

**IN THE COURT OF MS. PRABH DEEP KAUR, DISTRICT  
JUDGE-05, SOUTH EAST DISTRICT, SAKET COURTS,  
NEW DELHI**

**CS (COMM) 332/19**

CNR NO. DLSE01-006275-2018

**Burberry Limited**

Houseferry House, Houseferry Road,  
London SW1P 2AW, England

.....Plaintiff

VERSUS

**Krishan Kumar**

S/o Shri Tulsi Dass,  
Stall No. 10,  
Gaffar Market,  
Karol Bagh,  
New Delhi

Also as & at-

**Krishan Kumar,**

S/o Shri Tulsi Das,  
R/o 9/46, Geeta Colony,  
Delhi -110031

....Defendant no. 1

**Ashish Chanana,**

S/o Narinder Chanana,  
Stall No. 5,  
Gaffar Market,  
Karol Bagh,  
New Delhi -110005  
Also as & at-

**Ashish Chanana**

s/o Narinder Chanana,  
r/o C-38, 1<sup>st</sup> Floor, Kirti Nagar,  
Ramesh Nagar, Delhi -110015

....Defendant no. 2

**Md Shible Raza,**

S/o Md Hira  
r/o 348/27, Onkar Nagar,  
Tri Nagar, Delhi -110035

....Defendant no. 3

**Yogesh Kumar,**  
S/o Vijay Kumar,  
Shop No. 98 (Ground Floor),  
Gaffar Market,  
Karol Bagh,  
New Delhi -110005

Also as & at-  
Yogesh Kumar,  
s/o Vijay Kumar,  
r/o D-371, Peera Gadhi Camp,  
Delhi-110056

....Defendant no. 4

**Daljeet Singh,**  
S/o Sh. Nand Singh  
Shop No. 98 (First Floor),  
Gaffar Market,  
Karol Bagh,  
New Delhi -110005

Also as & at -  
Daljeet Singh  
s/o Sh. Nand Singh,  
r/o B-15, New Gupta Colony,  
Vijay Nagar, Delhi -110009

....Defendant no.5

Date of Institution : 02.08.2018  
Arguments heard on : 23.04.2026  
Date of Judgment : 29.05.2026

**SUIT FOR PERMANENT INJUNCTION, RESTRAINING  
INFRINGEMENT, PASSING OFF, DELIVERY UP AND  
RENDITION OF ACCOUNTS**

**JUDGMENT**

1. Vide this judgment, the suit for permanent injunction qua infringement of registered trademark and copyright and rendition of account/damages against the defendant, has been disposed of.

2. **Plaintiff's version as per averments in the plaint :-**

The case of the plaintiff as set out in the plaint in nutshell is that plaintiff, Burberry Ltd is a Private limited company duly incorporated on 9th January 1920 and existing in accordance with the laws of England having its registered office at Horseferry House, Horseferry Road, London SW1P 2AW, England. The plaintiff is engaged in the business of manufacture, distribution and sale of wide range of handbags, wallets, leather bags, ready to wear apparels, clothing, cosmetics, fragrances, sunglasses, footwear, fashion bags, leather goods, belts, leather belts, buckles, watches and other fashion accessories and allied/related products. The plaintiff is the owner and proprietor of the trademarks BURBERRY, BURBERRY EQUESTRIAN KNIGHT logo, CHECK device and various BURBERRY formative trademarks/ labels in relation to its said goods and business. Plaintiff uses its said BURBERRY trademark/label either individually or in combination of each other which are mentioned in para 3 of the plaint. The plaintiff has been honestly and bonafidely, continuously, commercially, openly, exclusively and to the exclusion of others, uninterruptedly and in the course of trade and as proprietor thereof using its BURBERRY EQUESTRIAN KNIGHT logo since the year 1901 and its CHECK device since 1920s, in relation to its said goods and business, either individually or in combination of each other and /or BURBERRY word mark and has built up on worldwide and globally valuable trade goodwill and reputation thereunder and acquired proprietary rights therein. In order to get statutory protection of its said BURBERRY trademark/label in India, plaintiff filed various applications of the same in respect of his said goods and business falling in different classes under the

