



**IN THE COURT OF SHRI DEVENDRA KUMAR SHARMA:
DISTRICT JUDGE (COMMERCIAL COURT)- 03: CENTRAL
TIS HAZARI COURT (EXTENSION BLOCK) : DELHI.**

CS (COMM) No. 953/2023

In the matter of :-

Surya Roshni Limited

Padma Tower-1, Rajendra Place,
New Delhi-110008

Through Authorised Representative

.....Plaintiff

Versus

1. Dhuri Plastic Private Limited

GST No.03AACCD9511G1Z1

Bagrian Road, Village Bardwal, Dhuri,
District Sangrur, Punjab - 148024

2. M/s Dhuri Polymers

Partnership Firm through its Partners

Mr. Rakesh Garg and Ors.

GST No.03AADFD6476C1ZS

Bagrian Road, Village Bardwal, Dhuri,
District Sangrur, Punjab - 148024

.....Defendants

Date of Institution : 30.06.2023

Date on which Judgment reserved : 07.03.2026

Date on which judgment pronounced : 13.03.2026

**SUIT FOR PERMANENT INJUNCTION RESTRAINING
INFRINGEMENT OF TRADEMARK, COPYRIGHT, PASSING
OFF, UNFAIR TRADE COMPETITION, RENDITION OF
ACCOUNTS, DAMAGES, DELIVERY UP ETC.**

JUDGMENT

1. Before this Court set to adjudicate on myriad issues flagged on either side, let the Court to spell out laconically the landscape of the pleadings.

2. This is a suit for Permanent Injunction restraining Infringement of Trademark, Copyright, Passing Off, Unfair Trade Competition, Rendition of Accounts, Damages, Delivery Up etc. filed by plaintiff against the defendants.

3. Initially the suit was filed against the defendant no.1 only as at that time the plaintiff was unaware about the details of defendant no.2. Vide order dated 27.09.2023, ad-interim *ex-parte* injunction was granted in favour of the plaintiff and against defendant no.1 and also a Local Commissioner (LC) was appointed to visit the premises of defendant no.1 regarding infringed material, and upon execution of the Commission, it was revealed that the defendant no.2 is also infringing the Plaintiff's mark under the common control and management of Defendant No.1. Accordingly, vide order dated 22.04.2025 the application on behalf of the plaintiff U/o I Rule 10 r/w Section 151 of CPC was allowed and defendant no.2 was impleaded in the array of defendant and ad-interim *ex-parte* injunction was also granted in favour of the plaintiff and against defendant no.2.

4. As would be apparent from the above-mentioned paragraph, the suit involved urgent interim relief of injunction and appointment of Local Commissioner, qua which the plaintiff had filed separate applications under Order 39 Rules 1 & 2 CPC as well as under Order 26 Rule 9 CPC, on which order in favour

of the plaintiff was passed on 27.09.2023 and therefore in terms of Section 12A of the Commercial Courts Act, the plaintiff was not required to undergo per-institution mediation. Otherwise, the alleged dispute is between the parties is a 'commercial dispute' within the definition of Section 2(1) (a) (xvii) of the CC Act.

(A) Pleadings of the Parties:-

5. Succinctly stated facts of the case as set out in the plaint are that the Plaintiff Company was incorporated on 17th October 1973, as private limited company and converted into Public Limited Company on 15th November, 1973. Mr. Sachin Rana being Constituted Attorney of the Plaintiff company is duly authorized to sign and verify pleadings and institute the present suit on behalf of Plaintiff.

6. It has been further averred that the Plaintiff Company is engaged in the business of manufacturing and marketing a wide range of products throughout India, including PVC pipes, Steel Pipes, Lighting Products such as LED lights and their fittings, LED Lamps, Street Lights, Flood Lights, FTL Fittings & Ballast Lights, GLS bulbs, FTL Tube lights, Night Bulbs, Electric Water Heaters, Room Heaters, Room Coolers, as well as other Home appliances like Irons, Mixers, Grinders, Juicers, Cooking Appliances like Gas Stoves, Electric Fans, and other high-quality products and accessories. The Plaintiff holds a prominent position in India's Lighting and Steel Industry and offers superior value to consumers as one of the country's largest giants in these sectors. The major accomplishments of the plaintiff company are given in para 7 of the plaint. The products

of the Electrical & lighting division are sold under the brand

name “**SURYA**” & ”.

7. It has been further averred that the plaintiff has launched extensive advertising and promotional campaigns incurring huge expenses, over that past few decades, to strengthen the impression of the trade mark ‘**SURYA**’ in the minds of the consumers at large as a result of which the trade mark ‘**SURYA**’ has acquired a high level of distinctiveness. It has been further averred that on account of long and continuous use, extensive marketing and sales campaign throughout India distribution network, enormous sales and painstaking quality control, the Steel, Lightning and PVC goods sold under the trademark ‘**SURYA**’ has acquired enviable goodwill and reputation amongst the members of the trade and public at large as a “well known” brand which now symbolizes, distinguishes, signifies, connotes and denotes the source and origin as well as high quality of products manufactured and sold by the Plaintiff.

8. It has been further averred that due to the success of its products, plaintiff is widely recognized all over the India and abroad and that ‘**SURYA**’ being the umbrella brand of the Plaintiff, has become a source identifier for the Plaintiff Company. Further, the Revenue figures for the Financial Year 2018-19 to 2022-23 indicating the goodwill and reputation earned by the plaintiff company have been detailed in para 12 of the plaint.

9. It has been further averred that Plaintiff is the

Registered Proprietor of trademark ‘**SURYA**’ and ‘**SURYA**’ formative marks and some of Plaintiffs registrations for the trade mark ‘**SURYA**’ and ‘**SURYA**’ formatives marks in Class 17 (which is the concerned trademark class for Plaintiff and Defendant’s identical goods) are detailed in para 13 of the plaint. It has been further averred that the registered trademarks of plaintiff have been renewed from time to time and are valid and subsisting and have full legal force. It has been further submitted that there are no disclaimers imposed on the mark and that the mark stands renewed and the Plaintiff Company has not given any licenses, assignments or grant to any person or entity of its trademarks.

10. It has been further averred that the Plaintiff Company also holds various copyright registrations for the ‘**SURYA**’ and ‘**SURYA**’ formative marks/labels which was specifically designed and the said artistic lettering style being a unique design stands registered under the Copyright Act, 1957 under Nos. A-55046/1998 and A-129617/2019 and that the copies of the copyright registration certificates are annexed with the plaint.

11. It has been further averred that the Plaintiff has been extensively advertising its products under the mark “**SURYA**” through various printed media including newspapers, magazines and trade journals, leaflets and other promotional literature and the said materials are being extensively distributed all throughout India for several years now and that some of the famous Bollywood Celebrities were appointed by the Plaintiff to promote its brand name “**SURYA**”. It has been further averred

that in IPL 2019, Plaintiff Company joined forces with the team *Rajasthan Royals*, where ‘**SURYA**’ brand name had been placed at the back of team jersey and lastly, Plaintiff Company rolled out a new advertising campaign with theme “*Surya - Sabko Mood Mein Le Aaye*” featuring famous singer and composer, Mr. Shankar Mahadevan.

