* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on*: 25.02.2026*
Judgment delivered on*: 22.05.2026*
Judgment uploaded on*: As per Digital Signature*

\+ **FAO(OS) (COMM) 23/2026 CM APPL. 9031/2026**

DABUR INDIA LIMITED ..... APPELLANT

versus

EMAMI LIMITED ..... RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr. Sandeep Sethi, Sr. Advocate with Ms. Kripa Pandit, Mr. R. Jawahar Lal, Mr. Anirudh Bakhru, Mr. Prabhu Tandon, Mr. Christopher Thomas, Ms. Meghna Kumar, Mr. Krisna Gambhir, Ms. Shreya Sethi and Ms. Aayomi Sharma, Advocates.

For the Respondent : Mr. Abhimanyu Bhandari, Sr. Advocate with Ms. Roohe Hina Dua, Mr. Harshit Khanduja, Ms. Shrutika Garg and Mr. Piyush Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed by the petitioner with the following prayers:

"a. Allow the present appeal and set aside the Impugned

Judgment dated 31.01.2026 in I.A. No. 14557 of 2023 passed by the Ld. Single Judge in the Civil Commercial Suit bearing 532 of 2023 titled as Emami Limited vs Dabur India Limited;

b. Grant a Stay against the operation of the Impugned Judgment dated 31.01.2026 in I.A. No. 14557 of 2023 passed by the Ld. Single Judge in the Civil Commercial Suit bearing 532 of 2023 titled as Emami Limited vs Dabur India Limited, during the pendency of the present Appeal;"

2. This appeal impugns the judgment dated 31.01.2026 in I.A. No.14557/2023 whereby the learned Single Judge had allowed the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) in favour of the respondent / plaintiff.

3. The impugned judgment notes that vide order dated 09.08.2023, the appellant/defendant was restrained from selling its product "*COOL KING THANDA TAEL*" in any manner in the Trade Dress or any similar Trade Dress to the product of the respondent / plaintiff being Navratna Oil as below:-

4. For the purpose of clarity, we are reproducing enlarged labels (procured from web) of the impugned products to highlight the features of the trade dress:-

(relevant portion has been extracted below for reference)

5. The appellant/defendant preferred an appeal against the order dated 09.08.2023 and a Coordinate Bench of this Court vide order dated 21.08.2023 passed in FAO(OS)(COMM.) 171/2023 set aside the initial order dated 09.10.2023 on the limited ground that in the circumstances of the present case, the defendant should have been given an opportunity to file the reply to the said application before adjudication on the aspect of interim stay. It is a conceded case as can be seen from the impugned order that the respondent/plaintiff in terms of order dated 29.02.2024 had limited its submissions on the aspect of passing off at the stage of seeking interim relief.

FACTUAL BACKGROUND

6. The facts as noted from the record are that the respondent/plaintiff established their business in the year 1974 under the flagship company of the Emami Group of Companies and is engaged in manufacturing and marketing of health, beauty, personal care and other allied products and claims to be one of the leading and fastest growing personal healthcare brands in India. The respondent/plaintiff commenced manufacturing of ayurvedic medicines and other allied medicinal preparations in India in the year 1982 and has acquired tremendous goodwill both within and outside the country. According to respondent/plaintiff, their product Navratna Oil was launched in January, 1989 with the catch phrase "Thanda Thanda Cool Cool" and the respondent/plaintiff claims to be in continuous and uninterrupted use of the phrase as well as the product ever since. It is their case that they are the undisputed leader in the therapeutic cooling oil segment providing multi-purpose benefits to satisfy their ever growing consumer base. It is averred that their market share comprises of 66% as of 2022 i.e., in the cooling oil segment. They have obtained registrations for the following marks with the registration details as provided below:-

S. No.	TRADEMARK	REG. NO.	CLASS	STATUS	DATE OF REGISTRATION
1.	NAVRATNA (LABEL)	785156	03	REGISTERED	06.01.1998
2.	NAVRATNA (LABEL)	785157	05	REGISTERED	06.01.1998
3.	NAVRATNA OIL (RED TRADE DRESS DEVICE)	1068166	05	REGISTERED	20.12.2001
4.	THANDA THANDA COOL COOL (DEVICE)	1305653	03	REGISTERED	27.08.2004
5.	THANDA	1305654	05	REGISTERED	27.08.2004

	THANDA COOL COOL (DEVICE)				
6.	NAVRATNA OIL DEV (RED TRADE DRESS DEVICE)	167705	05	REGISTERED	16.04.2008
7.	HALKA HALKA COOL COOL	1802168	03	REGISTERED	01.04.2009
8.	THANDA THANDA COOL COOL	2146193	03	REGISTERED	18.05.2011
9.	THANDA THANDA COOL COOL	2146194	05	REGISTERED	18.05.2011
10.	THANDA THANDA	2146195	03	REGISTERED	18.05.2011
11.	THANDA THANDA	2146196	05	REGISTERED	18.05.2011
12.	COOL COOL	2146197	03	REGISTERED	18.05.2011
13.	ZYADA THANDA ZYADA COOL	2146198	05	REGISTERED	18.05.2011
14.	ZYADA THANDA ZYADA COOL	2259420	05	REGISTERED	30.12.2011
15.	ZYADA THANDA ZYADA COOL	2259421	05	REGISTERED	30.12.2011
16.	NAVRATNA (LABEL)	3079175	03	REGISTERED	14.10.2015

7. The respondent/plaintiff claimed that their product is sold in bottles, which have been registered as designs under the Designs Act, 2000. The details of which are as under:-

S. No.	TITLE	REG. NO.	STATUS	DATE OF REGISTRATION	IMAGE
1.	NAVRATNA OIL (BOTTLE DESIGN)	253389	REGISTERED	23.04.2013	

2.	NAVRATNA OIL (BOTTLE DESIGN)	279325	REGISTERED	11.01.2016	

8. Further, they also claimed copyright over the label of the product of the respondent/plaintiff as under:-

S. NO.	TITLE	REG. NO.	STATUS	DATE OF REGISTRATION
1.	HIMANI NAVRATNA OIL (LABEL)	A-58209/2000	REGISTERED	10.01.2001
2.	HIMANI NAVRATNA TEL (LABEL)	A-67884/2004	REGISTERED	01.07.2004
3.	HIMANI NAVRATNA OIL (WITH DEVICE OF SAINT)	A-86299/2009	REGISTERED	23.07.2009

9. It is their case that they have spent a substantial amount of money in advertising through all available media, i.e. newspaper, journals, television, etc. They have also promoted their products continuously since 1989-90. They have drawn our attention to their sales turn over from the financial year 1990-91 to 2021-22 with the sales in the last financial year 2021-22 being Rs.58,562.25 lacs.

10. According to the respondent/plaintiff, they use a distinctive red packaging to sell their product with having made minor modifications in the packaging which keep changing with times, however, the distinct trade dress of the product which is also red in colour has remained the same throughout. The image of the product of the respondent/plaintiff is reproduced as under:

11. It is their claim that the respondent/plaintiff have been selling their product continuously and extensively over 30 years across India along with the set trade dress and under their trade mark. Due to which the marks of the respondent/plaintiff have acquired immense goodwill and reputation.