Trade Mark Act, 1999. The details of the registration is mentioned in para 8 of the plaint. Plaintiff's products are sold globally through its stores and burberry.co. as well as through third party wholesale customers, both offline and online. The income statement of the plaintiff is mentioned in para 12 of the plaint. The art works involved in the plaintiff's said BURBERRY trademark/label are original artistic works and the plaintiff is the owner and proprietor of the copyright therein within the meaning of Indian Copyright Act, 1957. The plaintiff has been dealing with its artworks/ copyright in the course of the trade in relation to its said goods and business inter-alia within the meaning of Section 14 of the Copyright Act, 1957. The plaintiff is committed to the creation of authentic and distinctive Goods/ products and continuous innovation in design and manufacturing. Products division of the plaintiff are womens, mens, and children apparels, accessories, and beauty. Plaintiff has acquired immense goodwill and reputation under the said trademarks/labels. The plaintiff has spent a huge amount of money and effort in building their brand image over the past several decades. With the advent of e-commerce and consumers becoming increasingly mobile and global, plaintiff continued to invest in digital commerce. Online and in-store innovations worked together to create a seamless experience wherever customers encountered the brand, burberry.com is the brand's largest store in terms of traffic and sales, servicing 44 countries in 11 languages. The plaintiff has adopted the said BURBERRY trademark/label as an essential and material part of its Email ID and Domain Name viz <https://www.burberry.com>, [www.burberryplc.com/](https://www.burberryplc.com/), <https://in.burberry.com> etc. Plaintiff company has thus exclusive right to use

said trademark and logos with respect to its products and no one is entitled to use the trademarks BURBERRY, BURBERRY EQUESTRIAN KNIGHT logo, CHECK device and various BURBERRY formative trademarks/ labels or any mark deceptively and confusingly similar to BURBERRY, BURBERRY EQUESTRIAN KNIGHT logo, CHECK device and various BURBERRY formative trademarks/ labels without a licence or assignment by the plaintiff company. Plaintiff said BURBERRY trademark/ label is a well known Trade Mark within the meaning of Section 2(1) (zg) of the Act.

3. Defendant is engaged in manufacturing, marketing, soliciting and trade of leather goods, accessories, readymade clothing, apparels, garments, handbags, footwear, shoes, bags, belts, perfumes, accessories, lifestyle goods and/or related/cognate or allied goods and / or related / cognate or allied goods. Defendant has been shown as "Ashok Kumar" following the "John Doe Order". Thereafter, such person would be substituted as parties instead of "Ashok Kumar" Defendant has dishonestly and malafidely adopted and started using the trade mark/label BURBERRY in relation to their impugned goods and has been using the same individually or in combination of each other. The defendant is giving false trade description to their impugned goods. Defendant is indulging in counterfeiting the impugned goods, which is in complete violation of plaintiff's statutory and common right in the said trademark/label/trade name/domain name. The defendant is not the proprietor of the impugned trade mark/ Label and has adopted and is so using in relation to their impugned goods and business and is otherwise dealing with it in the course of trade without the leave and

license of the plaintiff. Defendant is selling and distributing of spurious goods from its premises at South East Delhi. During the market survey in the last week of June 2018, the plaintiff company came to the knowledge that the trademarks and logos adopted by the defendant are deceptively and confusingly similar to the registered trademark BURBERRY of plaintiff and unwary customers are likely to be easily deceived, confused or misled. Hence, the present suit.

3. In the present suit, vide order dated 04.08.2018, John Doe order was passed as the particulars of defendant were not known to the plaintiff at the time of filing of the suit. In pursuant to ex-parte interim order dated 04.08.2018, Ld. LC has visited the premises of the defendant has submitted the report on 06.08.2018.

**4. Defence of defendant no. 1 & 3:**

It is stated that Plaintiff has concealed material facts from this Court and the present suit is nothing but an abuse of process of law and should be dismissed with punitive costs. The Defendants are small time traders and by way of the present suit the Plaintiff is trying to arm twist them to extort money. It is denied that Nirmal Singh is the constituted attorney of the Plaintiff. It is further denied that she is duly authorized by the plaintiff including to sign the Vakalatnama, sign and verify the pleadings, depose to the facts of the case and to do all necessary acts on behalf of the Plaintiff for the proper conduct and prosecution of the instant suit. It is specifically denied that Nirmal Singh is fully aware of the facts and circumstances of the instant case and he is competent to institute and prosecute the instant Suit on behalf of the Plaintiff. It is submitted that the

