



Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO.2849 OF 2026
IN
COMMERCIAL APPEAL (L) NO.39319 OF 2025

Grasim Industries Limited & Anr. .. Applicants/Appellants

Versus

Saboo Tor Private Limited & Ors. .. Respondents

...

Mr.Darius Khambata, Senior Advocate with Mr.Hiren Kamod, Mr. Vinod Bhagat, Mr. Anees Patel, Ms. Nishtha Gupta, Ms. Prachi Shah and Ms.Rashi Thakur i/b Mr. Vinod A. Bhagat for the Applicants/Appellants.

Mr.Ravi Kadam, Senior Advocate and Mr.Ashish Kamat, Senior Advocate with Mr. Thomas George, Mr. Rohan Kadam, Mr. Navankur Pathak, Ms.Neeti Nihal, Ms. Tanvi Sinh, Ms.Bargavi Baradhwaj, Mr.Ishaan paranjape, Mr.Ravi Varma and Mr.Asheesh Gupta i/b Saikrishna & Associates for the Respondent Nos.1, 4, 5 and 6.

**CORAM: BHARATI DANGRE &
 MANJUSHA DESHPANDE, JJ.**

DATE : 06th APRIL, 2026

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ORDER (PER BHARATI DANGRE, J.)

1. The present Commercial Appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (For short, 'CPC') raise a challenge to the impugned order dated 16/10/2025 passed by the learned Single Judge (Sharmila U. Deshmukh, J.), on Interim Application No.3888 of 2022, seeking

injunction in the suit filed for infringement of trade mark and passing off under the Trade Marks Act, 1999.

By the said order, the learned Single Judge, testing the case of the Appellant (Plaintiff) on the parameters applicable to grant of injunction in trade mark matter viz. *prima facie* case, likelihood of confusion, relative merits of the parties claim, balance of convenience and risk of irreparable harm and public interest, concluded that absence of any one, is sufficient to decline the interim relief.

On the detailed discussion about the factors being weighed in favour of the Plaintiff, the learned Judge concluded that considering that the Defendant was carrying on his business using his registered trade mark since 2008, grant of injunction would result in irreparable loss and by directing the Defendant No.1 to maintain accounts of the sales of its products till disposal of the suit, the Interim Application came to be dismissed.

2. We have heard learned senior counsel Mr.Khambata for the Appellant in support of the grounds raised in the Appeal calling for an interference in the impugned order, as it is alleged that the learned Judge has failed in appreciating the case that the Appellants validly hold registered trade mark as

early as in 1988 and the Respondents alleged use is much subsequent for an identical and/or deceptively similar trade mark and a case for infringement was made out.

The Respondent/Orig.Defendant is represented by learned senior counsel Mr.Kadam, who would support the impugned order by submitting that the learned Judge has rightly appreciated the claim of the Plaintiff and has refused the same by testing their case on the parameters for grant of injunction in a trade mark case.

3. The Appellants have taken out an Interim Application under Order XLI Rule 27(1) of CPC, for allowing the additional documents to be taken on record in form of additional evidence, which could not be produced before the trial court despite exercise of due diligence and that the evidence is relevant to the facts of the case, but could not be found earlier despite exercise of due diligence as the Appellants were unaware about the whereabouts of such documents.

Praying that since the documents annexed to the Interim Application bear material relevance to the Appellants' case, it is requested to take the documents on record as additional evidence, as it will meet the ends of justice for which the Respondents can be adequately compensated.

The Application received strong opposition from Mr.Kadam, as according to him, if the Plaintiff was unable to establish its *prima facie* case sufficient enough to grant interim relief, there is no question of this material being permitted to be admitted in evidence, despite establishing the necessary parameters of consideration of additional evidence under Order XLI Rule 27 of CPC and Mr.Kadam insisted that the said Application shall be heard and pronounced upon prior to the hearing of the Appeal.

4. For appreciating the contentions even as regards the Application filed for bringing additional evidence on record, we must refer to the factual background in which the present Appeal is filed and only thereupon, we will be able to appreciate whether the additional evidence deserve to be permitted and this is what prompt us to refer to background facts.

Plaintiff No.1-Grasim Industries Ltd., hereinafter referred to as '*Grasim*' and Ultra Tech Cement, hereinafter referred to as '*Ultra Tech*' filed a Commercial I.P. Suit for infringement and trade mark passing off and the marked involved is 'BIRLA'.



Plaintiff No.1 -Grasim pleaded that it is the flagship company of global conglomerate 'Aditya Birla Group' and it commenced its business in the year 1947 in textiles and diversified the same under BIRLA and BIRLA formative trade marks. According to the Plaintiffs, in the wake of the internal business arrangement, only the Birla family group of companies, owned and/or managed by the Birla family, are entitled to adoption of the well-known trade mark BIRLA, either stand alone or in conjunction with other one. As Grasim diversified into business of manufacturing, marketing, selling and/or exporting buildings and construction materials, cement, white wall care putty, texture wall finish, paints, chemicals for preserving food stuff, disinfectants, agricultural scientific research, agriculture, horticulture and forestry products etc., it was authorised to use BIRLA and BIRLA formative trade marks. Stating that Plaintiff No.2 and its subsidiaries are the seventh biggest cement manufacturer in the world and one of the largest manufacturer of grey cement, ready mix concrete and white cement in India, it has 20 integrated plants around the world of which 22 of its grinding units are in India.

5. Defendant No.1, hereinafter referred to as '*Saboo Tor*' is alleged to be a private limited company with Defendant No.2 being a partnership firm and Defendant No.3, being a person responsible for conduct of business of Defendant No.2. Pleading that Defendant Nos.1, 2 and 3 engaged in the business of manufacturing, marketing and selling of M.S. Bar(TMT), M.S.Round, TOR Steel, Metals and their alloys, metal building material etc. is also involved in manufacturing, selling and/or marketing of electric vehicles, E-Rickshaw, Electric Scooters, Electric Scooty and Electric motorcycles. Defendant No.6- the Director of Defendant No.1 is alleged to be aware of the business activities and involved in the conduct of its business.

They were arrayed as co-Defendants in the Suit, as the Plaintiffs claim some alleged rights over the trade mark 'BIRLA' and involved in some business relationship with one another.

6. According to Mr.Khambata representing Grasim, its pleaded case is very specific, being that it is a flagship company of global conglomerate Aditya Birla Group, which is managed by the famous Birla family of India and being engaged initially in textile business, the business was diversified under the BIRLA and BIRLA formative trade-marks. In para 3 of the

plaint, Grasim specifically pleaded about commencement of its business as textile manufacturer and subsequently expanding its business by use of mark 'BIRLA'. In para 8, according to Mr.Khambata, the plaint gave the relationship between the Plaintiffs and the Aditya Birla Group, by specifically pleading thus :-

“8. The Plaintiff No.1 was originally incorporated in 1947 as ‘The Gwalior Rayon Silk Mfg. (Wvg.) Company Ltd.’, a textile manufacturer, which trading name was changed to that of the Plaintiff No.1’s present trading name i.e. ‘Grasim Industries Ltd.’ in 1986. The Plaintiff No.1 craves leave to refer to and rely upon a copy of the Fresh Certificate of Incorporation dated 22 July 1986 issued by the Registrar of Companies, when produced. Today, the Plaintiff No.1 has evolved into a leading and diversified player with leadership presence across numerous sectors of industry. The Plaintiff No.1 endeavours to create sustainable value for 24,000+ employees, 262,000+ shareholders, society and customers.”