12. According to the respondent/plaintiff, they came to learn of the defendant sometime in June, 2023 having launched a similar product which was sold in bottles similar to that of the respondent/plaintiff. The product of the appellant/defendant is visually, structurally and phonetically similar to the product of the respondent/plaintiff. It is their claim that the same is deceptively similar as the defendant/appellant have willfully and with *mala fide* copied elements from the product of the respondent/plaintiff and have passed off their products as that of the respondent/plaintiff. It is alleged that the defendant/appellant have also adopted the marks 'THANDA TAEL', 'COOL KING', 'COOL OIL', 'COOL KING THANDA TAEL' and 'NAYA DABUR COOL KING THANDA TAEL' as being deceptively similar to the marks of the respondent/plaintiff. It has been alleged by them

that since the marks are deceptively similar, it has led the consumers to believe that there is an association between the products of the respondent/plaintiff and the appellant/defendant which does not exist.

13. The products of the respondent/plaintiff and those of the defendant/ appellant can be seen as under:

Respondent/plaintiff's product	Appellant/defendant's product
	
	

14. It is the case of the respondent/plaintiff that even the sachets of the product of the respondent/plaintiff have been slavishly imitated by the appellant/defendant and that the sachets and the bottles of the appellant's product bear the terms Peace-'Raahat' (राहत), Comfort-'Aaram' (आराम) and Freshness-'Tarotaazgi' (तरोताज़गी) in Hindi. The sachets of both the parties are as under:

Respondent/Plaintiff's product & Appellant/defendant's product
 
 

15. Findings of the learned Single Judge in the Impugned Judgment can be summarised as under:

15.1 The scope of the application before the learned Single Judge was restricted to the prayer of passing off and had claimed no monopoly in isolation over the colour red, herbs or the word cool or *thanda* but rather the distinctive combination over the same. The learned Single Judge had held that passing off is based on similarities of get up of packaging used by the appellant/defendant which would amount to misrepresentation damaging the business of the respondent/plaintiff. One of the

observations by the learned Single Judge was that the confusion must be caused by the distinctive features of the getup which are peculiar to the product of the respondent/plaintiff and the respondent/plaintiff cannot pick and chose the elements of the getup and the same must be considered as a whole.

15.2 The respondent/plaintiff had submitted before the Court that their product was launched in January, 1989 and has been in continuous and uninterrupted use since then. Their claim was also that the product has a total market share of 66% as of 2022 in the cooling oil segment. The respondent/plaintiff had obtained various trademark, copyright and design registrations in their product. Their presence on public media increased exponentially given the amount of money spent on promotion publicity and advertisement. They had also referred to their turnover which has increased from Rs.14.77 lacs in the year 1990-91 to Rs.58562.25 lacs in 2021-22. The said turnover had been referred to show the goodwill of the respondent/plaintiff and that the product has been sold for over 30 years across India with only minor modifications. The packaging can be identified from the shape of the bottle with red packaging containing images of *amla,* ice blocks, white flowers, one hibiscus flower and is accompanied by the phrase in a white colour font 'with nine active herbal ingredients'. This is said to be the trade dress which have become exclusive to the respondent/plaintiff.

15.3 The use and placement of the hibiscus flower, ice blocks and

ayurvedic herbs along with trade dress such as colour of packaging, colour of cap, colour of the liquid, shape of the bottle and the use of combination of red, white, yellow and gold along with the essential features, which have been stated above with the words 'Raahat', 'Aaraam' and 'Tarotaazgi' in the same order. The learned Single Judge had held that the trade dress of the respondent/plaintiff is deceptively similar to the product of the appellant/defendant.

15.4 It was held by the learned Single Judge that the common features between the trade dress cannot be a mere coincidence. Even the quantity of oil i.e., 270 ml is common to both the products. An overall comparison at the point of sale creates an impression that the impugned trade dress is an imitation of the product of the respondent/plaintiff.

15.5 It is not necessary for Courts to have a side-by-side comparison to determine deceptively similarity between the products. The Court was of the opinion that it is sufficient if there is an overall similarity in the idea or impression assessed from the perspective of the average consumer.

15.6 Another aspect which was commented by the learned Single Judge was that the appellant/defendant had not offered any explanation or a *bona fide* reason for adopting the impugned trade dress with identical features to that of the respondent/plaintiff. The test for determining the question of

passing off must focus on the similarities rather than on dissimilarities. The overall impression that is given upon a first glance is crucial for identifying whether there is a case for passing off. The Court also held that based on an overall impression, it is evident that the product is likely to cause confusion as the dominant similarities between the trade dress of the impugned product overwhelm the minor differences. The argument that the well known house mark would dispel the confusion could not have been accepted in view of the overall similarities between the products.

15.7 The learned Single Judge had held that the respondent/plaintiff established a *prima facie* case given their consistent and uninterrupted use. Also having considered the sales turnover the Single Judge had held that the respondent/plaintiff demonstrated ample reputation and goodwill. Whereas the appellant/defendant launched its product in 2023 and there is no dispute that the product of the respondent/plaintiff had already established itself well in the market at the time when the product of the appellant/defendant was launched. Based on this, it cannot be stated that the appellant/defendant is not attempting to ride on the goodwill of the respondent/plaintiff.

15.8 The respondent/plaintiff could not have claimed a monopoly over the red colour, herbs, hibiscus flower as individual aspects. However, the combination and arrangement of the same results in a distinctive ensemble and the same having been in use over

a considerable period of time has acquired a secondary meaning which enures to the favour of the respondent/plaintiff. Even if the individual components of the trade dress belonging to the respondent/plaintiff are common to the trade, the overall get up of the product must be protected.

15.9 The learned Single Judge had held that the reliance of the appellant/defendant on third party material does not disentitle the respondent/plaintiff and the respondent/plaintiff is not required to go after every small infringer.

15.10 Considering the above reasoning, the learned Single Judge deemed it appropriate to grant the relief of temporary injunction in favour of the respondent/plaintiff and had restrained the appellant/defendant from selling their product i.e. 'Cool King Thanda Tael' along with their trade dress.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Mr. Sandeep Sethi, learned Senior Counsel appearing with Ms. Kripa Pandit has, at the very outset, argued that the impugned judgment has ignored settled principles of law regulating grant of interlocutory injunction in terms of the judgment in the case of ***Wander Ltd. and Anr. v. Antox India P. Ltd, 1990 (Supp) SCC 727***, more so, in terms of paragraph 14 of the said judgment.

17. Another argument that has been advanced by Mr. Sethi is that although the arguments advanced on behalf of the appellant /defendant have

been heard by the learned Single Judge and even recorded the same in the impugned judgment, however, the said judgment does not deal with them in its findings. The said submissions have been recorded in the impugned judgment from paragraphs 6.1 to 6.13, but have not been dealt with. The Appellant's submissions were primarily made on overt and vast dissimilarities, considering settled principles for proving passing off. No evidence in support of the respondent's sales in the current trade dress/ label have been submitted and that no single entity can be granted monopoly over descriptive and common elements. Mr. Sethi has drawn our attention to the compartive chart at page no. 25 of the grounds of the appeal to show the dissimilarities between the products.

18. Mr. Sethi has argued that the present case is not for infringement but rather only for passing off. He stated that it is an admitted position as has been recorded in the orders dated 29.02.2024 and 23.08.2024 of the learned Single Judge, wherein the respondent/plaintiff expressly gave up its claim pertaining to the design of the bottle, infringement of copyright, infringement of trademark and disparagement, and confined its claim solely to passing off. Therefore, the learned Single Judge was to consider the claim only for passing off and confine the same to the trade dress / get-up, which is not a subject matter of trademark registration.

