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Reserved On : 16/12/2025
Pronounced On : 16/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 207 of 2025

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/APPEAL FROM ORDER NO. 207 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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Approved for Reporting	Yes	No
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MR. ANIL GOPALJI THACKER
Versus
MR. DAVDA JAYDEEPKUMAR JAGDISHCHANDRA

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Appearance:
MR HARSHIT TOLIA, SENIOR ADVOCATE WITH MR PRATIK K CHAUDHARY(8359) for the Appellants
MR KAMAL B. TRIVEDI, SENIOR ADVOCATE with MR SHIVANG A THACKER(7424) for the Respondent
MR AR THACKER(888) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

CAV JUDGMENT

1. The present Appeal from Order under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") is directed against the order dated 12.08.2025 passed by the learned 8th Additional District Judge,

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Bhuj–Kutch below Exh.5 in Trademark Suit No.1 of 2025 instituted by the appellant. By the said order, the learned trial Court was pleased to reject the application for interim injunction preferred by the appellant and consequently, vacated the ex-parte ad-interim injunction granted earlier on 15.05.2025.

2. The appellant herein is the original plaintiff, whereas the respondent herein is the original defendant in the aforesaid suit. For the sake of convenience and to avoid any confusion, the parties shall hereinafter be referred to in accordance with their original status before the trial Court, i.e., as plaintiff and defendant.

Case of the plaintiff :

3. The case of the plaintiff, as set out in the plaint, is that the plaintiff is the adopter, proprietor and user of the device mark / trademark SHREE KSHETRAPAL and is *inter alia* engaged in the business of construction and renovation of buildings, construction and repair works, residential and commercial building construction, construction of hotels, restaurants and resorts, as well as land development, since the year 2015. It is

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stated that the plaintiff initially commenced business activities at Deesa in District Banaskantha, which have subsequently expanded to the District of Kutch.

3.1 It is further averred that in the year 2015, a partnership firm was constituted in the name and style of "Shree Kshetrapal Agritech". Thereafter, in the year 2016, a private limited company, namely M/s. Shree Kshetrapal Oil Refinery Pvt. Ltd., came to be incorporated. Subsequently, other entities, namely Shree Kshetrapal Infrastructure, Shree Kshetrapal Building Materials and Shree Kshetrapal Infra LLP, were also formed by the plaintiff.

3.2 According to the plaintiff, in the course of the aforesaid business activities, several real estate projects have been launched in and around Bhuj–Kutch, including Shree Kshetrapal Prime, Shree Kshetrapal Arcade, Shree Kshetrapal Commercial and Industrial Park, Shree Kshetrapal Residency, Shree Kshetrapal Landmark, Shree Kshetrapal Epitome, Shree Kshetrapal Infinity, Shree Kshetrapal Square-1, Shree Kshetrapal Square-2 and Shree Kshetrapal Icon.

3.3 It is the further case of the plaintiff that, with a view to

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secure protection of its trademark / trade name “Shree Kshetrapal”, an application bearing No.6138925 came to be filed under the provisions of the Trade Marks Act, 1999 for registration of the device mark SHREE KSHETRAPAL under Class 37, and the said mark has been duly registered by the Registrar of Trade Marks. It is also stated that another application bearing No.6981533 has been filed for registration of the word mark “Shree Kshetrapal”, which is presently pending adjudication.

3.4 On the strength of the aforesaid registration of the device mark SHREE KSHETRAPAL, the plaintiff claims entitlement to protect the said trademark and restrain any infringement thereof. According to the plaintiff, the defendant has commenced business activities in May, 2025 under the trade name “Kshetrapal Construction”, which, according to the plaintiff, is structurally, phonetically and visually similar and deceptively identical to the plaintiff’s trademark “Shree Kshetrapal”. It is further alleged that upon making inquiries, the plaintiff came to learn that the defendant has also filed an application for registration of the trademark “Kshetrapal Construction”, claiming use thereof since 05.01.2014.

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3.5 In the aforesaid circumstances, the plaintiff instituted Trademark Suit No.1 of 2025 before the learned Civil Court at Bhuj–Kutch, seeking, inter alia, the following reliefs:

> "A. The defendant, their successors, servants, agents, dealers, stockiest and distributors be restrained permanently and perpetually from manufacturing, marketing, advertising, selling and/or providing any services under the mark "KSHETRAPAL CONSTRUCTION" and such other Trademark having identical and/or deceptively similar to the plaintiff's Trademark "SHREE KSHETRAPAL" and be further restrained from committing act of infringement of the registered trademark and passing-off by selling/providing their services under the mark "KSHETRAPAL CONSTRUCTION" as that of plaintiff's Trademark "SHREE KSHETRAPAL" and be restrained to claiming any rights, titles or interests in the mark "KSHETRAPAL CONSTRUCTION".
>
> B. A decree may be passed against the defendant and their properties which can be executed against the defendant and in favour of the plaintiff for the declaration that the plaintiff is the only proprietor of the Trademark "SHREE KSHETRAPAL" and the plaintiff is only entitled to provide his services under the Trademark "SHREE KSHETRAPAL".
>
> C. The defendant may be ordered to produce accounts for the sale of its services under the mark "KSHETRAPAL CONSTRUCTION" and be directed to pay the profits whatsoever derived from sale of such services under the illegal use of mark "KSHETRAPAL CONSTRUCTION" with interest @18% from the date of filing of the suit till realization. The Hon'ble Court be pleased to order the defendant to pay the damages on basis of reputation and goodwill which is ruined due to illegal use of the mark "KSHETRAPAL CONSTRUCTION", as may be deemed fit and proper in the interest of justice.

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D. That the defendant be restrained from disposing of or dealing with his asset which may adversely affect the plaintiff's ability to recover damages, cost or other pecuniary remedies which may be finally awarded by this Hon'ble court to the Plaintiff.

E. The defendant be restrained from interfering in any manner whatsoever with business of the plaintiff, their agents, servants, distributors, family and retailers from manufacturing, marketing, selling and advertising their services by using mark "KSHETRAPAL CONSTRUCTION".

F. Any other and further relief may be granted looking to the facts and circumstances of the case deemed fit, just and proper in the interest of justice.

G. A heavy exemplary cost of the suit may be awarded to the plaintiff."

3.1 Along with the plaint, an application Exh.5 under Order 39 Rule 1 and 2 of the Code was also filed seeking, inter alia, interim relief, which read, thus;

"A. Till the pendency and final disposal of the suit, the defendant, their successors, servants, agents, dealers, stockiest and distributors be restrained by an order of ad-interim and temporary and/or Ex-parte injunction from manufacturing, marketing, advertising and selling and/or offer for sale their services/products under the impugned mark "KSHETRAPAL CONSTRUCTION".

B. The defendant, their directors, successors, servants, agents, dealers, stockiest and distributors be restrained till final hearing and disposal of the suit from providing their goods/products/services under the mark "KSHETRAPAL CONSTRUCTION" and/or such other mark being identically, phonetically and/or confusingly and/or deceptively similar to the plaintiff's trademark "SHREE KSHETRAPAL" and be further restrained from

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committing the act of infringement as well as passing off the plaintiff's services /products under the impugned Trademark and may further be restrained from claiming any rights, titles or interest in the said Trademark.

C. The Hon'ble Court may further be pleased to restrain the defendant from causing interference and obstruction in any way, interfering with the sale, marketing, offer for sale in any manner, which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded by this Hon'ble court to the Plaintiff.

D. For ad-interim and interim relief of prayer (C), this Hon'ble Court be pleased to appoint the Court Receiver or such other person as this Hon'ble Court may deem fit and proper, with all powers under Order XL of the Code of Civil Procedure, 1908, to forcibly enter/visit any premises of the defendant at any time of the day or night, on any day, including on Sundays and holidays, without prior notice, with police help, if so required, and for that purpose to break open any lock or latch or door and to search, collect, seize, destroy, erase and/or store any goods, stationery, letterheads, signage, reprographic material, packaging, signboards, hoardings, labels and/or other material for advertising, selling or marketing any goods/services and/or other material featuring bearing the trademark or "KSHETRAPAL CONSTRUCTION".

E. Any other and further relief as may be deemed just and proper looking to the facts and circumstances of the case be granted in the interest of justice.

F. Cost of this application may kindly be awarded to the plaintiff."

4. The learned trial Court, upon considering the application for interim relief, was pleased to grant an ex-parte ad-interim injunction in favour of the plaintiff by order dated 15.05.2025

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against the defendant. However, upon service of notice of the said order, the defendant appeared and filed an application under Order XXXIX Rule 4 of the Code, seeking vacating of the said ex-parte ad-interim injunction. The defendant also filed a written statement to the plaint as well as a reply opposing the application for interim injunction.

