



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL (L) NO. 1600 OF 2006
IN
INTERIM APPLICATION (L) NO. 12616 OF 2024
IN
COMMERCIAL IP SUIT NO. 236 OF 2025

Minco India Private Limited, having
its address at Office No. 4506/07/08
45th floor, Kohinoor Square, Shivaji
Park, Dadar West, Mumbai – 28.

.. Appellant/ original
plaintiff

Versus

Minco India Flow Elements Private
Limited, 10th floor, B-1009, Kohinoor
Square, Plot No. 46, N.C. Kelkar
Marg, Opposite Shivsena Bhavan,
Dadar West, Mumbai – 28.

.. Respondent/
original defendant.

...

Mr. Pranshul Dube with Ms.Asma Nadaf and Ms.Maithri Porwal
for the appellant.

Mr.Hiren Kamod with Mr.Anees Patel i/b Mayuresh Borkar for
the respondent.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 18th MARCH, 2026**

JUDGMENT :- (Per Bharati Dangre, J)

1 The Appellant, the original plaintiff in Commercial IP (L)
No. 12477 of 2024 is aggrieved by the order dated 6/1/2026
passed by the learned Single Judge, thereby dismissing the

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Interim Application (L) No. 12616/2024 filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, and refusing the interim relief in it's favour.

Heard learned counsel Mr. Pranshul Dube for the appellant/original plaintiff and Mr.Hiren Kamod representing the respondent, the original defendant in the Suit who has supported the impugned order and pleaded that the Single Judge has rejected the application, as it so deserved.

2. Minco India Private Limited instituted Commercial I.P Suit for trademark infringement and passing off, by pleading that it is engaged in, and has been carrying on a well established business of gauges, Pressure, Temperature gauges, temperature switches, apparatus indicating temperature, Level gauges, Level switches, Flow meters and other cognate and allied goods/services since considerable length of time.

According to the plaintiff, it started using the mark 'MINCO INDIA' in relation to its goods in the year 1982, and on account of its sheer commitment and hard work, took the brand to greater heights and the public at large. The plaintiff claims that for over more than four decades, it has been uninterruptedly and continuously using the mark 'MINCO INDIA' which has gained popularity amongst the public and Business Associates.

3. It is the claim of the plaintiff that by long and continuous use of its trademark, 'MINCO INDIA' by the plaintiff, the mark has become distinctive and exclusively associated with the

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plaintiff and no one else, since the plaintiff rightly advertised, promoted, publicized and marketed its goods/services through the said mark 'MINCO INDIA'.

Based upon the aforesaid continuous use of the mark, the plaintiff applied for its registration by staking its user claim since 6/10/1982, claiming its registration in class 09, and the said trademark was registered vide Certificate No.3373018 of 29/1/2024 and the said registration is valid and subsisting. Based on the aforesaid registration, it is the claim of the plaintiff that by virtue of registration and continuous and uninterrupted use of the mark, MINCO INDIA, the plaintiff has gained exclusive rights over the same.

The cause of action for the plaintiff to institute the Suit against the defendant is the knowledge gained by it, in the first week of February 2024, as it found that the defendant is manufacturing and offering for sale various goods/services using identical mark 'MINCO' in relation to orifice plates, venture tubes, flow nozzle, flow instruments, flow meters. Plaintiff claim that the Defendant is not a stranger to it, and Raghvendra Kulkarni and Mr. Amarendra Kulkarni are brothers.

The plaintiff specifically pleaded it's case by stating that Raghavendra used to work with the plaintiff and was well aware that use of the mark 'MINCO' by the plaintiff, but with a malafide intention, dishonestly and fraudulently started using the mark 'MINCO' for the same goods services as that of the plaintiff.

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The plaintiff also pleaded that on 14/2/2024, it received an email from third party stating that 'flow nozzle' supplied by the plaintiff had failed and though the plaintiff was aware that it was not supplied by it, but was supplied by the defendant, and it responded by addressing an email to the complainant, clarifying the situation.

4. In the backdrop of the aforesaid event, since the plaintiff apprehended huge confusion and deception being created in the market due to the identical use of the mark 'MINCO' by the Defendant and submitting that the mark is so identical to that of the plaintiff that it is nearly impossible for a consumer or trade member to distinguish and not get confused/ deceived, the plaintiff filed the Suit for infringement of the impugned mark 'MINCO' and/or any mark which are identical or similar to the plaintiff's mark 'MINCO INDIA' in any manner whatsoever, so as to infringe upon the plaintiff's trademark registered in class 09. A restraint order is sought against the defendant from using the impugned mark in any manner whatsoever, so as to pass off or enable the others to pass off the defendant's goods/services as that of the plaintiffs.

5. In the Suit instituted by the plaintiff, MINCO INDIA Flow Elements Pvt. Ltd is impleaded as defendant and the plaint is accompanied with the correspondence of the plaintiff with the Government entities, showing old adoption and old use of the mark 'MINCO' along with the copies of the invoices showing use of the mark 'MINCO INDIA' by the plaintiff. The Plaint has

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also annexed the photocopy of the C.A. certificate showing sales turnover under the plaintiff's trademark 'MINCO INDIA' coupled with the balance sheets of the plaintiff since 1990.