12. It has been further averred that ‘**SURYA**’ and its formative marks are being used extensively by plaintiff and their affiliates in respect of all its products since past several decades and is thus identified and distinguished with the Plaintiff’s goods and no one else and that the very depiction of the aforesaid mark connotes and denotes the Plaintiff’s products. It has been further averred that the trade and consumers recognize the logo mark of plaintiff as source identifier of the Plaintiff Company’s products and any use of the said distinctive logo mark by any other person, without the express permission of the Plaintiff Company, in any manner whatsoever tantamount to creating misrepresentation and confusion in the eyes of the gullible consumers and therefore, any use of the said mark by anyone without the authorization of the Plaintiff Company would amount to violation of the Plaintiff’s intellectual property rights in the said mark.


13. It has been further averred that the Plaintiff mark “**SURYA**” has emerged as a well-known mark amongst the public just as envisaged under the provisions of Section 2(1)(zg) and the relevant provisions of Section 11 of the Trade Marks Act, 1999 and in view of the above, the trademarks “**SURYA**”,





and “**SURYA**” formative marks are entitled to protection

against any misappropriation by third parties. It has been further averred that the trademarks “**SURYA**”, is a valuable assets of the Plaintiff business for the immeasurable reputation and goodwill it enjoys amongst the purchasing public and for the brand equity it has in the market and that the use of trademark/s, identical or similar to “**SURYA**” by any person other than the Plaintiff will give rise to confusion and in all likelihood, it will lead to deception amongst the purchasing public and the trade that such products are connected or otherwise related to the Plaintiff.


14. It has been further averred that the Defendants are engaged in the business of manufacturing, marketing and trading of PVC pipes and fittings and other accessories and that the Defendants are infringing the Plaintiff registered trade mark


“**SURYA**” and “” by using a deceptively similar/ identical trademark as that of the Plaintiff. It has been further averred that on 03/05/2023, the Plaintiff successfully located the Defendants' premises where the infringing products were being manufactured, stored, and distributed under the impugned mark. The pictorial representations/comparison of the defendant's products as well as plaintiff's products are given in para 23 of the plaint.


15. It has been further averred that the comparative images of the Defendant's product with that of the Plaintiff product and Defendant's impugned mark/label with the Plaintiff's Registered Trademark/Label categorically reflects that the Defendants have copied the Plaintiffs' well-known trademark ‘**SURYA**’ in entirety. It has been further averred that the


Defendants have derived the device from the Plaintiffs' well known trademarks "SURYA" and  by subsuming the Plaintiff's mark 'SURYA' as a whole and that the act of the Defendants amounts to infringement of the Plaintiff's trademarks and Copyright. It has been further averred that as per online search conducted by the Plaintiff in the Online records of Trademarks, it is noted that the Defendants do not have any registration or application pending for  or 'SURYA GOLD' or "SURYA" trade marks in class-17 for the impugned goods PVC pipes and fittings etc.

16. It has been further averred that the adoption of a logo/trademark deceptively similar/identical to Plaintiff well-

known trademark "SURYA" &  by the Defendants is *mala fide* and cannot be a matter of coincidence and the same is a deliberate and a calculated move of the Defendants aimed at causing misrepresentation and making illegal profits by associating itself with the Plaintiff. It has been further averred that Defendant has copied the well-known trademarks "SURYA"

&  which is clearly evident from the Defendants' Trademark/device and that such use and adoption of the Plaintiff


well-known trademarks "SURYA" &  by the Defendants is not authorized and legitimate and that the adoption and use of the trademark and logo by the Defendants amounts to willful

infringement of the Plaintiff trademark "SURYA" & 



within the meaning of Section 29 (1) to (4) of the Trade Marks Act, 1999.

17. It has been further averred that the Defendant has

copied the copyright in the registered artistic work “” & “



” of the Plaintiff which is clearly evident from the

Defendant’s artistic representation of the impugned trademark i.e. the logo, as applied on its products, and a comparison of the same with Plaintiff’s registered artistic work. It has been further averred that the Defendant has adopted and used a similar logo/

artistic work “”/ “” as that as

registered in favour of the Plaintiff, where the similarities include, a circle with the alphabet ‘S’ instead of the word ‘Surya’ along with the side cuts on the inside of the circle which is similar to the side cuts of the circle which forms part of Plaintiff’s registered artistic work. It has been further averred that the Plaintiff being the owner of its artistic work is exclusively entitled to exploit its artistic work in the manner recognized under Copyrights Act, 1957 whereas the Defendants’ brazen copy of Plaintiff’s artistic work and use of the same on its products for sale is a violation of Plaintiff’s exclusive statutory right and thereby amounts to misuse/infringement of its copyright. It has been further averred that in fact, Defendants’ brazen acts is also evidence of their malafide and evident attempt to usurp the Plaintiff’s intellectual property without any permission/license from the Plaintiff. It has been further averred that the defendants are engaged in passing off their goods bearing trademark

“SURYA” for plaintiff business.

18. It has been further averred that the Defendant’s adoption of Plaintiff registered trademark “SURYA” &  is dishonest and motivated by a desire to usurp the vast reputation and goodwill which is enjoyed by the Plaintiff not only in India but also overseas and that the Defendant’s unlawful adoption of a deceptively similar/ identical logo is calculated to cause loss and injury to the Plaintiff’s reputation and business and dilute the distinctiveness of its trademark “SURYA” &  branded products. It has been further averred that the loss and injury to the Plaintiff’s reputation being caused / likely to be caused by such dilution is not capable of being calculated in monetary terms, hence, an immediate order of injunction restraining the Defendant is imperative.

19. It has been further submitted that the Plaintiff have suffered and are likely to suffer irreparable loss and injury to their goodwill and reputation unless a perpetual order of injunction, restraining the Defendants from committing the impugned acts of passing off and infringement is passed. It has been further averred that at present the plaintiff estimates that a damage from the infringing acts of the defendants is in lakhs of rupees. Thus, aggrieved by the act of the defendants, the plaintiff has filed the instant suit seeking reliefs of permanent injunction restraining the defendant from infringement of plaintiff’s registered trademark, copyright, passing off, delivery up, damages, rendition of accounts and costs.

20. The defendant no.1 has contested the suit alleging that the suit has not been properly instituted by a person duly authorized; defendant is not indulged in infringement of any trademark of the plaintiff or its passing off; defendant is selling goods under the mark WATERFLEX and AKASH AGRO and has never come across the goods of the plaintiff under the trademark SURYA in the market; suit is based on false assertions; Plaintiff is not the proprietor of trademark SURYA in Class 17 for PVC Pipes and has no rights in the trade mark either under the statutory law or under common law; plaintiff has no reputation or goodwill; this Court has no territorial jurisdiction; suit has not been valued properly and therefore, the plaintiff is not entitled to any relief and the suit filed by the plaintiff is liable to be dismissed with costs.

21. Despite service, the defendant no.2 neither appeared nor filed any written statement within the period stipulated under Commercial Courts Act, hence, opportunity defendant no.2 to file written statement was closed vide order dated 22.04.2025. However, it is to be noted that after allowing the application U/o I Rule 10 of CPC, there is no amendment in the pleading qua the allegation and relief against the defendant no.2 in the plaint, though according to the plaintiff defendant no.2 is the separate legal entity, therefore, during the course of arguments, the clarification was sought. Till date, since no step has been taken, therefore, this judgment is directed only against defendant no.1.

22. The plaintiff has filed the replication to the written statement of defendant no.1 reiterating the averments made in the

plaint and denying the contra averments made in the written statement.