Plaintiff had not supplied any documents to show that Nirmal Singh is authorized by the Plaintiff to act on its behalf. In absence of any document such as Board resolution and minutes of meeting it can be presumed that Nirmal Singh is authorized by the Plaintiff or to act on behalf of the Plaintiff. It is further submitted that a preliminary issue be framed regarding authority and once this courts satisfy itself that Nirmal Singh is authorized to act on behalf of the Plaintiff this Court should proceed in the matter accordingly. The entire claim of the Plaintiff in the Plaintiff is misconceived and not tenable at all in law. The present suit and the accompanying applications are liable to be dismissed in limine as the trade mark registrations as claimed by the Plaintiff are invalid and liable to be removed from the Register. The present suit is liable to be dismissed as the same is barred by law, particularly in view of the Section 2 of Power of Attorney Act, 1882. The Plaintiff's attorney/instrument has not been duly authorized by its principle under his own name, signatures and seal; hence Power of Attorney so filed in the present suit is not effectual in law. It is submitted that the present suit has been filed by an unauthorized person and has no locus-standi to file the same. Moreover, the alleged Resolution-Cum-Authority is unstamped. Further, it's a settled law that attorney cannot give evidence on behalf of the principle, whereas in the present suit affidavit of the alleged constituted attorney states to depose before this Hon'ble Court on behalf of the plaintiff, which is not sustainable and vitiates the entire suit. The person who has authorised Nirmal Singh shall be summoned by this Court to verify that he/She is authorised to sign on the authority letters. It is submitted that the Plaintiff has produced forged and fabricated

Resolution-Cum- Authority. Nirmal Singh has deposed wrongly on affidavit for which this Hon'ble ought to dismiss the suit on this very ground and take appropriate criminal action against her. The Plaintiff had played fraud on this Hon'ble Court. That having regard to the claim of the Plaintiff as set out in the Suit, the Plaintiff is in direct contravention to the provisions of Order VII Rule 10/11 of the Code of Civil Procedure, 1908. The Plaintiff is a foreign company and is neither selling any of their goods under their Trade Mark within the jurisdiction of this Hon'ble Court nor has any subordinate office.

The suit at its very outset is not maintainable as the same is directly hit by the provision of clause (a) of Order VII Rule 10/11 CPC, since the plaint does not disclose any cause of action qua the claims as mentioned in the Plaintiff. The present suit is also barred by Section 20 of CPC, 1908 read with Section 134 of Trademarks Act, 1999; neither the Plaintiff (which is a company/limited partnership) nor the Defendant reside, carry on business or work for gain within the territorial jurisdiction of this Hon'ble Court and as such the plaint is liable to be returned. Since no cause of action has arisen in the territorial jurisdiction of this Court nor the Defendant resides and/or works for gain within the local jurisdiction of this Hon'ble Court, the present suit is barred under section 20 (a) and 20(c) of the Code of Civil Procedure, 1908. Further, when no cause of action has arisen the present suit is liable to be rejected under Order VII Rule 10/11 Clause (a) of the Code of Civil Procedure, 1908. The present suit is without any cause of action and nor does the plaint disclose any cause of action on its bare reading. It may not be out of place to mention here that the Plaintiff has not filed even a single

document in support of the averments made in the Plaint pertaining to the territorial jurisdiction before this Hon'ble Court qua himself or the defendants. The plaintiff has not been filed even single original documents and has also not been filed Certificate U/s 65B of Indian Evidence Act 1872. The plaintiff has been filed expired POA and has not been file valid/renew POA and the POA is expired on 17th Feb 2018 and the suit is filed on July 2018 and the suit is not maintainable. That the person who has authorised Nirmal Singh shall be summoned by this Court to verify that he/She is authorised to sign on the authority letters. The present suit is vitiated as the plaintiff has not approached this Hon'ble Court with clean hands and has deliberately made false and misleading statements only to derive unjust gains and advantages to the prejudice of defendants.

**5. Defence of defendant no. 2:**

It is stated that defendant no. 2 denies and disputes each and every averment made in the plaint and all the statement/averments made in the plaint may be deemed to be denied until and unless they are specifically admitted to by the defendant no. 2. It is stated that the suit has not been filed by an authorized and proper person in as much as Mr. Nirmal Singh does not have a valid authority in his favour to sign, verify and institute the present suit. A mere perusal of the renewal of the Resolution Cum Authority dated 07.06.2017 shows that it was valid only till 17.02.2018, whereas the suit has been instituted on 30.07.2018. Furthermore there is no board resolution or any other such document which gives authority to the signatory of the plaint to institute the present suit. Hence the instant suit is liable to be dismissed on this ground alone. The defendant no. 2 has