6. In the pending I.P Suit, the plaintiff also took out an Interim Application, based on the pleading in the Suit, and pending hearing and final disposal of the Suit, seeking a relief of an order of injunction against the defendant in any manner, using the impugned mark 'MINCO' and/or any mark identical to its mark 'MINCO INDIA' in any manner whatsoever, so as to infringe its trademark registered in class 09. An injunction was also sought against the respondents from using the mark, so as to pass off or enable others to pass off its goods/services as that of the plaintiff/applicant.

It is this application which came to be rejected on 6/1/2026 by the learned Single Judge, by referring to the catena of decisions on which reliance was placed by the rival parties, along with the pleadings in support and opposing the application, by rendering a finding that the principles of equity and balance of convenience rules against the grant of interim relief in favour of the plaintiff, who had prima facie made false statements on oath and suppressed material facts.

The impugned order record that defendant was using the mark 'MINCO' as a part of its trademark since 2012 and had produced duly certified balance sheet, reflecting huge turnover and with the following specific observation, as a part of detail order, the claim of the plaintiff for injunction came to be rejected.

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“31. The principle laid down is that the Plaintiff cannot stand by and allow the Defendant to carry on business by expending money and after long lapse of time seek stoppage of the business. The Defendant has been openly using the mark “MINCO” as part of its trade name since the year 2012 to the complete knowledge of the Plaintiff. Despite being aware of since the year 2012, the Plaintiff Company has remained passive till the year 2025. For the past thirteen years, the Defendant has continued its business using the trade name MINCO INDIA and has build a formidable business which is prima facie evident from the sales turnover. Though it is contended that there is no acquiescence as the Defendant’s registration application mentions the use of the mark “MINCO” on proposed to be used basis, the contention is misplaced. The registration application seeks registration of device mark “MINCO” in saffron colour and there is sufficient material on record such as invoices, balance sheets etc to prima facie show the use of the mark “MINCO” as part of the trade name by the Defendant since the year 2012.

33. There are no pleadings and no material to prima facie support the case of passing off. The Plaintiff and Defendant are dealing in identical goods/services since inception. There is nothing to persuade this Court to come to a prima facie finding of misrepresentation by the Defendant or that the Defendant has marketed its product/services as that of Plaintiff intentionally or unintentionally. There has to be cumulative satisfaction of the classical trinity (a) goodwill (b) misrepresentation and (c) damage to goodwill, which is not satisfied in the present case.”

7. The learned counsel Mr.Dube would submit that the learned Judge has non-suited the plaintiff on the ground of suppression, by referring to the background facts, both companies being incorporated in the year 1982, with the name of the defendant company being set out as ‘Tivim Instruments Company Pvt Ltd’. Recording that both the companies were involved in the same or similar business and promoted by their father Manohar, to which there is no denial, it is recorded that there is identity/similarity of the goods/services offered by the plaintiff and the defendant.

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He would submit that the learned Single Judge did not dispute the proprietary right of the plaintiff and use of the trade mark 'MINCO INDIA' in respect of its goods and services since the year 1982 and accepted its claim of prior adoption and use of the trademark. However, it is submitted that the defence raised by the defendant was of concurrent entitlement to the use of the mark on two counts i.e. firstly by reason of being part of GICON Consortium and secondly, by reason of no objection granted by the plaintiff to change the defendant's name.

It is the contention of Mr.Dubey that though discretionary relief, can be refused to a party who is guilty of suppression of fact, but what is relevant is, the suppression should be of 'material fact' and what is not disclosed according to the learned Judge is; i) NOC granted to change the name in the year 2012 ii) the Plaintiffs remained the Director till 2015 and iii) False date of knowledge.

He would submit that the learned Judge has rightly held that delay would not defeat action for infringement and has rightly appreciated the fact that the plaintiff gained knowledge about the existence of the defendant in the market when one consumer made a complaint about the fault in the goods, to be realized by the plaintiff that it were not the goods manufactured by him.

According to Mr.Dubey, there can be only one proprietor of one mark and the plaintiff is staking its user claim since 1982

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and now has even registered its mark, giving it an edge over the defendant and according to him, defendant's case is not of prior user, but what impressed the learned Judge was the delay in approaching the Court, seeking the relief of injunction.

8. Submitting that the defendant came up with three defences and the learned Judge rejected two of them, and as far as the first defence, that the Directors of the plaintiff and defendant are real brothers and their father started both Companies, and therefore, the defendant is entitled to use the mark owing to be the part of the same family GICON Consortium, it is rejected by holding that in an action of infringement and passing off, family history and family relationship has no role to play. Further, the second objection that the plaintiff had provided NOC to the defendant for change of the name of the company from TIVIM to MINCO, it is held that assuming that an NOC was provided, the same would not entitle the defendant to concurrently use the mark 'MINCO'. However, the relief was refused to the plaintiff, by holding that he was guilty of suppression of facts and the Interim Application is rejected.

9. Mr.Dubey would rely upon the decision of the Apex Court in case of **M/s.S.J.S. Business Enterprises (P) Ltd Vs. State of Bihar and ors,**¹ to submit that mere suppression would not disentitle the plaintiff for interim relief and it is only when suppression was of material fact, could the plaintiff be disentitled for the relief. He would submit that even if the fact

¹ (2004) 7 SCC 166

would have been disclosed, it would not have affected the merits of the case and the Court would not have ruled in favour of the defendant, then, the same would not be considered a ‘material fact’, which would disentitle the plaintiff’s claim for interim reliefs.