Case of the Defendant :

5. The case of the defendant, as emerging from the written statement and the reply to the interim application, is that the plaintiff has suppressed material facts and made misleading statements on oath. According to the defendant, the defendant has been carrying on the business of construction under the trade name “Kshetrapal Construction” since the year 2014.

5.1 It is further the case of the defendant that from the year 2017 till April, 2025, the plaintiff and the defendant were business partners and had jointly undertaken several construction projects, wherein the trade name “Kshetrapal” was used by them jointly. It is also alleged that the plaintiff has committed a major suppression with regard to the

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proceedings before the Registrar of Trade Marks. According to the defendant, while seeking registration of the device mark SHREE KSHETRAPAL, the Registrar had raised objections under Section 9(1)(b) and Section 11 of the Trade Marks Act, 1999, to which the plaintiff had specifically stated that it was seeking registration only of the device mark. According to the defendant, this crucial aspect has not been disclosed in the plaint.

5.2 It is further contended by the defendant that while replying to the objection under Section 11 of the Trade Marks Act, the plaintiff had stated before the Registrar that the trademark had been adopted in a special and artistic manner, and therefore the mark “Shree Kshetrapal” was visually distinct. In such circumstances, according to the defendant, the plaintiff is precluded from claiming any exclusive right over the individual word forming part of the device mark. The defendant has also contended that the plaintiff has not produced any sale deeds or development permissions, which would demonstrate that the projects in question were undertaken jointly by the plaintiff and the defendant and that the word “Kshetrapal” was being used by them jointly in the

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course of such business activities.

5.3 It is further the case of the defendant that the defendant has been engaged in the business of construction since the year 2014 and has completed several projects by using the mark “Kshetrapal”. The defendant has also obtained a PAN card in the name of the firm “Kshetrapal Construction” on 29.05.2021. According to the defendant, several projects were undertaken jointly by the plaintiff and the defendant, including Shree Kshetrapal Square-1, Shree Kshetrapal Square-2, Kshetrapal Reyansh Avenue and Reyansh Kshetrapal The Palms. The defendant has also stated that an application for registration of its device mark KSHETRAPAL CONSTRUCTION has been filed on 28.04.2025, being Trademark Application No.6980721 under Class 37, claiming use thereof since 05.01.2014, which application is presently pending adjudication.

6. The learned trial Court, after considering the pleadings of the parties and the documents produced on record, by its order dated 12.08.2025 passed below Exh.5 in Trademark Suit No.1 of 2025, was pleased to reject the application at Exh.5

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for interim injunction and vacate the ex-parte ad-interim relief granted earlier.

7. Being aggrieved and dissatisfied with the aforesaid order passed by the learned trial Court, the plaintiff has approached this Court by way of the present Appeal from Order, seeking, inter alia, interim relief in terms of the application at Exh.5.

8. Heard learned Senior Advocate Mr.Harshit Tolia with learned advocate Mr.Pratik Chaudhary for the appellant – plaintiff and learned Senior Advocate Mr.Kamal B. Trivedi with learned advocate Mr.Shivang Thacker for the respondent – defendant.

9. Learned Senior Advocate Mr.Harshit Tolia for the plaintiff, while assailing the impugned order, has made the following submissions :

9.1 It is contended that the learned trial Court has failed to properly appreciate the evidence on record in its true letter and spirit and has also failed to consider the relevant statutory provisions and the settled principles of law governing the aspects of prior user, rights of a registered

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proprietor, similarity of trademarks and public policy. According to the plaintiff, such failure has resulted in a serious miscarriage of justice.

9.2 It is further urged that the learned trial Court has committed a material error in holding that the plaintiff has failed to establish prior use of the trademark “Shree Kshetrapal” since the year 2015, without properly appreciating the evidence on record. It is submitted that the plaintiff’s earlier firm, namely Shri Shetrapal Agritech, was not engaged in the construction business and that the spelling of the mark adopted by the plaintiff was different. The plaintiff contends that the findings recorded by the trial Court in this regard are erroneous and have resulted in miscarriage of justice.

9.3 It is also contended that the learned trial Court ought to have appreciated that the plaintiff’s firm came to be established in the year 2015, and since then the trademarks “Shree Kshetrapal” and “Shree Shetrapal”, the essential feature being the word “Kshetrapal”, have been continuously used by the plaintiff. Therefore, the finding recorded by the

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trial Court that the plaintiff failed to establish prior use of the said mark is, according to the plaintiff, unsustainable in the eye of law.

9.4 The plaintiff has further submitted that the learned trial Court ought to have appreciated that since the year 2015, the plaintiff has been engaged in various business activities, but notwithstanding the change in the nature of business, the word “Kshetrapal” has remained a constant feature in the plaintiff’s trade name. In such circumstances, according to the plaintiff, the trial Court ought not to have adopted a hyper-technical approach by drawing a distinction between the spellings “Kshetrapal” and “Shetrapal”, particularly when the businesses were related.

9.5 It is also contended that the learned trial Court has erred in concluding that the plaintiff had suppressed material facts by not disclosing the alleged joint business activity with the defendant. According to the plaintiff, the defendant was merely a minority investor in specific projects, namely Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2, and was never a co-owner or proprietor of the trademark “Shree

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Kshetrapal". It is submitted that there existed no partnership agreement between the plaintiff and the defendant, nor did the defendant ever assert any claim of ownership over the trademark "Kshetrapal" while acting as an investor in the schemes floated by the plaintiff. In such circumstances, the trial Court ought to have appreciated that the trademark "Shree Kshetrapal" is the trade name of the plaintiff, and that the defendant subsequently started using the word "Kshetrapal" for the schemes floated by him without the permission or consent of the plaintiff and in an unauthorized manner.

9.6 It is further contended that the plaintiff had sufficiently established use of the trademark "Shree Kshetrapal" since the year 2015 by producing ample documentary evidence on record. However, the learned trial Court, according to the plaintiff, has committed a serious error in not appreciating such evidence in its proper perspective, which has resulted in miscarriage of justice.

9.7 The plaintiff has also contended that the learned trial Court ought to have appreciated the well-settled principle that

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registration of a trademark confers upon the proprietor an exclusive right to its use, and that the use of a deceptively similar mark, such as “Kshetrapal Construction”, is likely to cause confusion among the public. According to the plaintiff, it is the prior adopter and user of the trademark “Shree Kshetrapal”, and the average consumer associates the word “Kshetrapal” exclusively with the plaintiff and its entities. It is therefore submitted that permitting the defendant to use the impugned mark for its construction schemes would dilute the plaintiff’s trademark and would also cause confusion and deception among the purchasing public, who may not be able to distinguish the real estate schemes of the plaintiff from those of the defendant. Hence, it is contended that the impugned order passed by the trial Court is contrary to the settled principles of law and deserves to be quashed and set aside.

9.8 It is further contended that the learned trial Court has attached undue significance to the alleged non-disclosure of the fact that the defendant was associated with and was one of the investors in certain schemes of the plaintiff. The trial Court has, according to the plaintiff, erroneously

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characterized such non-disclosure as suppression of material facts and relied upon the same as a ground to deny equitable relief. According to the plaintiff, the dispute in the present case pertains to trademark infringement and passing off, and not to any partnership dispute between the parties. Therefore, the non-disclosure of the defendant's role as a minority investor cannot be treated as material suppression of facts so as to disentitle the plaintiff from seeking interim relief.

9.9 Lastly, it is contended that the learned trial Court ought to have appreciated that the plaintiff is the registered proprietor of the trademark and has demonstrated a long history of use of the mark "Kshetrapal". According to the plaintiff, it has been clearly established that the defendant is using a confusingly similar mark in the same line of business, and therefore the order vacating the ad-interim relief and rejecting the application at Exh.5 is unsustainable in law. It is submitted that the balance of convenience lies in favour of the plaintiff, and that in the absence of interim relief, the plaintiff would suffer irreparable loss to its goodwill and reputation. Hence, the plaintiff prays that the impugned order be quashed and set aside and that the injunction as prayed for be granted

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in the interest of justice.

