perused the material on record, we are inclined to agree with the learned Single Judge.

73. The learned Single Judge has pigeonholed the commencement of user of the Flying Bird device mark by the respondent as the year 2000. For this, he has relied on the Chartered Accountant's Certificate dated 2 August 2023, as well as the Article in the Hindu Business Line dated 1 July 1999. We deem it appropriate to provide a screenshot of the Article from the Hindu Business Line, thus:



P.T. JYOTHI DATTA

IT WAS literally a case of wiping away its blues. Robin, the laundry whitener brand from Bechtel & Colman India Ltd (BCL), though synonymous with 'blue' and subsequently, whiteness, in almost every Indian home, was faced with the threat of being white-washed in the marketplace, but it has fought back.

MNC detergent brands such as Surf and Ariel's promises of whiteness, and the rise of smaller players such as Ujala whitener, took on the mighty Robin. And with no innovation for more than a decade, what Robin needed urgently was more colour and dynamism. Robin needed to fly.

And fly it did, in the revitalised logo seen on the new packages rolled out nationally from November 1998. This take-off is being propelled further with an advertising blitz being expected to break next month, according to Shombit Sengupta - creative strategist and founder of the Paris-based blinding strategy identity - the man behind Robin making wing on the logo.

More important, Robin could now catch a streak at those who derided its association with whiteness by taking on coloured along with white clothes. Its quality as an optical brightener was a tangible benefit, therefore adding a laundry whitener would have been inadequate - the new Robin claims to be a 'laundry solution'. A concept that is further supported by the 'Wings of Purity' positioning, designed to be in step with the flying bird logo.

Reflecting on the factors that precipitated the change, Mohit Mathur, BCL's Marketing Manager, points out, "As glossiness in the fabric whitener market, the case was not to invent. The wash basket had changed, our category relevance was affected, and both detergent manufacturers as well as small units in the whitener business were changing and talking about blue being its relevance."

Considering Robin's last innovation was way back in 1986, there was a need to "contemporise the brand image and articulate its values." And even as the campaign created by its agency, McCann-Erickson is about to break, other strategies are being devised to support the contemporary image. Brand extensions are being explored for Robin, and efforts are on to increase its presence in South-East Asian markets.

"We are definitely exploring brand extensions to leverage the Robin brand name. Though we are already in markets in Bangladesh, Sri Lanka, Malaysia and the UK, we are looking at introducing extensions that would be suitable in the different markets," adds Mathur.

BCL recorded a sales turnover of Rs 633 crore for the year ended December 1998, up

CONCEPTS

THAT BLUE FEELING



Shombit Sengupta, Founder, Shining Strategic Identity, and right, the old logo.

Robin Blue found itself sidelined as aggressive new brands grabbed its lines. Enter the Shining Strategist. A look at how Shombit Sengupta has helped the robin take wing.



14 per cent from the previous year. Unwilling to shelve the company's adaption on Robin, he admitted the company "would increase the spending" to support a revitalised Robin.

The Rs 210-crore laundry whitener market in the country is fragmented with small blue manufacturers selling their products at a low cost.

"Robin, though a pioneer in the market, did not dynamise its performance through innovations and hence there was a gradual shift towards the ultra-soft products," says Sengupta. Robin has a market share of 25 per cent.

But with the laundry habit being what it is in

the country, and with the overall detergent market facing problems due to climatic conditions, Robin's relevance in the marketplace seems to be here to stay.

"Robin had a strong equity, as blue is synonymous with the brand name, Robin. But this is a sleeping equity," says Sengupta, evaluating the loss of the label 'not flapping its wings'. He adds,

"The used Robin had strong equity as a trademark but not as an action-packed symbol. The flying bird now symbolises mobility, a lightness and brightness of colours. One could read more into it, like dirt flying away - a certain

progressive action." Further diagnosing what didn't go quite right, he says the brand was not clear about when it was to be used. This has been redressed with 'After wash' now displayed prominently on the package for both the powder and the liquid.

With consumers becoming aggressive, reducing prices and even transposing the value of blue to another colour - the obvious reference being to Ujala's 'blue liquid' - Robin as a brand had become old-fashioned, plain and frugal. "The four-drop concept of Ujala was smart as it suggested economy and value for your money." Sengupta also feels that Robin was guilty of neglecting the rural market, though this was its main strength. And here he points out how competitors miss out on "the advantages of the Indian retail market that has a person standing in."

"It is nothing more than a handful of brands out there," he says in his formidable style, referring to the cluster of brands on shop shelves. "The product needs to be attractively packaged so that the retailer is able to recall it quickly."

Among the efforts to create a brand stand with more innovativeness, the company also has plans to increase the depth of its retail network by 50 per cent, in keeping with the company's philosophy. At present, says Mathur, Robin is available in about 1.5-lakh retail units.