10. It is urged by Mr.Dube that the defendant filed an application for the mark ‘MINCO’ in 2022 on “proposed to be used” basis and thus it was the defendant’s own contention that it was not using mark ‘MINCO’ prior to 2022 and therefore, he would submit that plaintiff has not made any false statement.

He would submit that, had the plaintiff pleaded that he was aware of the Defendant since 2012/2015 and not as of 2024, the same would not have any bearing on the merits of the case, as the plaintiff was using the mark since 1982, and the Court ought to have still held in its favour, as the use of the mark by the plaintiff since 1982, is not disputed by the defendant and the learned Judge has already held that delay is not in defence in an action or infringement. It is his submission that if plaintiff’s registration as user claim is prior to the plaintiff’s date of registration, then it is imperative for the defendant to show use, even prior to such user claim of the plaintiff, and for this proposition, he has placed reliance in the decision of this Court in **Abdul Rasul Narullah Virjee and Anr Vs. Regal Footwear²**

It is also the contention of Mr.Dubey that if the adoption of the defence is dishonest, an injunction must follow and mere

² 2023 SCC Online Bom 10

delay in bringing an action is not sufficient to defeat grant of injunction and in support of this proposition, he would place reliance upon the decision of the Apex Court in **Midas Hygiene Industries (P) Ltd Vs. Sudhir Bhatia and ors**,³ to the effect that in case of infringement either of trademark or copyright, normally an injunction must follow, as grant of injunction becomes necessary if it prima facie appear that adoption of the mark itself was dishonest and mere delay is not sufficient to refuse injunction. Reliance is also placed upon the decision of the Delhi High Court in **M/s.Hindustan Pencils Pvt Ltd, Vs. India Stationery Products Co. and anr**,⁴ which has answered the issue, as to whether acquiescence would amount to denial of the relief to a plaintiff in an action for infringement and it is held that the principles on which the Court will refuse interlocutory or final relief, would demand a stronger case to be made out. Mr. Dubey has submitted that acquiescence is considered to be one of the facet of delay and it would come into play when the plaintiff knowingly let the defendants build up an important trade, until it had become necessary to crush it, then the plaintiff would be stopped by their acquiescence, but according to him, the acquiescence must be such as lead to the inference of a licence sufficient to create a new right in the defendant and according to him, the law of acquiescence is settled to the effect that a person who alleges, it should have been acting in ignorance of the title of other man and that the

3 (2004) 3 SCC 90

4 AIR 1990 DELHI 19

other man should have known that ignorance and should not have mentioned his own title.

Mr.Dube has also placed reliance upon the decision of Delhi High Court in **Make My Trip (India) Pvt Ltd. Vs. Make My Trip**,⁵ and though there is some serious objection raised by Mr.Kamod that this decision was not cited before the learned Single Judge, we take note of the said decision and will deliberate upon the same when we record our reasons in support of our decision.

It is paragraph no.26 of the said decision on which Mr.Dube has placed reliance, it is held that owners of trademark or copyrights cannot be expected to run after every infringer and thereby remain involved in litigation at the cost of their business time, but they can wait till the time the user name starts harming their business interest and start misleading and confusing their customers.

In any case, while claiming his prior user, it is the case of Mr.Dubey that the plaintiff was entitled to debar a subsequent user from using an identical mark under the law of passing off and since the defendant had only applied for a mark on a 'proposed to be used basis' he must be restricted to this, as by merely making an application for registration of the mark, is not sufficient to defeat the claim of a prior user.

11. Contesting the aforesaid claim, Mr.Kamod has advanced his submissions in great detail.

5 2019 SCC Online Del 10638



Dispelling the argument of Mr.Dube that the Court had non-suited him only on the ground of suppression, according to Mr.Kamod, a careful reading of the plaint would demonstrate that the only disclosure by the plaintiff about the relationship between the plaintiff and defendant is contained in paragraph no.11 when it is pleaded that the defendant is not a stranger to the plaintiff and that its Managing Director Mr.Raghvendra Kulkarni is the brother of the deponent, Amarendra Kulkarni, who has affirmed the plaint and used to work with the plaintiff once upon a time, and therefore, a statement is made to the following effect :-

“Thus, the defendant is well aware of the use of the mark ‘MINCO’ by the plaintiff and has dishonestly, fraudulently and with a malafide intention started using the mark ‘MINCO’ for the same goods/services as that of the plaintiff.”

According to Mr.Kamod, the cause of action is casually pleaded in para 12, when the plaintiff pleaded as below :-

“12 The applicant submits that in the first week of February, 2024, the applicant found that the respondent is manufacturing and offering for sale various goods/services using identical mark ‘MINCO’ in relation to orifice plates, venture tubes, flow nozzle, flow meters, flow instruments and other cognate and allied goods/services.”

Apart from this, according to Mr. Kamod, the plaintiff had very casually pleaded in paragraph 13 that the plaintiff had earlier received the information that defendant was using the mark ‘MINCO, but the plaintiff could not specifically find the goods and services being offered, but on 14/2/2024, the plaintiff received an email from third party to realise that the failed Flow Nozzle was supplied by the defendant, though the

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third party believed it to be supplied by the plaintiff.