wrongly implicated in the present suit as the defendant no. 2 is not selling/manufacturing /marketing any products marked or labeled as Burberry. Even the local commissioner has not placed on record on the spot proceedings of stall no. 5 to show defendant no. 2 was selling /manufacturing /marketing any of the products marked or labeled as Burberry. It is submitted that the defendant no. 2 had given front portion of the shop on rent of Rs. 10,000/- to Mr. Sunil Kumar, resident of L-25, JJ Colony, Wazirpur, North West Delhi -110052, who was allowed to open a counter for sale of his goods i.e. belts. The Aadhar card of the person running the counter has been placed on record. The goods given on superdari to the defendant no. 2 were actually goods of Mr. Sunil Kumar and not the defendant no. 2. The defendant no. 2 has a business of selling bags and purses. The goods sealed by the Local Commissioner also contains a couple of bags of the defendant no. 2, however, the said bags do not bear the mark of the plaintiff. The same can be verified by calling for the goods given on superdari. The defendant no. 2 undertakes to provide the goods sealed and given on superdari to this Court to implead the correct person and delete the name of the defendant no. 2 as party to the suit. Without prejudice to the above contentions taken by the defendant no. 2, it is submitted that the defendant no. 2 was not aware that by selling the goods seized by the Local Commissioner, Sh. Sunil Kumar would be committing any violation /infringement of the alleged IP rights of the plaintiff. Further, as none of the goods seized, except one good, at the defendant's premises bear the word mark Burberry, the defendant had no reasonable ground for believing that Sh. Sunil Kumar would be committing any violation /infringement of the alleged

IP rights of the plaintiff. The plaintiff has not approached this Court with clean hands. It has not disclosed the correct facts as the plaint is replete with gross and material suppression of facts and is liable to be dismissed on this ground alone.

Vide order dated 28.05.2025, the present suit is disposed of as settled qua defendant no.2.

6. Defendant no.4 and 5 have not filed any WS.

### Issues

7. From the pleadings of the parties, following issues were framed vide order dated 08.05.2019:-

*(i) Whether the suit is instituted by a duly authorized and competent person on behalf of the plaintiff?(OPP)*

*(ii) Whether this Court has territorial jurisdiction to try the present suit?(OPP)*

*(iii) Whether the plaintiff is proprietor and owner of trade marks in question?(OPP)*

*(iv) Whether the defendants are passing off their goods and infringing the trade mark of the plaintiff?(OPP)*

*(v) Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? (OPP)*

*(vi) Whether the plaintiff is entitled to a decree of rendition of account, as prayed for? (OPP)*

*(vii) Relief.*

Thereafter, matter was fixed for plaintiff's evidence.

8. In order to prove their case, the Plaintiff company examined its authorized representative Sh. Anand Arya as **PW-1**. He has reiterated the facts of plaint in his affidavit Ex.PW1/A. He has relied upon the documents i.e.

1) Ex. PW1/1 is true representation of said trademark/ label of the plaintiff.

- 2) Ex. PW1/2 is the photograph of the impugned goods bearing the impugned trademark/ label.
- 3) Ex. PW1/3 is registration certificate and status of plaintiff's trademark labels under application no. 905511.
- 4) Ex. PW1/4 is registration certificate and status of plaintiff's trademark/ labels under application no. 677683.
- 5) Ex. PW1/5 is registration certificate and status of plaintiff's trademark/ labels under application no. 905507.
- 6) Ex. PW1/6 is registration certificate and status of plaintiff's trademark/ labels under application no. 2892932.
- 7) Ex. PW1/7 is registration certificate and status of plaintiff's trademark/ labels under application no. 2010741.
- 8) Ex. PW1/8 is registration certificate and status of plaintiff's
- 9) Ex. PW1/9 is registration certificate and status of plaintiff's trademark/ labels under application no. 905509
- 10) Ex. PW1/10 is registration certificate and status of plaintiff's trademark/ labels under application no. 1247382.
- 11) Ex. PW1/11 is registration certificate and status of plaintiff's trademark/ labels under application no. 1963655.
- 12) Ex. PW1/12 is registration certificate and status of plaintiff's trademark/ labels under application no. 1102678.
- 13) Ex. PW1/13 is registration certificate and status of plaintiff's trademark/ labels under application no. 1875463.
- 14) Ex. PW1/14 is registration certificate and status of plaintiff's trademark/ labels under application no. 1102679.
- 15) Ex. PW1/15 is registration certificate and status of plaintiff's trademark/ labels under application no. 905508.

16) Ex. PW1/16 is income statement, earnings cash flow, balance sheet etc. of plaintiff form 2011 to 2015.

17) Ex. PW1/17 is documents relating to plaintiff's recognition towards its act of corporate social responsibility dated 10.09.2015.

