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

% Judgment Reserved on*: 29.04.2026*
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\+ **FAO(OS) (COMM) 7/2024 & CM APPL. 2820/2024, CM APPL. 14739/2026**

M/S VAJIRAM AND RAVI ISA STUDY CENTRE LLP ..... Appellant

versus

M/S VAJIRAO AND REDDY INSTITUTE PVT LTD .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. J. Sai Deepak Sr. Adv. with Mr. B. Badrinath, Mr. Sumit Rajput and Mr. Dhruv Bhardwaj, Advs.

For the Respondent : Mr. Yashraj Singh Deora, Sr. Adv. with Mr. Sameer Abhyankar, Mr. Rahul Kumar, Mr Aakash Thakur Mr. Nalin Talwar, Mr. Chatinaiya Safaya and Mr. Priyesh Mohan Srivastava, Advs.

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

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. This is an appeal under Order 43 Rule 1 of the Code of Civil

Procedure, 1908 [‘CPC’], read with Section 13(1) of the Commercial Courts Act 2015, and Section 10 of the Delhi High Court Act, 1966, against the order dated 14.09.2023 [‘impugned judgment’].

2. The present appeal pertains to a dispute inter-se two institutions, ‘VAJIRAM & RAVI’ and ‘VAJIRAO & REDDY’, both engaged in the business of coaching candidates for the Indian Civil Services examination.

FACTUAL MATRIX

3. The Appellant was established by Professor P. Velayutham as a sole proprietor under the trademark ‘VAJIRAM & RAO’. The usage of the said mark continued till 1976, when Mr. P.S. Ravindram took over the management of the institute and renamed it as ‘VAJIRAM & RAVI’ [‘Appellant’s mark’].

4. The Appellant holds wordmark registrations as well as device mark registrations of ‘VAJIRAM & RAVI’ and ‘VAJIRAM & RAO’[1].

5. The Respondent also engaged in the same business as the Appellant, has been operating under the trademark ‘VAJIRAO & REDDY’ [‘impugned mark’] at least since 2007. The Respondent has registration for the device mark 

bearing TM no. 1859489.

6. The Appellant has no objection to the Respondent’s business of coaching and training students; however, the Appellant has an objection to the Respondent’s use of the trademark ‘VAJIRAO’, which is deceptively similar to the Appellant’s trademark ‘VAIJRAM’ appearing in the name of

[1] Details of the Appellant’s various registrations are set out at page 71 of the paper-book.

the Appellant and is an abbreviated form of the name 'VAJIRAM & RAO'.

7. The Appellant, being aggrieved and the prior adopter of the marks 'VAJIRAM', 'VAJIRAM & RAO' and 'VAJIRAM & RAVI', filed a suit CS(COMM)43/2019 seeking an interim injunction restraining the Respondent from using the impugned mark and passing off its impugned mark as that of the Appellant's mark.

8. The learned Single Judge, vide the impugned judgment dated 14.09.2023, denied interim injunction on the ground that there are notable dissimilarities between the rival marks as a whole, and the Appellant lacked compelling evidence to indicate the likelihood of confusion.

9. In these facts, the Appellant has filed the present appeal.

SUBMISSIONS BY THE PARTIES

Submissions by the Appellant

10. Mr. J. Sai Deepak, learned senior counsel for the Appellant, states that the impugned mark cannot be said to be dissimilar. The Appellant's name was known as 'VAJIRAO', an abbreviation of the mark 'VAJIRAM & RAO', which was popular amongst students in the 1980s and 1990s, and hence the use of the impugned mark creates confusion in the minds of the public.

10.1. He states that the cause of action arose in December 2018, when the Respondent put up a hoarding opposite the institute of the Appellant whilst advertising its institute; prior to that, the Appellant was not aware of the Respondent.

10.2. He states that the learned Single Judge has disregarded the submission that when the adoption of the impugned mark by the Respondent was dishonest, the plea of delay and acquiescence is to be rejected. In this regard,

he places reliance on the judgment of the Supreme Court in **Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia Ltd**[2], wherein it has been categorically held that delay in bringing the action is not sufficient to defeat the grant of the injunction.