As regards the pleading of the plaintiff that there was huge confusion and deception being created in the market due to use of the identical mark 'MINCO' and the mark being so identical that it would lead to a confusion not only amongst the consumer but also in the mind of a trade member, Mr.Kamod would submit that the products in fact, do not have any mark and what is supplied by the defendant are the nozzles, which are customer specified i.e. on the order being placed by the customer, they are manufactured as per the specifications given.

He has invited our attention to the product catalogue of the defendant annexed at Exhibit Z which is an advertisement on the website www.mincoflow.com and by inviting our attention to the orifice plate, he would submit that there is no marking on the goods, but they are sold, by using the trade name '**MINCO India Flow Elements Pvt. Ltd**'. He would submit that the injunction sought by the plaintiff was from using the trading name as 'trade mark'.

12. Inviting our attention to the registration granted in favour of the plaintiff, Mr. Kamod would submit that the application, was for word mark 'MINCO INDIA' based upon the user of 6/10/1982 and the certificate granted on 29/1/2024, has granted the trademark (word) 'MINCO INDIA' to the plaintiff 'MINCO INDIA PVT LTD', a body corporate in class 09 for various apparatus/instruments set out in the registration certificate.

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Tracing the history of the parties, according to Mr.Kamod, they are begotten from the same group and identical business was carried out by both of them. In 2012, the name of the defendant 'Tivim' was changed to 'MINCO' but he would submit that the business never underwent a change. It is also submitted by Mr.Kamod that the plaintiff became Director of 'MINCO INDIA Flow Ltd', as the proprietor of plaintiff and defendant are real brothers, whereas Raghvendra was a Director in 'MINCO India Pvt. Ltd' and in 2015, they resigned from the Directorship from the respective company, and each of them was then thereafter entitled to have 100% control over its company and that is, when Mr.Amarendra and Raghvendra become the absolute owners of their own companies.

Mr.Kamod has urged before us that these two brothers were all the while together, took over the same business, have their factories next to one another and not only this, they share a common clientele and therefore, merely because the plaintiff has obtained registration before the defendant, do not give an edge over him. It is his contention that the principle of co-existence was all the while followed and his client expect the same to be followed in future.

The defendants opposition is to the claim of exclusivity of the plaintiff and Mr.Kamod clarify that by registration of the trademark, the plaintiff is entitled to have protection and claim exclusivity over others, but not against the defendant. He would submit that there is no mark as such being used on the

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products and the plaintiff and defendant, both are aware as to which product is manufactured by whom.

In short, the contention of Mr.Kamod is that there is no mark on the product of plaintiff and defendant but they are trading in the name by using the mark 'MINCO'.

13. Staking his claim of acquiescence, it is the submission of Mr.Kamod that plaintiff's Director Amarendra Kulkarni was a Director in the defendant's company till 2015 when he resigned, but he did not initiate any action till he instituted the Commercial Suit in the year 2024 and according to Mr.Kamod, this was not done as long as their father was alive as the actual business belonged to the father, which was split between the two sons, with the nature of business not undergoing any change. According to Mr.Kamod, when the plaintiff got registration, the defendant did not oppose as the understanding between the parties was always of 'co-existence' and even the defendant has applied for registration of the mark and their respective registrations will protect them against third parties, but not against each other.

He would emphasize on the principle that the plaintiff can use the mark qua the goods for which he has obtained registration and the defendant may be permitted to use the mark in form of trading name, qua its products for its advertisement/promotion, as the product per se, do not have any mark.

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14. The learned counsel has placed reliance on the decision of the Apex Court in **Ramjas Foundation and Anr Vs. Union of India and others**,⁶ where the principle of denial of relief to unscrupulous litigant has been laid down and it is his submission that a person who do not come to the Court with clean hands is not entitled to be heard on merits of his grievance, and the decision has highlighted the underlying object behind this principle. According to him, it is held that every Court is not only entitled but duty bound to protect itself from unscrupulous litigants, who do not have any respect for truth, and would try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the relevant issues.

15. Reliance is also placed by him upon the principle laid down recently in case of **Pernod Ricard India Pvt. Ltd Vs. Karanveer Singh Chhabra**,⁷ specifically in connection with the trademarks, when the Apex Court has held that grant of injunction in trademark matter, require the Court to consider multiple inter-related factors; prima facie case, likelihood of confusion, relative merits of the parties, balance of convenience, risk of irreparable harm and public interest, and it is held that these considerations operate cumulatively and in the absence of any one of this, may be sufficient to decline interim relief. According to him, the decision of the Apex Court

6 (2010) 14 SCC 38

7 2025 SCC Online SC 1701

has referred and considered the judicial precedents on the trademark infringement and passing off, and has also taken note of the recent evolution of trademark jurisprudence in the United Kingdom in form of – the Post – Sale Confusion Doctrine.

16. Further, by relying upon the decision of the Full Bench of this Court in **Lupin Ltd Vs. Johnson and Johnson**⁸ it is the submission of Mr.Kamod that while pronouncing upon the claim for infringement of trademark and grant of injunction, the Court is empowered to go beyond the question of validity of registration of the plaintiff's trademark even at an interlocutory stage and where the registration is ex-facie illegal, fraudulent, Court is not powerless to refuse grant of injunction, but for establishing these grounds, a very high threshold of prima facie proof is required.

