HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CIVIL REVISION PETITION NO. 614 OF 2024 (IPR)

C/W

MISCELLANEOUS FIRST APPEAL NO. 7600 OF 2024 (IPR)

IN CRP NO.614/2024:

BETWEEN:

M/s. SHRI PRASANNA ANJANEYA AGROTECH
M/s. SRI PANCHAMUKHI INDUSTRIES,
SY NO.142, HISSA 1, SINDOOR ROAD,
MANVI, RAICHUR 584 123,
KARNATAKA.
REP. BY ITS PARTNER
M.R. SRIKANTH.

...PETITIONER

[BY SRI MANMOHAN P.N., ADVOCATE FOR
SRI VINAY N., ADVOCATE (PH)]

AND:

M.R.PAVAN KUMAR,
SOLE PROPRIETOR OF
MRN AGRO INDUSTRIES,
SY NO.739, GADWAL ROAD,
RAICHUR - 584 101,
KARNATAKA.

...RESPONDENT

[BY SMT. PRIYA V., ADVOCATE (PH)]

Digitally signed by ANUSHA V
Location: High Court of Karnataka

THIS CIVIL REVISION PETITION FILED UNDER SECTION 115 OF CPC, AGAINST THE ORDER DATED 19.08.2024 PASSED ON I.A. NO.4 IN OS NO.3700/2024 ON THE FILE OF XVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU, REJECTING I.A NO.4 FILED UNDER ORDER VII RULE 11(a) AND (d) OF CPC FOR REJECTION OF PLAINT.

IN MFA NO.7600 / 2024:

BETWEEN:

M.R.PAVAN KUMAR,
SOLE PROPRIETOR OF
MRN AGRO INDUSTRIES,
SY NO.739, GADWAL ROAD,
RAICHUR 584 101,
KARNATAKA.

...APPELLANT

[BY SMT. PRIYA V., ADVOCATE (PH)]

AND:

M/S.SHRI PRASANNA ANJANEYA AGROTECH
M/S SRI PANCHAMUKHI INDUSTRIES,
SY NO.142, HISSA 1, SINDOOR ROAD,
MANVI, RAICHUR 584 123,
KARNATAKA.
REP. BY ITS PARTNER
M.R. SRIKANTH.

...RESPONDENT

[BY SRI MANMOHAN P.N., ADVOCATE FOR
SRI VINAY N., ADVOCATE (PH)]

THIS MFA FILED U/O 43 RULE 1(r) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED 19.08.2024 PASSED ON I.A.NOS.1 AND 2 IN OS.NO.3700/2024 ON THE FILE OF THE XVIII ADDITIONAL CITY CIVIL JUDGE, BENGALURU, REJECTING THE IA.NO.1 AND 2 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC.

THIS PETITION AND APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging order dated 19.08.2024 passed by XVIII Additional City Civil and Sessions Judge, Bengaluru (`**trial Court'**), on IA no.4 in OS no.3700/2024 (`**suit'**) filed under Order VII Rule 11 of Code of Civil Procedure, 1908 (`**CPC'**), CRP no.614/2024 is filed, while challenging order dated 19.08.2024 passed on IAs no.1 and 2 filed under Order XXXIX Rules 1 and 2 R/W Section 151 of CPC, MFA no.7600/2024 is filed. Since both matters arise out of same suit, they were clubbed together, heard and disposed of by this common order. For sake of convenience, parties will be referred to as per their ranks in Suit.

Submissions in CRP no.614/2024

2. Sri Vinay N. appearing for Manmohan PN Associates, Advocates for Revision Petitioner submitted, petitioner herein was defendant, while respondent - plaintiff in OS no.3700/2024 filed for decree of permanent injunction restraining defendants from infringement and passing off of its registered trademark 'MR GOLD', rendition of accounts and recovery of profits, delivery-up and destruction of infringing materials and other consequential reliefs etc.