10.3. He states that the learned Single Judge has failed to consider that there is phonetic, structural and visual similarity between the rival marks. He states that the Appellant and the Respondent operate in the same industry and that their customers are students who aspire to become civil servants. The repeated use of the impugned mark in its study materials, domain, advertisements, etc., creates confusion in the minds of the students who seek admission before the beginning of the academic session.

10.4. He states that the learned Single Judge has failed to consider that the Respondent used only the word 'VAJIRAO' in its domain name and not the complete name, which evidences the dishonest intentions and deliberate malafide action of the Respondent to ride upon the goodwill and reputation of the Appellant's mark.

10.5. He states that the Respondent only has rights, if any, on the device mark 

and not in the words therein. He states that it has rights only on the manner of representation of the said device mark and has no rights in the elements therein.

Submissions by the Respondent

11. Mr. Yashraj Singh Deora, learned senior counsel for the Respondent,

[2] (2004) 3 SCC 90

states that the learned Single Judge, whilst dealing with the issue of the similarity of the rival marks, has rightly held that since the present case pertains to composite marks, the marks must be considered as a whole, and that prima facie there is no likelihood of confusion inter se the rival marks. The target audience of both parties comprises well-informed civil services aspirants, who are able to distinguish the two marks, as can also be seen from the interviews of some of the successful civil services candidates. Even otherwise, the Appellant has failed to show that 'VAJIRAM' alone has obtained enough goodwill and reputation for it to be considered a dominant mark. In this regard, reliance is being placed upon the judgment of the Supreme Court in **Khoday Distilleries Limited v. Scotch Whisky Association and Others**[3].

11.1. He states that the Appellant has been aware of the existence of the Respondent at least since September 2009, if not before. The Appellant and the Respondent have been advertising in the same magazine. The existence of the said advertisement shows that the Appellant had constructive notice of the impugned mark. Since the Respondent has been continuously using the impugned mark since 2009, the Appellant has acquiesced to the Respondent's mark as per Section 33 of the Trademark Act, 1999.

11.2. He states that the learned Single Judge has rightly considered the evidence provided by the Respondent to demonstrate active marketing by both parties in the same magazines & newspapers as far back as 2009 at least, to conclude that the Appellant had adequate notice of the Respondent's activities.

11.3. He states that the impugned mark is dissimilar and is easily

[3] (2008) 10 SCC 723

distinguishable from the various registered trademarks of the Appellant, i.e., 'VAJIRAM & RAO', 'VAJIRAM & RAVI', and 'VAJIRAM'. The Respondent's mark 'VAJIRAO & REDDY INSTITUTE' must be seen in its entirety. Furthermore, the holistic comparison of the two marks conclusively shows distinctiveness, both phonetically and visually. Furthermore, the logos of both the institutes are unique from each other, which further increases the distinctive features of the marks of both the Appellant and the Respondent.

11.4. He states that the impugned judgment has rightly considered the facts of the present case in light of the settled position of law to conclude that no case for interim injunction is made out. He states that the impugned judgment cannot be overturned merely because an alternate view is possible. In this regard, reliance is being placed upon the judgment of the Supreme Court in **Wander Ltd. and Another v. Antox India P. Ltd.** [4]

COURT'S FINDINGS

12. This Court has heard the learned counsel for the parties and perused the records.

13. The Appellant's claims in the plaint are grounded in allegations of passing off, dilution of its mark, and unfair competition. It seeks an interim injunction on the grounds of passing off.

14. The Appellant is the registered proprietor of the word and device marks 'VAJIRAM & RAVI' and 'VAJIRAM & RAO', and it also holds registration for the word mark 'VAJIRAM'.

So also, the Respondent's impugned device mark 'VAJIRAO & REDDY INSTITUTE' is a registered mark.

[4] 1999 (Supp) SCC 727 [Paragraph No. 14]

15. The Respondent uses the composite mark ‘VAJIRAO & REDDY INSTITUTE’ for its Institute. It also uses the word mark ‘VAJIRAO’, which is a part of its device mark, on a standalone basis on its study material and as its domain name.