17. By relying upon the aforesaid decisions, it is also specifically contended by Mr. Kamod that the present Suit is filed by the plaintiff as Commercial Suit and it is therefore imperative for him to follow the prescribed procedure and as per the schedule appended to the Commercial Courts Act, 2015 read with Section 16 thereof, which make it necessary for the plaintiff when he approached the Court to make a statement of truth and Mr. Kamod would invite our attention to this statement, which according to him, is very casually made when the plaintiff state thus :-

8 2014 SCC Online Bom 4596



“3. I say that the statements made in paragraphs 1 – 11 of the plaint is true to my own knowledge and the statements made in paragraphs 12 – 35 are submitted on information and belief, and I believe the same to be true.

4. I say that there is no false statement or concealment of any material facts, documents on records and I have included information that is according to me, relevant for the present plaint.”

According to Mr.Kamod, the Suit being a Commercial Suit, must be tested on the statutory parameters and this statement of truth as disclosed by the plaintiff in support of his plaint, seeking the relief of injunction against the defendant, is just an illustration of perfunctory and casual approach of the plaintiff, which must disentitle him for any relief and this is what, is precisely done by the learned Single Judge

Mr.Kamod, thus request for dismissal of the Appeal.

18. We have considered the rival contentions of the respective counsel and perused the order under challenge passed by the learned Single Judge, who has refused injunction to the plaintiff, primarily on the ground of suppression of the relevant facts by the plaintiff.

19. In **Ramjas Foundation and Anr** (supra), the Apex Court has evolved a principle of great significance, by stating that a person who does not come to the Court with clean hands is not entitled to be heard on merits of his grievance and, such person is not entitled to any relief not only in the petitions filed under Article 32, 226 and 136 of the Constitution of India, but also in the cases instituted in other Courts and judicial forums.

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Reliance is placed upon the observation of **Langdale and Rolfe B, in *Dalglish v. Jarvie***⁹ which held thus :-

“It is the duty of a party asking for an injunction to bring under the notice of the Court all facts materials to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.”

It is not uncommon for the Courts to decline the relief to a party whose conduct is blameworthy, and who has not approached the Court with clean hands, and who has attempted to misuse the process of Court by making false and/or misleading statements, or by suppressing the relevant facts or by trying to mislead the Court in passing order in their favour and in such circumstances the party is held disentitled to any relief.

In *Pernod Ricard* (supra), their Lordships of the Apex Court, were specifically dealing with an issue under the Trademarks Act and with reference to the scheme of the statute granting protection to a registered mark, and in great detail, considered the judicial precedents on trademark infringement and passing off, to assist whether the appellants were entitled to the relief of interim injunction.

It evolved the legal principles governing grant of injunction by noting that the Trademarks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion and each case must be necessarily decided on its own facts and

9(1850) 2 Mac & G 231,

circumstances, with the judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate the outcomes. It is also held that the grant of injunction – whether for infringement or passing off- is governed by equitable principles and is subject to the general framework applicable to proprietary rights.

20. The Hon'ble Apex Court invoked the principles laid down by *American Cyanamide Co. v. Ethicon Ltd*¹⁰ as the said principles guide the Courts while determining interim injunction applications in trademark cases, and the criteria which were noted to be generally applied were reproduced as below:-

“(i) Serious question to be tried / triable issue: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.

(ii) Likelihood of confusion / deception: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.

(iii) Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.

(iv) Irreparable harm: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public – harms which are inherently difficult to quantify

10 (1975) AC 396



– the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the marketplace.”

In conclusion, it is held that while granting interim injunction in trademark matters, the Court shall consider multiple interrelated factors including *prima facie* case, balance of convenience, risk of irreparable harm, and also the public interest, as these considerations operate cumulatively, and the absence of any one of these, according to the Apex Court, is sufficient to decline the interim relief.

21. At the outset, Mr. Kamod, has invited our attention to the scope of exercising the appellate jurisdiction, and particularly, in case of discretionary orders relating to interim injunctions. He would submit that the Appellate Court shall not interfere with the exercise of discretion of the Court of first instance, and substitute its own discretion, except where the same has been shown to be exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

According to him, the Appellate Court is not allowed to reassess the material and seek to reach a conclusion different from the one reached by the Court below, if it was a reasonable conclusion possible on the material. It is also contended by Mr. Kamod, that the Appellate Court would not be justified in

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interfering with the exercise of discretion, solely on the ground that if it had considered the matter at the trial stage, it would have to come to a contrary conclusion. If the discretion has been exercised by the Court below reasonably and in a judicial manner, as long as the view of the trial Court was a possible view, the Appellate Court shall not interfere.

An objection is therefore raised by Mr. Kamod appearing for the respondent that the learned Single Judge on consideration of the pleadings, documents on record has decided the application in terms of the settled principles of law governing Interim Injunction, and has *prima facie* found that the plaintiff has approached the Court with false statements and by suppressing the material and relevant facts, and that the balance of convenience weighs in favour of the defendant.

22. With this objection in mind, we have perused the impugned order with the limited scope available to us in exercise of the appellate jurisdiction, to ascertain whether the exercise of discretion by the learned Single Judge was a possible view or whether it was an arbitrary exercise of power in ignorance of the settled principles of law governing grant of interlocutory injunctions.

23. From the Pleading in the Plaint instituted by the plaintiff, as Commercial IP Suit read with the Interim Application filed by the plaintiff, seeking injunction and the affidavit-in-reply filed by the respondent to the Interim Application, some undisputed facts have emerged before us.