23. The Plaintiff as well as defendant no.1 filed their respective admission/denial of documents on affidavits.

(B) Issues :-

24. From the pleadings of the parties, following issues were framed :-

- 1) *Whether the plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39 (a) of the plaint? (OPP)*
- 2) *Whether plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39 (b) of the plaint? (OPP).*
- 3) *Whether plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39(c) of the plaint? (OPP).*
- 4) *Whether the plaintiff is entitled for delivery up, as prayed for in prayer clause 39(d) of the plaint? (OPP).*
- 5) *Whether the plaintiff is entitled to a decree of damages to the tune of Rs. 10,00,000/- against defendant, as prayed for in clause 39(e) of the plaint? (OPP)*

- 6) *Whether the plaintiff is entitled to a decree for rendition of accounts against defendants, as prayed for prayer clause 39(f) of the plaint? (OPP)*
- 7) *Relief.*

(C) Evidence :-

25. In order to prove its case, the plaintiff has examined one witness, i.e. **PW1 Ambrish Kumar Srivastava** who has claimed to be lawful attorney/authorized representative of the plaintiff. The PW-1 was cross examined on behalf of the defendant no.1 at length.


On the other hand, **defendant No.1 failed to examine any witness in its favour despite opportunity** and vide order dated 03.11.2025, DE was closed.


(D) Final Arguments :-

26. Arguments were addressed by Sh. Sarthak Sharma, counsel for the plaintiff. However, no arguments have been advanced on behalf of any of the defendants. Written submissions have also been filed on behalf of plaintiff.

27. During the course of arguments, counsel for plaintiff reiterated averments made in the plaint and also referred to documents filed on behalf of plaintiff as well as evidence adduced on record by it.

28. Counsel for the plaintiff has contended that plaintiff

is the registered proprietor of the trademark “SURYA”/  /

/"SURYA ROSHNI" and SURYA formative marks in several classes, including Class 17 for PVC pipes and fittings and allied goods (application 628629, 628631, 1393667, 1393668, 1756562, etc.). It has been further submitted that the registrations are valid, subsisting, renewed and without disclaimers, since 1994. Plaintiff also holds various copyright registrations for its "SURYA" based marks/device. It has been further submitted that plaintiff became aware of Defendants' infringing products on 27.03.2023 when its sales team in Central Delhi reported PVC pipes being sold under the deceptively similar mark "SURYA GOLD" /  for identical products and on 03.05.2023, Plaintiff located Defendants' premises at Bagrian Road, Village Bardwal, Dhuri, where the infringing products were being manufactured, stored and distributed under the impugned mark. It has been further submitted that the defendants were found selling the impugned goods from Delhi itself and also through online platforms (www.indiamart.com) and their own website (www.dhuriplastic.in). It has been further submitted that vide order dated 27.09.2023, an interim injunction was granted by the Court and a Local Commissioner was appointed to search and seize infringing products at Defendants' premises. It has been further submitted that the commission was conducted on 17.10.2023 and the LC Report records that Defendants were operating from two premises – one in the name of Dhuri Plastic Pvt. Ltd. (Defendant No. 1) and another in the name of M/s Dhuri Polymers (Defendant No. 2); that at Defendant No. 1's office, a cut pipe bearing half of the impugned logo (along with

pipes bearing the mark UTTAM SURYA) was displayed and then concealed; that at both the premises, at least five running machines, large piles of PVC pipes and a truck full of pipes (including pipes bearing the impugned mark) were found; that the Plaintiff's representatives were also met with a lot of hostility and that the Defendant No. 2's infringing activities were discovered to be in tandem with Defendant No. 1's as there was also a common ownership. It has been further submitted that Defendant No. 1 has filed a written statement but has not led any evidence which was closed vide order dated 03.11.2025 and the Defendant No. 2 has neither appeared nor filed any written statement. PW-1's evidence, together with Exhibits PW1/1–PW1/24 therefore stands unrebutted, as does the case of the Plaintiff. It has been further submitted that Defendants have merely added the laudatory term “GOLD” to Plaintiff's prior adopted, well-known and registered trademark “SURYA” and are using the same for identical goods, thereby subsuming the essential element “SURYA” in its entirety thereby constituting infringement of the Plaintiff's SURYA based marks. It has been further submitted that the interim order dated 27.09.2023 recognises that there is clear deceptive similarity between Plaintiff's “SURYA” marks and Defendants' impugned mark, given that the goods and trade channels are identical; there is no subsequent defence evidence to warrant any different conclusion at the final stage. Defendants' marks are deceptively similar to the Plaintiff's prior use, well-known and registered “SURYA” based marks by subsuming the most essential element of the Plaintiff's trademark “SURYA” and the same is likely to cause confusion in the public and the same was also observed by this

Court vide order dated 27.09.2023. It has been further submitted that it is settled law that interim findings on similarity stand unless cogent reasons are shown, which the Defendants have failed to provide. Their defence, being untenable, is liable to be disregarded, and there is no ground to deviate from the earlier finding. It has been further submitted that the Plaintiff has established that Defendants' infringing use is deliberate and on a substantial scale, not an isolated mistake; both Defendants operate from adjacent premises; multiple machines and large stock of pipes were found; a truck was seen leaving; and attempts were made to hide pipes bearing the impugned mark. Additionally, the Defendants do not possess any trademark registration in their favour. The reasoning provided by the Defendants that they mere use grinds of PVC Pipes to produce new ones at a cheaper rate is an after thought, a red herring and unjustified. Even if that is the case, it does not explain why PVC Pipes bearing the impugned mark were found at the premises of the Defendants. Neither does it explain the availability of the impugned products in the market nor does it explain the hostile conduct of the Defendants' during the LC Commission. It has been further submitted that plaintiff's claim of Rs.10,00,000/- towards damages is more than warranted and justified. Inter alia, as per Defendants' own Indiamart pages, their annual turnover is INR 5–25 crores and they sell various types of PVC pipes at about Rs. 75–135 per kg, typically in bulk, and, the LC Report shows great manufacturing capacity, multiple running machines and large quantities of pipes at both premises. Reliance is further placed upon the invoices annexed by Defendant No. 1 with its written statement showing substantial raw-material purchases for

PVC regrind/powder between March 2023 and September 2023 (for example, INR 14,79,702 for 24,468 Kgs; INR 19,44,640 for 29,750 Kgs; INR 17,42,589 for 25,030 Kgs; INR 17,18,044 for 30,020 Kgs, etc.) to show the scale of Defendants' business and profits from the impugned goods. It has been further submitted that from these figures, a realistic assumption can be drawn that from a purchase of around Rs.70 lakhs worth of raw material in just a span of 7 months and considering the aforementioned prices at which defendants sell the PVC Pipes, a profit margin of at least 20% can be assumed. It has been further submitted that since no PVC Pipes bearing the WATERFLEX and AKASH AGRO marks were found during the commission, it can be assumed that the revenue generated by the defendants is through the sale of infringing products and considering these figures and the judicial precedents relied upon, damages of Rs.10 lakhs are minimal and justified. It has been further submitted that considering the severity of the misconduct of the defendants, the plaintiff is also entitled to the award of punitive damages. It has been further submitted that Defendants have not led any evidence in the present matter. Defendant No. 1, although it has filed a written statement, has not produced any witness in support of its pleadings and documents and its right to lead evidence has been closed by this Ld. Court vide order dated 03.11.2025; Defendant No. 2 has neither appeared nor filed any written statement, and its right to file the same has been closed by this Ld. Court vide order dated 22.04.2025. It has been further averred that Defendant No. 1's written statement is verified by a purported authorised representative, but Defendant No. 1 has not examined this deponent or produced any Board Resolution or Power of

Attorney in evidence to prove such authority. In the absence of any defence witness or proved authorisation, Defendant No. 1's written statement remains an unproved pleading and cannot be accorded evidentiary value. Defendant No. 2, having not filed any defence at all, has not contested the Plaintiff's case. The net result is that Plaintiff's version, as deposed by PW-1 and supported by Exhibits PW1/1–PW1/24, stands unrebutted, while the Defendants' defence is neither proved nor supported by any evidence on record. Thus, it is prayed that suit be decreed.