16. In the suit, Appellant had sought an interim injunction restraining the Respondent from using ‘VAJIRAO’ on a standalone basis or as a part of its composite device mark ‘VAJIRAO & REDDY’ on the plea of its deceptive similarity with the Appellant’s mark ‘VAJIRAM’, ‘VAJIRAM & RAVI’ and ‘VAJIRAM and RAO’.

It is undisputed by the Appellant that it has been using the composite mark ‘VAJIRAM & RAVI INSTITUTE’ for its Institute since 1999, which continues to be in use to date. It earlier used the composite mark ‘VAJIRAM & RAO’ from 1976 to 1999 and not thereafter. It has demonstrated a sporadic use of the standalone mark ‘VAJIRAM’ in its advertisements.

17. The Appellant contends that the word ‘VAJIRAO’ in the Respondent’s mark is an abbreviation of the Appellant’s earlier mark ‘VAJIRAM & RAO’ and is therefore deceptively similar to the Appellant’s mark and is capable of causing misrepresentation amongst the public. The Appellant contends that the word ‘VAJIRAO’ in the Respondent’s mark is also closely similar to the Appellant’s mark ‘VAJIRAM’.

18. The learned Single Judge has declined the interim injunction and returned the following findings, which have been challenged in this appeal: -

i. The composite trademarks ‘VAJIRAM & RAVI’ and ‘VAJIRAO & REDDY INSTITUTE’ have to be compared as a whole, and on this comparison, the rival marks are distinct. The words ‘RAVI’ in case of the Appellant and ‘REDDY’ for the Respondent, respectively, are

distinct elements. In addition, the device marks include each organisation's logo, adding further to the distinctive element. Furthermore, the inclusion of the word 'INSTITUTE' in the Respondent's device mark enhances the dissimilarity. The learned Single Judge concluded that there is no immediate and obvious connection between the two composite marks when viewed as a whole.

The aforesaid findings have been returned based on a visual comparison of the rival device marks as being used by the parties. For convenience, the same is reproduced as under: -

Appellant's Mark	Respondent's Mark
	

ii. In view thereof, the learned Single Judge concluded that the Respondent's mark 'VAJIRAO & REDDY INSTITUTE' was prima facie not deceptively similar to 'VAJIRAM & RAVI'.

iii. With respect to Respondent's use of the word 'VAJIRAO' as a part of its composite mark, the standalone use of the said word in its study material and as its domain name, the Appellant alleged deceptive similarity between 'VAJIRAO' and 'VAJIRAM'. However, the learned Single Judge observed that Appellant's reliance on its mark 'VAJIRAM', which is also part of its composite mark 'VAJIRAM & RAVI', to allege passing off due to misrepresentation is not

persuasive, as the Appellant had failed to establish reputation and goodwill in its standalone mark 'VAJIRAM'. The learned Single Judge observed that Appellant's use of the mark 'VAJIRAM' was almost always accompanied by its mark 'VAJIRAM & RAVI'. The learned Single Judge held that the Appellant would have to present compelling evidence *at trial* to prove the distinctiveness of its standalone mark 'VAJIRAM' as well as goodwill therein, and also prove that the Respondent's use of the mark 'VAJIRAO' is likely to cause confusion amongst the target audience.

iv. Since both parties run coaching institutes for UPSC aspirants, the learned Single Judge has taken into consideration the fact that the target customers are well-informed civil service aspirants, who are discerning, capable of distinguishing between the two institutes and therefore unlikely to be misled by the rival marks. This opinion was formed by the Court, after perusing the content of the interviews of the successful UPSC aspirants published in the newspapers. The text of newspaper interviews showed that the aspirants/students[5] knowingly referred to having attended *both* the institutes for preparation of mock interviews, evidencing that they did not confuse or associate Respondent's institute with that of the Appellant's institute; and were conscious that these are distinct institutes.