9. The Plaintiffs state that the Aditya Birla Group comprises of, apart from the Plaintiff No.1, Plaintiff No.2 and other prominent manufacturing and/or service providing companies such as Aditya Birla Fashion & Retail Limited, Aditya Birla Science & Technology Company Private Limited, Aditya Birla Grasun Chemicals Ltd. etc.-----”

The plaint also pleaded that several companies of the Aditya Birla Group, including Plaintiff Nos.1 and 2, are listed on the Bombay Stock Exchange and National Stock Exchange.

7. In Paragraph 15, the Plaintiffs connection with BIRLA trade mark and its use is highlighted and Mr.Khambata has emphasized on this particular pleading, which according to him, the learned Single Judge has failed to consider.

Staking its claim, the Plaintiff No.1 pleaded that its trademark registrations are valid and subsisting and the mark 'BIRLA' is the leading, most prominent and essential feature of its trade marks and its earliest registrations date back to the year 1988. In addition, the pleading of the Plaintiffs is very specific as below :-

*"The Plaintiffs have been openly, continuously and extensively using the Plaintiffs BIRLA trade marks including the "ADITYA BIRLA GROUP" wordmark extensively in respect of their goods/services. Copies of the respective trade mark registration certificates/status reports are hereto annexed as **EXHIBIT "B-1"** to **"B-112"** respectively."*

In connection with the trademark "BIRLA WHITE", the plaintiffs pleaded thus :-

"18. The Plaintiff No.1 state that the abovementioned trademark registrations under Nos.524399 and 524400 applied for / registered prior to 1999 were applied / registered by the Plaintiff No.1's predecessor being the Indian Rayon and Industries Ltd. in right, title and interest. In or about April 1988, the Plaintiff No.1's predecessor, Indian Rayon and Industries Limited adopted and commenced using the trademark "BIRLA WHITE" upon and in relation to its white cement. The said Indian Rayon Industries Limited subsequently applied for and secured registrations of the trademarks containing the mark "BIRLA WHITE" under Nos 524399 and 524400, both in class 19 under the Trade and Merchandise Act, 1958. Since its adoption, the Plaintiff No. 1's predecessor has been openly, widely continuously and extensively using the trademark "BIRLA WHITE" upon and in relation to its white cement. Thereafter, on or about the 23rd January 1999, the grey and white cement business of the said Indian Rayon and Industries Limited demerged and transferred to the Plaintiff No.1 vide and order of the Hon'ble High Court of Madhya Pradesh in Company Petition No 39 of 1988 connected with Company petition No 33 of 1998, allowing the Scheme of Arrangement in the nature of Demerger between Indian Rayon and Industries Limited and the Plaintiff No 1. By Virtue of the Scheme of Arrangement, all the intellectual property of the said Indian Rayon and Industries Limited in respect of the transferred business, including the trademark "BIRLA WHITE" came to be transferred to the Plaintiff No.1 along with the goodwill thereof. The Plaintiffs crave leave to

refer to and rely upon the aforesaid Scheme of Arrangement and the order dated 23rd February 1999 respect thereof, when produced. Accordingly, the Plaintiff No.1 made the necessary application on Form TM-23 dated 4th March 2005 before the Registrar of Trade Marks to bring itself on record as the subsequent proprietor of the aforesaid trade marks under Nos 524399 and 524400, both in Class 19. Subsequently, the Registrar of Trademarks vide his order dated 13th April, 2018 was pleased to allow the aforesaid application on Form TM-23 dated 4th March 2005 and order thereon dated 13th April 2018 when produced. The expression 'Plaintiff No.1' used hereinafter shall, unless it is repugnant to the context, be deemed to include their respective predecessor/s in right, title and/or business interest."

8. Alongwith the plaint, the Plaintiffs furnished list of their trademark registrations 'BIRLA' with respect to its date and user claim in clause 19 as well as in regards to the chemicals used in the industries in Class 1 and in relation to paints/colours in Class No.37.

The list include 112 registered trade marks, with 'BIRLA WHITE' being listed at Sr.Nos.1 to 14. The registration of trade mark 'BIRLA WHITE' dated 14/02/1990 is based on user claim since 1988, the registration being granted on 14/02/1990 in class 19. Thus, according to Mr.Khambata, the Plaintiffs pleaded their case by submitting that registration of their mark is prior to 1990 and the same was based on prior user since 2007.

9. In the light of the specific pleadings in the plaint, the Plaintiffs took out an Interim Application for grant of interim reliefs by specifically averting as below :-



“For the sake of brevity, the Applicants repeat all that is stated in the Plaint as if the same forms a part and parcel of this application and crave leave to refer to and rely upon all that is stated in the Plaint without reproducing the same herewith to avoid repetition”.

10. The Application for grant of injunction contain an assertion that trade-marks ‘BIRLA’ which is the leading, essential and prominent feature of the Plaintiffs goods, have acquired reputation, goodwill and instant recognition among consumers and they have large distribution network penetrating PAN India and the customers associate Plaintiffs ‘BIRLA’ trademarks and the word ‘BIRLA’ with the Applicants and none else. The Application, in particular, pleaded as below :-

“8.3 In view of the aforesaid, the Applicants have acquired statutory as well as common law rights in the well-known trade mark ‘BIRLA’ and are entitled to use the well-known trade mark BIRLA in respect of all their respective goods and services to the exclusion of other disentitled manufacturers and/or traders.”

The cause of action for the Suit as well as grant of injunction is set out by alleging mala fide adoption and/or use of impugned trade-mark by the Defendants by use of the words viz. ‘BIRLA’, ‘BIRLA TMT’, ‘BIRLA E-BIKE, the impugned trading name i.e. ‘BIRLA STEEL’ and the impugned device marks i.e. BIRLA E-BIKE



BIRLA

BIRLA TMT / BIRLA E-BIKE / 

as well as the impugned domain names i.e. 'www.brilamsteel.com' and 'www.birlaebike.com', which are identical with and/or similar or deceptively similar to the Plaintiffs BIRLA trademark, for acts of passing off, damages and other consequential reliefs.

Interim Application No.3888 of 2022 sought restraint by an interim order and temporary injunction, pending the hearing and final disposal of the Suit, so as to restrain the Defendants by themselves and all persons acting for and on their behalf from infringing all or any of the Plaintiffs BIRLA trade marks and the impugned domain names as well as trading name, which is identical with and/or deceptively similar to the Plaintiffs' mark.