9.10 To substantiate the aforesaid submissions, learned Senior Advocate Mr.Harshit Tolia has placed reliance on the following authorities :

(1) Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia, reported in (2004 3 SCC 90.
(2) Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel, reported in (2006) 8 SCC 726.
(3) Hindustan Pencils (P) Ltd. v. India Stationary Products Co., reported in 1989 SCC Online Del 34.
(4) SIA Gems and Jewellery Pvt. Ltd. v. SIA Fashion, reported in 2003 SCC Online Bom 498.
(5) Jagdish Sweets and Farsan v. Jagdish Foods Pvt. Ltd., reported in 2007 SCC Online Guj 32.
(6) Jagdish Gopal Kamath v. Lime & Chilli Hospitality Services, reported in 2015 SCC Online Bom 531.
(7) Torrent Pharmaceuticals Ltd. v. Wockhardt Ltd., reported in (2018) 18 SCC 346.
(8) Kewal Ashokbhai Vasoya v. Suarabhakti Goods (P) Ltd., reported in 2022 SCC Online Bom 3335.
(9) Eduspark International (P) Ltd. v. Laxmi Publications (P) Ltd., reported in 2023 SCC Online Del 2062.
(10) Marico Limited v. KLF Nirmal Pvt. Ltd., rendered in IA (L) No.26759 of 2023 in COMMIP (L) Suit No.22293 of 2023 by the Bombay High Court.
(11) Nirav Nimmi Corporation v. Ashish Traders, rendered in

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AO No.9 of 2025 by this Court.

(12) Patel Field Marshal Agencies & Anr. v. P.M. Diesels Limited & Anr., reported in (2018) 2 SCC 112.

(13) K.R. Chinna Krsihna Chaetiar v. Shri Ambal & Co., Madras & Anr., reported in (1969) 2 SCC 131.

(14) New Narbada Divya Jyoti Impex Trading by Divyan Mahendra Singhvi v. Narmada Agrobase Limited, rendered in Appeal from Order No.191 of 2025.

(15) Under Armour.,Inc v. Aditya Birla Fashion & Retail Ltd., rendered in CS (COMM) 41 of 2023 by the Delhi High Court.

9.11 By making the aforesaid submissions, learned advocate for the plaintiff urged this Court to allow the present Appeal from Order.

10. Per contra, learned Senior Advocate Mr.Kamal Trivedi for the defendant, while supporting the impugned order, has made the following submissions :

10.1 On the other hand, the learned advocate appearing for the defendant has supported the impugned order and submitted that the learned trial Court was fully justified in refusing the interim relief and in vacating the ad-interim injunction, particularly on the ground of suppression of

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material facts and misleading statements made by the plaintiff. According to the defendant, two material suppressions have been committed by the plaintiff, namely: (i) non-disclosure of the proceedings before the Registrar of Trade Marks in connection with the plaintiff's application bearing No.6138925 for registration of the device mark SHREE KSHETRAPAL, and (ii) non-disclosure of the joint business activities of the plaintiff and the defendant in relation to the projects Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2.

10.2 It is submitted that the plaintiff had filed an application bearing No.6138925 on 06.10.2023 for registration of the device mark SHREE KSHETRAPAL under Class 37, declaring the same as "proposed to be used". However, in the plaint, the plaintiff has asserted that the device mark / trademark "Shree Kshetrapal" has been in use since 15.05.2015. It is therefore contended that the plaintiff possesses registration only of a device mark, and not of a solitary word or stand-alone mark "Kshetrapal". The said registration, according to the defendant, pertains to a composite device mark containing several features including the words "Shree Kshetrapal", and therefore the mark is

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required to be considered as a whole and in its entirety. It is further submitted that during the course of the registration proceedings, objections were raised by the Registrar under Section 9(1)(b) and Section 11 of the Trade Marks Act, 1999. In response to such objections, the plaintiff had stated before the Registrar that the mark was specifically and artistically designed and that the plaintiff was claiming rights only over the device mark. However, according to the defendant, these crucial aspects have not been disclosed in the plaint and the plaintiff has attempted to claim exclusive rights over the solitary word “Kshetrapal”, which is otherwise a non-distinctive term and also the name of a deity. It is also submitted that while replying to the objection under Section 11, the plaintiff had specifically stated that the mark “Shree Kshetrapal” had been adopted in a particular artistic manner, making it visually distinct. According to the defendant, the suppression of these aspects relating to the objections under Sections 9 and 11 constitutes suppression of material facts going to the root of the matter, and therefore the learned trial Court was justified in drawing an adverse inference against the plaintiff.

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10.3 The defendant has further submitted that the plaintiff has also suppressed the fact that the plaintiff and the defendant were joint owners / investors / developers in two projects, namely Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2. According to the defendant, such disclosure was highly relevant and material, but the plaintiff intentionally failed to disclose the same in the plaint while seeking interim relief. It is therefore submitted that the learned trial Court was well within its jurisdiction in declining to exercise discretionary powers under Order XXXIX Rules 1 and 2 of the Code.

10.4 It is further submitted that the documents relating to the construction of Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2, including the development permissions issued for the said projects, along with the documents relating to projects undertaken by the defendant under the name “Kshetrapal”, such as Kshetrapal Reyansh Avenue and Reyansh Kshetrapal The Palms, clearly demonstrate the defendant’s use of the mark. Reliance is also placed on the affidavit of the engineer, Mr.Mayank Goradia, confirming that the defendant has been using the name “Kshetrapal

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Construction" since 2014, as well as the affidavit of a vendor who supplied materials to Kshetrapal Construction. According to the defendant, these materials prima facie establish that the defendant is the prior user of the mark "Kshetrapal Construction". In contrast, the plaintiff obtained registration of the device mark only on 06.10.2023 and in the said application had declared the mark as "proposed to be used", without claiming any prior usage. Under such circumstances, it is submitted that the plaintiff can at the most claim exclusivity over the device mark SHREE KSHETRAPAL as a whole, and not over any individual component such as the word "Kshetrapal".

10.5 It is further contended that the stand taken by the plaintiff before the Trade Marks Registry and the stand taken before this Court are mutually inconsistent and contradictory, thereby amounting to approbation and reprobation. Before the Trademark authority, the plaintiff had asserted that exclusivity was being claimed only over the device mark SHREE KSHETRAPAL, whereas before this Court, under the guise of the registered device mark, the plaintiff is attempting to claim exclusive rights over the word "Kshetrapal", which according to the defendant is impermissible in law. It is therefore

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submitted that the learned trial Court has rightly declined to grant interim relief.

10.6 It is also submitted that the plaintiff has failed to establish prior use of the trade name “Shree Kshetrapal” since the year 2015 through any cogent or reliable evidence. According to the defendant, the various business entities relied upon by the plaintiff, such as Shree Kshetrapal Agritech, Shree Kshetrapal Oil Refinery Pvt. Ltd., Shree Kshetrapal Infrastructure, Shree Kshetrapal Building Materials and Shree Kshetrapal Infra LLP, were not engaged in construction activities. It is therefore submitted that mere registration of a trademark does not confer an exclusive right in a case where the defendant has raised a defence under Section 34 of the Trade Marks Act, which recognizes the rights of a prior user. On the other hand, according to the defendant, prima facie evidence has been produced to demonstrate that the defendant has been engaged in construction activity since 2014, including third-party affidavits and documents relating to projects jointly undertaken with the plaintiff such as Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2, as well as

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independent projects such as Kshetrapal Reyansh Avenue and Reyansh Kshetrapal The Palms. In such circumstances, it is submitted that the impugned order passed by the learned trial Court cannot be said to be erroneous, and the present Appeal from Order deserves to be dismissed.

10.7 It is further submitted that the word “Kshetrapal” is non-distinctive in character, *publici juris*, and also the name of a deity, and therefore no monopoly can be claimed over the said word. The plaintiff’s registration pertains only to a device mark, and therefore in view of Section 17 of the Trade Marks Act, the plaintiff is not entitled to dissect the mark “Shree Kshetrapal” and claim exclusive rights over the word “Kshetrapal” alone. According to the defendant, under the anti-dissection rule, a registered trademark is required to be considered as a composite mark in its entirety and not by isolating individual components thereof.

10.8 It is further contended that the word “Kshetrapal”, being a name of a deity and non-distinctive in nature, has become *publici juris*, and several entities are registered under the name “Kshetrapal” in relation to different business activities.

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Therefore, according to the defendant, no exclusivity or monopoly can be permitted over the word “Kshetrapal”.

10.9 Lastly, it is submitted that the defendant is the prior and continuous user of the word “Kshetrapal”, and in view of Section 34 of the Trade Marks Act, the rights of a prior user prevail over those of a subsequent registrant. According to the defendant, the record clearly indicates that the plaintiff’s device mark was registered only on 06.10.2023 and was declared as “proposed to be used”, without citing any prior use. In such circumstances, since the defendant has prima facie established prior use of the word “Kshetrapal”, the learned trial Court was perfectly justified in refusing to grant interim relief in favour of the plaintiff.