18) Ex. PW1/18 is authorization letter dated 16.02.2021.

19) Ex. PW1/19 is documents relating to plaintiff's business within jurisdiction.

20) Ex. PW1/20 is certificate u/s 65 B of Indian Evidence Act, 1872.

21) Mark P1 is list of plaintiff's trademark registration.

## 9. Ex-parte

Record further reveals that **defendant no.1, 3, 4 and 5 were proceeded ex-parte vide order dated 14.09.2022** as defendant no.1, 3, 4 and 5 failed to appear despite repeated opportunities being given.

10. I have heard Ld. Counsel for plaintiff and carefully perused the record. Ms. Ayushi Aggarwal, Ld. Counsel for plaintiff have addressed final arguments. She has filed written arguments in which she has reiterated the arguments addressed before the Court. The same are not reproduced here in verbatim for the sake of brevity but will be dealt alongwith the findings upon issues at the relevant stage. Record has been carefully perused.

11. Plaintiff has placed reliance upon following judgments :

- I. *Midas Hygiene Industries (P) Ltd. V. Sudhir Bhatia and Ors. (2004) 3 SCC 90)*
- II. *Leayan Global Pvt. Ltd. Vs. Bata India FAO (OS) (COMM) 105/2019 (Judgment dated 15.12.2025)*

- III. *Aero Club Vs, Sahara Belts 2023 SCC online De 7466*
- IV. *Louis Vuitton Malletier V. Iqbal Singh and Ors. 2019 (78) PTC 315 (Del).*
- V. *The Polo /Lauren Company L.P. Vs. Rohit S Bajaj and Ors.*
- VI. *Jasdeep Singh Kalsi Vs. State & Ors. Manu/De/4655/2018*
- VII. *World Wrestling Entertainment Inc. Vs. Reshma Collection 2014 (60)ptc 452 (Del)*
- VIII. *Kohinoor Seed Feild India Pvt. Ltd. Vs. Veda Seed Sciences Pvt. Ltd. 2025 DHC 10789 DB*
- IX. *Diamond Modular Pvt. Ltd. Vs. Vikash Kumar & Anr. 2025 DHC 3619 Db*
- X. *Suman Devi Anrs. V. Rakesh Kumar Sharma 2025 DHC 6149 Db*
- XI. *Sandisk L1c & Anr. Vs. Laxmi Mobiles & Ors CS(Comm) 589 of 2019;*
- XII. *Lt Foods Company Vs. Saraswati Trading Company, CS (Comm No. 413/2021.*

12. Issue-wise findings is below:-

**Issue no. i**

***(i) Whether the suit is instituted by a duly authorized and competent person on behalf of the plaintiff?(OPP)***

The onus to prove issue no.i was placed upon the plaintiff.

The defendants have categorically challenged the authority of Mr. Nirmal Singh to institute the suit on behalf of the plaintiff.

13. Perusal of record shows that the present suit has been instituted by one Mr. Nirmal Singh on the basis of one Resolution-cum-authority letter dated 07.06.2017. However, plaintiff has not placed on record any document to prove that he has been duly authorized by board of directors of the plaintiff company to institute the present suit. No board of resolution and minutes of meetings in this regard have been placed on record by the plaintiff. No official of the plaintiff company had entered into witness box to depose that Mr. Nirmal Singh had been duly authorized by the plaintiff company to file the present suit.

Interestingly, the copy of said resolution clearly states that the resolution-cum-authority in favor of Mr. Nirmal Singh is extending till 17.02.2018 and thus, the authority of Mr. Nirmal Singh had already expired on 02.08.2018, when the suit has been instituted and nothing has been filed to prove the authority of Mr. Nirmal Singh to institute the suit on behalf of plaintiff. Thus, plaintiff has failed to prove that the suit has been instituted through duly authorized person.

14. Further, the plaintiff has examined one Mr. Anand Kumar Arya as PW-1 on 14.09.2022 and he has relied upon the Authorization letter and resolution-cum-authority Ex.PW1/8 (colly). However, plaintiff has not placed on record any document to prove that he has been duly authorized by board of directors of the plaintiff company to depose in the present suit on behalf of plaintiff. No board of resolution and minutes of meetings in this regard have been placed on record by the plaintiff. No official of the plaintiff company had entered into witness box to depose that Mr. Anand Kumar Arya had been duly authorized to depose on behalf of plaintiff or that Mr. Jeffrey Michael Warren, Director of Brand Protection had been authorized by Board of Directors to appoint AR to file the suit in India. Nothing has been filed to prove that the said Jeff Warran is Director of Brand Protection as stated in the authorization letter. Thus, the evidence given by PW-1 on behalf of plaintiff cannot be considered as substantial evidence on behalf of plaintiff. **Accordingly, issue no.i is decided in favour of defendant and against the plaintiff.**

**Issue no.ii**

***(ii) Whether this Court has territorial jurisdiction to try the present suit?(OPP)***

15. The onus of issue no.ii was placed on plaintiff. The defendants have not led any evidence to establish lack of territorial jurisdiction.