19. Mr. Sethi is of the view that elements of passing off not found to be established and the impugned judgment does not find that the ingredients of passing off are made out. It is his case that the law for establishing a case for passing off is well settled and that the respondent/plaintiff must satisfy the triple test being that; (a) there must exist goodwill and reputation in a

particular mark or label or trade dress; (b) the possibility of deception or misrepresentation must also be established; and (c) likelihood of damage must also be present. He has argued that the impugned judgment does not record that there is any goodwill or reputation attached to the respondent's product, or that there has been misrepresentation by the appellant or a case for likelihood of damage has also not been made out.

20. It is the case of the appellant as argued by Mr. Sethi that since neither the triple test has been satisfied nor the same has been established before the learned Single Judge, therefore, the relief for passing off ought not to have been granted. More so, since the aspect of goodwill has not been established, it is incumbent upon the respondent to show sales not in respect to the entire range of products of the said company but also show sales figures of the concerned product. In this regard, he has placed reliance on paragraph 13 of a judgment of the Supreme Court in the case of ***Brihan Karan Sugar Syndicate Private Limited v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana, 2023 INSC 831***.

21. As per Mr. Sethi, the respondent failed to plead or establish, even *prima facie,* sales and advertising figures attached to the Respondent's trade dress and label. Instead, the Respondent filed sale figures of products under the umbrella brand 'NAVRATNA', which includes a variety of products and packaging including of hair oils, almond oil, talcum powders and perfumes, besides the subject red-coloured oil. The respondent has also not submitted any consumer surveys, brand recognition studies, or consistent third-party references to establish that the current trade dress/ label adopted by the respondent only in 2016, has acquired distinctiveness. In this regard,

reference has been made to paragraph 34.5 of the judgment in the case of ***Pernord Ricard India Private Limited and Anr. v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701***.

22. Mr. Sethi has stated that the respondent sought to file an Affidavit on the last date of arguments before the learned Single Judge, which affidavit was refused and rightly not taken on record by the learned Single Judge.

23. On the second aspect of passing off being misrepresentation, Mr. Sethi has stated that the appellant placed on record material that there are numerous third-party players in the Red Hair Oil market which use similar elements such as red colour packaging, ice cubes, hibiscus, herbs, etc. as part of their trade dress and label and as such the aforesaid elements are common to trade of red coloured oil and incapable of exclusive appropriation by the Respondent. Neither the respondent is the first adopter nor user of the red-coloured trade dress and label in the market. A third party competitor by the name of Himtaj Medicare adopted the red-coloured Oil and the red-coloured trade dress / label in the year 1956 for Herbal Cool Oil. Himtaj Medicare, was the first to adopt and introduce illustration of ice/snow and flowers on their Hair oil packaging. He stated that the respondent in its Annual Report of the year 2004-2005 acknowledges HIMTAJ OIL as a major player and a competitor in the market at page no. 1111 of the paper-book. It is his case that there are a number of other third party players, which have since adopted similar aspects for the trade dress for red coloured oil predominately a red label with similar features of hibiscus flower, herbs, etc., and such elements have become customary among the consumers for the said product.

24. He has referred to the impugned judgment to state that such a category of the product has certain elements and features common to the trade dress. It is his case that the respondent cannot claim monopoly on red colour, herbs, hibiscus flower components of the trade dress, if they are considered individually. Mr. Sethi stated that even though the individual components of the respondent's trade dress are common to the market although as far as the argument the overall get-up of the respondent's trade dress requires protection is concerned, Mr. Sethi has argued that the said observation is inconsistent. If the individual elements of the trade dress are considered common to the market then the combination thereof cannot be said to constitute passing off and therefore, the impugned judgment erroneously concludes that the respondent's trade dress deserves protection.

25. Mr. Sethi has also argued that the impugned judgment does not take into account the house mark of the appellant being 'DABUR' under which the trade name 'COOL KING' operates. It is his case that the house mark of the appellant has been declared as a well known mark and is enough to distinguish the product from that of the respondent's. It is settled law, that when the overall impression of the product is considered from the perspective of an average consumer with imperfect recollection, the prominent display of the house mark clearly distinguishes product from others, even if there are some common or descriptive elements. In these circumstances, any claim of likelihood of confusion would be incorrect, as the prominent use of the well-known house mark together with the distinct product name effectively removes any scope for confusion in trade dress and negates any claim of misrepresentation by the Respondent.

26. On the aspect of likelihood of damage, Mr. Sethi is of the opinion that since there is no similarity between the products, no occasion for likelihood of damage would arise. The features that are common between the two labels such as hibiscus flower, ice blocks, menthol leaves and the use of descriptive words such as "THANDA", "COOL", "COOL TEL", and "COOLING OIL" are all common and generic in nature being common to trade and as per settled law, cannot be afforded protection. Furthermore, since the respondent had given up the claim over the colour 'Red' in the oil of the impugned trade dress, the impugned judgment ought to have analysed the same based on the outer packaging and with respect to the transparent bottles of both parties, in order to consider similarities in the trade dress. Mr. Sethi has drawn our attention to the dissimilarities in competing trade dress in the grounds of appeal. In view of the discernible dissimilarities evident from the chart, the finding of overall similarity as per the impugned judgment ought to be considered perverse.

27. According to Mr. Sethi, the impugned judgment also has not taken into account the distinctive bottle of the appellant which has the purpose of cooling the oil through the cooling tube and is a unique selling point for the appellant. The said cooling tube by itself makes the appellant's bottle and the label starkly different from that of the respondent's. Mr. Sethi is of the view that since the respondent is a major player in the market of the red coloured cooling oil, it cannot in law imply likelihood of damage by adoption and use by the appellant of the common aspects of the trade dress. On this aspect, Mr. Sethi has argued that it is necessary for the respondent to establish that their trade dress in question had acquired distinctiveness

and secondary meaning through trial that the elements of their trade dress would only be associated with the respondent alone.

28. On the other hand, Mr. Sethi submitted that the respondent does not rely on their trade dress but rather on the brand 'NAVRATNA' to sell their goods in the market. Additionally, there is no case of dishonest adoption made out as the alleged similarities in trade dress, are either generic or elements that are common to trade. The only overlap identified is the red colour of the oil, the claim of which the respondent has expressly given up, for the reason that it is common to the trade.

29. Mr. Sethi has referred to *Kerly* on '*Law of Trade Marks 12th Ed, 1986*', to state that in cases where trader's goods are recognised by their general appearance, or "*get-up"* such cases are rare, since few traders rely on get-up alone to distinguish their goods, so that trade names and word trademarks are ordinarily present too, and it is further stated that, a difference in name is enough to intimate the public about the origin of the goods. In support of his arguments he has referred to ***Kellogg Company v. Pravin Kumar Bhadabhai, (1996) 16 PTC 187***, and ***Britannia Industries Limited v. ITC Limited FAO (OS) (COMM) 77/2016*** to argue that the respondent has failed to establish any of the aforesaid elements necessary to prove passing off.

30. Another limb of argument taken by Mr. Sethi is that findings of secondary meaning in the absence of any cogent evidence and the same not having been pleaded by the respondent are beyond the scope of the suit. He argued that despite expressly noting that the individual elements sought to

be protected by the respondent are common to trade and incapable of exclusive appropriation, the impugned judgment nevertheless proceeded to hold that the combination, arrangement, and overall presentation of such common elements had acquired secondary meaning. It is his argument that the said findings in the impugned judgment are without any cogent evidence and contrary to the settled principles of law and are therefore without reasoning. The onus to demonstrate and prove exclusivity for the purposes of secondary meaning lies on the respondent and nothing has been placed on record to establish the same. According to him, in the impugned judgment, there is no finding or reference to any document or evidence to support the finding of "secondary meaning" such as consumer surveys, brand recognition studies, or consistent third-party references etc., in favour of the Respondent in reference with ***Pernord Ricard India Private Limited and Anr. Vs Karanveer Singh Chhabra (supra)***.