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The plaintiff 'Minco India Private Ltd', is incorporated in 1982 by Registrar of Companies, Mumbai, and the IP Suit filed by it for infringement and passing off is affirmed by Mr. Amarendra Kulkarni in his capacity as Director/Authorised Signatory of the Company.

The plaintiff secured registration as proprietor of the trademark 'MINCO INDIA' in respect of the goods falling under class 09, the registration, being granted on 29/01/2024 and the claim of the plaintiff revolve around the said registration.

The defendant is, "Minco India Flow Elements Private Limited", a Private Limited Company engaged into similar business of Flow Elements and cognate and allied goods/services similar to that of Plaintiff, engaged in well-established business of 'gauges, pressure, temperature gauges, temperature switches/instruments, flow meters, level switches, level transmitters, etc.

As per the plaint, the plaintiff has pleaded that the Defendant is not a stranger to the plaintiff, as its Managing Director Mr. Raghvendra Kulkarni is brother of Mr. Amarendra Kulkarni, the deponent of the plaint and used to work with the Plaintiff.

From the reply filed by the defendant and the material placed alongwith, it is noted that the Plaintiff and Defendant Company are promoted by the same family patriarch, Manohar Mahadev Kulkarni, father of Amarendra and Raghavendra and following the family partition in the year 2012, Amarendra and

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Raghavendra Kulkarni were appointed as Directors in place of the Directors who resigned with effect from 01/04/2012 and in the Minutes of Meeting of Board of Directors of M/s.Minco (India Pvt Ltd) dated 25/03/2012, which is conducted under the Chairmanship of Mr. Manohar Kulkarni, it was resolved that the change of Directors be informed to the Registrar of Companies. Accordingly, for Minco (India Pvt Ltd), the name of Mr. Amarendra Kulkarni along with Mr. Raghavendra Kulkarni was forwarded in form No. 32.

As far as the defendant is concerned, it was originally incorporated as 'Tivim Instruments Pvt Ltd' also in 1982 by the Registrar of Companies, Maharashtra and in Form 32, the name of Amarendra Kulkarni and Raghvendra Kulkarni was forwarded to the Registrar of Companies (ROC) in their capacities as Directors of the Company. Thus, in the wake of the family arrangement Amarendra and Raghavendra, real brothers were appointed as Directors of both Plaintiff and Defendant companies.

By a Resolution dated 2/07/2012, Minco (India) Private Limited, conveyed its no objection to the Defendant 'Tivim Instruments Company Private Limited', for adopting a trade name 'MINCO' with the following names being proposed; (i) Minco (India) Flow Private Limited (ii) Minco (India) Flow Elements Private Limited, (iii) Minco (India) Flow Products Private Limited.

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The Resolution was passed in presence of Mr. Manohar Kulkarni, the father of Amarendra and Raghavendra and pursuant thereto the Defendants name was changed to 'Minco (India) Flow Elements Private Limited' in September, 2012.

24. All the documents in relation to the aforesaid are placed on record along with the reply filed by the Defendant opposing the Interim Application.

In the reply affidavit, the Defendant has traced the lineage of Manohar Kulkarni with Amarendra as Director and Shareholder of the Plaintiff Company, and Raghavendra as Director and Shareholder of the Defendant Company. According to the defendant, when it decided to change the name of its Company, the Plaintiff's company conveyed its no objection as per the arrangement of the family members and in the Extraordinary General Body Meeting of the Defendant Company held on 16/08/2012, it was resolved that the name of Tivim Instruments Company Private Limited be changed to Minco (India) Flow Elements Private Limited and by way of special business, the members unanimously approved the change of name and substituted the same in the Memorandum of Association of the Company.

25. In light of all the documents being placed along with the reply filed by the Defendant, it is evident that the Plaintiff had the knowledge of the Defendants use of the word 'MINCO' ever since 2012.

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Another milestone took place in 2015, when Amarendra resigned from his position as Director of M/s. Minco (India) Flow Elements Private Limited, the defendant by citing personal reason with effect from 31/12/2015, and the Board of Director was requested to give effect to the resignation. In an identical manner, Raghvendra Kulkarni, resigned from his position as Director in M/s Minco (India) Private Limited Plaintiff company, on the very same day. Since the Plaintiff was the Director in the Defendants company upto 2015, it definitely had knowledge about the use of the trading name 'MINCO' as the name of the Defendant company was changed from 'Tivim Instruments' to 'Minco (India) Private Limited' with consensus and on by passing of a resolution.

All this while, despite having such knowledge, the Plaintiff chose to be placid and did not initiate any action whatsoever against the defendant for use of its trading name incorporating the word 'MINCO'.

26. It is in this background, when the pleadings in the plaint filed by the Plaintiff for infringement of its trademark and for an action of passing off is perused, we find it strange when the Plaintiff plead that the Defendant was well aware of the use of mark 'MINCO' by the Plaintiff but has dishonestly, fraudulently and with malafide intention started using the mark for the same goods/services as that of the Plaintiff and the Plaintiff gained knowledge about this only in the first week of February 2024 with reference to the main page of the website of Defendant.

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Without giving any specifications, the plaintiff also pleaded that it had also received earlier information about the defendant using the mark 'MINCO' but could not trace any goods or services of the Defendant in the market, but it is on 14/02/2024, it received an email from a third party to realise that the defendant was supplying goods identical to that of the plaintiff in order to gain advantage of its reputation in the market.