In support of the contentions, counsel for the plaintiff has relied upon following judgments:-

- a) *Kaviraj Pandit Durga Dutt Sharma vs. Navratna Pharmaceuticals Laboratories reported in AIR 1965 SC 980.*
- b) *Amritdhara Pharmacy vs. Satya Deo Gupta reported in AIR 1963 SC 449.*
- c) *Corn Products Refining Co. vs. Shangrila Food Products Ltd. reported in AIR 1960 SC 142*
- d) *K.R. Chinna Krishna Chettiar vs. Shri Ambal and Co. and Anr. reported in (1969) 2 SCC 131*
- e) *Laxmikant V. Patel vs. Chetanbhat Shah & Ors reported in (2002) 3 SCC 65*
- f) *The Indian Hotels Company Ltd. vs. Ashwajeet Garg & Ors. reported in 2014 (59) PTC 256 (Del)*
- g) *Midas Hygiene vs. Sudhir Bhatia and Ors. reported in 2004 (28) PTC 121 (SC)*
- h) *Haldiram India Pvt. Ltd. vs. Berachah Sales Corporation & ORs. 2024 SCC OnLine Del 2265*
- i) *Shree Girirajji and Co. vs. Gagan Pagrani Proprietor*

- of Plastica Industries reported in MANU/DE/2291/2024*
- j) PUMA SE vs. Ashok Kumar, CS (COMM) 703/2022 and I.A. 16559/2022 decided by Hon'ble High Court of Delhi on 20.10.2023.*
 - k) The Indian Hotels Company Limited vs. Manoj reported in MANU/DE/5831/2024*
 - l) Inter Ikea Systems BV v. Imtiaz Ahamed, reported in 2016 SCC OnLine Del 6717*
 - m) Puma SE v. Ashok Kumar, 2023 SCC OnLine Del 6764*
 - n) Aero Club v. Sahara Belts, 2023 SCC OnLine Del 7466*
 - o) Cartier International A.G. v. Gaurav Bhatia, 2016 SCC OnLine Del 8*
 - p) Hero Honda Motors Ltd. v. Assuramji Scooters, 2005 SCC OnLine 1275*
 - q) Koninlijke Philips N.V. v. Amazestore, 2019 SCC OnLine Del 8198*
 - r) Strix Ltd. v. Maharaja Appliances Ltd., 2023 SCC OnLine Del 7128*
 - s) Hindustan Lever Ltd. v. Satish Kumar, 2012 SCC OnLine Del 1378*
 - t) Louis Vuitton Malletier v. Iqbal Singh, 2019 SCC OnLine Del 7879*
 - u) Dharampal Satyapal Ltd. v. Youssef Anis Mehio, 2022 SCC OnLine 3307*
 - v) Disney Enterprises, Inc. v. Rajesh Bharti, 2013 SCC OnLine Del 605*

(E) Analysis of Evidence and Findings:-

29. I have heard the learned Counsels for the plaintiff and have also perused the record as well as the written submissions and case laws filed on behalf of the plaintiff.

No amendment is pleaded qua defendant no.2 in terms of Order I Rule 10 of CPC, therefore, the entire analysis of evidence and findings are confined against defendant no.1.

30. Before discussing the evidence and the contentions raised on behalf of the plaintiff, let it be mentioned that the Local Commissioner appointed by the Court visited the premises of the defendants on 17.10.2023 and gave report **Ex.PW1/23** (exhibited by PW1). In the cross-examination of PW1, no question regarding **Ex.PW1/23** was asked. In law, a Local Commissioner's report can be read in evidence in terms of Order 26 Rule 10(2) CPC.

31. Ex.PW1/23 reveals that defendants were operating from two premises, both located within one kilometer of each other. The Local Commissioner alongwith Mr. Shrihar Tripathi, Counsel for the plaintiff, Mr. Rakesh Sharma, AR of plaintiff and two police personnel visited the first premises (hereinafter referred to as 'Premises A') while Mr. Ambrish Srivastava, AR of plaintiff alongwith one police personnel visited the second premises (hereinafter referred to as 'Premises B') to make sure that no goods were being removed therefrom. As per report, when the Local Commissioner reached the premises A, a signage by the name of 'Dhuri Plastic Pvt. Ltd., Bagrian Road, Dhuri-148024 (Sangrur) Pb.' was found installed there and the owner of the unit namely Mr. Rakesh Kumar Garg arrived at

premises A around 3.06 PM and acknowledged that PVC pipes and fittings were being manufactured in both Premises A and Premises B and that he was the owner of both these units. The local Commissioner executed the commission at Premises A, after some resistance by Mr. Rakesh Kumar Garg and relevant paras of the report are reproduced hereunder:-

*“9. That at the **back area of Premises A**, I observed that at least five functioning machines manufacturing PVC Pipes and/or fittings. I further observed several piles of PVC Pipes and fittings lying around the premises and in one truck. While some pipes bore no trademarks at all, most of them bore various trademarks like KISSAN SUPREME, FINOLEX, PRINCE GOLD, TATA, JINDAL. **Subsequently I came across one pipe bearing the impugned trademark / artistic work “SURYA GOLD”** and pictures of the said pipe are being attached herein and marked as ANNEXURE-F.*

*11. That thereafter we, being guided by Mr. Rakesh Garg, proceeded towards Premises B. At **premises B**, I observed that the main gate had the name and particulars of the entity M/s. Dhuri Polymers. Pictures of the same are attached herewith and marked as ANNEXURE-G. After reaching Premises B at 3:50 PM I was told by Mr. Ambrish that not only had he seen one truck full of pipes leave Premises B along with a person on a bike with a backpack but also that he was treated with hostility which led to the screen of a phone being broken in the process. After thoroughly inspecting Premises B I observed that there were at least five functioning machines manufacturing PVC Pipes and/or fittings. I further observed several piles of PVC Pipes and fittings lying around the premises and in a few trucks as well. I again observed that while some pipes bore no trademarks at all, most of them bore various trademarks like KISSAN SUPREME, FINOLEX, PRINCE GOLD, TATA, JINDAL, OPOLLA. **Subsequently I came across three pipes of various dimensions bearing the impugned trademarks / artistic works “SURYA GOLD” and “UTTAM SURYA”** and pictures of the said pipes are being attached herein and marked as ANNEXURE-H.*

32. The Local Commissioner seized the three pipes found at Premises B and prepared the inventory sheet and

released the same to Mr. Rakesh Garg on Superdari. The On-spot proceedings sheet, attendance sheet, inventory sheet, superdarinama and photographs of the premises and infringed goods, running into 64 pages, are part of the report of the Local Commissioner's report.