v. The learned Single Judge held that the Appellant had prima facie failed to establish any likelihood of confusion amongst the concerned members of the public [i.e., UPSC aspirants] with respect to the Respondent's institute 'VAJIRAO & REDDY' with the Appellant's

[5] Ms. Anu Kumari and Mr. Sagar Kumar

institute ‘VAJIRAM & RAVI’.

vi. With respect to honesty and adoption of the impugned mark ‘VAJIRAO & REDDY’ by the Respondent, the learned Single Judge observed that documents on record established that the Respondent has been using the impugned mark at least since March 2005, whereas the suit had been filed in 2019. The Respondent established a trust by the name ‘VAJIRAO SHIKSHAN TRUST’ and ‘VAJIRAO DEGREE COLLEGE’ in 2013-2014, which provided evidence of continuous use of the mark by the Respondent and therefore, at a prima facie stage, the Court held that the adoption of the mark was not fraudulent. However, the learned Single Judge opined that this issue of honest adoption would require investigation *at trial*, where both parties will be obligated to present evidence substantiating their respective positions.

vii. The learned Single Judge concluded that Appellant had failed to show that the Respondent, by using the impugned mark ‘VAJIRAO & REDDY’, had misrepresented to the public any association with the Appellant’s mark ‘VAJIRAM & RAVI’; to the contrary, the documents showed that the Respondent had been using its impugned mark openly and coextensively with the Appellant for an extended period of time, dating back to 2005.

viii. In view of the aforesaid findings, the learned Single Judge declined to grant an interim injunction restraining the Respondent from using the mark ‘VAJIRAO’ or ‘VAJIRAO & REDDY’.

19. Before we decide the Appellant’s claim for an interim injunction on the grounds of passing off on the merits, we would like to take note of the

wilful conduct of the Appellant in failing to prosecute its suit by leading evidence.

The suit was instituted on 22nd January, 2019. After the completion of pleadings, issues were framed on 31st January, 2020. The Plaintiff filed the evidence affidavits of its eight witness(es) on 16th March, 2020. Thereafter, the Local Commissioner was appointed on 1st April 2022, for the recording of evidence. However, the recording of evidence of the witnesses did not commence due to the wilful inaction of the Appellant. Instead, the Appellant pressed the hearing of its injunction application, which was decided by the learned Single Judge *vide* impugned judgment dated 14th September, 2023, declining the injunction.

20. We have been informed at this appeal's hearing dated 29th April 2026, that the Appellant has *still* not commenced recording of evidence. To date, not a single witness has tendered evidence, and adjournments have been sought by the Appellant before the Local Commissioner on one ground or another. This conduct of the Appellant in wilfully not commencing the recording of evidence from 2020 to 2026 is *telling* and shows a lack of interest in prosecuting the suit. The learned Single Judge in the impugned judgment has expressly noted that Appellant, *at trial*, has to lead relevant evidence to show its reputation and goodwill in the standalone mark 'VAJIRAM', and establish likelihood of confusion amongst the target audience due to the use of the word 'VAJIRAO' by the Respondent in the impugned mark 'VAJIRAO & REDDY'. The Appellant's unwillingness to lead evidence to establish reputation and goodwill leads to an inference that the Appellant does not have any relevant evidence available to substantiate the said facts and is therefore delaying the trial.

21. It has been three years since the judgment of the learned Single Judge, and yet the Appellant has failed to commence with the recording of evidence in the suit. The Appellant's unwillingness to proceed to trial would merit dismissal of the suit for non-prosecution under Order XVII, Rules 2 and 3, read with Order IX of CPC.

22. We shall now proceed to examine the Appellant's claim of passing off against the Respondent's use of the impugned mark. It is trite law that in an action for passing off, the plaintiff has to show goodwill associated with its mark, misrepresentation by the defendant, likelihood of confusion amongst the customers and consequent damages suffered by the plaintiff.

23. In this appeal, we are called upon to examine whether the Respondent's device mark 'VAJIRAO & REDDY INSTITUTE' is deceptively similar to Appellant's marks 'VAJIRAM & RAVI', 'VAJIRAM', as well as its earlier mark 'VAJIRAM & RAO'.