27. Looking to the nature of the family relationship shared between Amarendra and Raghvendra, when defendant was originally incorporated as 'TIVIM Industries Pvt. Ltd' in 1982, and even when defendant adopted a trading name 'MINCO' the plaintiff granted a 'No objection' on 2/7/2012, and its name was changed to MINCO (India) Flow Elements Pvt. Ltd, in September 2012. Not only this, pursuant to the family arrangement, Amarendra and Raghvendra held the post of Directors in each others companies till it was mutually agreed that they will resign on the same day from the respective company, and thereafter, became absolute owner of the plaintiff and the defendant company.

It is on account of this peculiar relationship shared between the plaintiff and the defendant companies with its proprietors, being the two brothers, Amarendra and Raghvendra, we find substance in the submission of Mr.Kamod that plaintiff is not entitled to exclusivity against the defendant though as against others, in the course of protecting its registered mark, it is entitled to raise objection.

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One thing is clear that till 2015, Amarendra was a part of the defendant company and was cognizant of the use of the trading name 'MINCO' by defendant as in 2012, when it changed its name, and rather it was the plaintiff who accorded 'No Objection' and when Amarendra was a Director in defendant Company, obviously, he must have been a part of many transactions being carried out by the defendant company, by use of its name 'MINCO (India) Flow Elements Pvt. Ltd.'

When both the brothers resigned from each others company, it was not on account of any commercial reason or that some dissatisfaction was expressed by each other, but the resignation was identically worded in both the cases, being due to personal reasons and not on account of the change of the defendant's trading name to MINCO.

Despite such knowledge since 2015, the plaintiff did not initiate any action whatsoever against the defendant for use of its trading name 'MINCO' and/or being aggrieved by use of the word 'MINCO' in its own name.

28. The plaintiff and the defendant's company are both engaged in manufacturing specialised industrial product and they were initially together, as the business came to them from the family and when they parted ways, they continued to carry the same business and we are informed that they have factories located next to each other and even share common clientele.

29. Merely because the plaintiff has obtained registration before the defendant, therefore, will not give it exclusivity, as

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we must record that the plaintiff has acquiesced the use of the trading name by the defendant since the year 2012 itself.

30. What is most startling is, the claim of the plaintiff, in the Plaint and the Interim Application, giving an impression that the defendant is an unrelated third party, who suddenly appeared in the market in or about 2024, as it is pleaded case of the plaintiff that it became aware of the defendant's "goods" bearing the trademark 'MINCO' in first week of February, which gave rise to the cause of action for instituting the suit.

We find that the plaint completely lack the particulars about the relationship between the plaintiff and the defendant or that Amarendra was a Director in MINCO India Flow Elements Pvt. Ltd, till 2015 or any details being offered about the business of the plaintiff and the defendant, or about the commonality shared between them.

It is lack of this disclosure, which prompted the learned Single Judge to refuse the relief in favour of the plaintiff when the impugned order record that it is admitted that Director of the plaintiff Company was Director of the defendant company and vice-versa, the learned Judge observe thus :-

“27 “The resignation letter dated 15th December, 2015 by the Director of Plaintiff is addressed to the Board of Directors of Minco (India) Flow Elements Put Ltd which demonstrates knowledge about the use of the word "MINCO" as part of the changed name by the Defendant. The Plaintiff and the Defendant are located at Tivim Industrial Estate, Mapusa Goa and their Mumbai address earlier was at 194/195 Gopi Tank Road, Off Pandurang Naik Marg, Mahim and the cause title of the plaint show that both are located at Kohinoor Square at Dadar, Mumbai. In the rejoinder Affidavit, there is specific pleading in paragraph 18 that the Defendant has throughout been known to provide sub standard products/services and

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since consumers knew that Amarendra and Raghvendra were brothers, they used to reach out to Amarendra to resolve the situation, who used to address the situation. The reply dated 7th March, 2020 by the Amarendra Kulkarni on behalf of General Instruments Consortium accepts that the Plaintiff and Defendant Company are intertwined and that their offices are located within the same premises. In light of the material on record prima facie the Plaintiff was well aware of the nature of business of the Defendant and that the Defendant was carrying on business using the word MINCO as part of its trade name and in trade mark sense since atleast the year 2015 and prima facie proves the falsity in the pleadings at paragraph 12 and 13 of the plaint.”

31. The principle of law as regards the party approaching the Court with unclean hands, is well recognised in Indian jurisprudence as in the case of Ramjas Foundation (supra), the Apex Court has held that a person who do not come to the Court with clean hands, is not entitled to be heard on merits of his grievance, the object underlying the principle being that every Court is not only entitled, but is duty bound to protect itself from unscrupulous litigants, who do not have any respect for truth and try to pollute the stream of justice by resorting to falsehood or suppressed facts which have bearing on the adjudication of the issue(s) arising in the case.

32. In **Shantapa Alias Shantesh S. Kalasgond Vs. M/s. Anna**¹¹, it is reiterated that temporary injunction is a discretionary relief and the District Judge had refused grant of temporary injunction in favour of the plaintiff, by considering his conduct in suppressing the reply filed before the Trade Mark Registry and in such circumstances, it is held that it is not for a litigant to decide what fact is material for adjudicating a case and what

¹¹2023 SCC Online Bom 2566



is not. It is the obligation of the litigant to disclose all the facts of the case and leave the decision making to the Court.