31. On the other hand, Mr. Sethi has placed reliance on the record to show that there are numerous players in the market having similar elements such as like red colour packaging, ice cubes, hibiscus, herbs, etc., as part of their trade dress. He also stated that it is the case of the respondent, that the current trade dress was only introduced in the year 2016. He stated that the packaging or trade dress adopted by the respondent today, differs considerably compared to the trade dress and labels used prior to 2016. Further, as is evident from the respondent's documents, the arrangement and combination of elements constituting its trade dress have undergone material changes over time. It is due to this fact that the current trade dress and label used by the respondent has not attained any distinctiveness let

alone, secondary meaning.

32. He has also taken an objection over the fact that no monopoly ought to accrue over descriptive elements and terms in the packaging. He has argued that impugned judgment has further erred in holding that the alleged distinctive combination of the impugned trade dress is deceptively similar to the respondent-plaintiff's trade dress by completely overlooking the fact that the elements claimed by the respondent to be similar are all common being descriptive elements, that are generic to the hair oil market. Furthermore, the impugned judgment while referring to the trade dress which uses the words 'Raahat', 'Aaraam' and 'Tarotaazgi' ought not to have held that the same is similar to the respondent-plaintiff's trade dress, since it is settled law, that no one party can have a monopoly over descriptive terms, especially when the said tagline has not been registered. In fact, the respondent has consciously not even applied for their registration as such descriptive words would never have been registered. In this regard he has made a reference to a judgment of a Coordinate Bench of this Court in ***Uma Impact Private Ltd & Anr v. ML Brothers LLP FAO(OS)(COMM) 68/2019***.

33. Mr. Sethi has summarised the grounds of appeal against the Impugned Judgment as under:

33.1 That the trade dress of the appellant is not similar to that of the respondent and the components of the packaging which have been deemed as the essential features are infact descriptive and common to the trade, not to be monopolised by a single entity.

33.2 The colour of the packaging, colour of the cap and the colour of the liquid have been considered in the impugned judgment whereas the respondent/plaintiff has given up its claim over the colour red.

33.3 The impugned judgment also considered the quantity of oil i.e., 270 ml in both the competing products as a factor against the appellant/defendant. Such a comparison of quantity of oil cannot be considered while analysing distinctiveness. The products of both the parties are sold in different quantities and sizes other than 270 ml bottle in the market. The comparison of the sizes in which the products of the parties are sold are as under:-

Emami Navratna	**Dabur Cool King**
Ml	**Ml**
50/45	42
100/90	87
180	187
200	
270	270
300	
450	470
500	
600	--
750	--

33.4 The impugned judgment in effect grants protection to the individual elements of the product, which have been held to be common to the trade and incapable of exclusive monopoly.

33.5 The impugned judgment has also erred while holding that the house mark of the appellant/defendant 'Dabur', which has been declared as a well known mark would not dispel confusion. Even when the brand name/mark 'DABUR COOL KING' occupies approximately 60% of the trade dress and therefore, no consumer would mistake one for the other.

33.6 The finding of goodwill which has been noted in the impugned judgment from the year 1989 in favour of the respondent/plaintiff is erroneous since the current trade dress, which is a subject matter of the suit has only been used by then since the year 2017.

33.7 The respondent/plaintiff has not produced any evidence to show that there is established goodwill and reputation of the impugned trade dress in the market but rather wrongly considered the purported sales under the brand 'NAVRATNA', which comprises of multiple products, which are not limited to hair oil.

33.8 Another factor which has not been noted in the impugned judgment is that the respondent/plaintiff has materially altered its packaging over the years and adopted a completely new trade dress in the year 2016. Substantial differences exist

between the earlier and the current packaging in terms of all aspects including colour scheme, layout, visual elements, bottle shape and overall get up. The extension of the goodwill which has been established with the earlier packaging cannot be extended to the subsequent trade dress.

33.9 The impugned judgment has also erred by holding that the trade dress had acquired secondary meaning based on the combination of the individual elements of the trade dress. Such an argument was never taken before the learned Single Judge and no evidence was produced in this regard but rather extensive third party usage of such elements either individually or in combination in the hair oil category including prior use such as the one by 'Himtaj' negates any claim of distinctiveness or exclusivity and no evidence has been led on this aspect.

33.10 The impugned judgment has not applied the trinity test for passing off with respect to the trade dress of the respondent/plaintiff contrary to the principles laid down by the Supreme Court in ***Brihan Karan Sugar Syndicate Private Limited (supra)***.

34. Mr. Sethi has argued that ingredients for granting an injunction not made out. The grant of an interim injunction necessarily requires a judicial determination of the three settled parameters, i.e., existence of a *prima facie* case, balance of convenience, and irreparable injury. In this regard, he has referred to ***Pernord Ricard India Private Limited and Anr. (supra)***. The

impugned judgment is silent on this aspect and there is no clear finding on this issue.

35. Mr. Sethi has stated that the reliance which has been placed by the appellant/defendant on the order dated 09.08.2023 passed in CS(COMM) No. 532 of 2023 misconceived since the said order was set aside vide Order dated 21.08.2023 by the Division Bench of this Court in FAO (OS) (COMM) 171/2023. He has placed reliance to Annexure-B table distinguishing each judgment relied on by the Respondent. It is his case that the impugned judgment suffers from serious errors of law and fact, ignores material on record, returns findings beyond the pleadings, and grants relief without satisfying the settled requirements for interim injunction. He prayed that the impugned judgment be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

36. Mr. Abhimanyu Bhandari, learned Senior Counsel along with Ms. Roohe Hina Dua have entered appearance on behalf of the respondent/plaintiff has at the outset stated that the appeal against an interlocutory injunction is an appeal on principle and the Appellate Court does not substitute its discretion where exercise of such power is patently against the law. He drew our attention to the judgments in ***Wander Ltd. (supra)*** and ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi, (2024) 11 SCC 351***, wherein the said parameters in the former were further restricted by the later pronouncement. The sales of the respondent/plaintiff in the cooling oil market is a matter of record and that the respondent/plaintiff commands a significant goodwill and has supported its

claim by showing a year wise turnover from FY 2009-10 till FY 2024-25. In this regard, he has relied upon the impugned judgment more so in paragraph 7.10 in support of his claim along with the additional affidavit dated 14.10.2025 indicating the sales of the product of the respondent/plaintiff. According to Mr. Bhandari, a comparison of the products would show that the appellant/defendant has sought to pass off their product as of the respondent/plaintiff, the same is depicted as under:

DEFENDANT'S PRODUCT	PLAINTIFF'S PRODUCT
	

37. Mr. Bhandari has placed on record a substantial list of advertisements spanning over several decades, including high-profile celebrity endorsements. The record further reflects media expenditure exceeding ₹49 crores per year, as per the certificate issued by the Chartered Accountant, which substantiates the marketing expenditure incurred by the respondent/plaintiff in advertising the said product. He has stated that the scale, continuity and consistency of the respondent's advertising efforts clearly demonstrate a long-standing goodwill, thereby leading to the public association of the red bottle with the respondent. The impugned judgment

has rightly taken note of these materials and recorded clear findings affirming the goodwill and distinctiveness in the product of the respondent/plaintiff.