10.10 To substantiate the aforesaid contentions, learned Senior Advocate Mr.Kamal B. Trivedi has placed reliance on the following authorities :

(1) Wander Ltd. v. Antox India P. Ltd., reported in 1990 (Supp.) SCC 727.
(2) S.P. Chengal Varaya Naidu v. Jagannath, reported in (1994) 1 SCC 1.
(3) Lalit Kumar Jain v. Jaipur Traders Corporation Pvt. Ltd.,

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reported in (2002) 5 SCC 383.

(4) K.D. Sharma v. Steel Authority of India Ltd., reported in (2008) 12 SCC 481.

(5) Lal Babu Priyadarshi v. Amritpal Singh, reported in (2015) 16 SCC 795.

(6) Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Ltd., reported in (2018) 9 SCC 183.

(7) Ganesh Grains Ltd. v. Shree Ganesh Besan Mill, rendered in SLP(C)No.7812 of 2022.

(8) Pernod Ricard India Pvt. Ltd. v. Karnaveer Singh Chhabra, reported in 2025 SCC Online SC 1701.

(9) Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities (P) Ltd., reported in 2011 (121) DRJ 536.

(10) Vardhman Buildtech Pvt. Ltd. v. Vardhman Properties Ltd., reported in 2016 SCC Online Del 4738.

(11) Aura Synergy India Ltd. v. M/s. New Age False Ceiling Co. Pvt. Ltd., reported in 2016 SCC Online Del 892.

(12) Freudengerg Gala Household Product Pvt. Ltd. v. GEBI Products, reported in Commercial Appeal No.72 of 2017 by the Bombay High Court.

(13) Shree Ganesh Besan Mill v. Ganesh Grains Ltd., reported in 2021 SCC Online Cal.3068.

(14) Pathanjali Ayurved Limited v. Arudra Engineers Pvt. Ltd., reported in 2021 SCC Online Mad 5567.

(15) Kent RO Systems Ltd. v. Gattu Bhai, reported in 2022 SCC Online Del 791.

(16) Apollo Parker Construction Equipments Pvt. Ltd. v. Amman India Private Limited, rendered in Appeal from

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Order No.43 of 2022 by this Court.

(17) Unisn Health Check Up and Diagnostics LLP v. Amman India Private Limited, rendered in Appeal from Order No.98 of 2024 by this Court.

(18) Shoban Salim Thakur v. Chaitanya Arora, rendered Interim Application (L) No.18278 of 2025 by the Bombay High Court.

(19) S. Syed Mohideen v. P. Sulochana Bai, reported in 2016) 2 SCC 683.

(20) DCM Shriram Ltd. v. Amreek Singh Chawla, rendered in 2025 SCC Online Del 197.

10.11 By making above submissions, learned Senior Advocate Mr.Kamal B. Trivedi urged this Court to dismiss the present Appeal from Order.

11. Having heard the submissions of learned advocates for the respective parties and having carefully gone through the material produced on record, the question that falls for consideration of this Court is – whether the plaintiff is entitled to grant of an interim injunction restraining the defendant from using the impugned trademark ‘Shree Kshetrapal’ on the ground that such use amounts to infringement and/or imitation of the plaintiff’s registered device mark, namely,

SHREE KSHETRAPAL ?

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12. So as to decide the aforesaid question, in my opinion, certain provisions of the Trademark Act, 1999, deserve threadbare scrutiny. Sections 9, 11, 17, 28, 31 and 34 are relevant for the purpose, the same are quoted, thus:

> "**Section 9**. **Absolute grounds for refusal of registration.**—(1) The trade marks—
>
> (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
>
> (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
>
> (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered:
>
> Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.
>
> (2) A mark shall not be registered as a trade mark if—
>
> (a) it is of such nature as to deceive the public or cause confusion;
>
> (b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;
>
> (c) it comprises or contains scandalous or obscene matter;
>
> (d) its use is prohibited under the Emblems and Names

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(Prevention of Improper Use) Act, 1950 (12 of 1950).

(3) A mark shall not be registered as a trade mark if it consists exclusively of—

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

Explanation.—For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

Section 11 - Relative grounds for refusal of registration.—(1) Save as provided in section 12, a trade mark shall not be registered if, because of—

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(2) A trade mark which—

(a) is identical with or similar to an earlier trade mark; and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor,

shall not be registered if or to the extent the earlier trade

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mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.

Explanation.—For the purposes of this section, earlier trade mark means—
[(a) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;]

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

(6) The Registrar shall, while determining whether a

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trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;
(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services, to which that trade mark applies.

(8) Where a trade mark has been determined to be well known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for

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registration under this Act.

(9) The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—

(i) that the trade mark has been used in India;

(ii) that the trade mark has been registered;

(iii) that the application for registration of the trade mark has been filed in India;

(iv) that the trade mark—

(a) is well-known in; or

(b) has been registered in; or

(c) in respect of which an application for registration has been filed in, any jurisdiction other than India, or

(v) that the trade mark is well-known to the public at large in India.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—

(i) protect a well-known trade mark against the identical or similar trade marks;

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

(11) Where a trade mark has been registered in good faith disclosing the material informations to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical with

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or similar to a well-known trade mark.

Section 17 -Effect of registration of parts of a mark. —(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(a) contains any part—

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

Section 28-Rights conferred by registration.—(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(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

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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.

Section 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.

(2) In all legal proceedings as aforesaid a registered trade mark shall not be held to be invalid on the ground that it was not a registrable trade mark under section 9 except upon evidence of distinctiveness and that such evidence was not submitted to the Registrar before registration, if it is proved that the trade mark had been so used by the registered proprietor or his predecessor in title as to have become distinctive at the date of registration.

Section 34-Saving for vested rights.—Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his;

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whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark."

Legal Analysis :

13. A plain reading of Section 9 of the Trade Marks Act, 1999 reveals that it provides for absolute grounds for refusal of registration of a trademark. The provision seeks to ensure that only marks which are distinctive and legally permissible are entered in the register. It prohibits registration of marks which are devoid of distinctive character, descriptive of the goods or services, or customary in the trade, as such expressions are considered part of the public domain and must remain available for use by traders. At the same time, the provision recognizes that even such marks may become registrable if they have acquired distinctiveness through extensive and continuous use, thereby enabling the public to associate the mark with a particular source. The provision further bars registration of marks whose use would be deceptive, scandalous, obscene, or offensive to religious sentiments, or otherwise prohibited by law, thereby safeguarding public interest and morality. It also restricts

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registration of certain functional or value-giving shapes of goods, so as to prevent traders from securing a perpetual monopoly over features inherent in the goods themselves. Thus, Section 9 operates as a threshold filter, ensuring that only marks capable of functioning as indicators of trade origin are registered.

13.1 A plain reading of Section 11 of the Act indicates that it prescribes relative grounds for refusal of registration, primarily intended to protect earlier trademark rights and to prevent consumer confusion. Unlike Section 9, which deals with the inherent distinctiveness of a mark, Section 11 examines the relationship between the proposed mark and existing marks. The provision bars registration where the mark sought to be registered is identical with or deceptively similar to an earlier mark in respect of similar goods or services, if such similarity is likely to cause confusion or association in the minds of the public. The provision also extends protection to well-known trademarks, by prohibiting registration of identical or similar marks even in respect of dissimilar goods or services, where such use would take unfair advantage of, or dilute, the reputation of the well-known

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mark.

13.2 Section 17 of the Act governs the effect of registration of a composite trademark consisting of several components. The provision clarifies that registration confers an exclusive right in the trademark as a whole, and not necessarily in respect of each individual component forming part of the mark. Sub-section (2) further restricts such exclusivity by providing that registration shall not confer any exclusive right in respect of any part of the mark which is not separately registered or is not independently capable of registration, such as elements that are descriptive, generic or otherwise non-distinctive. The legislative intent underlying Section 17 is to prevent the proprietor from dissecting a composite mark and claiming monopoly over common or non-distinctive elements. The provision, therefore, strikes a balance between protecting the proprietor's rights in the registered composite mark and ensuring that descriptive or common elements remain available for legitimate use by others.

13.3 A plain reading of Section 28 of the Act indicates that registration of a trademark confers upon the registered

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proprietor a statutory right to exclusive use of the mark in relation to the goods or services for which it is registered. The provision recognizes two principal rights, namely: (i) the exclusive right to use the trademark in the course of trade, and (ii) the right to seek legal remedies against infringement. However, the exclusivity flowing from registration is not absolute and remains subject to other provisions of the Act, including prior user rights, conditions attached to registration, or limitations arising from the nature of the mark itself. Sub-section (2) further clarifies that where identical or deceptively similar marks are registered in favour of different proprietors, such registration does not entitle one registered proprietor to claim exclusivity against the other, though each may enforce his rights against third parties. Thus, Section 28 establishes the statutory proprietary rights arising from registration, while simultaneously recognizing the statutory limitations and coexistence of similar registered marks within the framework of trademark law.