33. **PW1 Ambrish Kumar Srivastava** reiterated the averments of the plaint in his affidavit in evidence **Ex.PW1/A** while relying upon documents **Ex.PW1/1 to Ext.PW1/24** which are as under:-

S.No.	Details of documents	Exhibit
1.	Copy of Power of Attorney dated 24.01.2024 executed in his favour	Ex.PW-1/1
2.	Copy of Board Resolution in favour of Mr. Raju Bista dated 28.05.2013	Ex.PW1/2
3.	Copy of Power of Attorney dated 21.03.2023 in favour of Sh.Sachin Rana	Ex.PW1/3
4.	Copy of Power of Attorney dated 20.10.2021 in his favour authorizing him to authorize Sh. Sachin Rana	Ex.PW1/4
5.	Copy of authorization of Sh. Nirupam Sahay dated 12.04.2021	Ex.PW1/5
6.	Printout of photographs of plaintiff's original products	Ex.PW1/6
7.	Printout of photographs of defendant's products depicting the impugned mark/label	Ex.PW1/7
8.	Printout of plaintiff's official website	Ex.PW1/8
9.	The price list of 2022 for plaintiff's products	Ex.PW1/9
10.	Various BIS and IS/ISO Licenses granted to the plaintiff	Mark-A
11.	Printouts of online posts/tweets by the President of Indian for Padmashree Award to Sh. Jai Prakash Aggarwal, Chairman of plaintiff company for trade and industry	Ex.PW1/11
12.	Printout of plaintiff's commercial by famous bollywood celebrity Ms. Preity Zinta	Ex.PW1/12
13.	Printout of plaintiff's commercial by famous bollywood singer Mr. Shankar Mahadevan	Ex.PW1/13

14.	Printout of photographs showing plaintiff's SURYA trademark on jersey of team 'Rajasthan Royals' in IPL 2019.	Ex.PW1/14
15.	Original legal proceedings certificate of trademark registrations of plaintiff	Ex.PW1/15 (Colly)
16.	Originals of the Copyright Certificates of the plaintiff	Ex.PW1/16 (Colly)
17.	Photos of advertisement hoardings of the plaintiff for SURYA PVC Pipes and other products at various locations	Ex.PW1/17
18.	Printout of defendant no.1's official website	Ex.PW1/18
19.	Printout of defendant no.1's profile on e-commerce website 'Indiamart'	Ex.PW1/19
20.	Printout of the GST status of defendant no.1	Ex.PW1/20
21.	Printout of defendant No.2's profile on e-commerce website 'Indiamart'	Ex.PW1/21
22.	Printout of the GST status of defendant no.2	Ex.PW1/22
23.	Copy of report of Local Commissioner	Ex.PW1/23
24.	Affidavit in compliance with Order XI Rule 6 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and Section 63 of BSA	Ex.PW1/24

34. Let it be mentioned here that during examination-in-chief of PW1, the counsel for the defendant raised objections as to the mode of proof of documents produced by PW1. However, nothing has been brought on record as to the mode of proof regarding documents more particularly about the trademark certificate Ex.PW1/15, copyright certificate Ex.PW1/16 and Local Commissioner Report Ex.PW1/23.

35. In his affidavit Ex.PW1/A, PW1 also gave a justification as to demand of damages from the defendant to the tune of Rs.10,00,000/-. It has been stated that as per the Indiamart pages of the defendants, their annual turnover is 5-25 Cr and they sell various types of PVC Pipes for a price

range of about 75-135 Rs/Kg which over time amounts to a lot considering a lot of PVC Pipes and fittings are sold in bulk. It has been further stated that as per report of Local Commissioner, large amount of PVC Pipes and a great capacity to manufacture a large amount of PVC Pipes was discovered at the premises of the Defendants. It has been further stated that as per invoices placed on record by the defendant no.1 alongwith the written statement which are only for a period from March 2023 to September 2023, the defendants have spent exorbitant amounts on raw materials, out of which they produce the impugned products and presumably sell them for a profit, hence the damages claimed by the plaintiff are more than justified.

36. The PW1 has been cross-examined on behalf of the defendant no.1 at length.

37. No witness was examined on behalf of defendant no.1 despite opportunity and vide order dated 03.11.2025, DE was closed.

38. In the light of aforesaid discussion, before returning the issue-wise findings, the following facts and evidence relevant for the case in order to the entitlement of the plaintiff for a decree are discussed as under.

39. It is the case of the defendant no.1 in the W.S. that it is engaged in manufacturing and marketing of PVC Pipes and its allied goods and while manufacturing the PVC Pipes and to provide the same products at an affordable rate, it use scrap of used PVC Pipes which is grinded in the premises of the defendant and from the granules obtained from the said grinding

process affordable pipes of good quality is manufactured by the defendant company. It has been further alleged that defendant is not manufacturing the goods under the trademark SURYA or its formative mark, infact defendant is selling goods under the trademark WATERFLEX and AKASH AGRO. It has been further alleged in para 11 of the W.S. that defendant is not selling goods under the trademark SURYA GOLD, hence no infringement and passing off is made out by the plaintiff and on this very ground only instant suit is liable to be dismissed. However, no evidence has been led by defendant No.1 to substantiate its defence.

40. Since the instant matter proceeded against Defendant on basis of the report of Sh. Shrey Gupta, Ld. Local Commissioner, the observations made therein are very relevant for the present suit. More particularly the law on the point of admissibility and evidentiary value of the report of Local Commissioner has been discussed in various judgments and the relevant judgments are reproduced alongwith the relevant paras as under for ready reference.

41. In the judgment in case titled as **Levi Strauss & Co. Vs Rajesh Agarwal reported in 246 (2018) DLT 577**, it has been held:-

“9. The Local Commissioner is in fact a representative of the court itself and it is for this reason that Order 26 Rule 10 (2) of CPC clearly provides that once the Commissioner has filed the evidence along with his report the same shall be treated as evidence in the suit and form part of the record.

10. It is a settled proposition that the Local Commissioner need not be examined in every matter. If any party wishes to examine the Commissioner for whatsoever reason or if the court wishes to seek any clarification in respect of the

Commissioner's report, then the option to examine the Commissioner exists. In Misrilal Ramratan & Ors. Mansukhlal & Ors Vs. A. S. Shaik Fathimal & Ors., 1995 Supp (4) SCC 600 the Supreme court categorically holds that the Commissioner's report cannot be rejected on the specious plea of non-examination of the Commissioner. The relevant portion of the judgment reads as under:

"It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case."

Similar is the view taken by a Ld. Single judge of this Court in Harbhajan Singh Vs. Smt. Shakuntala Devi Sharma & Anr. MANU/DE/0058/1976: AIR 1976 DELHI 175.

16. The impugned judgment/order dated 28th November, 2006 is set aside. The plaintiff is entitled to permanent injunction in terms of prayers (i), (ii) & (iii) of the plaint. Learned counsel for the Appellant does not press the relief (iv) for damages. The Local Commissioner found only 57 pairs of jeans in the Defendant shop bearing the infringing marks. The Court fee deposited by the plaintiff is to the tune of Rs. 7,400/- in the suit and Court fee deposited in the present appeal is to the tune of Rs. 7350/- i.e. a total of Rs. 14,750/- is awarded as costs. The suit is decreed in terms of prayer clauses (i), (ii) & (iii) of the plaint with costs of Rs. 14,750/-. Decree sheet be drawn. The appeal is allowed in the above terms. All miscellaneous applications are disposed of as infructuous."