Summing up the 'Wings of Purity' concept, Sengupta says "The total brand mix communicates quality for whites and colours, a benefit of purity and brightness in the brand. The packaging design in blue communicates the image (After Wash) on top, the resulting lookback shows how whiteness is considered in the washing and the egg shape in the logo communicates whiteness, life, protection and brightness."

Sengupta's success stories include the repositioned Britannia, with the 'Eat healthy, think better' headline; Merit's Parachute brand with its 'Cotton Dream'; Wipro's 'Applying Thought'; Lulule's 'Source of Radiant Beauty' and Saffola's 'Heart of the Healthy Family'.

His global portfolio includes the Vest brand of hair remover from Bechtel & Colman Plc, Danette deodorants from the Danone group, Fovite Dials, the hair tonic from Procter & Gamble, Mami Blue padding deodorant from Nestle, and the corporate identity for Armagnac run from the Beech Martin group.

The strategic identity advised for BCL, he says, aims at focusing on the brand's 'quoted value' or the "emotional surplus the brand releases re-into the consumer's perception." Or the conclusion emotional connection the little bird seeks to make with its consumer.

Can the company convert that emotional reaction into purchase decisions? That's where the new identity can help. □

74. At a *prima facie* stage, and keeping in mind the principles in *Wander v. Antox*, we do not see any basis for disagreeing with the findings of the learned Single Judge. There is no perversity in the manner in which the learned Single Judge has appreciated the evidence before him, and this Court, in exercise of its appellate jurisdiction, cannot re-appreciate the sufficiency of evidence. At the very least, therefore, we agree with the learned Single Judge that the commencement of user of the Flying Bird device mark by the respondent would be entitled to be treated as 2000.

75. Mr. Gupta sought to contend that there was nothing to indicate



whether the sales figures provided in para 15 of the plaint refer to the goods bearing the Sitting Bird device or the Flying Bird device. The figures commence from the year 2000. Mr. Lall has pointed out that, in the plaint, it has specifically been averred that, after the adoption of the Flying Bird device, the respondent was exclusively utilizing that device. Even otherwise, as the learned Single Judge has correctly noted, the Hindu Business Line Article specifically stated that, in 1998, consequent to the conceptualization and creation of the mark by Shombit Ranjan Sengupta, the goods bearing the Flying Bird device had been released in the market.

76. In that view of the matter, we are of the *prima facie* view that the sales figures provided by the respondent in para 15 of the plaint, which were supported by the CA certificate, were entitled to be regarded as figures representing the returns from sales of products bearing the Flying Bird mark. The learned Single Judge has noted that, if the respondent's user was to be treated as commencing from 2000, then, from 2000 to 2023, prior to which no user of the Flying Bird device had been shown by the appellant, the respondent had earned huge amounts by way of sales of the product, with the returns in the year 2022 alone being in the region of ₹ 23 crores. In that view of the matter, the learned Single Judge holds that the respondent had also succeeded in making out a *prima facie* case of goodwill, prior to the adoption of the Flying Bird device by the appellant. We find no reason to disturb the said finding, in exercise of our appellate jurisdiction.

VI. Other incidental submissions



77. The submission of Mr. Gupta that, as both marks were registered, the learned Single Judge ought to have held that triable issues arose, and ought not to have granted an injunction solely on the ground of passing off, is obviously unsustainable. The Supreme Court has clearly held, in *S. Syed Mohideen v. P. Sulochana Bai*²⁷, that though no action for infringement can lie against a registered trade mark, an action for passing off is maintainable. This position is also manifest from Section 27(2)²⁸ of the Trade Marks Act. In view of the *non obstante* clause with which Section 27(2) commences, no defence under Section 28(2) or 30(2)(e) would be available to one who is guilty of passing off his product as that of another. Passing off is a common law tort, fundamentally founded on deceit – even if proof of deceit is not a *sine qua non* – and is registration agnostic. Section 31(1) merely confers, on a registered trade mark, a *prima facie* presumption of validity, and, as a valid trade mark can also be enjoined if a case of passing off is established, this provision, too, is immaterial.

78. Where passing off is found to exist, the Supreme Court holds, in para 14 of *Laxmikant V. Patel v. Chetanbhai Shah*²⁹, thus:

“....Once a case of passing-off is made out the practice is generally to grant a prompt ex parte injunction followed by appointment of Local Commissioner, if necessary. In our opinion the trial court was fully justified in granting the ex parte injunction

²⁷ (2016) 2 SCC 683

²⁸ 27. No action for infringement of unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

²⁹ (2002) 3 SCC 65



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to the plaintiff based on the material made available by him to the court.....”

F. Conclusion

79. For the aforesaid reasons, we do not deem this a fit case for interference in appeal. The impugned order of the learned Single Judge is maintained.

80. The appeal is, accordingly, dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 7, 2026

YG/DSN/AR