13.4 A plain reading of Section 31 of the Act suggests that registration of a trademark constitutes prima facie evidence of its validity. The Legislature has clarified that such registration

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carries only evidentiary value and not conclusive proof of validity. The validity of a registered trademark may still be challenged if it is shown that the mark did not possess the requisite distinctiveness or was otherwise not entitled to registration at the time it was registered. Thus, the presumption created under Section 31 is rebuttable in nature, and the registration remains subject to scrutiny on legally permissible grounds.

13.5 A plain reading of Section 34 of the Act embodies the fundamental principle that prior user prevails over subsequent registration. The provision protects the vested rights of a person who has continuously and bona fide used a trademark from an earlier point of time, even if another person subsequently obtains registration of the same or a similar mark. In effect, the statutory monopoly created under Section 28 remains subordinate to the superior rights of a prior user. Consequently, a registered proprietor cannot restrain a party who is able to demonstrate earlier and continuous use of the mark in relation to the same goods or services. The provision thus safeguards the commercial goodwill and reputation acquired through prior use, ensuring

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that registration does not defeat pre-existing proprietary rights in a trademark.

14. Keeping in mind the aforesaid analysis of the provisions of the Trademark Act, it would be an apt to take note of the recent enunciation of law by the Apex Court in the case of **Pernod Ricard India Pvt. Ltd. v. Karnaveer Singh Chhabra,** reported in **2025 SCC Online 1701.** The Apex Court, keeping in mind various provisions of law on Trademark, succinctly held as under :

> "31.5 In the case of composite marks – those contained multiple elements, such as words and logos – the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Courts have often required disclaimers of such generic parts at the time of registration. For instance, in Tungabhadra Industries Ltd v. Registrar of Trade Marks 24, the registration of "Diamond T" in a diamond-shaped logo was granted, but the word "Diamond" was required to be disclaimed due to its non-distinctiveness.
>
> 32.4 In the present case, the appellants' attempt to isolate the word 'PRIDE' as the basis of comparison is legally untenable. Trademark similarity must be assessed by considering the mark as a whole, and not by extracting a single component for comparison. When viewed in their entirety, the appellants' marks – 'BLENDERS PRIDE', 'IMPERIAL BLUE', and 'SEAGRAM'S' – are structurally, phonetically, and visually distinct from the respondent's mark 'LONDON PRIDE'. The mere presence of the common word 'PRIDE' which is a generic and laudatory

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term, does not render the competing marks deceptively similar in the absence of an overall resemblance. Thus, under the anti-dissection rule, no case for infringement or passing off is made out.

34. It is a well-established principle of trademark law that generic, descriptive, or laudatory terms – particularly those commonly used in a given trade – cannot be monopolized by any one proprietor. Even where such terms form part of a registered trademark, protection does not extend to those elements per se unless it is affirmatively shown that they have acquired secondary meaning – i.e., that the term has come to be exclusively and distinctively associated with the plaintiff's goods in the perception of the consuming public.

41. It is a settled principle of trademark law that deceptive similarity does not necessitate exact imitation. What is material is the likelihood of confusion or association in the minds of consumers arising from an overall resemblance between the competing marks. The applicable standard is that of an average consumer with imperfect recollection.

42. While comparing rival marks, Courts must assess the marks in their entirety, rather than dissecting composite trademarks into isolated components. The dominant feature of a mark may assist in crossing the preliminary threshold of analysis, but the ultimate inquiry must focus on the overall impression created by the mark – especially in the context of the relevant goods, trade channels, and target consumers. The proper test is not to place the two marks side by side to identify dissimilarities, but to determine whether the impugned mark, when viewed independently, is likely to create an impression of association or common origin in the mind of the average consumer. Even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement if it constitutes an essential and distinctive feature of the composite mark as a whole.

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43. Section 17(1) of the Trade Marks Act, 1999 grants exclusive rights only in respect of the mark as registered. Section 17(1) excludes protection for common or non-distinctive elements unless such elements have acquired secondary meaning. Section 27(2) and 29 preserve the right to institute passing off actions and define the contours of infringement, respectively. Notably, Section 29(3) presumes confusion only where identical marks are used for identical goods – a condition not met in the present case as the marks.

46. The courts below also correctly observed that the products in question are premium and ultra-premium whiskies, targeted at a discerning consumer base. Such consumers are likely to exercise greater care in their purchase decisions. The distinct trade dress and packaging reduce any likelihood of confusion. The shared use of the laudatory word 'PRIDE', in isolation, cannot form the basis for injunctive relief.

51. It is not in dispute that the word "PRIDE" is not registered as a standalone mark. Nor can the appellants claim exclusivity over common elements like bottle shape or color schemes that are generic and widely used in the industry. While the composite marks 'BLENDERS PRIDE' and 'IMPERIAL BLUE' are protected, their individual elements – lacking distinctiveness – are not independently enforceable.

55. Although the appellants hold registrations for the composite marks, no evidence was adduced to demonstrate that any particular element – such as bottle shape, color scheme, or the word "PRIDE" – had acquired distinctiveness or secondary meaning. Trademark protection extends only to distinctive identifiers. Descriptive or commonplace elements fall outside the ambit of protection unless distinctiveness is proved."

15. Upon careful consideration of the aforesaid decision, the

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Apex Court in no uncertain terms held that while comparing rival marks, the Courts must assess the marks in their entirety, rather than dissecting composite trademarks into isolated components. Section 17(1) of the Trade Marks Act, 1999 grants exclusive rights only in respect of the mark as registered. Section 17(1) excludes protection for common or non-distinctive elements unless such elements have acquired secondary meaning.

16. In order to adjudicate the issue involved in the present proceedings, it would be appropriate to consider the salient facts emerging from the record, which may be summarized as under:

(i) Though it is the case of the plaintiff that he has been engaged in the business of construction since the year 2015 by using the trade name “Shree Kshetrapal”, it is pertinent to note that at the time of filing the application for registration of the device mark SHREE KSHETRAPAL, the plaintiff had not claimed any prior use from a particular date. On the contrary, in the said application, the device mark was declared as “proposed to be used.”

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(ii) During the course of the registration proceedings, the Registrar of Trade Marks had raised objections under Sections 9 and 11 of the Trade Marks Act, 1999. In response thereto, the plaintiff had categorically stated that he was not claiming exclusive rights over the word “Kshetrapal” in isolation, but was seeking protection only in respect of the entire device mark 

as a whole. It was also asserted that the device mark, taken as a whole, was artistically and visually distinct from the marks cited by the Registrar. Thus, before the Registrar of Trade Marks, the plaintiff had claimed exclusivity only in respect of the composite device mark 

and not in respect of the individual word “Kshetrapal.”

(iii) In the plaint, the plaintiff has asserted that the trademark “Shree Kshetrapal” has been in use since the year 2015, by referring to business entities such as Shree Kshetrapal Agritech, Shree Kshetrapal Oil Refinery Pvt. Ltd., Shree Kshetrapal Infrastructure, Shree Kshetrapal Building Materials and Shree Kshetrapal Infra LLP. However, the plaintiff has not been able to produce any material to

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demonstrate that the said entities were engaged in construction activities since the year 2015.

(iv) It is also relevant to note that the mark “Shree Kshetrapal” refers to the name of a protector deity, which appears to be popularly and commonly used. The prefix “Shree” is generally employed as a respectful honorific and is not distinctive in character. Consequently, the dominant element of the expression “Shree Kshetrapal” appears to be the word “Kshetrapal,” which itself carries religious connotations.

(v) It is an admitted position that the plaintiff, in the plaint, has not disclosed the earlier association or relationship with the defendant. It is also not in dispute that the plaintiff and the defendant had jointly floated two schemes, namely “Shree Kshetrapal Square-1” and “Shree Kshetrapal Square-2.”

(vi) From the documentary material produced on record, including sale deeds and development permissions, it prima facie appears that the plaintiff and the defendant had jointly purchased the land and thereafter launched the projects “Shree Kshetrapal Square-1” and “Shree Kshetrapal Square-

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2” by obtaining joint development permissions.

(vii) The plaintiff has also not disclosed in the plaint the fact that objections had been raised by the Registrar of Trade Marks under Sections 9 and 11 of the Act during the course of the registration proceedings relating to the device mark SHREE KSHETRAPAL.