42. It was further held in case of ***ML Brother LLP Vs Maheshkumar Bhuralal Tanna 2022 (91) PTC 270 (Del)*** that:-

"11. In Levi Strauss & Co. Vs. Rajesh Agarwal MANU/DE/0019/2018 : 2018 IAD (Delhi 622, this Court examined the said provision and held that once the Commissioner has filed the evidence along with his report, it becomes evidence in the suit itself. Under Order 26 Rule 10(2) CPC it is not mandatory to examine the Commissioner to admit the report of the Commissioner as evidence in the suit. The relevant observations are as under:

8. The Local Commissioner is in fact a representative of the Court itself and it is for this reason that Order 26 Rule 10 (2) of CPC clearly provides that once the Commissioner has filed the evidence along with his report the same shall be treated as evidence in the suit and shall form part of the record.

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10. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the court and evidence collected by the Commissioner along with the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner's report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report. In the present case, a perusal of the written statement filed by the Defendant clearly reveals that the Defendant does not challenge the Commissioner's report. Para of the written statement is set out below..."

13. In view of Order 26 Rule 10 (2) CPC and the judgments discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. Accordingly, in the present case the report of the Local Commissioner and the contents therein can be relied upon by the court as evidence as the same is unchallenged.

43. Thus, in the light of the laws as discussed herein-above, the report of the Local commissioner becomes relevant who has inspected two premises, one belonging to defendant no.1 i.e. Premises A and other belonging to defendant no.2 i.e. Premises B. During the inspection, it was noticed that in the office of the defendant no.1 there was one pipe having half of the impugned logo/art work of the plaintiff trademark and the photographs of the pipe including the said pipe having logo was taken. It was also reported in the report of Local Commissioner Ex.PW1/23 that Mr. Rakesh Garg, owner of the premises of defendant no.1 acknowledged that the PVC pipes and fittings were being manufactured in both the premises. It was also found that in the said premises, five functioning machines manufacturing PVC pipes were found installed. Out of the pipes

found there, some of the pipes were having no trademark and others were having other trademark and in inspection one more pipe was found having the trademark/artistic work 'SURYA GOLD' and pictures of the said pipe was also taken. Thereafter, inspection was made of premises of defendant no.2. This premises was also found having five functioning machines manufacturing PVC pipes with no trademark on some pipes and others having different trademarks and during the course of inspection three pipes were also recovered having the trademarks/artistic work of 'SURYA GOLD' and 'UTTAM SURYA' and a clarification was given that these pipes are there either as a samples or as scraps and were not manufactured by him. After the inspection, on spot proceedings sheet, attendance sheet, inventory sheet and superdarinama were prepared. Alongwith the LC report, the photographs have also been annexed. As per the inventory prepared by the Ld. Local Commissioner, the following goods were recovered:-

- (i) PVC Pipe bearing the mark 'UTTAM SURYA' length 8 ft 11 inch diameter 250 mm : 1 piece
- (ii) PVC Pipe bearing the mark 'SURYA GOLD' length 2 ft 9 inch diameter 9 inch : 1 piece
- (iii) PVC Pipe bearing the mark 'SURYA GOLD' length 1 ft 10 inch diameter 5.5 inch : 1 piece

44. The report dated 31.10.2023 submitted by Local Commissioner reveals that the alleged pipe seen at Premises A belonging to defendant no.1 was later on hidden and therefore, there is no seizure/photograph of the same. The perusal of the photographs of infringed goods annexed with it clearly reveals

that defendant was dealing in infringed goods bearing trademark of the plaintiff. There is no reason to disbelieve the report regarding the finding of one pipe at the premises of defendant no.1 or its subsequent hiding as no objection has been filed on behalf of defendant no.1 against this report and the report has been proved as per law and in view of the case law herein-above referred, the report of Local Commission is admissible in evidence and can be treated to be sole ground of proof of the activities at the premises inspected by the Ld. Local Commissioner.

45. For the purposes of damages plaintiff has relied upon the inventory prepared by the Local Commissioner with the submission that from the documents/invoices attached with the W.S., it can be inferred that the defendant no.1 was having large scale manufacturing of counterfeited PVC Pipes of different brands including that of plaintiff. The witness Mr. Ambrish Kumar Srivastava, AR of plaintiff has given calculation of damages as under in his evidence affidavit Ex. PW-1/A for a sum of Rs.10 lakhs on the basis of following details:-

"Further, as per the Indiamart pages of the Defendants, their annual turnover is 5-25 Cr and they sell various types of PVC Pipes for a price range of about 75-135 Rs/Kg which over time amounts to a lot considering a lot of PVC Pipes are fittings are sold in bulk. Additionally, as per the report of the Local Commissioner appointed by the Ld. Court, large amount of PVC Pipes and a great capacity to manufacture a large amount of PVC Pipes was discovered at the premises of the Defendants. In fact, the Defendant No.1, in its written statement, has attached various invoices which show exorbitant amounts of purchases of PVC Regrind/powder. As per the documents attached with the Written Statement of Defendant No.01, has purchased raw materials for the impugned products from various suppliers. A few examples from the invoices attached by Defendant No.01

are as follows:-

- a. INR 14,79,702 paid for 24,468 Kgs of raw material;
- b. 2500 Kgs of raw material purchased without disclosing amount;
- c. INR 14,750 paid for 250 Kgs of raw material;
- d. INR 19,44,640 paid for 29,750 Kgs of raw material;
- e. 3000 Kgs of raw material purchased without disclosing amount;
- f. INR 17,42,589 paid for 25,030 Kgs of raw material;
- g. INR 17,18,044 paid for 30,020 Kgs of raw material;
- h. 30080 Kgs of raw material purchased without disclosing amount;
- i. INR 17,10,489 paid for 25,750 Kgs of raw material;
- j. INR 3,20,910 paid for 4,990 Kgs of raw material;

Pertinently, the said invoices are only for the time period of March 2023 - September 2023. Hence, in such a limited amount, the Defendants have spent exorbitant amounts on raw materials, out of which they produce the impugned products and presumably sell them for a profit. Hence, the damages claimed by the plaintiff are more than justified."

46. Although the case property has not been produced. However, from the report of Local Commissioner, it is clear that one pipe was recovered at the place of defendant no.1 and three pipes were recovered at the place of defendant no.2. Even there is photographs attached of the PVC Pipes recovered at the place of defendant no.2/Premises B.

47. The case laws are summarized briefly in following paragraphs for grant of damages.

48. In *Haldiram India (P) Ltd. v. Berachah Sales Corpn., 2024 SCC OnLine Del 2265*, it is observed as follows;

*"43. In the context of assessment of damages, the settled legal position is that the **Local Commissioner's report can be read in evidence in terms of Order XXVI Rule 10(2) CPC**. This position has been settled by the recent decision of the Supreme Court in **Committee of Management Anjuman Intezamia Masajid, Varanasi***

*v. Rakhi Singh (2023 : INSC : 702), wherein the Supreme Court has observed that **the report of the Local Commissioner and the evidence taken by him/her constitute evidence in the suit and form a part of the record.***

The evidentiary value of any report of the Commissioner is a matter to be tested in the suit and is open to objections including cross-examination. Accordingly, in the present case, the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence to assess the damages, as the same stands unchallenged.”

49. In the case of **Time Incorporated Vs Lokesh Srivastava reported in 116 (2005) DLT 599** and in the case of **Microsoft Corporation Vs Deepak Raval reported in 2006 (33) PTC 122 (Del)**, it was held as under:-

“17. Coming to the question of damages, it may be stated at the outset that in the absence of the defendants, it may not be of any use to pass a decree of rendition of accounts. However, still damages can be awarded on the basis of estimation. Courts in this country have started adopting appropriate yardsticks for awarding of the damages even in the absence of the defendants.