On the other hand plaintiff has relied upon the following judgments to show that this court has territorial jurisdiction to entertain and try the present suit:-

- I. *World Wrestling Entertainment Inc. Vs. Reshma Collection 2014 (60)ptc 452 (Del)*
- II. *Kohinoor Seed Feild India Pvt. Ltd. Vs. Veda Seed Sciences Pvt. Ltd. 2025 DHC 10789 DB*
- III. *Diamond Modular Pvt. Ltd. Vs. Vikash Kumar & Anr. 2025 DHC 3619 Db*
- IV. *Suman Devi Anrs. V. Rakesh Kumar Sharma 2025 DHC 6149 Db*

Arguments heard. Record perused.

The plaintiff has been able to prove that this court has territorial jurisdiction to entertain and try the present suit while defendant has failed to discharge the burden cast upon him. Accordingly, issue no. ii is decided in favour of plaintiff against the defendant.

16. **Issues no. iii to vii**

***(iii) Whether the plaintiff is proprietor and owner of trade marks in question?(OPP)***

***(iv) Whether the defendants are passing off their goods and infringing the trade mark of the plaintiff?(OPP)***

***(v) Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? (OPP)***

***(vi) Whether the plaintiff is entitled to a decree of rendition of account, as prayed for? (OPP)***

The onus to prove issue nos.iii, iv, v and vi was placed upon the plaintiff. These issues are taken together for the sake of

brevery as theses issues are interlinked and involve same discussion.

The principal question before this Court is whether the plaintiff has been able to establish that present defendants were actually involved in the alleged infringing activities.

However, mere proof of registration or reputation of a trademark does not automatically entitle the plaintiff to a decree unless infringement or passing off by the present defendants is specifically established.

17. The defendants specifically pleaded in their WS that the defendants are small time traders and by way of the present suit the Plaintiff is trying to arm twist them to extort money.

Thus the present controversy is not merely regarding existence of registrations but whether the defendants have infringed any enforceable right of the plaintiff.

18. Further, the onus is upon the plaintiff to prove that defendants have infringed the trademark of the plaintiff. To prove the liability of defendants, plaintiff has relied upon the LC report.

However, plaintiff has neither summoned Ld. LC to prove the report nor PW-1 Mr. Anand Arya has placed reliance upon the report of Ld. LC during evidence.

Further, PW-1 has placed on record photographs taken during commission of Ld. LC and the photographs have been filed on 03.11.2025 along-with the application U/O 7 R 14 CPC which was allowed vide order dated 03.11.2025. Now, admittedly, PW-1 Sh. Anand Arya was not present at the time of execution of local commission and plaintiff had not examined

Mr. Dheeraj Kumar, who was present at the spot as AR of the plaintiff. Ld. LC has not even considered the authority of said Mr. Dheeraj Kumar to take the supardari of seized goods on behalf of plaintiff nor Ld. LC has taken on record the ID proof of said Mr. Dheeraj Kumar.

Further, admittedly Ld. LC has visited multiple premises/shops/stalls and after execution of local commission five defendants have been impleaded in the present suit. Now the plaintiff nowhere clarified as to which photograph as relied by the plaintiff, belonged to which defendant or premises nor plaintiff has examined the said AR of plaintiff, who took the photographs during execution of local commission. None has appeared on behalf of plaintiff to depose that the photographs relied by the plaintiff were actually taken on the same day and time when local commission was executed.

19. Further, the court has perused the report of the Local Commissioner, the inventory of the allegedly seized goods and the photographs annexed therewith. Further, the inventory list filed by Ld. LC reveals that Ld. LC has seized the goods without mentioning about the appearance, lable and logo of the seized goods. Apart from one inventory list qua defendant no.3, Ld. LC has not mentioned about the label/trademark or name over the seized product. If Ld. LC has mentioned the name of goods as 'Burberry Buckle' only, as reflected in annexure F, it implies that there was no mention of name/label/logo appearing on the remaining seized goods/product because the products/goods have no such name/label/logo as similar to the trademark of the plaintiff.