(viii) It further emerges from the record that the defendant has also filed an application on 28.04.2025 for registration of a device mark KSHETRAPAL CONSTRUCTION under Trademark Application No.6980721 in Class 37, which is presently pending adjudication. In the said application, the defendant has claimed user since 05.01.2014. The defendant has also placed on record prima facie evidence in the form of third-party affidavits, including those of a vendor and an architect, in support of the contention that the defendant has been engaged in construction activities under the name “Kshetrapal Construction” since the year 2014.

17. Keeping in mind the legal analysis as well as the facts of the case, this Court would like to proceed further to deal with

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the contentions raised by the rival parties, as under :

Suppression of material fact and misleading statement :

(1) Before this Court goes into suppression and/or misleading statement is made or not, at this juncture, it would be profitable to consider the recent decision of the Apex Court in the case of **Kusha Duruka v. State of Odisha**, reported in **(2024) 4 SCC 432**, wherein the Apex Court has explained doctrine and maxims – *suppression veri and expressio falsi* and effect thereof. Relevant observations of the aforesaid decision, read thus;

> "3. In K.D. Sharma Vs. Steel Authority of India Limited and others it was observed by this Court:
>
> > "39. If the primary object as highlighted in Kensington Income Tax Commrs., (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an

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applicant requires to be dealt with for contempt of court for abusing the process of the court."

[emphasis supplied]

4. In Dalip Singh v. State of Uttar Pradesh and others, this Court noticed the progressive decline in the values of life and the conduct of the new creed of litigants, who are far away from truth. It was observed as under:

"1. For many centuries Indian society cherished two basic values of life i.e."satya" (truth) and "ahinsa" (non- violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice- delivery system which was in vogue in the pre- Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

5. In Moti Lal Songara Vs. Prem Prakash @ Pappu and another, this Court, considering the issue regarding

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concealment of facts before the Court, observed that "court is not a laboratory where children come to play", and opined as under:

> "19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expression faisi , i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to playpossum.
>
> 20. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."
>
> (emphasis supplied)

6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The

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materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now a litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim supressio veri, expression faisi, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. Its nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that `Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.'

7. In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts in Saumya Chaurasia v. Directorate of Enforcement. It was a case where the appellant before this Court had challenged the order passed by the High Court6 rejecting his bail application. He was accused of committing various crimes under the Indian Penal Code and the Prevention of Money Laundering Act, 2002. His bail application was rejected by the High Court on 23.06.2023. In the pleadings before this Court, it was mentioned that the High Court had committed gross error in not considering the chargesheet dated 08.06.2023 and the cognizance order dated 16.06.2023, which clearly suggested that there was error apparent on the fact of it. The fact which was available on record was that an order in the bail application was reserved by the High Court on 17.04.2023 and pronounced on 23.06.2023. Having some suspicion, this

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Court directed the appellant to file an affidavit to clarify the aforesaid position. There was no specific reply given to the aforesaid query to the Court. Rather vague statements were made. Considering the facts available, this Court observed that there was a bold attempt by and on behalf of the appellant therein to misrepresent the facts for challenging the order impugned therein, regarding the conduct of the parties and the counsel, this Court made the following observations :

> "13. It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasized that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated Senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practicing in the High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their legal acumen for which they are engaged, cannot be obliviated.
>
> (emphasis supplied)"

Upon consideration of the facts of the present case, this Court is of the firm opinion that the plaintiff has approached the Court by making misleading statements and suppressing material facts, while presenting a distorted version of the factual matrix. This conclusion is drawn primarily from the circumstance that the plaintiff has failed to disclose the

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fundamental fact that the plaintiff and the defendant had jointly purchased the land and thereafter jointly launched the projects, namely, “Shree Kshetrapal Square-1” and “Shree Kshetrapal Square-2.” Such a material and crucial fact was withheld by the plaintiff while instituting the suit, thereby enabling the plaintiff to obtain an ex-parte ad-interim injunction at the initial stage. Not only that, the plaintiff has also suppressed the fact that the application for registration of the device mark was filed on the basis that the mark was “proposed to be used” and not on the basis of prior use. The plaintiff has further failed to disclose the objections raised by the Registrar of Trade Marks under Sections 9 and 11 of the Trade Marks Act, as well as the submissions made by the plaintiff in response thereto. It is evident from the record that before the Registrar of Trade Marks, the plaintiff had categorically stated that he was claiming exclusivity only in respect of the device mark as a whole and not over the word mark “Kshetrapal.” Despite such a stand before the statutory authority, the plaintiff, in the plaint, has taken a contrary and misleading plea by asserting that the mark has been in use since the year 2015. In a suit alleging trademark infringement and passing off, a plaintiff is expected to make full and candid

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disclosure of all relevant facts, including the proceedings before the Registrar of Trade Marks relating to the registration of the mark in question. In the present case, the plaintiff has clearly failed to disclose material facts, thereby disentitling itself to the equitable relief sought. In the considered opinion of this Court, the plaintiff cannot be said to have approached the Court with clean hands and appears to have instituted the proceedings with suppression of facts, misleading statements and a distorted presentation of the factual position, apparently with an oblique intention. In such circumstances, the learned trial Court could have rejected the application for interim relief solely on the ground of suppression of material facts, without entering into the merits of the controversy. The only infirmity which this Court finds in the impugned order is that the rejection of the interim relief was not accompanied by an order of costs. However, since the learned trial Court has also examined the matter on merits, this Court deems it appropriate to consider the case on merits as well.

(2) **Protection under Section 28 vis-à-vis Section 34:**

As discussed hereinabove, Section 28 of the Trade Marks

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Act, 1999 confers upon the registered proprietor a statutory right to the exclusive use of the registered trademark in relation to the goods or services for which the mark stands registered. However, such exclusivity is not absolute and remains subject to other provisions of the Act, particularly the protection afforded to a prior user under Section 34. In the present case, it is an admitted position that the plaintiff applied for registration of its device mark SHREE KSHETRAPAL under Class 37 vide Application No.6138925. Significantly, in the said application the plaintiff did not claim registration on the basis of prior use; on the contrary, the device mark SHREE KSHETRAPAL was declared as "proposed to be used." In such peculiar circumstances where the plaintiff itself has claimed the registered device mark as 'proposed to be used and once the defendant has raised a defence under Section 34 of the Act on the ground of prior and continuous use, the burden was upon the plaintiff to demonstrate that it had been using the said trademark prior to the use claimed by the defendant. However, upon examination of the plaint and the documents placed on record, this Court finds that the plaintiff has failed to establish that any of its entities were engaged in

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construction activities under the trade name “Shree Kshetrapal.” The firms relied upon by the plaintiff, namely Shree Kshetrapal Agritech, M/s. Shree Kshetrapal Oil Refinery Pvt. Ltd., Shree Kshetrapal Infrastructure and Shree Kshetrapal Building Materials, prima facie indicate that the plaintiff was engaged in business activities other than construction, albeit under the name “Shree Kshetrapal.” Consequently, the material on record does not satisfactorily establish that the plaintiff had been using the trade name “Shree Kshetrapal” in relation to construction activities prior to the defendant. Further, when the registration of the device mark SHREE KSHETRAPAL itself has been sought on the basis that the mark was “proposed to be used,” the plaintiff cannot, under the guise of such registration, claim exclusive rights over an individual component of the registered device mark. At best, the exclusivity contemplated under Section 28 would extend only to the device mark in its entirety. Even otherwise, the plaintiff has attempted to rely upon sales figures from the year 2015 to 2025 in support of its claim of use. However, the said figures do not clearly indicate which entity generated the sales, nor do they specify the particular projects or business activities from which such figures were derived. Moreover,

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having regard to the nature of the construction business, the figures appear comparatively modest and do not prima facie suggest that the plaintiff had developed a wide commercial presence, substantial goodwill, or extensive business operations under the said mark. On the other hand, the defence raised by the defendant under Section 34 prima facie appears to have some substance. The defendant has produced third-party affidavits, including those of a vendor and an architect, indicating that the firm “Kshetrapal Construction” has been engaged in construction activities since the year 2014. In addition, the defendant has placed on record documents suggesting that several projects have been undertaken wherein either the expression “Shree Kshetrapal” or “Kshetrapal” has been used. In the aforesaid circumstances, this Court is of the considered view that mere registration of a device mark under Section 28 does not entitle the plaintiff to claim exclusivity over an individual component of the mark. The statutory exclusivity, if any, would extend only to the composite device mark as registered. It is true that in order to successfully invoke the defence under Section 34, the defendant is required to demonstrate continuous and prior use of the trademark, and the burden of

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establishing such prior use ordinarily lies upon the defendant. However, such strict proof would arise only where the plaintiff itself has clearly established prior use of the mark in question. In the present case, the plaintiff did not claim any prior use at the time of seeking registration of the device mark SHREE KSHETRAPAL, and has subsequently attempted, in the plaint, to assert usage since the year 2015 under the guise of the registered device mark. In the considered opinion of this Court, therefore, it was incumbent upon the plaintiff to first establish a clear and cogent case of prior use, and only thereafter could the defendant be called upon to discharge the stricter burden contemplated under Section 34. In the absence of such material from the plaintiff, the reliance placed upon Section 28 to claim exclusivity cannot be accepted.