11. Respondent Nos.1, 4, 5 and 6 opposed the Application by filing affidavit-in-reply and Defendant No.1 pleaded that it was incorporated in the name 'Sirmour Alloys Private Limited' in the year 1991, but in the year 1999, it changed its name to 'Saboo Tor Private Limited'. It also pleaded that the company has been carrying on business of manufacturing, processing, importing, exporting and dealing in all kinds of ferrous, non-



ferrous metals alloys and their products, and since 2004, and it commenced manufacturing and supplying of iron and steel products under the registered trademarks 'BIRLA' and/or under the brand name 'BIRLA TMT'. It pleaded that Defendant No.1's product 'TMT Bar' sold as 'Birla TMT Steel Bar' is one of the top 10 TMT Bars in India and in manufactured in Himachal Pradesh and marketed across various States in India and in the course of its use for past 18 years, it has emerged to be one of the most sought-after by the builders and engineers, it being of superior quality, involving industry leading automation set-up and being advanced and high strength variant of steel meeting international quality standards.

According to Defendant No.1, under the brand name 'BIRLA TMT', various products are covered, including Birla Thermo Mechanically Trusted (TMT) Steel Bar, Mild Steel (M.S.) Square Bars used in cranes gantry, bullock carts axles, truck trailers and tippers; Mild Steel (M.S.) Flat Bars used by Grafting manufacturers, Railways, Bus Body, Ship Building etc. According to the Defendant No.1, from the nature and use of the products which are in the market for last 15 years, those involved in commerce and trade, take informed decision and there is no scope for any confusion or deception.



12. Mr.Kadam, representing the Defendants, would rely upon the defence set out in the affidavit in clause 6.2, when it pleaded thus :-

“6.2 I say that Defendant No.1's prior adoption and use of the marks 'BIRLA' and 'BIRLA TMT' is highly fanciful, and inherently distinctive coined composite word mark, which when taken as a whole, is inherently distinctive of Defendant No.1's products alone. It is further stated that the relevant class of consumers of Defendant No.1's products only associate with the brand name 'BIRLA TMT' to that of Defendant No.1 owing to the long, continuous, consistent and uninterrupted usage of the trademark by Defendant No, 1 qua its products such as TMT Bar, MS Square, MS Flat, MS Round and Angle and Channel etc.”

In addition, in para 6.6, the Defendants adopted a stand that by filing the present action, the Plaintiffs were wrongfully trying to claim a monopoly over the word 'BIRLA', which is in fact a dictionary word and means, 'scarce, rare, uncommon' and reliance is placed upon the dictionary meaning of the term 'birla'.

According to Mr.Kadam, Defendant No.1 was desirous of indicating the rare character of its goods, being a superior strength and, therefore, the word 'BIRLA' was adopted and used.

According to him, Defendant No.1 is the proprietor of the registered trademark in Class 6, whereas the Plaintiffs do not enjoy any registration and, therefore, the Plaintiffs claim to the word 'BIRLA' cannot and does not come in the



Defendants' way or prejudice exercise of its rights as a registered proprietor of the Defendants' trademarks.

13. In short, Defendant No.1 set up its case by attempting to demonstrate that the word was coined on account of an assigned meaning attached to it indicating 'rare' and the Defendant was always vigilant in protecting its intellectual property rights.

In paragraph 13.2 of the reply, Defendant No.1 enlisted its marks under Class 6 for Iron and Steel products and claim to be the registered proprietor of those marks, which include the trademark 'BIRLA', 'BIRLA TMT' being registered in 2008 with its user claim of 2004, the registration granted in Class 6- M.S.Bar(TMT), M.S.Round, TOR Steel, M.S.Angle, M.S.Channel, M.S.Square. The Defendant has also secured trademark registration in Class 10, 11, 18 with the trademark 'BIRLA'. In addition, it also filed several trademark applications for the mark 'BIRLA' across various classes, which are pending for registration and this include goods in Class 8, 20, 21, 17, 5, 9, 12, by describing the user as 'proposed to be used' and which has received objections from the Plaintiffs.



14. According to Mr.Kadam, the defence of the Respondents, which was also evidently made clear in the reply affidavit was of they being the prior user in Class 6, in contrast to the Plaintiffs, neither having registered or not conducting any business in respect of those goods in which Defendant No.1 is carrying its business. Therefore, according to Mr.Kadam, the case of Defendant No.1 was and is about selling of its product under brand name 'BIRLA TMT' atleast since the year 2004 with the trademark registration having secured since the year 2008 and, therefore, Defendant No.1 is not only the owner but also the prior user of 'BIRLA' and 'BIRLA TMT' under Class 6. Harping upon the well settled position in law, according to Mr.Kadam, the prior use of the goods will override the subsequent user, even though the subsequent user has a registered trademark and in this case, the Plaintiffs have never used its mark as against goods in Class 6 and have never applied for registration.

15. In short, the submission of the contesting Defendant is of harmonious existence. In addition, Mr.Kadam relying upon the reply filed by Defendant No.1, has also urged that in fact the word 'BIRLA' is a subject matter of several registered trademarks and the search on the official website of

Trademark Registry, has lead to several entities across classes, who have registered or have applied for registration trademarks containing the word 'Birla', and therefore, according to Mr.Kadam, there is no reason why the Plaintiffs shall claim exclusivity to the use of the word 'Birla'. Paragraph 15.2 of the reply affidavit enlisted atleast 29 such entities in various classes which have made the use of the word 'BIRLA' in conduct of their activity.

16. While defending the claim in the Suit as well as the Appeal before us, Mr.Kadam specifically urged that the Interim Application and the Suit suffer from gross delay and latches as Defendant No.1 has been honestly, continuously, openly, widely, exclusively and with bona fide intent using the trademark 'BIRLA' and 'BIRLA TMT' since the year 2004 and when it applied for registration in the year 2008 and 2009, it was published in the Trademark Journal on September 29/09/2014 and 31/10/2015 respectively and if the Plaintiffs were vigilant as claimed by them, they should have known and objected to it, but they did not choose to do so, clearly indicating acquiescence in the use and adoption of the mark by the Defendant No.1. According to Mr.Kadam, the very fact that for last over 15 years, both the Applicants and Defendant



No.1's goods have been sold openly, extensively and through common trade channels clearly indicate that the trade has accepted their harmonious co-existence with a clear understanding that there is no scope for any deception and confusion and that is the reason, there were no complaints ever made by the Plaintiffs and even at present, there is no cause of action to complain or institute the present proceedings.

17. In light of the aforesaid pleaded case of the Plaintiffs and the Defendants, Mr.Khambata has urged that the relief in favour of the Plaintiffs is denied for the reason that though the Plaintiffs had dedicated substantial portion of the plaint to plead about the Birla Group's reputation, goodwill and association of the Plaintiffs with the Birla group, they have failed to substantiate the pleading by way of documentary material and in this regard, the trial Judge, after noticing the pleading that Plaintiff No.1 is a flagship company of Aditya Birla Group incorporated in the year 1947 and on account of the internal arrangement between Birla Group of Companies, Plaintiffs got exclusive right to use 'BIRLA' trademark, observed thus :-

"41.There is not a single document on record to prima facie demonstrate : (a) the prior use and registration of the "BIRLA"



marks by the BIRLA group of companies in respect of its products; (b) the registrations of "BIRLA" mark and its Formative marks secured by Birla group of companies in respect of its diverse products which marks have become distinctive of the BIRLA group (c) the Plaintiffs being part of the Birla group and thus acquires right to use the "BIRLA" trade mark and formative trade marks by internal arrangement or the right being devolved upon the Plaintiffs through the Birla group of companies".