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19. Reading of the judgments in the aforesaid cases would manifest that the courts have frowned upon the conduct of the defendants “willfully calculated to exploit the advantage of an established mark” and held that in such circumstances, the plaintiff would be entitled to compensation. It was also found that the defendants were enough business savvy to engage in a successful, albeit illegal business venture. Even assuming, arguendo, that they had no knowledge of Microsoft licensing products, knowledge is not an element of copyright infringement. The Courts came heavily upon the defendants where it was found that irrefutable evidence give rise to an influence of the defendants international, knowing and willful infringement.

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24. Coming to the legal position in India, a positive trend has started. Here also as Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of the defendant’s exact figures of sales by the defendants under the infringing copyright and/or trade mark, exact damages are not available.”

50. It has also been held in the case of Super Cassettes Industries Vs Rachana Television Pvt. Ltd. reported in 2013/DHC/2461; 201 (2013) DLT 329 that:-

“16. The defendant has deliberately stayed away from this Court proceeding with a view to frustrate the plaintiff’s claim of damages. The said act is unjustified. This Court is also in agreement with the submission of learned counsel for plaintiff that defendant’s illegal activities have a cascading effect and set a bad example for other licencees of the plaintiff. Consequently, the plaintiff is also held entitled to punitive damages against the defendants for failing to appear and evading the necessity to present accounts.

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19. Also, in the case of *Times Incorporated Vs. Lokesh Srivastava and Ors., MANU/DE/0104/2005: 2005 (3) PTC 3 Del* this Court has held as under:-

Thwart of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities. Whenever an action has criminal propensity also the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice ad as such, in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the list but suffer on account of the breach. In the case in hand itself, it is not only the plaintiff, who has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the defendants’ Magazine “TIME ASIA SANSKARAN” also have suffered by purchasing the defendants’ Magazines under an impression that the same are from the reputed publishing house of the plaintiff company. This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discouraged dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them... This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement....”

51. It has been further held in case of **Pepsico Inc & Ors Vs PSI Ganesh Marketing & Ors. reported in 2014 (59) PTC 275 (Del)** that:-

“29. In Microsoft Corporation Vs. Deepak Raval reported at MANU/DE/3700/2006: MIPR 2007 (1) 72, this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of Defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.

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32. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of Court proceedings. Any view to the contrary would result in a situation where a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to say away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted R.C. Chopra, J. has very succinctly set out in Time Incorporated’s case (supra) that punitive damages are founded on the philosophy of corrective justice.”

52. It has further been held in the case of **Cartier International AG & Ors. Vs Gaurav Bhatia & Ors. (supra)** that:-

“28. The defendants have not filed any written statement in this suit. They have also failed to admit or deny the documents of the plaintiffs. They have also failed to cross-examine PW-1. The evidence of the plaintiffs’ has gone un rebutted. Therefore, the evidence of the plaintiffs and documents filed by the plaintiffs are deemed to be admitted under the provision of Order XII Rule 2-A CPC.

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62. *In view of the facts of the present case, this Court is of the opinion that in the present case Rs. 1 Crore as punitive damages be granted in favour of the plaintiffs and against the defendants in terms of para 44 (g) of the plaint.*”

53. Further in case of **Christian Louboutin Sas Vs Ashish Bansal & Ors reported in 2018 VII AD (Delhi) 125; 2018/DHC/4666**, it has been held that:-

“15. Under the given facts and circumstances of this case where the defendants reclused themselves from the proceedings, cannot be permitted to enjoy the benefits of evasion or covert priorities as has been using the domain websites and have been infringing the plaintiffs’ trademark certainly makes the defendants liable to pay the damages to the plaintiffs. Hence, a decree for a sum of 20.00 Lac in favour of the plaintiffs and against defendants, is also passed on account of infringing the registered marks, trade dress and violating interim order. The plaintiffs shall also be entitled to interest @ 10% pa on the damages so awarded from the date of filing of the suit till the date of realisation. Costs of the suit is also awarded to the plaintiff and against the defendants. The defendants are jointly and severally liable to pay the damages and costs to the plaintiff. Decree sheet be drawn.”

54. Further it has also been held in case of **Sandisk LLC & Ors Vs B-One Mobile & Ors. reported in 2019(78) PTC 363 (Del)** that:-

“22. Consequently, the suit is decreed in favour of the plaintiff and against defendants in terms of clauses (a) and (b) of para 61 of the plaint along with costs. The costs shall amongst others include the lawyers’ fees as well as the amounts spent on purchasing the court fees. The Bill of Cost already filed by the plaintiff shall be scrutinised by the learned Registrar. The plaintiffs are also held entitled to compensation of Rs. 7,47,900/- to be paid by the defendant no. 1, Rs. 2,06,280/- by the defendant no. 3, Rs. 11,05,518/- by the defendant no. 4, Rs. 2,15,622/- by the defendant no.5, Rs. 67,500/- by the defendant no.6, Rs. 34,200/- by the defendant no.7 and Rs. 6,65,280/- by the defendant no.8.”

55. In case of **Louis Vuitton Malletier Vs. Capital General Store & Ors. (supra)**:-

“26. Counterfeiting is an extremely serious matter, the ramifications of which extend far beyond the confines of the small shop of the petty counterfeiter. It is a commercial evil, which erodes brand value, amounts to duplicity with the trusting consumer, and, in the long run, has serious repercussions on the fabric of the national economy. A counterfeiter abandons, completely, any right to equitable consideration by a Court functioning within the confines of the rule of law. He is entitled to no sympathy, as he practices, knowingly and with complete impunity, falsehood and deception. Even while remaining within the confines of the provision with which it is seized-in this case, Order XXXIX Rule 2A-the court is, therefore, required to be economically and socially sensitized, and to send a deterrent message to others who indulge, or propose to indulge, in the practice of counterfeiting.

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30. Keeping in mind the power vested in the Court to mould the order to ensure substantial justice, I am of the opinion that the interests of justice would best be subserved if, in the present case, the defendant is directed to pay, to the plaintiff, 5 lakhs within a period of four weeks from today, failing which Mr. Javed Ansari, the proprietor of Defendant 2, shall suffer incarceration in civil prison in Tihar Jail for a period of one week.”

56. Thus, in the light of settled principles of law, it can be said that as far as the calculation of damages given by PW1 in his evidence affidavit, Ex.PW1/A, is concerned, there is no documentary evidence placed on record in support thereof.

57. Even the defendant has failed to place on record any document that the pipe was found there was either samples or scraps for the purposes of grinding.

58. From the evidence available on record, it appears that the Local Commissioner alongwith the counsel for the plaintiff company Mr. Shrihar Tripathi and two representatives of plaintiff company i.e. Mr. Ambrish Srivastava (PW1) and Mr.

Rakesh Sharma and had visited the premises of defendant situated at Bagrian Road, Village Bardwal, Dhuri, District Sangrur, Punjab-148024 on 17.10.2023 pursuant to order passed by this Court and it was found that defendant no.1 was manufacturing the counterfeited PVC Pipes including the infringement of trademark of the plaintiff under falsified marks as 'SURYA GOLD' and 'UTTAM SURYA'. Before filing of the present case also, an investigation was conducted and plaintiff found that defendant no.1 was manufacturing the counterfeited PVC Pipes infringing the trademark of the plaintiff. Further, there is nothing mentioned in the report of the Local Commissioner or the affidavit of PW1 nor has plaintiff placed on record any other document from which it can be ascertained as to what was the price at which defendants were selling the infringing PVC Pipes bearing the logo of plaintiff. Apparently no books of account or invoices or any other document was seized from the premises of the defendants, during the visit by the Local Commissioner. Further, there is no document on record from which figures of sales made by defendants in a day or a week or in a month can be ascertained. The plaintiff has also not mentioned the price at which it was selling the original product but considering the fact that there was recovery of one pipe at the premises of defendant no.1 which was found identical and/or deceptively or confusing similar products, it can be safely concluded that the infringing goods must have been sold at comparatively lesser price than the original products of the plaintiff.