38. According to Mr. Bhandari, the argument that the product of the respondent/plaintiff lacks goodwill is self defeating and contrary to the appellant's own conduct. According to him, the respondent is a market leader in that segment and the appellant has attempted to impinge on the said position. This he said so on the account of the fact that when the product of the appellant was launched, their own advertisement referred to the product/bottle of the respondent/plaintiff in reference to the product in the cooling oil market. Such an adoption was neither accidental nor a mere coincidence but rather a *malafide* and calculated commercial strategy with the sole intention of riding on the goodwill of the respondent/plaintiff. He has placed reliance on the judgments in the cases of ***Dabur Ltd. v. Shree Baidyanath, 193 (2012) DLT 558, Cadbury India Ltd. v. Neeraj Food Products, 2007 SCC OnLine Del 841, Ishi Khosla v. Anil Aggarwal, 2007 SCC OnLine Del 126*** and ***Heinz Italia and Anr. v. Dabur India Ltd. (2007) 6 SCC 1***.

39. He stated that the appellant has sought to contend by relying on various small market players that the respondent-plaintiff's trade-dress is common to trade. This argument according to him does not stand since the closest competitor of the respondent/plaintiff is 'Himgange' which is a green coloured oil followed by 'Rahat Rooh' oil which is red in colour. In this regard, he has referred to the additional affidavit filed on 25.02.2026 and the Nielsen AC Report for the year 2024. In so far as the other market

players are concerned in the red cooling oil market segment he argued that the said players have a miniscule share in the market and cannot sustain the argument that the said components are common to the trade. He has cited the judgments in the cases of ***Pankaj Goel v. Dabur India Ltd., 2008 (38) PTC 49 (Del)*** and ***National Bell Co. v. Metal Goods Mfg. Co. AIR 1971 SC 898*** to argue that mere presence of third parties in the market does not dilute the rights of the respondent.

40. Mr. Bhandari has drawn our attention to the market share of other oils which are the competitors of the respondent/plaintiff along with their market shares including their own product as under:

> *"Cooling oil category (overall) — MAT Dec'24*
>
> *I. Navratna Cooling Oil (all variants: Red/Green/others): 67.7% o*
> *Navratna Red Oil: 52.4%*
> *Navratna Extra Thanda Oil (Green): 14.7%*
> *II. Himgange Oil (Green): 26.5%*
> *III. Raahat Rooh (Red): 3.5%*
>
> *Red cooling oils sub-category — MAT Dec'24*
> *I. Navratna Red Oil: 91.3%*
> *II. Raahat Rooh: 6.1%"*

41. It is the case of the respondent/plaintiff so contended by Mr. Bhandari that the appellant's own conduct demonstrates acknowledgement of the Respondent's leadership in the cooling oil segment. Having consciously attempted to compete against and draw comparison with the Respondent's product / bottle (as per their own Advertisement) as the industry benchmark, such a plea is clearly an afterthought and is devoid of merits. He has drawn our attention to the products of the competitors which

are the dominant players in the market after the respondent as hereinunder:

42. Insofar as the argument concerning that 'Himtaj Oil' being the biggest competitor of the respondent in the cooling oil segment. He stated even if it were to be assumed that 'Himtaj Oil' is a competitor, it is submitted that the packaging of the said oil i.e., the bottle and the outer packaging is entirely different in shape, presentation and overall get-up. The same can be seen as under:

43. Mr. Bhandari stated that the appellant's own reliance on 'Himtaj', in fact, demonstrates that no serious competitor in the cooling oil segment has sought to copy the respondent's trade dress. According to him, the appellant stands isolated in its deliberate imitation of the respondent's trade dress. If 'Himtaj', allegedly a significant competitor, did not consider it necessary to adopt the respondent's trade dress, the appellant's decision to do so becomes even more suspicious and indicative of the slavish imitation and dishonest adoption.

44. It is the case of the respondent that the appellant's entire argument is designed to divert attention from the real issue, being its dishonest adoption of the respondent's trade dress. In the absence of any *bona fide* explanation for such an adoption in 2023, the appellant is now estopped from contending that the respondent/plaintiff's trade dress or its constituent elements are common to the trade, particularly, even when they themselves have applied for registration of the very same elements. In this regard, he has referred to a judgment in the case of ***Automatic Electric Ltd. v. R.K.***

Dhawan 1999 PTC (19) 81 (Del).

45. According to Mr. Bhandari, the appellant's new line of argument does not in any manner dislodge the finding of goodwill recorded by the impugned judgment, nor does it furnish any explanation for its dishonest adoption or rebut the clear finding of deceptive similarity. On the contrary, it is inconsistent by the appellant's own conduct at the time of launch of its product in 2023 when they sought to pass off their own product as that of the respondent/plaintiff.

ANALYSIS AND CONCLUSION

46. Having heard the learned Senior Counsel for the parties and perused the record, the submissions of Mr. Sethi, can be summed up as under:-

i) Although, the arguments as advanced on behalf of the appellant / defendant were heard and recorded by the learned Single Judge in the impugned order, but the same were not dealt with in the findings;

ii) No evidence in respect of the respondent's sales in the current trade dress/label have been submitted;

iii) No single entity can be granted monopoly over descriptive and common elements;

iv) The grant of injunction is contrary to the judgment in the case of ***Wander Limited (supra);***

v) The element of passing off not found to be established in as much as there is no goodwill and reputation in the respondent/ plaintiff trade dress;

vi) There is no possibility of deception or misrepresentation;

vii) There is no likelihood of damage, to be caused to the plaintiff / respondent;

viii) The respondent / plaintiff has shown sales in respect of entire range of products of the company and not with regard to the impugned product;

ix) There is no misrepresentation as there are numerous third party players in the Red Hair Oil market, who use similar elements such as red colour packaging, ice cubes, hibiscus, herbs, etc. as part of their trade dress and label and as such the aforesaid elements are common to trade;

x) If the respondent cannot claim monopoly over the red colour, herbs, hibiscus flower components of the trade dress, then component thereof cannot constitute passing off;

xi) The impugned judgment does not take into account the house mark of the appellant DABUR, under which the trade name COOL KING OIL has been declared as a well known mark and is enough to distinguish the product of the respondent;

xii) The cooling tube by itself makes the appellant's bottle and the

label starkly different from that of the respondent;

xiii) The respondent has failed to establish that its trade dress in question is clearly distinctive; and

xiv) The respondent has not pleaded that the respondent's get up has achieved a secondary meaning; as such the learned Single Judge could not have given the injunction.

47. At the outset, we may state that vide order dated 29.02.2024 and 23.08.2024 the respondent through Mr. Bhandari has given up its claim pertaining to the design of the bottle; infringement of the copyright; infringement of trade mark and disparagement and confined its claim solely to the passing off. We may also state that Mr. Bhandari has not claimed any monopoly over the colour red.

48. Having said that, the issue of passing off has to be seen on the basis of similarities and get up of the packaging used by the appellant that amounts to misrepresentation and damage to the respondent. There is an obligation on the part of the respondent to prove that the get-up used by it is a distinctive one and the appellant/defendant's get up is similar enough to deceive notwithstanding any other difference between the two sets of goods.