Accepting that the pleading in the plaint refer to the history of origin and user of 'BIRLA' trademark, its reputation and goodwill, it is held by the learned Judge that the prior registration of domain name by Birla Group of Companies cannot assist Plaintiffs *sans* any material to demonstrate connection between the Plaintiffs and Birla Group of Companies and it is held conclusively that, "*there is no averment in the plaint to justify this connection between the domain name and Ultratech Cement Ltd.. The pleading per se cannot confer any cannot confer any benefits associated with the Birla trade marks upon the Plaintiffs.*"

18. According to Mr.Khambata, the learned Single Judge failed to consider that the Plaintiff No.1 is a registered proprietor of 112 marks and what is held by the learned Judge in paragraph 42 was never his case as it was pleaded that Plaintiff No.1 was in textile business, but later on shifted the business. According to him, the whole basis of rejection of the interim relief in favour of the Plaintiffs is their failure to

establish any connection with Birla Group of Companies and the reference to the registration mark 'BIRLA WHITE', has reflected that the registration is in the name of Indian Rayon and Industries Ltd., but since the scheme of the arrangement was not placed on record, the Single Judge failed to accept the contention about user of the trademark 'BIRLA WHITE' by Indian Rayon and Industries Ltd.

Another reason, according to Mr.Khambata, when the learned Single Judge refused the relief is that there is no single registration with the word 'BIRLA' i.e. the name.

19. It is in this background, the Appellants have taken out an Interim Application No.2849 of 2026, bringing on record the additional evidence at the stage of Appeal by invoking Order XLI Rule 27, seeking permission to file the additional documents appended at Exh.A-E collectively, for the purpose of effective adjudication of the Appeal arising out of the impugned order.

We have perused the Interim Application which seeks to bring on record the following documents;

(a) *The scheme of arrangement between :-
Indian Rayon and Industries Ltd.
Grasim Industries Ltd.*

and

Their respective shareholders and creditors providing for the transfer of transferred business of the transferor company to the transferee company



(b) Copy of the Petition filed before the High Court of Madhya Pradesh in form of Company Petition No.1 of 2001 for sanction of amalgamation under Section 394 of the Companies Act, 1956 for amalgamation of Dharni Cements Ltd., transferor company with Grasim Industries Ltd. i.e. transferee company alongwith the order passed by the Madhya Pradesh High Court on 09/03/2001.

(c) Application for registration filed by Plaintiff No.1-Grasim Industries securing registration in Class 9 on 14/02/1990 for trademark 'BIRLA WHITE' with its user dated 30/04/1988 and the certificate granted on 14/08/1996 alongwith the Directors Report of Indian Rayon Industries Ltd., which has a reference to its business in Cement Division, Insulator Division apart from Cotton and Synthetic Division, with specific reference to the new project of White Cement, Grey Cement Expansion, Ceramics etc., the report being of 10/08/1987 accompanied with the balance sheets.

20. The Interim Application has specifically pleaded thus :-

“4. With regard to the contents of clauses (c) mentioned in para 2 above, the Appellants submit that while instituting the present suit, certain documents could not be placed on the Court's records before the Ld. Single Judge as they were not found by the Appellants despite exercise of due diligence and/or were not within the knowledge of the Appellants. The Appellants submit that pursuant to the order being passed, they have undertaken a detailed exercise of tracing such old records from their archives, warehouses including looking into archives of the newspaper agencies, taking inspections and have been able to collate such evidence which is materially relevant to the present proceedings. The Appellants are desirous that such evidence collected by them be placed and brought on record before this Hon'ble Court as additional evidence of the Appellants and therefore most humbly seeks permission of this Hon'ble Court, under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to be permitted to produce the documents before this Hon'ble Court at the appellate stage .

5. The Appellants submit that such evidence is relevant to the facts of the present case and the same could not be found earlier despite exercise of due diligence on the part of the Appellants, who were unaware of the whereabouts of such documents. The Appellants submit that the aforementioned documents have a bearing and are materially relevant to the Appellants' case and this Hon'ble Court in exercise of its inherent powers can take such documents on record as additional evidence in the present proceedings. Such documents are also necessary to meet with the ends of justice for which the Respondents can be adequately compensated.”



In paragraph 26, the Application also proceed to state that the additional evidence could not be produced before the trial court despite exercise of due diligence, but the documents are utmost necessary so as to enable the Appellants to effectively plead its case before the Court.

21. Mr.Kadam has vehemently opposed the Application by submitting that such an application shall only be entertained by the Appellate Court, when the contingencies set out in the said provision are made out, but not otherwise.

He would place reliance upon the decision of the Full Bench of this Court in the case of *Uto Nederland B.V. & Anr. Vs. Tilaknagar Industries Ltd.*¹ where the principle in *Wander Ltd.* (supra.) has been reiterated when the issue came to be determined as to whether the order passed on an application for temporary injunction is *prima facie* adjudication and not an exercise of discretion and secondly, as regards the scope of appeal from an order of the trial Court on an application of injunction. Mr.Kadam has also focused his attention on the conduct of the Plaintiffs, as he has invited our attention to the joint statement of truth filed by the General Manager of Plaintiff No.1, the suit being filed as Commercial I.P. Suit, warranting a joint statement of truth under the first scheme

1 2025 SCC OnLine Bom 6140



Order VI Rule 15A, where a following statement is made in support of the plaint.

“We say that, all the documents in our power, possession, control or custody pertaining to the facts and circumstances of the proceedings initiated by us, have been disclosed and/or copies thereof annexed with the Plaint, and we do not have any other documents in our power, possession, control or custody.”

In light of this statement, Mr.Kadam has urged that the Plaintiffs are not entitled for permission to produce the documents. He would place reliance upon the decision of Privy Council in the case of *Parsotim Thakur & Ors. Vs. Lal Mohar Thakur & Ors.* revolving around Order XLI Rule 27 and in specific, he would point out to the relevant observation where it is held that the provision of Section 107 , Civil Procedure Code, as elucidated by O. 41 R. 27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of Appeal. Reliance is also placed upon the decision of the Apex Court in *Arjan Singh alias Puran Vs. Kartar Singh & Ors.*², where the Three Judge Bench of the Apex Court has held that where additional evidence is allowed to be adduced contrary to the principles governing reception of such evidence, it would amount to improper exercise of discretion and additional evidence so brought on record shall be ignored.