24. In addition, we have been called upon to examine whether the standalone word 'VAJIRAO' in the Respondent's mark is deceptively similar to Appellant's marks, more specifically 'VAJIRAM', and is an attempt to ride upon the goodwill and reputation of the Appellant's marks.

In summary, the Appellant's challenge is to the Respondent's use of the word 'VAJIRAO'.

25. The Appellant has sought to contend that 'VAJIRAO' in the Respondent's mark is a colourable imitation of the word 'VAJIRAM' as it appears in the present mark 'VAJIRAM & RAVI', and it is an abbreviated form of its discontinued mark 'VAJIRAM & RAO/ VAJIRAM & RAO'.

The learned Single Judge has, however, not found favour with the said submission, as it has concluded that the Respondent uses its composite device mark 'VAJIRAO & REDDY INSTITUTE' for carrying on its business, and it is the composite mark which has to be considered as a whole and compared to the Appellant's composite mark 'VAJIRAM & RAVI' to determine if there is any misrepresentation or likelihood of confusion.

26. The Appellant has not seriously contested the learned Single Judges' finding that the Appellant's device mark 'VAJIRAM & RAVI' is not deceptively similar to the Respondent's device mark 'VAJIRAO & REDDY INSTITUTE', as is evident from ground no. '12' of this appeal.

27. The consideration and deliberation of the learned Single Judge with respect to the lack of similarity between the composite marks is set out at paragraph nos. '7', '7.1' and '7.2' of the impugned judgment, and the Appellant has been unable to point out any error in the findings returned. We also concur with the said findings of the learned Single Judge that the composite marks 'VAJIRAM & RAVI' vis-à-vis 'VAJIRAO & REDDY INSTITUTE', compared as a whole, are not deceptively similar.

28. Next, the Appellant has contended that the Respondent uses the standalone word 'VAJIRAO' as a part of its domain name and on its study material, which is deceptively similar to the Appellant's mark 'VAJIRAM' and is likely to be confused by the customers as associated marks. Learned Single Judge, however, opined that Appellant has failed to prima facie show reputation and goodwill in the standalone mark 'VAJIRAM' so as to persuade the Court to hold that the customers are likely to associate use of the word 'VAJIRAO' with 'VAJIRAM'. Learned Single Judge at paragraph nos. '9' to '12' of the impugned judgment observed that the Appellant

invariably uses the mark 'VAJIRAM' along with its composite mark 'VAJIRAM & RAVI' and therefore the Court was of the prima facie opinion that the Appellant would have to at trial prove the reputation and goodwill of the standalone mark 'VAJIRAM' as well as the likelihood of the association of the said mark in the minds of the public with the word 'VAJIRAO'.

In this appeal, the Appellant has been unable to draw our attention to any evidence to show that the said finding of the learned Single Judge was incorrect. The Appellant had not placed on record any sales figures or advertisement and promotion expenditure, which would establish its reputation and goodwill in the mark 'VAJIRAM' on a standalone basis.

29. This Court finds it apposite to refer to the dicta of the Supreme Court in **Brihan Karan Sugar Syndicate Private Limited v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana**[6], wherein the Court has reiterated the settled position of law that in a suit for passing off, the plaintiff [i.e., the Appellant herein] has to place on record its sales figures and advertisement expenditure to assist the Court in assessing the reputation and goodwill of the plaintiff's mark.

30. Furthermore, the learned Single Judge also opined that there is no material on record to form an opinion that the use of the word 'VAJIRAO' by the Respondent has caused any misrepresentation amongst the customers.

While forming an opinion that there is prima facie no misrepresentation amongst the students by the use of impugned mark 'VAJIRAO & REDDY', as noted above, the learned Single Judge has referred to interviews of successful UPSC aspirants who had studied with

[6] 2023 SCC OnLine SC 1163

both Appellant and the Respondent's Institute to form a prima facie view that the target audiences recognise both the Institutes as separate entities and do not confuse one for the other. During arguments, Appellant has been unable to show us any material so as to persuade us to take a contrary view on the issue of absence of misrepresentation.