20. Further, the perusal of report of Ld. LC reveals material discrepancies, which are as follows:-

**Qua defendant no.1/Krishan Kumar:-**

The relevant portion of Ld. LC is as follows:-

*“Thereafter, I alongwith the authorized representative of the plaintiff, Ld. Advocate for the plaintiff and police personals visited the Stall no. 10, Gaffar Market, karol Bagh, New Delhi, where one Sh. Krishan Kumar was found to be present at the stall, who introduced himself as the owner of Stall No. 10, Gaffar Market, karol Bagh, New Delhi. I informed him the purpose of my visit. I also handed over a copy of Court order dated 04.08.2018 passed by this Hon'ble Court with due acknowledgement, I started the commission and inspected the stall no. 10. During inspection I found infringed products from this aforementioned stall. I prepared an inventory of all infringed produce, seized and sealed the same. The same were released to A.R. of the plaintiff on supardari as the owner of the site refused to take the'supardair of He infringed goods with direction to produce the same before the court as when directed. Identification proof of the owner of the stall was also collected. Thereafter, I along-with the AR of the plaintiff and Ld. Counsel for the plaintiff left the stall no.10. Photographs of the same wee taken by the AR and plaintiff's counsel by their mobile phones and same are in their possession. Spot proceedings, supardarinama, inventory and identification proof are annexed here with as Annexure-B (colly).”*

Clearly, defendant no.1 has not even taken the goods on supardari. The Ld. LC has nowhere given any observation about the reason of refusal nor Ld. LC has asked defendant no.1 to produce any invoice or bill with respect to said goods. Thus a reasonable doubt over the credibility of execution of local commission is raised and the proceedings comes under reasonable suspicious. **Accordingly issue iii, iv, v and vi are decided in favour of defendant no.1 against the plaintiff.**

**21. Qua defendant no.2/Ashish Chanana:-**

No observations as matter was settled between plaintiff and defendant no.2.

**22. Qua defendant no.3/Shible Raza:-**

The court perused the report of the Local Commissioner and the inventory of the seized goods. The reports mentioned that the goods from the custody of defendant no.3 were having the label / logo as 'Burberry'. The defendant no.3 has failed to produce the goods, therefore, an adverse presumption is to be taken against defendant no.3 and it will be presumed that he has intentionally not produced the goods because production of goods might have revealed the similarity between the impugned marks of defendant no.3 and the marks of the plaintiffs. Therefore, it will be presumed that defendant no.3 is selling counterfeit/spurious goods.

**23.** Customers base of the products of both the parties may not be same. But that by itself does not give the rights to the defendant to deal in infringing activities. It is not only the interest between the parties before the court but the interest of the general public/customers also needs to be protected by the court. Thus, if the defendant no.3 is permitted to use the impugned mark which are deceptively similar and confusingly to that of the plaintiff's company, it will not only cause wrongful loss to the plaintiff company, but it will also cause grave prejudice and harm to public. Not to mention about loss to the goodwill of the plaintiff. Besides there is all likelihood of 'dilution' of the trademark of the plaintiff and in terms thereof plaintiff is entitled to protection under clause 4 of Section 29 Trademarks Act.

In the present suit plaintiff is also claiming rendition of account by the defendants and damages.

24. A reference to the decision of **Hon'ble High Court of Delhi** titled as “ **The Heels V. Mr. V. K. Abrol and Anr. , CS (OS) No. 1385 of 2005 decided on 29.03.2006**” would be profitable, wherein the Hon'ble court has held:

*“This court has taken a view that where a defendant deliberately stays away from the proceedings with the result that on enquiry into the accounts of the defendant for determination of damages cannot take place, the plaintiff cannot be deprived of the claim for damages as that would amount to a premium on the conduct of such defendant. The result would be that parties who appear before the court and contest the matter would be liable to damages while the parties who choose to stay away from the court after having infringed the right of the plaintiff, would go scotfree. This position cannot be acceptable.*

*No doubt it not possible to give an exact figure of damages on the basis of actual loss, but certain token amounts on the basis of the sales of the plaintiff can certainly be made. The plaintiff is unnecessarily dragged into litigation and the defendants must bear consequences thereof. In fact in such a case both compensatory and punitive damages ought to be granted apart from the costs incurred by the plaintiff on to such litigation. In view of the given sales figure of the plaintiff. I consider it appropriates to grant a decree of damages in favour of the plaintiff and against the defendants for a sum of Rs. 3 lakh apart from costs of the suit.”*

25. In view of my finding that the plaintiff is entitled to the relief of permanent injunction, also taking in to consideration the proposition of law stated above I am of the view plaintiff is entitled to compensatory and punitive damages to the tune of **Rs. 3 lakh** in his favour and against the defendant no.3. **Accordingly**

issue iii, iv, v and vi are decided in favour of plaintiff against the defendant no.3.