59. Therefore, it is not clear on what basis PW1 has given calculation of damages in para 27 of his affidavit

Ex.PW1/A.

60. The plaintiff has not pressed for prayer for rendition of accounts during the arguments but has pressed for grant of punitive damages. The quantum of punitive damages has been given in the prayer clause of the plaint and plaintiff has prayed for grant of punitive damages in sum of Rs.10 lakhs.

61. In view of the aforesaid discussion, issue-wise findings are as follows:-

ISSUE No.1 :-

Whether the plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39 (a) of the plaint? (OPP)

AND

ISSUE No.2:-

Whether plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39 (b) of the plaint? (OPP).

AND

ISSUE No.3:-

Whether plaintiff is entitled for a decree of permanent injunction against the defendants, as prayed for in prayer clause 39(c) of the plaint? (OPP).

62. All these issues are being taken up together as they are inter connected. Under Clause 39 (a) to (c) of the prayer clause of the plaint, the plaintiff sought injunction against the defendant no.1 from dealing with goods bearing infringed

trademark and copyright of the plaintiff or from passing off the goods. Onus to prove these issues was on the plaintiff.

63. In view of the aforesaid discussion, it is held that the plaintiff has proved its case on preponderance of probability that there was infringement of trademark/copyright of the plaintiff qua the PVC pipes, therefore, plaintiff is held entitled to decree of permanent injunction against the defendant No.1 from manufacturing, trading, selling, marketing, printing, offering for sale, displaying, advertising, promoting on the internet through any website or through any social media channels or through any physical store/locations or by any other mode or manner, any goods including PVC Pipes, PVC pipe fittings and/or any other identical, similar and/or allied and cognate goods bearing infringed trade mark or copyright of the plaintiff, directly or indirectly and in any manner. **Issues no.1 to 3 are accordingly decided in favour of the plaintiff and against the defendant.**

ISSUE No.4 :-

Whether the plaintiff is entitled for delivery up, as prayed for in prayer clause 39 (d) of the plaint? (OPP)

64. The onus to prove this issue was upon plaintiff. As discussed in detail hereinabove, the plaintiff has proved its entitlement on preponderance of probability and therefore, it is held that plaintiff is entitled for delivery up of all of the goods seized by the LC which were released to the defendant on superdari. **This issue is accordingly decided in favour of the plaintiff and against the defendant.**

ISSUE No.5:-

Whether the plaintiff is entitled to a decree of damages to the tune of Rs. 10,00,000/- against defendant, as prayed for in clause 39(e) of the plaint? (OPP)

AND

ISSUE No.6:-

Whether the plaintiff is entitled to a decree for rendition of accounts against defendants, as prayed for prayer clause 39(f) of the plaint? (OPP)


65. The onus to prove both these issues were upon plaintiff. As already discussed hereinabove, the plaintiff has given up the relief of rendition of accounts during the arguments, hence no finding is required to be returned qua issue no.6. Moreover, due to lack of documents in this regard, no observations and consequently directions regarding rendition of accounts can be given.

With regard to issue no.5, as discussed in detail hereinabove, the plaintiff has successfully proved on preponderance of probability that the defendant is infringing the plaintiff's registered trademark and copyright. Considering the totality of facts and circumstances, it is deemed appropriate to award punitive damages in the sum of Rs.3 lakhs to the plaintiff **which shall be paid by defendant no.1. Both the issues are decided accordingly.**

RELIEF:-



66. In view of observations made above, the plaintiff is entitled to the following reliefs:-

(i) *A decree of permanent injunction is passed in favour of the plaintiff and against the defendant no.1 thereby restraining defendant no.1 by themselves/himself and also through their/his subordinates, servants, agents, representatives, officers, family members, distributors, dealers and/or anyone who may be acting for and/or on them/his behalf from infringing the Plaintiff's trademark 'SURYA' and its formative marks containing essential element 'SURYA' by manufacturing, trading, selling, marketing, printing, offering for sale, displaying, advertising, promoting on the internet through any website or through any social media channels or through any physical store/locations or by any other mode or manner, any goods including PVC pipes, PVC pipe Fittings and/or any other identical, similar and/or allied and cognate goods under the mark "SURYA GOLD"/*


 *and/or any other trademark identical and/or deceptively similar to the aforesaid Plaintiff's trademark 'SURYA' and its numerous 'SURYA' based formative marks by using the essential element 'SURYA'.*

(ii) *A decree of permanent injunction is passed in favour of the plaintiff and against the defendant no.1 thereby restraining the defendant no.1 by themselves/himself and also through their/his subordinates, servants, agents, representatives,*

officers, family members, distributors, dealers and/or anyone who may be acting for and/or on them/his behalf from infringing the Plaintiff's registered copyrights registered under the Copyright Act, 1957 under Nos. A-55046/1998 and A-129617/2019 by manufacturing, trading, selling, marketing, printing, offering for sale, displaying, advertising, promoting on the internet through any website or through any social media channels or through any physical store/locations or by any other mode or manner, any goods under the infringing artistic work/logo

‘’/‘’ and/or any other identical and/or similar artistic work to the Plaintiff's aforesaid registered copyrights.

- (iii) A decree for permanent injunction is also passed in favour of the plaintiff and against the defendant no.1 thereby restraining the Defendant No.1 by themselves/himself and also through their/his subordinates, servants, agents, representatives, officers, family members, distributors, dealers and/or anyone who may be acting for and/or on their/his behalf from passing off the Plaintiff's trademark ‘SURYA’ and its numerous ‘SURYA’ based formative marks by using the essential element ‘SURYA’ by manufacturing, trading, selling, marketing, printing, offering for sale, displaying, advertising, promoting on the internet*

*through any website or through any social media channels or through any physical store/locations or by any other mode or manner, any goods including PVC pipes and/or any other identical, similar and/or allied and cognate goods under the mark “**SURYA GOLD**”/“” and/or any other trademark identical and/or deceptively similar the aforesaid Plaintiff’s trademark ‘**SURYA**’ and its numerous ‘**SURYA**’ based formative marks by using the essential element ‘**SURYA**’.*

- (iv) The defendant is also directed to deliver all the goods/pipes seized by the LC within a period of 2 weeks from the date of decree to the plaintiff so that the plaintiff may properly destroy those goods.*
- (v) The plaintiff is awarded punitive damages in the sum of Rs.3,00,000/- to be paid by defendant no.1.*
- (vi) Costs of the suit is also awarded in favour of plaintiff and against defendant no.1 and shall be paid by defendant no.1 as per rules.*

67. Decree sheet be prepared accordingly after filing of the deficient court fee by the plaintiff, if any.

68. **File be consigned to record room after due compliance.**

**Dictated and announced
in the open Court on
13th March, 2026.**

**(DEVENDRA KUMAR SHARMA)
District Judge (Commercial Court)-03
Central, Tis Hazari Courts, Delhi.**