We do not intend to multiply the authorities on this point, as the principle as regards suppression of fact has received serious consideration from the Courts time and again, when it arrived at a conclusion that the material fact which was within the knowledge of the party has been intentionally suppressed either to gain a relief or to refuse the relief.

The said principle apply with more force in case of grant of injunction, which is a discretionary relief and particularly, for grant of interim injunction in trademark, the Court is expected to consider several parameters which will include prima facie case, likelihood of confusion, balance of convenience, risk of irreparable harm and also public interest as held in **Pernod Ricard India**, these considerations operate cumulatively and absence of any one of them may be sufficient to decline interim relief.

33. The plaintiff suppressed the material fact about their companies being promoted by the same family patriarch, Manohar Mahadev Kulkarni and about the inter se relationship between Amarendra and Raghvendra in management of the plaintiff and the defendant company and the learned Single Judge has rightly refused to exercise discretion in favour of the plaintiff, as only one plain statement is made in the plaint, when the plaintiff has stated that the defendant's Managing Director (Raghvendra) is brother of the plaintiff's Director

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Amarendra, and he used to work with the plaintiff. The learned Judge therefore, taking note of the suppression of the material fact, which were placed on record by the defendant, by filing a reply to the application for grant of injunction, rightly concluded that the use of trading name by the defendant is not dishonest or fraudulent and in fact, the plaint conveyed a misleading impression that the defendant is unassociated third party, with no concern or relevance to the plaintiff's company.

Reliance by the plaintiff on its registration for the mark 'MINCO INDIA' vide registration No.5966943 dated 5/6/2023 in respect of goods falling in Class 09 which is granted on 29/1/2024 does not in our view, entitle the plaintiff for an injunction as a matter of course. Immediately, after its registration, the plaintiff contrived its alleged cause of action by pleading that in first week of February 2024, it gained knowledge about the activity of the defendant and proceeded to file the Suit.

In the reply to the Interim Application, the defendant has adopted a stand of openly, extensively and continuously using the trading name with mark 'MINCO' since 2012, to the complete knowledge of the plaintiff and the plaintiff's inaction for over 13 years while the defendant continued its business under the trading name 'MINCO' building a formidable business with cumulative sales turnover, in our view, amount to clear acquiescence on the part of the plaintiff and acquiescence is a complete defence to an infringement action which

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contemplate existence of two elements viz. honesty in defendant's adoption and use and lack of some positive act on part of the plaintiff and we find both elements present in the case before us.

The plaintiff in fact approved the change of name of the defendant company, as it decided to to adopt corporate name 'MINCO' in the year 2012 itself, and it is obvious for the reason that both the companies form part of the family promoted consortium known as 'GICON'.

In the AGM of the defendant held on 16/8/2012, when Amarendra continued as its Director, the change of defendant's name incorporating MINCO was approved without any demur and it is a pleaded case of the defendant that till the day when Manohar Mahadev Kulkarni in 2018, in the wake of the family arrangement, the 2015 Will was accepted and acted upon by the parties and that is why Amarendra exited the defendant company and Raghvendra existed the plaintiff company, with the entire shareholding transferred accordingly. Both companies have continued to serve several common industrial houses since 2013 and Amarendra himself had acknowledged in 2020 that business of the parties was carried under the "GICON" group and the business activities were intertwined.

34. In the wake of the aforesaid, though the plaintiff's registration make it entitle to exclusivity, but it do not extend to the Defendant Company in the peculiar circumstances, which existed as the business of both the entities was intertwined

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flowing from the same origin. Apart from this, it is to be noted that the products do not have any mark per se, as the plaintiff and defendant are manufacturer of specialised industrial equipment supplied as per the specification of the client, and they are not the products which are casually available for sale in the market. The likelihood of confusion in regards to such products, is therefore, minimal and the reliance by the plaintiff on a solitary email of February 2024, as regards the complaint about some product, is not sufficient to establish the confusion created or the likelihood of confusion.

Since the balance of convenience is in favour of the defendant, who has been openly and continuously using 'MINCO' as a part of its trade name since September 2012 and has earned reputation and goodwill by the use of the trading name and the plaintiff on the other hand, being aware of the same, never objected, nor did it initiate any action, till the time when it filed the present Suit, we do not find any legal lacunae or error in the impugned order passed by the learned Single Judge, who found that the plaintiff was unable to demonstrate a prima facie case or that the balance of convenience was in its favour, or that any irreparable loss would be caused to it, if injunction is not granted.

35. Reliance placed on the decision of **Make My Trip** (supra) is not applicable to the present case as it involved several fly-by-night operators adopting the impugned mark, attempting to ride on the goodwill of the plaintiff's well-known brand. It is in

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this context it is held that for every instance of infringement, instead of concentrating on the business, the plaintiff was not expected to rush to the Court seeking an injunction, but the same is not the situation in the present case.

Further, the decision relied by the Mr. Dube in case of **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd**¹², is in the context of pharmaceutical products, where the Supreme Court has held that a stricter test of deceptive similarity must be applied, because confusion in medicinal products may have serious consequences on public health, but the principle laid down therein is not applicable to the present case, where the discretionary interim relief is refused to the plaintiff on account of the suppression of material facts and on the basis of acquiescence.

Upholding the impugned order passed by the learned Single Judge, the Appeal is dismissed.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

12 (2001) 5 SCC 73