² 1951 Supreme Court Cases 178

As held by the Apex Court, Mr.Kadam would rely upon the proposition that the discretion to receive and admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in Order 41 Rule 27 of CPC. According to him, under Order 41 Rule 27 it is the Appellate Court, which must require the evidence to enable it to pronounce the judgment and this is the true test, to be applied by the Appellate Court, is to determine, whether it is able to pronounce the judgment on the material before it without taking into consideration the additional evidence sought to be adduced.

22. At this stage, in order to consider whether the Application seeking production of additional evidence deserve consideration, we deem it appropriate to reproduce Order 41 Rule 27 of CPC, which reads thus :-

“27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or



for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

23. Interim Application No.2849 of 2026 filed by the Applicants(Plaintiffs) pleaded that, while instituting the Suit the relevant documents in form of scheme of arrangement between the Plaintiff No.1 and Indian Rayon & Industries Ltd. alongwith the Printout Status Report relating to the trademark registration ‘BIRLA WHITE’ as well as the copies of the annual reports of the Appellants’ predecessor and brochure issued by Birla Management Corporation Ltd., which the Plaintiffs wanted to be placed on record could not be brought on record as they were not with the Plaintiffs and despite exercise of due diligence not within their knowledge.

After the impugned order was passed, the Applicants undertook detail search from their archives, warehouses including archives of the newspaper agencies, taking inspections and was able to collate such evidence which is materially relevant and that is why the permission is sought to place the evidence on record.

24. For deciding the Application, the question for consideration before us is, whether despite exercise of due

diligence, the documents could not be produced and whether they have any bearing or relevance to the Appellants' case.

According to Mr.Kadam, filing of the Application is nothing but an attempt to fill in the lacuna, which was clearly plucked by the learned Single Judge, when she refused to grant injunction in favour of the Plaintiffs.

25. The scope of Order XLI Rule 27 also fell for consideration in *Colgate Palmolive Company & Anr.* (supra), when the question that arose for determination was, whether the appellants may be permitted to tender additional evidence as sought for. By relying upon the decision in the case of *Mahavir Singh Vs. Naresh Chandra*³, the said provision was held to be in form of exception to the general rule and the said provision read with Section 107(d), which permitted additional evidence to be taken, was held to be only permitted when the conditions and limitations set out in the said rule are found to exist. It is held that the Court is not bound by the circumstances mentioned under the rule to permit additional evidence and the parties are not entitled, as of right, to the admission of such evidence and the matter is definitely in the discretion of the Court, which is expected to be exercised judiciously and sparingly. The Privy Council in *Kessowji Issur Vs. Great*

³ (2001) 1 SCC 309



Indian Peninsula Rly.Co., highlighted the principle flowing from the said provision in the following words :-

“In the third circumstance, the appellate Court may require any document to be produced or any witness to be examined to enable it to pronounce the judgment, or for any other substantial cause. The expression "to enable it to pronounce judgment" has been the subject of several decisions including *Syed Abdul Khader v. Rami Reddy* wherein it was held that when the appellate Court finds itself unable to pronounce judgment owing to a lacuna or defect in the evidence as it stands, it may admit additional evidence. The ability to pronounce a judgment is to be understood as the ability to pronounce a judgment satisfactory to the mind of the Court delivering it. It is only a lacuna in the evidence that will empower the Court to admit additional evidence (*See : Municipal Corpn of Greater Bombay v. Lala Pancham*). But a mere difficulty in coming to a decision is not sufficient for admission of evidence under this Rule. The words "or for any other substantial cause" must be read with the word "requires", which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule would apply...”

In paragraph 11, by applying the principle of limited interference in exercise of the power of review, the Court observed thus :-

“11.Whether the learned motion Judge was right or not in passing the impugned order shall have to be seen in the light of the material placed before the learned motion Judge by the parties. With the limited jurisdiction that the appeal Court has in the matter arising out of an application for temporary injunction, ordinarily the appeal Court shall confine the consideration of the matter to the pleadings and material that were under consideration before the motion Judge. You cannot find fault with the discretionary order of the learned Judge by relying upon the material placed in appeal which was not under consideration at the time of consideration of application for temporary injunction and interfere with the discretionary order. The appeal Court. in an appeal from discretionary order does not generally travel beyond the record of the lower Court.”



26. In *K. Venkataramiah Vs. A. Seetharama Reddy & Ors.*⁴, a reference is made to Section 107, which empowered the Appellate Court “to take additional evidence or to require such evidence to be taken”, “subject to such conditions and limitations as may be prescribed” and Rule 27 of Order 41 prescribe the conditions and limitations.

The conditions for exercise of this power were formulated by the Apex Court as below :-

“The rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced. One class is where the Court appealed from has refused to admit evidence which ought to have been admitted. The other class is where the appellate court requires such additional evidence for itself- either to enable it to pronounce judgment or for any other substantial cause. The second class of the rule requires that when additional evidence is allowed to be produced by an appellate court, the Court shall record the reason for its admission.

When the contention was raised that the High Court, which allowed the production of evidence for its own requirement, had failed to apply their mind and did not record any reasons for admission of additional evidence, the importance of the provision for recording of reasons for admission of additional evidence was noted though the contention that omission to record reasons vitiated the admission of the evidence. The

4 1963 SCC OnLine SC 216

object of the provision was highlighted by Their Lordships in the following words :-

“Clearly, the object of the provision is to keep a clear record of what weighed with the appellate court in allowing the additional evidence to be produced-whether this was done on the ground (i) that the court appealed from had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the appeal or (iii) it allowed this for any other substantial cause. Where a further appeal lies from the decision of the appellate court such recording of the reasons is necessary and useful also to the Court of further appeal for deciding whether the discretion under the rule has been judicially exercised by the court below. The omission to record the reason must therefore be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory.....It may be mentioned that as early as 1885 when considering a similar provision in the corresponding section of the Code of 1882 viz. Section 586, the High Court of Calcutta held that this provision for recording reasons is merely directory and not imperative Gopal Singh v. Jhakri Rai. We are aware of no case in which the correctness of this view has been doubted. It is worth noticing that when the 1908 Code was framed and Order 41 Rule 27 took the place of the old Section 568, the legislature was content to leave the provision as it was and did not think it necessary to say anything to make the requirement of recording reasons imperative. It is true that the word "shall" is used in Rule 27 (2); but that by itself does not make it mandatory. We are therefore of opinion that the omission of the High Court to record reasons for allowing additional evidence does not vitiate such admission.”

27. In light of the observations of the High Court, it was concluded that it was not possible to say that the High Court made order for admission of additional evidence without applying its mind and rather when the Appellate Court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment”, but also for “any other substantial cause”. In no uncertain words, the Apex Court expressed its verdict in the following words :-



“16.....There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence “be enable it to pronounce judgment”, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence “for any other substantial cause” under Rule 27(1)(b) of the Code.