49. The case of the respondent / plaintiff is that it has launched its product in January 1989 and has been in continuous and uninterrupted use since then. Mr. Bhandari has also stated that the respondent /plaintiff has 66% market share in the year 2022 in the Cooling Oil segment. It is also

the case of respondent /plaintiff that impugned product is their only product in cooling oil segment and that the turnover of the plaintiff / respondent increased from Rs.14.77 Lacs in the year 1990-91 to Rs.58562.25 Lacs in the year 2021-22. Mr.Bhandari has referred to the certificate from the chartered accountant dated 26.06.2025, which is part of the pleadings before the learned Single Judge filed on 14.10.2025, to show the sales of the products marketed as Navratna Ayurvedic Oil (Red packaging) wherein the sales pertaining to the Financial Years 2009-10 to 2024-25 have been shown to total Rs.4927.03 Crores. This affidavit has been contested by Mr.Sethi. He has stated that the said affidavit was not taken on record by the learned Single Judge. However, we note the findings of the learned Single Judge in the impugned order, more specifically in paragraph no.7.10, the learned Single Judge has noted the sales pertaining to the product of the respondent aggregating to Rs.4,927 Crores.

50. At this stage, we may state it is the submission of Mr. Sethi that the respondent / plaintiff has not given the individual turnover or the turnover of the impugned product NAVRATNA. We however note, that there is no denial that the product NAVRATNA has a market share of 66%. The case of the appellant is that it launched its product in the market in the year 2017 and the impugned packaging in the year 2023. It is a fact that the appellant/ respondent has not given the turnover of its impugned product “Dabur Cool King/ Cool King Thanda Tail”. Therefore, it is clear that the respondent is the prior user. Given the said factual position, the argument of Mr.Sethi that no sales figures with regard to the impugned products were produced is not tenable. At least, at this *prima facie* stage the certificate of the chartered

accountant annexed with the additional affidavit dated 14.10.2025, is enough to offset the argument of Mr.Sethi and established goodwill not only of the respondent company, but also in the impugned products.

51. Mr. Sethi has relied upon judgment in the case ***S. Syed Mohindeen v. P. Sulochana Bai, (2016) 2 SCC 683*** as followed in ***Brihan Karan Sugar Syndicate Private Limited (supra)*** to state that in a case of passing off the goodwill of the product must be established not only through the figures of the sale of the product, but also the expenditure incurred on its promotion and advertising. There is no dispute on the said position of law; however, the same has to be proved at the time of trial.

52. The Supreme Court has held that, at a *prima facie* stage for the grant of temporary injunction, the statement of accounts signed by the chartered accountant of the plaintiff indicating expenses incurred on advertising and the promotion along with figures of sale may be material for consideration which at the time of final hearing of the suit, must be proved. The said judgments are trite law and even in the present case, the respondent/plaintiff has at this nascent stage showed sufficient material to support their case, which would be a subject matter of trial. Hence, to that extent, these judgments do not aid the case of the appellant.

53. Though, it is the case of the respondent that it had adopted the current trade dress / label with changed shape of the bottle in the year 2016, but it consistently maintained similar get up effective from 1995 with prominent mark of NAVRATNA in the following manner:-

54. *Prime facie* we agree with the above submission. The difference in the earlier label used by the respondent/ plaintiff and the present label does not appear to us to be so stark, which requires the respondent / plaintiff to independently establish the goodwill in respect of the present label as well.

55. It is the submission of Mr. Bhandari that, before marketing the product in the present get-up, the appellant has changed the trade dress of its product time to time in the following manner:-

56. Be it noted the words Ayurvedic Oil – Ayurvedic Tel (आयुर्वेदिक तेल), Herbs – Jadi Buti (जड़ी-बूटी), Peace – 'Raahat' (राहत), Comfort – 'Aaram' (आराम) and – Freshness – 'Tarotaazgi' (तरोताज़गी) are words mentioned on the bottle of the respondent and are found matching on the bottle of the appellant. There is also a yellow triangular colour banner on

the left side of the bottle of the appellant which reads 'New' (नया) in Hindi, which is similar to the one found matching in the respondent's bottle. Similar is the position in respect of sachet sold by the appellant as is clear from the following:-

Respondent/Plaintiff's product	&	Appellant/defendant's product
		
		

57. In fact we find that Mr. Sethi has not given any reason as to why the appellant /defendant changed the trade dress/get-up of its product "HIM SAGAR TEL" to "SUPER THANDA TEL", to "COOL KING THANDA TEL". So, it follows that the possibility of the appellant's goods being passed off as goods of the respondent/ plaintiff cannot be ruled out.

58. Insofar as, the plea of Mr. Sethi that there are numerous third party

players in the Cooling Oil market, who used similar elements of Red Colour packaging, ice cubes, hibiscus, herbs, etc., as part of their trade dress and label and as such the elements being common to the trade, there cannot be any deceptiveness is concerned; the submission is opposed by Mr. Bhandari, by drawing our attention to the oils manufactured by the third parties to contend that their packaging/ trade dress is much different from that of the respondent. We agree with the said submission, in view of the packaging of the third parties in the following manner:-

59. Whereas, Mr.Sethi, has also drawn our attention to other third party players in the red cooling oil marketing segment and their packaging depicted below:-

60. Mr.Bhandari has contested the said submission by saying that the other players in the cooling oil segment as referred to by Mr Sethi, do not have different get-up/ trade dress and in any case they do not have a large market share as compared to the respondent/plaintiff, as such not affecting the respondent. It is settled position of law that the plaintiff is *dominus litis,* it would be upto them to decide whether an action against trademark and passing off is to be brought against such third party players. As stated above in an action of passing off, the Court has to look at the overall appearance of the product and not individual aspects/ attributes of the trade dress including the house mark of the respondent which in itself has acquired considerable goodwill over the years.

61. In view of our above conclusion, the plea of Mr.Sethi that Red Colour packaging, ice cubes, hibiscus, herbs, flowers, etc., are common to the trade for Red colour oil cannot be *prima facie* accepted. We agree with the conclusion drawn by the learned Single Judge in the impugned order, more particularly in paragraph no.21, which we reproduce as under:-

> *"21. Having heard the learned Counsel for both the Plaintiff and the Defendant and considering the material placed on record, the overall comparison of the Defendant's Product with the Plaintiff's Product shows that there is an attempt to imitate the essential features of the Plaintiff's Trade Dress by the Impugned Trade Dress. The Impugned Trade Dress is deceptively similar to the Plaintiff's Trade Dress as the essential features of the Plaintiff's Trade Dress such as colour of the packaging, colour of the cap, colour of the liquid, shape of the bottle and the use of combination of red, white, yellow and gold with the essential features of ice cubes, hibiscus flowers, ayurvedic herbs are copied in the Impugned Trade Dress along with the use of the words 'Raahat', 'Aaraam' and 'Tarotaazgi' in the same order. The common features in the Plaintiff's Trade Dress and the Impugned Trade Dress does not appear to be a mere coincidence. Even the quantity of the oil, i.e. 270 ml is identical in both the Plaintiff's Product and the Defendant's Product. The overall comparison of the get-up at the point of sale creates an impression that the Impugned Trade Dress is an imitation of the essential features of the Plaintiff's Trade Dress. It is not necessary to have exact identity for side-by-side comparison between the Impugned Trade Dress and the Plaintiff's Trade Dress. It is sufficient if there is an overall similarity in the idea or impression assessed from the perspective of a consumer of average intelligence having imperfect recollection as held in Cadila Healthcare (supra). A holistic view of the Impugned Trade Dress appears to be deceptively similar to the Plaintiff's Trade Dress. The Defendant has not offered any explanation or bonafide reason for adopting the Impugned Trade Dress having identical features to that of the Plaintiff's Trade Dress."*
>
> (Emphasis supplied)

62. It follows on a comparison of the products of the parties, it is clear that the overall similarity including the presence of the yellow triangle which states "New" in Hindi, the flower, ice cubes, herbs even the terms

'Raahat' (राहत), 'Aaram' (आराम) and 'Tarotaazgi' (तरोताज़गी) find mention in the same sequence bereft of a justification for such an adoption of the impugned trade dress including the common bottle size of 270 ml. As such we find ourselves in agreement with the findings of the learned Single Judge.