In fact, considering the niche market segment that the Appellant and the Respondent cater to and considering that these students were successful in qualifying for UPSC, it seems improbable that the Appellant would not be aware of these interviews, which referred to the Appellant's institute. We may note that in this market segment, interviews of the successful UPSC candidates are promoted, recorded and broadcasted at the behest of the institute(s) since it enhances the reputation of the concerned institute.

We therefore find that the reliance placed by the learned Single Judge on these interviews was merited for forming the prima facie view on the issue of lack of misrepresentation.

31. In addition to the aforesaid findings, the learned Single Judge has opined that in the given facts where the Respondent is an established Institute from at least 2007, the grant of an interim injunction in 2019 was not desirable. The Respondent has prima facie demonstrated from the documents on record that it has been using the impugned mark at least since 2007 and has had a registration for the device mark since 2009, with user claim since 2007. As noted above, given the niche market segment and overlapping geographical operations in Delhi, we concur with the learned Single Judge's finding that it is unconvincing that the Appellant learnt about the Respondent's Institute only in 2018 has merit and would require an appreciation of the evidence led *at trial*. The submission of the Respondent

that advertisements of both the institutes simultaneously appeared in relevant magazines as early as September 2009, also militates against Appellant's submission that it learnt about the Respondent institute only in 2018.

32. The Appellant has no real explanation for the concurrent advertisements in the relevant magazines. It sought to dismiss this fact by relying upon the judgment of **Automatic Electric Limited v. R.K. Dhawan and Another**[7]. We are not persuaded by this argument, as in the said judgment, it was a case of a solitary concurrent advertisement, and therefore, the Court gave the plaintiff therein the benefit of doubt. However, in the present case, the Respondent has placed on record editions of the Civil Service Chronicle magazine [amongst others], and the ratio of **Automatic** (supra) would not be applicable. The Appellant would therefore have to explain *at trial* how, despite advertising in the same magazines, it had no knowledge of the existence of the Respondent's Institute for the period from at least 2007 to 2018.

33. The Appellant has also relied upon the judgment of the Supreme Court in **Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia Ltd,** wherein the Court had held that mere delay in instituting a suit is not sufficient to defeat the grant of an injunction if it prima facie appears that the adoption of the mark by the defendant itself is dishonest.

In the considered opinion of this Court, the said judgment does not apply to the facts of this case, as the submission of the Appellant that the Respondent is passing off its services for the services of the Appellant has not been established at this prima facie stage on the tests of passing off.

[7] 1999 SCC OnLine Del 27

Appellant has failed to prima facie establish that the Respondent's impugned mark 'VAJIRAO & REDDY' is a dishonest adoption, as the Appellant has been unable to establish its reputation and goodwill in the mark 'VAJIRAM', so also the Respondent itself has garnered its own reputation and goodwill for its services, as opined by the learned Single Judge.

34. The interviews of the students, who attended both the institutes and the concurrent advertisements from 2007 to 2018 in the relevant magazines, show that for over a decade, no objection or concern was raised by the Appellant, thereby allowing the Respondent to continue their business under the impugned mark and build their own reputation and goodwill. The inaction of the Appellant permitted the Respondent to continuously use the mark from 2007 till 2019 without any objections or interference. Respondent's action of having its device mark registered in 2009 evidences its honest intention to use the mark legitimately. The inaction of the Appellant tilts the balance of convenience in favour of the Respondent, and therefore, at an interim stage, denial of the injunction in these facts does not merit interference. In this regard, this Court deems it apposite to refer to the dicta of the Supreme Court in **Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Limited and Others,**[8] wherein the Court had held that the plaintiff's delay in instituting a suit cannot be permitted to prejudice the defendant, who used its registered mark continuously and extensively during the period that the plaintiff maintained silence. The relevant paragraph reads as follows: -

> "40. If goodwill or reputation in the particular jurisdiction (in India) is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff's