Reliance was placed upon the observations in *Parsotim Thakur* (supra), where the Privy Council proceeded to point out, “*it may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands.*”

28. We must examine the Application before us seeking production of additional evidence on record in the background facts placed before us, as it is worthy to note that the Application seeking additional evidence when filed, the Court shall take up the same at the time of hearing of Appeal on merits, so as to find out whether the documents and/or the evidence sought to be adduced has any relevance or bearing to the issued involved. If the Court arrives at the conclusion that the Application deserve to be allowed, to test the validity of these documents, it is permissible for the Appellate Court to remand the matter to the trial Court for its consideration. In light of the aforesaid situation emerging from the law before

us, when we examined the impugned order in the light of the rival contentions placed before us, based on the pleadings, in the suit as well as the pleadings in the Interim Application, with a specific statement being made that all the statements in the plaint are to be considered as pleadings in the Interim Application, we had carefully perused the pleadings and, thereafter, analysed the reasoning of the learned Judge in the impugned order.

29. Grasim claims to be a flagship company of Aditya Birla Group and has pleaded that well-known famous Birla family owns and administers the said Group and other Groups of Birla family. Pleading that Birla family had engaged in a variety of business activities with their respective 'BIRLA' and 'BIRLA' formative trade-marks, the Plaintiffs pleaded their case by referring to the business conducted.

The plaint has categorically provide the details of Plaintiff No.1, which was incorporated as "The Gwalior Rayon Silk Mfg. (Wvg.) Company Ltd.", a textile manufacturer whose trading name was changed to that of 'Grasim Industries Ltd.' in 1986. In para 9, the Plaintiffs pleaded their case that Aditya Birla Group comprises of various prominent manufacturing and/or service providing companies, including



Plaintiff Nos.1 and 2 and several other companies and both Plaintiff Nos.1 and 2 are listed on the Bombay Stock Exchange and National Stock Exchange alongwith Aditya Birla Capital Ltd., Aditya Birla Sun Life Ltd., Aditya Birla Fashion & Retail Ltd. etc.

We, *prima facie*, find substance in the submissions of the learned senior counsel Mr.Khambata that a statement was clearly made in the plaint that they were under the control of Aditya Birla Group alongwith several other companies listed on the Stock Exchange. Highlighting the reputation which Aditya Birla Group has achieved in several industries and market segments, in paragraph 14, the Plaintiffs have highlighted their association with BIRLA trademark by stating that the origin of the trade mark 'BIRLA' dates back to the 19th century when Seth Shiv Narayan Birla started trading in cotton and presently Kumar Mangalam Birla is the current Chairman of the Aditya Birla Group and the categorical statement is made in para 14, which in our opinion could not create any doubt about the Plaintiffs not establishing its connect with Birlas, as we find the following pleading which has probably escaped the attention of the learned Single Judge.



“Mr.Kumar Mangalam Birla chairs the Boards of all major Aditya Birla Group companies in India and globally, including the Plaintiffs.”

Another pertinent pleading and of much significance is to be found in paragraph 15, when the Plaintiffs pleaded thus :-

“15. The Plaintiffs state and submit that on account of the internal business arrangements of the groups of companies which fall under the businesses of the Birla Family, only such groups of companies owned and/or managed by the Birla Family are entitled to the adoption and/or use of the well-known trade mark BIRLA either stand-alone or in conjunction with other marks. One such marks is the ADITYA BIRLA GROUP word mark and logo. The said marks were adopted in the year 1996 and have been in Multiple classes. The said marks have been openly, extensively and continuously used by the Plaintiffs and other group companies. The use of this mark comes also in conjunction with the other Plaintiff BIRLA marks. The Plaintiffs craves leave to refer to and rely upon copies and/or details of any pending trade-mark applications, and/or trademark registration certificates obtained in relation trade marks hereinabove, when produced.”

30. Plaintiff No.1 took its case ahead by stating that in order to accord statutory protection and to prevent misappropriation, dilution and misuse of the Plaintiffs BIRLA trade-marks, Plaintiff No.1 by themselves or through their predecessors in right, title and interest have secured registrations for a number of ‘BIRLA’ trademarks and the list thereof was exhibited at Exh.B-1 alongwith Exh.B—with reference to the report of Plaintiff No.1 as well as Plaintiff No.2, with a specific averment to the effect that the Plaintiffs have been openly, continuously and extensively using the Plaintiffs BIRLA trade marks, including the ‘ADITYA BIRLA

GROUP' wordmark extensively in respect of its goods and services.

Exhibit A to the plaint is in form of details of the trademark registration of Plaintiffs BIRLA trademarks and the first 14 items except item No.2 is the registration in Class 19, the goods being cement/slag cements, white wall care putty etc. The words 'each of the trademarks' against the said goods include the word 'BIRLA'. In no uncertain words, the Plaintiffs, in the plaint as well as in the Interim Application, pleaded their connect with BIRLA Group, but by way of defence, Defendant No.1 adopted a stand that use of the mark 'BIRLA' and 'BIRLA TMT' is highly fanciful, and inherently distinctive coined composite word mark, which, when taken as a whole, is inherently distinctive of Defendant No.1's products alone. It is the case of the Defendant that the relevant class of consumers of Defendant No.1's products only associate with the brand name 'BIRLA TMT' qua its products such as TMT Bar, MS Square, MS flat, MS Round and Angle and Channel etc. However, in paragraph 6.6 of the reply of the Defendant No.1, the claim in the Interim Application is opposed by stating that the Applicants were wrongfully trying to claim a monopoly over the word 'BIRLA', which is in fact a word of general sense

and meaning being 'scarce, rare, uncommon' and since Defendant No.1 wanted to indicate the rare character of its goods, being of superior strength, the word 'BIRLA' was adopted and Defendant No.1 is now the proprietor of the registered trademark in Class 6, where the Plaintiffs do not enjoy any registration.

31. When we perused the pleadings in the Application and the response of the Defendants through their reply affidavit, the pleadings in para 4 to the Application where the Plaintiff No.1 had pleaded about it being a flagship company of global conglomerate of Aditya Birla Group, response of the Defendants is want of knowledge. In para 20.16 of the reply affidavit, it is suggested that no case for injunction is made out as Defendant No.1's mark 'BIRLA' and 'BIRLA TMT' and the Applicants mark, when compared as a whole, will not cause any confusion/deception, since they are different and distinguishable to each other's mark and are neither identical nor deceptively similar and there is also a clear and stark difference in services/goods being offered by them and that there is no overlap in respect of the same. In para 20.17, there is specific denial to the claim of the Plaintiffs that the adoption of Defendant No.1's mark is to come close to the Applicants



mark, by reiterating that the services offered by the Applicants and Defendant No.1 are under different classes. It is also sought to be suggested that the Applicants and/or the Birla family companies were aware and had knowledge about the existence of Defendant No.1 and its mark and despite this, they knowingly failed/neglected to take any action against Defendant No.1 and rather having stood by for a substantial period, have encouraged Defendant No.1 to carry on its business in the manner to acquire reputation and to expend money and after lapse of time, their business cannot be stopped.

32. Reading of the reply affidavit filed by the Defendants and the stand adopted by them qua the specific pleadings by the Plaintiffs, we find that the claim of the Plaintiffs in para 4 of the plaint about its relationship with Aditya Birla Group, there is simply denial for want of knowledge, which may not be accepted as denial.