Additionally, this Court is of the view that the expression “Shree Kshetrapal” itself does not appear to possess distinctive character. The word “Kshetrapal” refers to the name of a deity, and therefore carries a religious connotation which is commonly used. Consequently, the mark lacks inherent distinctiveness. In view of Section 9 of the Act, exclusivity over such a non-distinctive expression cannot

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ordinarily be claimed. It is also pertinent to note that at the time of registration of the device mark SHREE KSHETRAPAL, the Registrar of Trade Marks had raised an objection under Section 9, to which the plaintiff responded by stating that exclusivity was being claimed only in respect of the device mark SHREE KSHETRAPAL as a whole, on account of its distinctive artistic representation. Having taken such a stand before the statutory authority, the plaintiff cannot now seek, through the present proceedings, to obtain exclusive rights over the non-distinctive word “Shree Kshetrapal.” Thus, on an overall consideration of the statutory scheme and the material placed on record, the contention advanced on behalf of the plaintiff on the basis of Section 28 cannot be accepted.

(3) **Rule of Anti-Dissection – Section 17:**

As discussed hereinabove, Section 17 of the Trade Marks Act, 1999 governs the effect of registration of a composite trademark consisting of multiple components. The provision makes it clear that registration of a composite mark confers exclusive rights in the mark as a whole, and not necessarily in respect of each individual component forming part of the

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registered mark. In other words, the law recognizes the rule of anti-dissection, whereby a composite trademark is required to be considered in its entirety, and the proprietor cannot isolate one element of such mark to claim exclusivity thereon. In the present case, it is an admitted position that the plaintiff has obtained registration only in respect of a device mark 

. In such circumstances, it would not be permissible for the plaintiff to claim exclusive rights over one of the components of the said device mark, namely, the expression "Shree Kshetrapal." The statutory scheme under Section 17 contemplates that if exclusivity is sought over any individual component of a composite mark, such component must either be independently distinctive and separately registered, or otherwise capable of separate registration. In the case at hand, it is not in dispute that the expression "Shree Kshetrapal" has not been registered independently in favour of the plaintiff, and the application filed by the plaintiff seeking registration of the said word mark is still pending consideration before the Trade Marks Registry. In view of Section 17(2), where a registered mark contains elements which are common to the trade, non-distinctive, or otherwise incapable of independent registration, the proprietor cannot

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claim exclusivity over such elements merely because they form part of a registered composite device mark. Furthermore, the word “Kshetrapal” carries religious and mythological connotations and is commonly understood as referring to a guardian deity or protector of a region or temple. Expressions of such nature, which are widely used and possess religious significance, ordinarily lack the element of inherent distinctiveness necessary for conferring exclusive proprietary rights. Therefore, having regard to the scheme and intent of Section 17, this Court is of the considered view that the plaintiff cannot dissect the registered device mark SHREE KSHETRAPAL and claim exclusivity over the expression “Shree Kshetrapal.” Consequently, the plaintiff cannot claim any monopoly or exclusive right over the said expression, nor can such claim form the basis for grant of equitable relief in the present proceedings.

(4) **Presumption of Validity of Registered Trademark – Scope of Section 31:**

So far as the contention raised with reference to Section 31 of the Trade Marks Act, 1999 is concerned, the said provision deals with the statutory presumption of validity

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attached to a registered trademark. The provision stipulates that registration of a trademark shall be prima facie evidence of its validity. In the facts of the present case, there is no dispute with regard to the registration of the plaintiff's device mark SHREE KSHETRAPAL. The controversy, however, does not pertain to the validity of the registration itself, but rather to the plaintiff's attempt to claim exclusivity over one of the components of the registered device mark, namely, the expression "Shree Kshetrapal." It is required to be noted that the presumption under Section 31 ordinarily comes into operation where, in a suit for infringement or passing off, the defendant challenges or disputes the validity of the registration of the trademark itself. In the present case, the defendant has not disputed the validity of the plaintiff's registered device mark SHREE KSHETRAPAL. The dispute is confined only to the plaintiff's claim that it enjoys exclusive rights over the word "Shree Kshetrapal," which forms merely one of the components of the registered device mark. In such circumstances, the plaintiff cannot invoke Section 31 to extend the presumption of validity so as to claim monopoly or exclusivity over an individual component of the composite

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device mark. As discussed hereinabove, the statutory presumption under Section 31 operates only in respect of the registered mark as a whole, and not in respect of its individual components, particularly where such components are not independently registered. It is also well settled that the presumption under Section 31 is only prima facie in nature and is rebuttable. In the present case, the plaintiff has not been able to prima facie demonstrate, through cogent documentary evidence, that the expression "Shree Kshetrapal" has been continuously and extensively used by it in relation to construction and allied activities. Under such circumstances, merely because the plaintiff holds registration of a device mark SHREE KSHETRAPAL, the benefit of the presumption under Section 31 cannot be extended to confer exclusive rights over one of its components, namely, "Shree Kshetrapal." Therefore, in the considered opinion of this Court, the reliance placed by the plaintiff on Section 31 of the Act to assert exclusivity over the said expression is misconceived and unsustainable in law.

(5) **Average Consumer Test and Imperfect Recollection:**

It is well settled that the entire scheme of the Trade

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Marks Act, 1999 is premised upon the test of an average consumer possessing imperfect recollection, with the primary objective of preventing likelihood of confusion or deception in the minds of such consumers. While examining a claim of infringement or passing off, the Court is required to assess whether the impugned mark is likely to create confusion in the mind of a person of average intelligence and imperfect recollection. In the present case, it is equally necessary to consider the nature of the goods and services forming the subject matter of the dispute. Admittedly, the activities undertaken by both the plaintiff and the defendant relate to construction and real estate development. Unlike ordinary consumer goods which are readily available for purchase from a shop, rack, or showroom, purchase of immovable property is a considered and deliberative transaction, ordinarily undertaken after due verification, inquiry, and scrutiny of the project as well as the developer. In such circumstances, even assuming that a prospective purchaser initially experiences some degree of confusion upon noticing the expression “Shree Kshetrapal”, such confusion would not automatically culminate in the purchase of a property from the wrong developer. A person intending to purchase immovable

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property would invariably undertake further inquiry, verification of the project details, and interaction with the concerned developer, during which process it would immediately become apparent whether the project belongs to the plaintiff or to the defendant. Therefore, even if a prospective purchaser approaches either party under a mistaken impression at the initial stage, such confusion would be temporary and easily dispelled upon minimal inquiry. Consequently, the possibility of a consumer ultimately purchasing property from the defendant under the belief that it belongs to the plaintiff appears to be highly remote and improbable. Under these circumstances, this Court is of the considered view that the likelihood of confusion or deception, which forms the foundation for grant of relief in trademark disputes, is not sufficiently established in the present case. A consumer intending to purchase property from the plaintiff would, upon due inquiry, clearly ascertain the identity of the developer and would not inadvertently purchase property from the defendant. Therefore, applying the average consumer test in the context of the nature of the services involved, this Court finds no justification to extend equitable protection to the plaintiff on the ground of likelihood of

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confusion.

18. Now let us consider the authorities cited by learned advocates for the parties.

(1) So far as the decision in Marico Limited v. Agro Tech Foods Limited is concerned, wherein reliance was placed on Kewal Ashokbhai Vasoya v. Sujanil Chemo Industries, the Bombay High Court has observed that the question whether an injunction should be continued or vacated essentially falls within the judicial discretion of the Court, and such discretion must necessarily be exercised having regard to the peculiar facts and circumstances of each case. If the facts of the present case are examined in light of the aforesaid principle, this Court finds no justifiable reason to interfere with the discretion exercised by the trial court in vacating the ex-parte ad-interim injunction, particularly on the ground of suppression of material facts. In trademark litigation, where a defence under Section 34 of the Trade Marks Act is available against the statutory rights under Section 28, a plaintiff who seeks equitable relief is under a duty to disclose all material facts, including the prior use of the mark by the defendant. In

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the present case, the plaintiff was fully aware that the defendant had acted as a joint developer/partner in certain schemes where the expression “Shree Kshetrapal” was jointly used, and therefore such fact was a crucial and material circumstance. The deliberate omission to disclose this fact clearly justified the trial court in vacating the ex-parte ad-interim relief. Another significant suppression, which weighed both with the trial court as well as this Court, pertains to the non-disclosure of the proceedings before the Trade Marks Registry, where the plaintiff, while meeting the objection raised under Section 9, had expressly stated that it was claiming exclusivity only over the device mark SHREE KSHETRAPAL as a whole. This statement clearly demonstrates that the plaintiff itself was conscious that the expression “Shree Kshetrapal,” being the name of a deity, was not capable of exclusive appropriation. In such peculiar circumstances, the authority relied upon by the plaintiff is of no assistance to its case.

