

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)



2026:CHC-OS:62

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

IP-COM/59/2024
[OLD NO C.S /148/2023]
IA NO: GA-COM/5/2025

JAY BABA BAKRESWAR RICE MILL PRIVATE LIMITED
VS
DEEPAK KUMAR BARNWAL

For the Petitioner :Mr. Sourojit Dasgupta, Adv.
Ms. Sanchari Chakroborty, Adv.
Ms. Tanishka Khandelwal, Adv.

Heard on :13.02.2026

Judgment on :13.02.2026

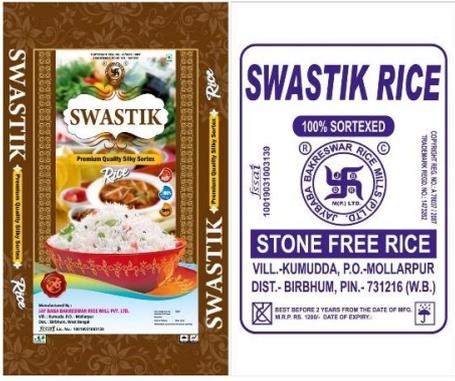
Ravi Krishan Kapur, J.:

1. This is a suit for infringement and passing off. The application has been filed under Order VIII Rule 10 of the Code of Civil Procedure.
2. Despite repeated service, the respondent remains unrepresented.
3. Though the respondent appeared at the interlocutory stage, the respondent has neither entered appearance in the Suit nor filed any Written Statement.
4. The petitioner is engaged in the business of manufacture and sale of rice and similar products. It is alleged that since year 1998, the petitioner had adopted a label mark "SWASTIK". The products of the petitioner are being sold under the package containing the label "SWASTIK" continuously and uninterruptedly since 1998. The petitioner also boasts



of extensive sales in respect of the said product bearing the mark “SWASTIK”.

5. The petitioner is also enjoying registrations in respect of the label mark “SWASTIK” in various stylized manners. Significantly, the registration being enjoyed by the petitioner contains a disclaimer i.e. registration of the trademark shall give no right to the exclusive use of device of “SWASTIK” and all other descriptive matters. The plaintiff has also obtained copyright registrations over the artistic work in respect of the above mark. The details of such registration are fully enumerated both in the plaint and petition.
6. In or about June 2023, the petitioner came across the respondent’s product bearing the mark “SWASTIK” with the only additional word ‘New’ written insignificantly over the impugned mark.
7. For convenience, the rival marks are set out herein below;

PETITIONER’S MARK	RESPONDENT’S MARK
	

8. It is also alleged that though the respondent had applied for registration of the mark New “SWASTIK” on a proposed to be used basis, such registration has been refused.



9. Upon the filing of this suit, by an order dated 14th August, 2023, this Court had at an *ad interim* stage granted an order of injunction restraining the respondent from using the impugned packaging and label. Ultimately, the *ad interim* order was confirmed on February 19, 2024.
10. On a bare perusal of the two marks, the same appear to be identical to each other. The packaging of the respondent's product is strikingly similar and deceptively identical to that of the petitioner's packaging. The petitioner is also the prior user of the mark and has been using the same since 1998.
11. In *Laxmikant V. Patel v. Chetanbhai Shah*, reported in (2002) 3 SCC 65 it has been held as follows:

“10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

12. Order VIII Rule 10 of the Code of Civil Procedure 1908 provides as follows;

*Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:
Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.*



13. In *Aisha Bi Vs. M. Shamsher Khan ILR 2001 Kar 546*, it has been held as follows:

“12...A reading of Rule 5(2) and Rule 10 of Order VIII of the CPC and the law laid down by the Supreme Court in Balraj Taneja's (supra), it is now clear that even if the defendant does not file his written statement, it is incumbent upon the Trial Court to apply itself to the facts pleaded by the plaintiff and come to its own conclusion that even if the facts as stated in the plaint are taken as true, it does not create any inbuilt inconsistency on facts requiring the same to be proved by the plaintiff by adducing evidence. In case, the Court, after going through plaint, finds that the facts disclosed therein gives rise to two versions of the foundational facts on which the relief ought to be based, then it will be necessary for the Court to direct the plaintiff to lead evidence so that on appreciation thereof the Court can ascertain the correct facts and thereupon either decree or dismiss the suit. But, if the Court finds that the facts pleaded are consistent and forms good basis for awarding the relief claimed, then the Court is required to decree the suit on the basis of the facts pleaded in the plaint, since in absence of written statement filed by the defendant controverting any of those facts, the same has to be taken as admitted.

13. Accordingly, we clarify here that in all cases where no written statement has been filed by the defendants, it is neither necessary nor appropriate to direct the plaintiff to adduce evidence in support of the facts pleaded by him in an indiscriminate manner. The Court has to pronounce the judgment and decree the suit if the facts pleaded does not admit of any in-built inconsistency giving rise to two different versions of the foundational facts. But even for doing so, the Court has to pass the judgment containing the relevant facts and the reasons for granting the relief.”

14. Similar views have also been expressed in (a) *Kaira District Cooperative Milk Producers Union Ltd. and Another v Maa Tara Trading Co. and Others (2022 SCC OnLine Cal 2516)*, (b) *Devans Modern Breweries Ltd. v Mount Everest Breweries Ltd. and Another (2022 SCC OnLine Cal 3514)*, (c) *Shyam Sel and Power Limited v Atibir Industries Company Limited (2023 SCC OnLine Cal 3781)* and (d) *SRMB Srijan Private Limited v Uma Shankar Jaiswal (2024 SCC OnLine Cal 6157)*.

15. In view of the above uncontroverted facts pleaded and satisfactorily proved, the petitioner is entitled to an order under Order VIII Rule 10 of the Code of Civil Procedure, 1908.



16. In view of the strong prima facie case, balance of convenience in irreparable injury the petitioner is entitled to protective reliefs.

17. In such circumstances, the suit is decreed in terms of prayers (a), (b), (d) and (e) of the plaint.

(RAVI KRISHAN KAPUR, J.)

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