63. In so far as the submission of Mr.Sethi that the house mark of the appellant being "DABUR" under which the trade name "COOL KING" operates, and in that sense, the house mark being a well known mark is enough to distinguish the product of the appellant from that of the respondent. This submission has been contested by Mr.Bhandari by stating that even "EMAMI" is well known mark and the house mark shall not have any bearing or effect on the trade dress and get up, which has been adopted by the appellant /defendant as late as 2023 with a clear motive to pass off its product as that of the plaintiff's / respondent's.

64. Mr.Sethi, has also argued that if the individual elements of trade dress are common to the trade then a combination thereof cannot be said to constitute passing off. We do not agree with this submission. We concur with the findings of the learned Single Judge that the test for passing off has to be examined on the touchstone of similarities rather than the dissimilarities. Mr.Sethi has also argued that apart from the features which according to him are common to the trade, even the shape of the bottle is distinctive which in its 270ml size has a unique cooling tube. We find that both the products look similar enough to cause damage to the respondent's product and the appellant should not be allowed to blow hot and cold on this aspect to suit its case.

65. Mr. Sethi has also relied upon the decision in the case of ***Kellogg Company v. Pravin Kumar Bhandbhai, (1996) 16 PTC 187*** to say that the presence of the house mark is a distinguishing feature. Whereas Mr. Bhandari has opposed the said submission by relying on the judgments in the cases of ***N. Ranga Rao and Sons v. Anil Garg and Ors. 2005 SCC Online Del 1293*** and ***Euro-Solo Energy Systems Ltd. v. Eveready Industries India Ltd. 2009 SCC Online Cal 1991*** and argued that the said judgment does not lay an absolute rule that the house mark is a complete cure for the overall similarity appearance. The trade dress has to be taken as a whole and not in part/ in isolation in view of the judgment in ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***. The said principle is clear and has been upheld by the Courts that the same falls under the anti-dissection rule in cases concerning trade mark and the same has been upheld by the Supreme Court in ***Pernod Ricard (supra)***. However, the Supreme Court in ***Pernod Ricard (supra)*** had held that the Courts are not precluded from applying the dominant feature test. In the present case, since there are similarities between the trade dresses of the parties, wherein the respondent is the prior *bona fide* user of the same, we accept the argument of Mr. Bhandari and are of the view the said judgment does not help the case of Mr.Sethi.

66. In so far as the judgment cited by Mr.Sethi in the case of ***Uma Impact Pvt Limited (supra)*** is concerned, the said judgment has been relied upon by him to state that certain marks which are descriptive should not be granted protection of registration. Needless to state that in view of the fact that Mr.Bhandari has confined this appeal only to the aspect of passing off,

the said judgment would not be of any help to the appellant.

67. Mr.Sethi has relied upon various judgments, being ***Star Bazar Pvt Limited v. Trent Limited & Another***, ***2010 SCC OnLine Del 4764***; ***Marico Limited v. Agro Tech Foods Limited , ILR (2010) Supp. (3) Delhi 402***; ***Holy Cow Foundation v. Patanjali Gramodyog Nyas (Trust), 2026 DHC: 146***; ***Gensol Electric Vehicles Pvt Limited v. Mahindra Last Mile Mobility Limited : 2025:DHC:116***; ***Intex Technologies (India) Limited v. M/s. Tech (India), 2017 SCC OnLine Del 7392***; ***Meso Pvt Limited v. Liberty Shoes Limited, AIR 2019 Bom 35***; ***Valvoline Cummins Limited v. Apar Industries Limited, 2013 DHC:6052***; and ***Peshawar Soap and Chemicals v. Godrej Soaps Limited, 2001 (58) DRJ 170*** to state that the presence of the house mark "DABUR" on the appellant's packaging is enough to allay any confusion in the minds of the consumer.

68. With regard to said submission, it is settled law in the case of passing off, the consumer is taken to be a person of an average intellect and imperfect recollection [Reference: ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***]. This combined with the fact that the goods are being sold at a low cost, which would entail that the degree of care exercised by an average consumer at the time of purchase would be at a lower threshold, the presence of the house mark has little role to play in this background, given the other overlapping features in the trade dress. In other words, it is only the get up and trade dress of the product which will determine the sale of the products and in view of the fact that trade dress and get up of the appellant product is likely to cause confusion, cannot be discountenanced. Hence, the judgments as relied upon by Mr.Sethi have no

applicability to the present case given the distinguishing factual aspects and the general rule of assessment in passing off action. Each case has to be considered in the context of its unique factual background.

69. Mr.Sethi has also relied upon judgment in the case of ***Britannia Industries Limited v. ITC Limited, 2017:DHC:1452-DB*** to contend that the triple test in a case of passing of must be established. We are of the view that in this case, the respondent at least at a *prima facie* stage established its case for passing off satisfying the triple test [Reference: ***Reckitt & Colman Products Ltd. v. Borden Inc. (1990) 1 WLR 491*** as upheld in ***Syed Mohindeen (supra)***] and has further made out a case for grant of injunction. As such, we cannot agree with Mr.Sethi on the applicability of judgment ***Britannia Industries Limited (supra)*** in the favour of the appellant given the peculiar facts of this case.

70. The aforesaid suggests the attempt on the part of the appellant/ defendant is to copy the essential features of the get up and trade dress of the plaintiff / respondent so as to capture the market and there is a likelihood of harm/ damage to the respondent. More particularly given the fact that the all the individual components of the trade dress though as per Mr.Sethi are common to the trade, we find they are depicted in a manner almost identical to that of the respondent's trade dress. The said attempt has not been denied but rather justified by stating that the presence of the house mark is enough to dispel any confusion, which argument we do not find ourselves in agreement with given our reasoning above.

71. Having said the above, Mr.Sethi has placed reliance on the decision

of the Supreme Court in ***Pernord Ricard India Private Limited (supra)*** more particularly on the paragraphs 31.7, 34.5, 36.2 to 36.4, which we reproduce as under:-

> *"31.7. Colour combinations are treated similarly to single colours combined with other distinctive elements. A specific combination of colours may be prima facie registrable depending on its manner of presentation. For example, colours used within a defined geometric shape may qualify for registration. Where colours are applied to packaging or labels, the burden of proving acquired distinctiveness is higher. In such cases, the proprietor must show that the colour scheme functions as a badge of origin. Ultimately, trademark law seeks to protect indicators of source - both inherently and through acquired distinctiveness - which were previously protectable only through the more demanding process of a passing off action.*
>
> *xxx xxx xxx*
>
> *34.5. In the present case, the appellants have failed to produce cogent evidence - such as consumer surveys, brand recognition studies, or consistent third-party references - to demonstrate that the term 'PRIDE' has acquired secondary meaning exclusively pointing to their product. Mere duration of use, turnover, or marketing expenditure is insufficient to displace the term's inherent descriptive or laudatory character. As judicial precedent makes clear, even extensive use of a descriptive term does not justify exclusivity unless such use has displaced the word's primary meaning, so that it now serves as a source identifier in the minds of the consuming public.*
>
> *xxx xxx xxx*
>
> *36.2. The grant of injunction - whether for infringement or passing off - is ultimately governed by equitable principles and is subject to the general framework applicable to*

proprietary rights. Where actual infringement is established, that alone may justify injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, "the life of a trademark depends upon the promptitude with which it is vindicated."