(2) With regard to the decisions in Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and Patel Field Marshal Agencies v. P.M. Diesels Ltd., it deserves to be noted that both the judgments arose under the provisions of the erstwhile

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Trade and Merchandise Marks Act, 1958. In view of the recent pronouncement of the Supreme Court in Pernod Ricard India Pvt. Ltd. v. Controller of Patents and Designs, the observations made in Ramdev Food Products to the effect that the word “Ramdev” constituted the dominant feature of the mark would operate primarily within the framework of the earlier statutory regime.

Similarly, the judgment in Patel Field Marshal Agencies cannot be interpreted to mean that a civil court, while dealing with an interlocutory application, must invariably grant interim relief merely because the plaintiff is the proprietor of a registered trademark. Registration confers only prima facie validity, and the civil court is not precluded from examining the issue while deciding an application for interim injunction in a suit for infringement or passing off. In the present case, the dispute is not regarding the validity of the registered device mark SHREE KSHETRAPAL itself; rather, the controversy is whether such registration entitles the plaintiff to claim exclusivity over one of its components, namely “Shree Kshetrapal.”

(3) Insofar as the decision in K.R. Chinna Krishna Chettiar v.

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Sri Ambal & Co. is concerned, it must again be borne in mind that the said judgment arose under the earlier statutory regime. Under the present Trade Marks Act, 1999, Section 9 embodies a clear legislative policy prohibiting the monopolization of generic, descriptive, or commonly used expressions. The legislative intent is that such expressions must remain available for public use, unless it is demonstrated through convincing evidence that the expression has acquired a secondary meaning through long and exclusive use. In the present case, the plaintiff has failed to produce any material demonstrating that the expression "Kshetrapal" has acquired a secondary meaning identifying the plaintiff's services. Even the sales figures relied upon by the plaintiff, ranging approximately between Rs.42 to Rs.45 lakhs during the relevant period, cannot reasonably establish that the word mark "Kshetrapal" has come to exclusively denote the plaintiff's services in the construction field. Significantly, the plaintiff obtained registration of its device mark SHREE KSHETRAPAL as "proposed to be used", without asserting any prior use. Hence, the decision in K.R. Chinna Krishna Chettiar is clearly distinguishable and not applicable.

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(4) As regards the decision of this Court in New Narmada Divya Jyoti Impex Trading v. Divyan Mahendra Singhvi, the injunction was confirmed in favour of the plaintiff therein because the defendant's logo/device mark as a whole was deceptively similar to the plaintiff's registered logo, and the plaintiff had established substantial business turnover running into crores of rupees over several years. In the present case, however, the dispute is not one of similarity between two device marks. Rather, the plaintiff seeks to claim exclusivity over the expression "Shree Kshetrapal," which forms only a component of its registered device mark. Moreover, the plaintiff has failed to establish through credible evidence that the said expression has acquired secondary meaning in the real estate market. Hence, the said judgment does not assist the plaintiff.

(5) Similarly, the decision in Under Armour Inc. v. Aditya Birla Fashion and Retail Ltd. is clearly distinguishable. In the present case, at the stage of registration of the device mark 

, the plaintiff itself stated before the Trade Marks Registry, in response to the objection under Section 9, that it

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was claiming exclusivity only over the device mark as a whole. The objection raised by the Registrar related specifically to the word “Kshetrapal,” being a common and religious expression. Having secured registration of the composite device mark on that basis, the plaintiff cannot now seek exclusivity over the individual component “Kshetrapal,” unless it establishes through convincing evidence that the said expression has acquired a secondary meaning, which it has failed to do.

(6) With regard to the decision in Torrent Pharmaceuticals Ltd. v. Alkem Laboratories Ltd., it must be noted that the dispute therein concerned pharmaceutical products, where the court exercised greater vigilance owing to the potential implications on public health. In such cases, even a slight likelihood of confusion between two marks may have serious consequences. In contrast, the present dispute pertains to construction and real estate services, where the consumer decision-making process involves detailed inquiry and deliberation. The goods or services involved are not items that can be casually picked up from a shop or showroom. Therefore, the ratio of the aforesaid decision cannot be

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applied in a straight-jacket manner to the present case.

(7) In Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia, the Supreme Court observed that in cases of trademark infringement, injunction normally follows, particularly where the adoption of the mark appears dishonest. While there can be no dispute with the said proposition, the facts of the present case demonstrate that it is the plaintiff who has approached the Court with suppression and misleading statements. Even on merits, the plaintiff has failed to establish that the expression “Shree Kshetrapal” has acquired secondary meaning in relation to construction services. Consequently, the ratio of the said decision is inapplicable.

(8) In Hindustan Pencils Pvt. Ltd. v. India Stationery Products Co., the Court protected the mark because the plaintiff had established substantial goodwill and reputation. In the present case, however, the plaintiff has failed to demonstrate that the expression “Shree Kshetrapal” has attained reputation or market recognition in the real estate sector. No material such as consumer surveys, brand recognition studies, or independent market references has

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been produced. Consequently, the said decision is of no assistance.

(9) In SIA Gems and Jewellery Pvt. Ltd. v. Prashant R. Shah, the Court observed that even a common word may be registered when used in a distinctive stylized form. In the present case, however, the dispute does not concern the device mark SHREE KSHETRAPAL as a whole but rather the plaintiff's claim to exclusivity over the individual component "Shree Kshetrapal." Since the said expression is a common religious name, objectionable under Section 9 unless secondary meaning is proved, the said decision is not applicable.

(10) The decision in Jagdish Sweets and Farsan v. Jagdish Foods Pvt. Ltd. also stands on a different footing, as the plaintiff therein had established goodwill and reputation sufficient to justify grant of injunction. In the present case, the plaintiff has failed to establish that the expression "Shree Kshetrapal" has acquired secondary meaning or market reputation.

(11) Likewise, the decision in Jagdish Gopal Kamath v. Lime & Chilli Hospitality Services reiterates that a mark containing

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descriptive elements may still be protected if the mark as a whole has acquired distinctiveness and goodwill. However, in the present case the plaintiff's device mark SHREE KSHETRAPAL was registered only in 2023 with the notation "proposed to be used," and there is no cogent evidence demonstrating that the component "Shree Kshetrapal" has independently acquired distinctiveness.

(12) As regards Eduspark International Pvt. Ltd. v. Laxmi Publications (P) Ltd., the factual matrix therein is entirely different, and therefore the ratio of the said decision cannot be applied to the peculiar facts of the present case.

(13) Finally, in Nirav Nimni Corporation v. M/s. Nirav Enterprises, the plaintiff had established both long-standing registration and prior use dating back several decades, along with copyright protection. In the present case, the plaintiff's registration of the device mark SHREE KSHETRAPAL is of recent origin (2023) and is expressly stated to be "proposed to be used." No evidence of prior reputation or secondary meaning has been demonstrated. Hence, the said decision is also distinguishable.

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Conclusion

19. In view of the foregoing discussion, this Court finds no infirmity in the impugned order passed by the trial court in rejecting and vacating the interim relief. The discretion exercised by the trial court cannot be said to be arbitrary or unreasonable, particularly in light of the serious suppression of material facts by the plaintiff, including the non-disclosure that the defendant had jointly used the trade name “Shree Kshetrapal” with the plaintiff in the projects Shree Kshetrapal Square-1 and Shree Kshetrapal Square-2, as well as the plaintiff’s own stand before the Trade Marks Registry while overcoming objections under Sections 9 and 11. This Court is therefore satisfied that the plaintiff has not approached the Court with clean hands, apart from this, even on merits as discussed hereinabove, is not entitled to the equitable relief. Accordingly, the Appeal from Order stands dismissed with costs quantified at Rs.50,000/-.

20. Consequently, the Civil Application also stands dismissed.

(NIRAL R. MEHTA,J)

V.J. SATWARA