3. In plaint, it was stated, plaintiff was engaged in manufacture and trade of premium quality sona masoori rice under trademark 'MRN GOLD', along with its variants 'MRN CHAND', 'MRN COPPER' and 'MRN PLATINUM', claiming continuous and uninterrupted use of 'MRN GOLD' since 13.03.2001. Originally business was run by partnership firm. In 2016, it became proprietorship and trademarks along with goodwill were assigned to it under Assignment Deed dated 15.06.2016. It was stated '**MRN'** mark was derived from initials of head of family and was inherently distinctive and formed essential part of plaintiff's trading style. And through continuous and uninterrupted use, extensive sales turnover, substantial expenditure on advertisement and sales promotion and strong distribution network, it had acquired immense goodwill, reputation across South India and also won awards and recognitions. That apart from direct sale, plaintiff marketed and sold its goods on E-Commerce platforms/websites with domain name "<https://indiamart.com/>", "<https://dunzo.com/>" and "<https://sriramkumaranricemundy.in/>" etc. and 'MRN' mark had acquired secondary meaning in market associated with

plaintiff's goods. And plaintiff held subsisting registration of trademark 'MRN Gold' under Class 30 for rice under Application no.1752294 and others, while application for *'MRN SILVER'* was pending. Plaintiff had also got copyright registrations for artistic features of labels and packaging of 'MRN Chand', 'MRN Gold' and 'MRN Daiwik'.

4. It was stated plaintiff was prior *'adoption and user' of mark* ***'MRN Gold'***, from 2001, but in respect of identical goods i.e. rice and with dishonest intention, defendant adopted deceptively similar mark 'MR GOLD' with cosmetic omission of letter 'N'. In fact in 2015-16 when defendant applied for registration of its mark, when plaintiff opposed it, application was withdrawn. But began using it again in September 2023. And in fresh application filed in 2022 continuous usage from 2008 was claimed. As defendant's goods sold in markets within jurisdiction of Court led to confusion among consumers with average intelligence and imperfect recollection of plaintiff's mark 'MRN Gold' to believe defendant's product 'MR Gold' was manufactured by plaintiff and adoption of identical mark was with intention to tap on goodwill, a cease-and-desist notice was got issued by plaintiff on 19.09.2023. In reply dated

29.09.2023, defendant refused to comply and admitted continued use of mark, constituting infringement of plaintiff's registered trademark under Section 29 of Trade Marks Act, 1999 ('**TMA'**), and also passing off under Section 27 (2) of TMA and causing confusion in market, diluting plaintiff's brand value tarnishing its reputation and also caused irreparable loss and injury, suit was filed.

5. It was stated, cause of action arose initially in 2001 upon adoption of mark, subsequently in 2013 on its registration and in 2015–2016 on gaining knowledge of defendant's earlier application. It was stated, fresh cause of action accrued in September 2023 upon discovery of resumed use of mark by defendant which continued so long as infringement and passing off persist. It was stated trial Court had territorial jurisdiction under Section 134 of TMA and Section 20 of CPC.

6. Along with plaint, plaintiff filed IAs no.1 and 2 under Order XXXIX Rules 1 and 2 of CPC for temporary injunction restraining defendant, assignees, agents etc. from infringing or passing off plaintiff's trademark 'MRN GOLD' or any other mark that may be identical or deceptively similar to registered

trademark of plaintiff, stating same reasons/contentions as stated in plaint.

7. On appearance, before filing written statement, defendant filed objections to IAs no.1 and 2 denying plaint averments in *toto*. And filed IA no.4 under Order VII Rule 11(a) and (d) of CPC for rejection of plaint. It was stated, suit was not maintainable as plaintiff had not approached Court with clean hands, suppressed/misrepresented material facts, suit was without cause of action and trial Court lacked territorial jurisdiction. And as plaintiff admitted defendant's continued use of 'MR GOLD' since 2015-16, suit filed on 31.05.2024 would be barred by limitation.

8. Further, plaintiff was conducting business from Raichur, filing of suit before Civil Court at Bengaluru instead of before jurisdictional Commercial Court amounted to forum shopping. It was stated as no cause of action arose in Bengaluru, trial Court lacked territorial jurisdiction. Further, plaintiff misrepresented itself as '*registered proprietor*' of wordmark 'MRN GOLD', whereas registration pertained only to logo and not word per se and that plaintiff had suppressed pendency of rectification application filed by defendant

challenging said registration and pendency of subsequent wordmark registration application filed by plaintiff. Even contention of deliberate undervaluation of reliefs at Rs.1000/- despite claim of damages values at Rs.25,00,000/- (Rupees Twenty-five lakhs only) in legal notice constituted abuse of process to avoid approaching Commercial Court. There was failure to comply with directions issued by this Court about assessment of specified value under Commercial Courts Act, 2015 (‘**CCA’**). On above grounds, defendant filed IA no.4 for rejection of plaint.