[8] (2018) 2 SCC 1

> right in the action of passing off that it had brought against the defendants in the Delhi High Court. Consequently, even if we are to disagree with the view of the Division Bench of the High Court in accepting the defendant's version of the origin of the mark 'Prius', the eventual conclusion of the Division Bench will, nonetheless, have to be sustained. We cannot help but also to observe that in the present case the plaintiff's delayed approach to the Courts has remained unexplained. Such delay cannot be allowed to work to the prejudice of the defendants who had kept on using its registered mark to market its goods during the inordinately long period of silence maintained by the plaintiff."
>
> [Emphasis Supplied]

35. We note that the Appellant has not even addressed arguments on any alleged damage suffered by the Appellant due to the Respondent's use of the impugned mark, which is the third essential ingredient in the claim of passing off.

36. In the facts of this case, the learned Single Judge has opined that the rival composite marks are not deceptively similar and the Appellant has been unable to prove any reputation and goodwill in the standalone use of its mark 'VAJIRAM'. For all these reasons, we find no ground to interfere with the refusal of the interim injunction.

37. In any event, the scope of interference, while hearing an appeal against the order passed by a Commercial Court, in Intellectual Property matters, under Order XXXIX Rule 1 and 2 CPC, stands settled by the judgment of the Supreme Court in **Wander Ltd. v. Antox India (P) Ltd.** (supra). The relevant paragraph reads as follows: -

> "13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the

trademark on which the passing-off action is founded. We shall deal with these two separately.

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**[9]:

> "... These principles are well established, but as has been observed by Viscount Simon in **Charles Osenton & Co. v. Jhanaton**[10] '...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'.
>
> The appellate judgment does not seem to defer to this principle. …."
>
> [Emphasis Supplied]

38. In its recent decision in **Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra**[11]**,** the Supreme Court has reiterated the aforesaid principles

[9] AIR 1960 SC 1156
[10] 1942 AC 130
[11] 2025 SCC OnLine SC 1701

at paragraph '19.8', which reads as under: -

> "19.8. In **Wander Ltd.**, this Court elaborated the principles governing the grant or refusal of interim injunctions in trademark infringement and passing off actions. It was underscored that appellate courts ought to be circumspect in interfering with the discretionary orders of lower courts in such matters. Interference is warranted only where the discretion has been exercised arbitrarily, capriciously, perversely, or in disregard of settled legal principles.
>
> [Emphasis Supplied]

39. Thus, as summarized by the Division Bench of this Court in **Sanjay Gupta and Vinay Gupta v. Vineet Jain, Proprietor of Vijaypal Vineet Kumar and Co.,**[12] an appeal against an interlocutory order passed by the Commercial Court, the Appellate Court would not substitute its subjective view for the view adopted by the Commercial Court. It is only if the Commercial Court errs on principle that the Court would interfere; otherwise, factual and discretionary evidence and findings of the Commercial Court are ordinarily immune from interference in an appeal.

40. As noted in the judgment, the Appellant/plaintiff has failed to proceed with the trial, though issues were framed on 31st January, 2020. The matter is still pending before the Local Commissioner. The state of affairs arising from the wilful inaction of the Appellant/plaintiff in leading evidence shows that parties file suits only to agitate the relief of an interim injunction and are not interested in the adjudication of their final claims. This conduct of the Appellant clearly reflects its lack of bona fides in prosecuting the suit proceedings.

41. Accordingly, the Appellant is directed to commence recording of the evidence of its witnesses in July 2026 and conclude the recording of

[12] 2026 SCC OnLine Del 1862

evidence within three months thereafter. Similarly, Respondent is directed to conclude recording of its evidence within three months of the conclusion of the Appellant's evidence. It is directed that in case the Appellant fails to commence and conclude its evidence, the learned Single Judge shall pass an appropriate order against the Appellant under Order XVII Rules 2 and 3 CPC, read with Order IX CPC, which includes dismissal of the suit for non-prosecution.

42. In view thereof, this Court does not deem it fit to interfere with the impugned judgment. The appeal is dismissed. Pending application[s], if any, are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

MAY 26, 2026/mt/hp/aa