**26. Qua defendant no.4/Yogesh Kumar:-**

The relevant portion of Ld. LC is as follows:-

*“Thereafter, I alongwith the A.R., Ld. Advocate of the Plaintiff and police personals reached at Shop no 98, Gaffar Market, karol Bagh, New Delhi, where one Sh. Yogesh Kumar found to be present at the first floor of the site, who introduced himself as the owner of Site No. 98, ground floor, Gaffar Market, karol Bagh, New Delhi. I informed him the purpose of my visit. I also handed over a copy of Court order dated 04.08.2018 passed by this Hon'ble Court with due acknowledgment, I started the commission and during inspection/search I found infringed products from this aforementioned shop. I prepared an inventory of the infringed products, seized and sealed the same. The same were released to Sh. Yogesh Kumar, on supardari with instruction to produce the same before the court as and when directed. Identification proof of the owner of the site was also collected.*

As per inventory list only two sunglasses and two empty wallet boxes were seized from defendant no.4. Ld. LC has nowhere given any observation with respect to the name/trademark/logo appearing on the goods. Further, Ld. LC not has asked defendant no.4 to produce any invoice or bill with respect to the said goods. Thus, a reasonable doubt over the credibility of execution of local commission is raised and the proceedings comes under reasonable suspicious. **Accordingly issue iii, iv, v and vi are decided in favour of defendant no.4 against the plaintiff.**

**27. Qua defendant no.5/Daljeet Singh:-**

The relevant portion of Ld. LC is as follows:-

*“Thereafter, I alongwith the A.R. of the plaintiff and Ld. Counsel for the plaintiff left the shop. no. 98, Ground Floor and proceeded to first floor of the same site. The shop was found locked. In spite of making all efforts no one had come forward for the first floor, shop no. 98. I alongwith A.R. and Ld. Advocate of the plaintiff and police personals waited for the owner till 3:30 PM, but none has come forward.*

*Thereafter, I asked the A.R. of the plaintiff to break open the locks of the first floor of Shop no. 98, Gaffar Market, Karol Bagh, New Delhi. The A.R. was about to hit the lock with hammer, only then one Sh. Kultar Singh S/o Sh. Daljeet Singh, mobile no. 9717336494 came forward and claimed to be the owner of the first floor of shop no. 98. I informed him the purpose of my visit. I handed over a copy of Court order dated: 04.08.2018 passed by this Hon'ble Court with due acknowledgment. Thereafter, Sh. Kultar Singh opened the locks of the floor of site no. 98. I alongwith AR, Ld. Counsel of the plaintiff and police personals entered the first floor. I started the the inspection/search. During inspection, I found infringed products from this aforementioned site. I prepared an inventory of the infringing products and after seized the same, the same were released to Sh. Kultar Singh, on supardari with instruction to produce the same before the court as and when directed. Identification proof of the owner of the site was also collected. Photographs of the same were taken by the AR and plaintiff's counsel by their mobile phones and same are in their possession. Spot proceeding, Supardari-nama, Inventory and identification proof are annexed here with as Annexure-E (Colly).”*

Thus, report of Ld. LC one Sh. Kultar Singh, S/o Sh. Daljeet Singh was found at the spot and even the seized goods is handed to Sh. Kultar Singh. Now no reason is coming forward why plaintiff Singh has pleaded Sh. Daljeet Singh as defendant no.5. Further, Ld. LC has no where given any observation with respect to the name/ trademark/logo appearing on the goods. Further, Ld. LC not has asked defendant no.4 to produce any invoice or bill with respect to the said goods. Thus, a reasonable

doubt over the credibility of execution of local commission is raised and the proceedings comes under reasonable suspicious. **Accordingly issue iii, iv, v and vi are decided in favour of defendant no.5 against the plaintiff.**

**RELIEF**

In view of above discussion, the suit of the plaintiff stands dismissed. Parties shall bear their own costs. All the pending applications stand dismissed being not pressed upon.

Decree sheet be prepared accordingly. **File be consigned to Record Room after due compliance.**

**Typed to the direct dictation and announced in the open court on this 29<sup>th</sup> May, 2026**

**(Prabh Deep Kaur)  
DJ-05/South-East District  
Saket Courts, New Delhi**