9. Plaintiff opposed IA no.4 contending that in infringement of trademark and passing off cases, cause of action was continuous in nature. Moreover, defendant had discontinued use of mark after withdrawal of application in 2017, but resumed use in September 2023, which was fresh cause of action. Hence, suit was in time. On territorial jurisdiction, it was stated both plaintiff and defendant were selling goods in Bengaluru, as evidenced by invoices and online sales and hence trial Court had jurisdiction as per Section 20 (c) of CPC.

10. On territorial jurisdiction, it was stated both plaintiff and defendant were selling goods in Bengaluru, as evidenced by invoices and online sales and hence trial Court had jurisdiction as per Section 20 (c) of CPC. It was stated at stage of consideration of IA for rejection of plaint, only plaint averments were to be seen and contentions of defendant would be irrelevant. On said grounds plaintiff prayed for dismissal of application.

11. Based on pleadings, trial Court framed following:

POINTS:

1. *Whether the suit is without any cause of action and whether the suit is barred by any Law, hence the plaint is liable to be rejected under Order VII Rule 11(a) & (d) of CPC?*

2. *What order or decree?*

12. On consideration, trial Court answered point no.1 in negative and point no.2 by rejecting application. Aggrieved defendant has filed CRP no.614/2024.

13. Challenging order on IA no.4, this revision petition is filed. It was submitted rejection of IA no.4 was erroneous and contrary to law and trail Court failed to notice that suit was ex-facie not maintainable. It was submitted Hon'ble Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali** reported

in **(2020) 7 SCC 366,** had categorically held, if averments in plaint disclosed that suit was barred by limitation, plaint was to be rejected exercising power under Order VII Rule 11 (d) of CPC. It was submitted, plaint averments revealed that plaintiff was aware of alleged infringement in year 2015–2016, when it conducted trademark search and opposed defendant's application for registration of mark 'MR Gold'. Consequently, suit filed on 31.05.2024 was belated by eight years and barred by limitation prescribed in Article 88 of Limitation Act, 1963. And cause of action once accrued, plaintiff cannot take recourse to recurring cause of action theory to overcome limitation. Hence, rejection of IA no.4, by trial Court was contrary to law calling for interference.

14. On territorial jurisdiction, it was further submitted, Civil Court at Bengaluru lacked territorial jurisdiction to entertain suit as both plaintiff and defendant are admittedly carrying on business at Raichur and neither have office or place of business at Bengaluru. And plaintiff deliberately chose distant forum to harass defendant, without accrual of any cause of action. It was submitted that Hon'ble Supreme Court in **Indian Performing Rights Society Ltd. v. Sanjay Dalia**

reported in **(2015) 10 SCC 16**, had held, though Section 134 of TMA provides an additional forum same cannot be misused to drag/dilate suit or drag defendant to a far-flung place, where no cause of action arose. Said ratio was followed by this Court in **United Breweries Ltd. v. M/s. Som Distilleries & Breweries Ltd.** reported in **2018 SCC OnLine Kar 2061**.

15. It was submitted, plaint did not disclose accrual of cause of action within jurisdiction of Bengaluru Court. It was submitted, reliance on invoices dated 03.12.2023 and 04.01.2024 was wholly misconceived as address of defendant shown therein is 'Sindanoor Road, Manvi' and goods mentioned are 'MR Green Fibre' and 'MR Holographic' rice respectively and not 'MR Gold'. It was submitted High Court of Delhi in **Pfizer Enterprises & Anr. v. Dr.HR Manchanda** reported in **2008 SCC OnLine Del 1723** held mere sale of goods does not constitute carrying on business unless an essential part of business takes place at concerned location. Further, Hon'ble Supreme Court in **Dhoda House v. SK Maingi,** reported in **(2006) 9 SCC 41**, clarified stray or isolated transactions are insufficient to confer jurisdiction. Relying on decision in case of **St. Ives Laboratories Inc. v. Arif Perfumers & Anr.,**

reported in **2009 SCC OnLine Del 208,** jurisdiction cannot be artificially created based on isolated transactions, and that Section 20 CPC must be interpreted in a manner that prevents forum shopping. It was submitted that as both parties are situated at Raichur filing of suit before trial Court at Bengaluru was abuse of process of law.