36.3. The principles laid down in American Cyanamid Co. v. Ethicon Ltd. (1975) AC 396 continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:

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

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

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

(iv) Irreparable harm: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public - harms which are inherently difficult to quantify - the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to

prevent confusion or deception in the marketplace.

> *36.4. In conclusion, the grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: prima facie case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief."*

72. Suffice to state that the Supreme Court in the above decision in paragraph No.36.4 has clearly held that grant of interim injunction in trademark matters requires the court to consider multiple interrelated factors: *prima facie* case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest.

73. In the present case, in view of our finding above, we are *prima facie* of the view that all the factors as laid down by the Supreme Court are available to the respondent in the case in hand and the learned Single Judge has rightly arrived at the finding, which we have already reproduced above and granted the injunction in favour of the respondent/plaintiff.

74. In fact, the law is well settled by the Supreme Court in ***Wander Limited (supra)*** that the appellate Court will not interfere with the exercise of the discretion of the Court of first instance and substitute its own decision except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. In fact the Supreme Court held that the Appellate Court will

not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage if would have come to a contrary conclusion. In the facts of the case, in hand, our conclusion is that the learned Single Judge has exercised the discretion properly and it is not the case where the settled principles of law have been ignored while granting the interim injunction.

75. Additionally, we may also refer to the judgment of this Court in ***Sona Mahindra Pvt Limited & Another v. Sona BLW Precision Forgings Limited & Others, 2023:DHC:2572-DB*** wherein on the aspect of preliminary injunction, the Court has held as under:-

> *"42. At the outset, we may highlight the position of law with respect to the powers of an appellate Court dealing with an appeal against a discretionary order. It is well settled that the appellate Court will not reassess the material on which the Court of first instance has decided to grant or refuse an interim protection. The locus classicus in this regard, is the judgment in Wander Limited (supra), wherein a three-judge Bench of the Supreme Court has held as under:-*
>
> > *"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion*

different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721) "... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] „...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case...."

43. In fact, this view has been further propounded by the Apex Court in a veritable plethora of cases including K. Palaniswamy v. Shanmugam & Ors., Civil Appeal 1392/2023, Shyam Sel & Power Limited v. Shyam Steel Industries, (2023) 1 SCC 634, Narendra Hirawat & Co. v. Sholay Media Entertainment, (2022) 1 SCR 857 and Ambala Sarabhai Enterprises v. K.S. Infraspace LLP, (2020) 5 SCC 410 and by this Court in Shrivats Rathi and Anr. v. Anil Rathi and Ors., 2021 SCC OnLine Del 2.

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47. The learned Single Judge did hold that the respondents have concealed/suppressed the aforesaid two aspects. However, he also observed that concealment made by the plaintiff in every case would not result in an automatic

dismissal of the plaint and/or application seeking interim relief. He held that the relief of injunction against infringement and passing off is granted not only to protect the proprietary rights of the plaintiff, but also to protect an ordinary unwary consumer who may be deceived due to adoption of a similar mark for similar goods by the defendant. On the aspect of concealment of correspondence exchanged between the respondents and the Trade Marks Registry, he also held that the same cannot be a reason to deny relief to the respondents or dismissing the suit.

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52. The aforesaid would reveal that the learned Single Judge did come to a conclusion that the concealment of disclaimer on the exclusive rights in the word 'SONA' was a vital fact to be disclosed by the respondents in the plaint, though it may not eventually influence the outcome of the suit/application seeking interim injunction.

53. We find that the learned Single Judge, by stating so, was also of the view that the concealment made by the plaintiff in every case would not result in automatic dismissal of the plaint or the application filed by the plaintiff seeking interim relief, as there is an element of public interest also to be protected.

54. On a detailed perusal of the impugned order, we find that the learned Single Judge while holding that there is concealment of material facts by the respondents, has also considered certain mitigating circumstances as mentioned in paragraphs 45 to 50, which we have already reproduced above. The learned Single Judge in exercise of his judicial discretion concluded that for the acts of concealment, the respondents can be visited with exemplary costs rather than dismissing the suit/application.

55. That apart, we find that the learned Single Judge was of the view that keeping in view the earlier adoption of the word 'SONA' by the respondents, its extensive use by the

respondents, and the likelihood of deception and confusion being caused in the mind of an unwary customer of continued association between the respondents and the appellants due to the adoption of the mark 'SONA' in the corporate name of the appellant No.1, the respondents were successful in demonstrating a prima facie case for grant of an interim injunction in their favour. The appellants have failed to demonstrate that the exercise of discretion by the learned Single Judge is perverse, capricious, arbitrary or illegal.

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57. We find ourselves in complete agreement with the conclusion of the learned Single Judge on the above issue as well.

xxx xxx xxx

61. In view of the discussion above, we are of the view that there is basis for the learned Single Judge not to dislodge the respondents on the ground that there has been a concealment/suppression of facts by the respondents. We are also of the view that the learned Single Judge has exercised his discretion judiciously, in concluding that in the facts of the case, equities lie in favour of the respondents, and that the respondents have been able to make out a good prima facie case for the grant of interim protection, and in granting the ad-interim injunction in their favour and against the appellants. There being no perversity, arbitrariness or illegality in the exercise of discretion by the learned Single Judge, the impugned order warrants no interference. The other judgments on which reliance was placed by the learned senior counsel for the appellants are not required to be gone into as they were all considered by the learned Single Judge, and also in view of our above conclusion."

76. Mr.Sethi, has also relied upon certain judgments from foreign jurisdictions *viz.* ***Alfwear, Inc. v. Mast-Jagegermiester US, Inc. 2023 WL 5765891; Arcona, Inc. v. Farmacy Beauty, LLC 976 F.3d 1074, Arcona, Inc. v. Farmacy Beauty, LLC, United States Supreme Court; Kate Spade LLC v. Saturdays Surf LLC, 950 F.Supp.2d 639; Koninkijke Philips Electronics v. Hunt Control Systems, Inc. 2016 WL 3545529; Nabisco, Inc v. Warner-Lambert Co, 220 F.3d 43(2d Cir.2000), Nartron Corp. v. ST Microelectronics,305 F3d 397 (2002), RG Barry Corp. v. A Sandler Co., 406 F.2d 114 (1969), Trovan Ltd. v. Pfizer Inc, 107 Fed Appx 788 (2004), Autozone, Inc and Speedbar, Inc. v. Tandy Corp, United States Court of Appeals, Sixth Circuit, 2004 FED App. 0200P (6th Cir);*** and ***Therma-Scan, Inc. v. Theroscan Inc. United Court of Appeals, Ninth Circuit 295 F.3d 623*** in support of his submissions. However, we do not feel it necessary to delve into the same, given our findings above, especially at this interim stage.

77. Our aforesaid conclusion is based on the finding that the trade dress encompassing the overall visual appearance of the product including the lay-out, colour scheme of the products of the appellant vis-à-vis those of the respondent, has been rightly injuncted because it is deceptively similar to the trade dress of the products of the respondent /plaintiff and there is every likelihood of misleading the consumers and constitutes passing off.

78. In view of our findings and analysis above, this appeal being devoid of merits is dismissed. We uphold the impugned order passed by the learned Single Judge. The pending application is also dismissed.

79. Needless to state that our findings in the present order, are *prima facie* and the same shall be subject to final decision in the suit post trial. The learned Single Judge shall decide suit without being influenced by any observation made by us in this judgment.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MAY 22, 2026
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