33. According to Mr.Kadam, if the Plaintiffs have filed a suit as a Commercial Suit, all those necessary documents relied upon by them ought to have been the part of the plaint. According to him, the requirement is stricter in Commercial Suit in the wake of the Commercial Courts Act, 2015, but all the while the plaint only project that the Plaintiffs will produce



the documents as and when required and the pleadings, therefore, require substantiation by necessary documents, but the Plaintiffs have miserably failed to do so. We have no doubt in our mind that the one who asserts or claims existence of a fact, must prove the same and the burden of proof is definitely on the plaintiff to prove his case. Mr.Kadam has argued that if Plaintiff No.1 has claimed that it got the title from Seth Shiv Narayan Birla or whomsoever from Birla Family, it must prove the same.

We find this to be a misreading of the claim in the plaint and this is what, according to us, has been patently ignored in the impugned order, as the learned Single Judge has refused to rely on the Plaintiffs' association with Birla Group of Companies giving exclusive right only to those companies, which form part of the Birla Group to use the trademark, containing the word 'BIRLA' and to institute action for infringement of its well-known BIRLA mark, The learned Judge refer to the pleadings of the Plaintiff No.1 about it being flagship company and that on account of the internal arrangement between by Birla Group of Companies which gave the Plaintiffs exclusive right to use 'BIRLA' trademark and in the words of the learned Single Judge, "*the gist of the*



pleadings is that the use by a third party, outside the Birla group of companies, of the mark using the word Birla infringes upon the exclusive right of the Birla group of companies. Considering the manner in which the plaint has been framed, the basic requirement to be prima facie established by the Plaintiffs is to demonstrate its association with the Birla group of companies, even accepting the exclusive right of Birla group. The Plaintiffs are independent corporate entities who have initiated infringement action on the strength of exclusivity to Birla trade mark, which right has to be prima facie demonstrated.” The learned Judge has further recorded that, *“the Plaintiffs appears to be harboring a misconception that reference to the well known name of Birla family is sufficient to accept the exclusive right of Plaintiffs to use the “BIRLA” trade marks”*. It is also recorded in the impugned order that the plaint pleads that Plaintiff No.1 is a limited company incorporated in the year 1947 in textile business and there is not even a bare assertion of user of the “BIRLA” trade mark by the Plaintiff No.1 in the year 1947 for marketing its textiles. The claim of the Aditya Birla Group being the user of “BIRLA” trade mark since the year 1996 is not substantiated by any document.

It is further noted that there is no averment in the plaint to justify the connection between the domain name and Ultratech Cement Ltd. and the pleadings *per se* cannot confer any benefits associated with the Birla trade marks upon the Plaintiffs and all reference to Birla group is unsubstantiated, that leaves the Plaintiffs with the claim of being a registered proprietor of its trade mark which has instituted an action for infringement of its registered trade mark. Excluding any association with the Birla group, according to the learned Single Judge, there is no much difference between the Plaintiff No.1 and the Defendant No.1, which are both registered proprietors of their respective trade marks containing the word Birla.

The learned Judge further proceeded to note that the registered trade mark 'BIRLA WHITE' was registered by Indian Rayon and Industries Limited in the year 1999 with the user claim of 1988 and the registration certificates in respect of the trade mark 'BIRLA WHITE' under Registration No.524399 and 524400 indicate that registration is in the name of Indian Rayon and Industries Limited and though an attempt is made that there is demerger between Indian Rayon and Industries Ltd. and Plaintiff No.1, the scheme of

arrangement is not placed on record. Thus, an inference is drawn by the learned Single Judge that no a single document is produced on record to demonstrate user of the trademark by Indian Rayon and Industries Ltd. since the year 1988 and that there is not a single registration of the stand alone word Birla in registration marks of Plaintiffs in Class 19.

34. Rule 27 of Order XLI relating to Appeals from original decrees is couched in a negative language by providing that Parties to an Appeal shall not be entitled to produce additional evidence, either oral or documentary before the Appellate Court. It is, however, permissible to bring such evidence only in the contingencies set out therein; being the Court from whose decree the Appeal is preferred has refused to admit evidence which ought to have been admitted or a Party establish that despite exercise of due diligence such evidence was not within his knowledge and even after exercise of due diligence could not be produced at the time when the Decree which is appealed was passed.

One more contingency stipulated in the provision is, when the Appellate Court itself require any document to be produced or any witness to be examined to enable it to pronounce Judgment or for any other substantial cause and in

such case the Court may allow such evidence or document to be produced or witness to be examined.

Whenever additional evidence is allowed to be produced it is imperative for the Appellate Court to record the reasons for its admission. In *K. Venkataramiah* (supra), the Apex Court, laid its emphasize on sub-clause (2) of Rule 27 as regards recording of reasons for admitting additional evidence and the intention of the provision is highlighted.

35. In *Union of India Vs. K.V. Lakshman & Ors.*⁵ the scope of Clause (1)(aa) of Rule 27 Order XLI came up for consideration and the Court declared that the additional evidence may be permitted if the Party seeking to file it satisfy the Court with justiciable reason for its filing and is able to establish relevance of such evidence for deciding right of Parties. But if the application for filing additional evidence is allowed, then the Appellate Court is obliged to afford opportunity to the opposite Party to file additional evidence by way of rebuttal.

In Para 36 the Apex Court held that :-

“36. Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject-matter of the lis, the court should allow the party to file such additional evidence. After all, the court has to do substantial justice to the

5 (2016) 13 SCC 124

parties. Merely because the court allowed one party to file additional evidence in appeal would not by itself mean that the court has also decided the entire case in its favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal.”

36. In case of *Union of India Vs. Ibrahim Uddin & Anr.*⁶, by placing reliance upon the decision in *K. Venkataramiah* (supra) and *Municipal Corporation of Greater Bombay Vs. Lala Pancham & Ors.*⁷ it is categorically held that the Parties are not entitled, as of right to the admission of evidence at appellate stage and the provision do not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory Judgment and the matter is entirely within the discretion of the Court though by way of caution it is expressed that the power shall be sparingly used and ordinarily the Appellate Court shall not allow the evidence to be adduced so as to enable the Party to raise a new point in appeal, nor is a party on whom the onus of proving any point lies fail to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can in such a case pronounce Judgment against him.

In short, at the stage of an Appeal, allowing a document to be produced or a witness to be examined is only permissible

⁶ (2012) 8 SCC 148

⁷ AIR 1965 SC 1008

when the Court find it necessary for enabling it to pronounce Judgment, but this do not entitle the Appellate Court to let in fresh evidence at appellate stage merely for the purpose of pronouncing Judgment in a particular way i.e. evidence will not be allowed for removing a lacunae which has caused the Party and now such lacunae is tried to be filled in.

The words 'substantial cause' in the provision also received interpretation when in Para 40 and 41 the Court recorded thus :-

“40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a “substantial cause” within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.”

But whenever the Court permit the additional evidence to be led in form of a document or oral evidence, it shall record its reason for doing so as reason is the heartbeat of every conclusion and it substitute subjectivity to objectivity.

37. Another question that arise for consideration is at what stage the Application under Order XLI Rule 27 is to be

considered at the time of hearing the Appeal on merits and the true test is whether the Appellate Court is able to pronounce the Judgment on the material before it without taking into consideration the additional evidence sought to be adduced and such occasion would arise only if on examining the evidence as it stands the Court comes to a conclusion that some inherent lacunae or defect becomes apparent to the Court, as the provision is not intended to assist an unsuccessful litigant to patch up the weak parts of his case and fill up the omissions or the lacunae when he file an Appeal. It is, therefore, expected that when an Application is filed for taking additional evidence on record before the Appellate Court, it is only when the Court on appreciating the reasoning adopted in the impugned Order/Judgment and on appreciation of the evidence is of the view that the additional evidence must be brought on record so as to enable it to pronounce the Judgment or for doing substantial justice.

In *Parsotim Thakur* (supra), the Privy Council expounded the principle underlying Order XLI Rule 27 and with reference to Clause (1)(b) held that it is only when the Appellate Court requires (i.e. finds it needful) that additional evidence can be admitted and the legitimate occasion for the



exercise of the discretion is not whenever before the Appeal is heard a Party applies to adduce fresh evidence, but when on examining the evidence as it stands some inherent lacunae or defect becomes apparent. Though the defect may be pointed out by a Party or that Party may move the Court to supply the defect, but the necessary requirement of exercise of the power is that of the Court, who is of the opinion that the additional evidence is necessary to be brought on record and this could be done upon appreciation of the evidence by the Court. In no uncertain words, the Privy Council expressed thus :-

“If the Respondents desired to give evidence as to the thumb-
impression they had ample opportunity to do so in the trial Court. The provisions of Section 107, Civil Procedure Code, as elucidated by O. 41, R. 27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of Appeal.....Under Cl. (1)(b) it is only where the appellate Court “requires”, the additional evidence can be admitted.”

In *Arjan Singh alias Puran* (supra) it is ruled that the discretion to admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in Order XLI Rule 27 and if additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion and the additional evidence brought on record will have to be ignored. Under Order XLI Rule 27 it is

the Appellate Court that must require the evidence to enable it to pronounce the Judgment and the legitimate occasion for application of the rule was set out to be, on examining the evidence as it stands, some inherent lacunae or defect becomes apparent, not where discovery is made outside the Court of fresh evidence and the Application is made to import it.

38. From the various precedents cited before us, which had focused upon the scope of the particular provision in form of production of additional evidence by the Appellate court and fulcrum of all the pronouncements seeking speak in one voice, 'that the said provision does not entitle the appellate court to laid any fresh evidence, but the Court will exercise its discretion if in its view any document to be produced or any witness to be examined is to be examined, to enable it to pronounce Judgment or for any other substantial cause.

In short, despite the power being conferred on the Appellate Court to permit the evidence to be brought before it which was not produced or adduced at the time of trial, the discretion vested in the Court must be limited to those cases where it found it necessary to secure such evidence which would enable it to pronounce the Judgment and in no way it is

to be construed as a provision to be invoked by a Party to fill up the lacunae in his case.

39. Once we are clear on the principle flowing from the aforesaid, when we focus our attention on the Application filed before us, with reference to the documents which are sought to be brought on record and this application is to be appreciated by us in the factual background.

In this regard, it is to be noted that if the Plaintiffs have associated their claim by pleading a statement of facts, unless and until there is a denial, the learned Judge could not have ignored the said pleading merely on the ground that there is no proof produced alongwith the plaint. The Plaintiffs alongwith the plaint have annexed several documents, which included their registrations and it is to be noted that the Plaintiffs have appended a list of 112 registered trade marks with the use of the word 'BIRLA', with a pleading that on account of the internal arrangement worked out with Aditya Birla Group, they were entitled to use the said mark and in fact have obtained registration in respect of 112 goods/services, the oldest one to be found registered on 14/12/1990 based on the user claim from 30/04/1988. When there is no denial of the claim of the Plaintiffs about their relationship with the

Aditya Birla Group and, therefore, their entitlement to use the mark 'BIRLA WHITE/BIRLA' in their products, we are of the view that the documents sought to be produced on record by way of additional evidence would assist this Court in appreciating the pleadings of the Plaintiffs as well as the contest raised to the same.

40. In this background, the Application for bringing on record the additional evidence and this comprise of a document in form of scheme of arrangement between Indian Rayon and Industries Ltd. and Grasim Industries Ltd. i.e. Plaintiff No.1. The said scheme transferred the business of the transferor to the transferee company i.e. Grasim and transferred business in the scheme is the business of Grey Cement and White Cement Undertaking, including other plants of the transferor company as a going concern and included white cement manufacturing unit in Rajasthan (known as 'Birla White') and grinding unit of 1.2 million tpa capacity in the State of Maharashtra (known as 'Birla Super Cement Works').

The aforesaid document sought to be produced in form of additional evidence is only sufficient to establish the business of Indian Rayon and Industries Ltd. of Grey Cement and White

Cement was transferred to Grasim Industries Ltd. As regards the trade mark 'BIRLA WHITE', in Class 19 presently registered in the name of Plaintiff No.1-Grasim Industries Ltd., the trade mark applied for is 'BIRLA WHITE', the application being preferred on 14/02/1990 and the registration being granted on 14/08/1996.

The Application is accompanied with history/PR details, which has a reference to the scheme of arrangement sanctioned by the High Court of Madhya Pradesh under the Company Petition No.39 and 33 of 1988, order dated 23/02/1999. The order of the Madhya Pradesh High Court, which is annexed to the Application, is also perused by us. It is an order passed on the Petition filed by Grasim Industries Ltd. under Section 394 of the Companies Act, 1956 with a prayer that the scheme of arrangement of the transferred business of Indian Rayon and Industries Ltd. with the transferee company be sanctioned from 01/09/1998. The said scheme of arrangement also contain no reference to Aditya Birla Group. The other documents, which are annexed which are conferred upon the Plaintiff No.1 as well as Plaintiff No.2 as a unit of BIRLA WHITE only establish that the Plaintiffs are using the mark 'BIRLA' and it is a well-known mark.

In our view, the relevance of the documents in the wake of the pleadings in the plaint and the Interim Application, was not warranted at that stage, as we find that the contingency for production of the documents has arisen in the wake of the finding in the impugned order that the Plaintiff No.1 has failed to establish its relationship with Aditya Birla Group by any documentary evidence.

In our view, these documents are necessary to be brought on record to affirm the claim, which was already set out in the plaint. In order to do substantial justice, we deem it appropriate to allow the Application, but no way we are pronouncing upon the admissibility of documents and on the Application being allowed, we permit the Respondents to file an additional affidavit, dealing with the said documents within a period of one week from today.

Interim Application is allowed in the aforesaid terms.

41. The Commercial Appeal is directed to be listed for further consideration on **23rd April, 2026** on Supplementary Board.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)