16. It was submitted though subject matter of suit was alleged infringement and passing off of trademark constituting '*commercial dispute'* as defined in Section 2 (1) (c) (xvii) of CCA, plaintiff deliberately omitted to state '***specified value'*** to avoid raising 'commercial dispute' under CCA, after claiming damages of ₹25,00,000/- (Rupees Twenty-five Lakhs) in legal notice dated 19.09.2023. Such deliberate undervaluation of reliefs was to avoid jurisdiction of Commercial Courts and held by this Court to be impermissible in **Bangalore Blues Entertainment India Pvt. Ltd. v. One Ikigaii Edutech Pvt. Ltd.** reported in **2023 SCC OnLine Kar 177**.

17. It was submitted plaintiff suppressed material facts especially whether its trademark registration 'MRN GOLD' was for word mark or device mark by deliberately not producing

complete registration certificate or status of application along with plaint, while producing other trademark applications with complete details. Only after said omission being pointed out, plaintiff produced application along with memo, indicating lack of bonafide.

18. Further, Assignment deed relied on by plaintiff does not depict device mark casting serious doubt on plaintiff's claim. And registration certificate relied was for 'MRN Gold Logo' and not word "MRN Gold" per se. It was submitted, at present validity of plaintiff's application was under challenge vide rectification application filed by defendant on 27.10.2023. Even lack of pleading about pendency of rectification application pointed at suppression of material facts.

19. It was submitted, plaintiff failed to produce invoices evidencing continuous use of mark from 2017 to 2022, casting doubt on plaintiff's claims. It was submitted plaintiff filed application no.6196407 for registration of word mark "MRN Gold" on 24.11.2023. On 06.12.2023, after Trademarks Registry raised objection under Section 11 (1) of TMA. As such application for registration was refused and plaintiff was called upon to respond. Thus, application was pending for

consideration and consequently, word 'MRN Gold' was not registered as Trademark. Therefore, plaintiff had no right or cause of action to file suit. For failure to state these material facts, plaint was liable for rejection as held in **M/s. Durga Projects & Infrastructure Pvt. Ltd. v. Sri S Rajagopala Reddy & Ors** reported in **ILR 2019 Kar 4739; DN Bhagya v. DA Mallikarjuna** reported in **2024 SCC OnLine Kar 20** and by Hon'ble Supreme Court in **Raghwendra Sharan Singh v. Ram Prasanna Singh** reported in **(2020) 16 SCC 601**.

20. It was submitted while considering applications for temporary injunction trial Court held no similarity between rival marks thereby denuding plaintiff of no cause of action either for infringement or passing off. Hence, plaint ought to have been rejected under Order VII Rule 11 (a) of CPC.

21. Further, trial Court failed to consider binding precedents including judgment in **United Breweries Ltd.**'s case (supra), even though it squarely applied to facts of case. By reciting decisions relied by plaintiff without reasoning trial Court held plaint disclosed cause of action. Thus, impugned order was perverse, suffered from non-application of mind and

contrary to settled legal principles. Therefore, continuation of suit was abuse of process of law. Hence, plaint was liable for rejection.

22. On other hand, Smt.V. Priya learned counsel for plaintiff opposed revision and contended trial Court rightly rejected application under Order VII Rule 11 of CPC.

23. At outset, it was submitted scope of enquiry under Order VII Rule 11 CPC was limited to averments in plaint and defense taken by defendant was wholly irrelevant. It was submitted, if on complete and meaningful reading plaint disclosed cause of action, then application for rejection of plaint would not sustain.

24. It was submitted cause of action for suit was infringement and passing off plaintiff's trademark 'MRN GOLD'. In plaint, it was stated that defendant had earlier applied for registration of mark 'MR GOLD', which was opposed by plaintiff and defendant withdrew application, but in September 2023 resumed use of infringing mark. This was stated as cause of action for suit, which was sufficient. Further, in cases of trademark infringement and passing off, every act of

infringement or passing off would give rise to fresh cause of action and as such suit was within period of limitation, by relying on decisions in case of **Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co.** reported in **(1997) 1 SCC 99** and **Hasmukhrai & Co. v. Raj Tea & Co.** reported in **(2005) SCC OnLine Bom. 1629**.

25. On territorial jurisdiction, it was submitted passing off was continuing wrong and as it was stated in plaint that competing and offending goods were available for sale in market within its territorial limits, trial Court would have territorial jurisdiction. It was submitted plaintiff also appended plaint with invoices evidencing sale in Bengaluru. It was submitted sale of infringing goods within jurisdiction was sufficient to confer jurisdiction under Section 29 (6) of TMA.

26. As held by Hon'ble Supreme Court in case of **Indian Performing Rights Society Ltd.**'s case (supra), Section 134 (2) of TMA provides additional forum and does not exclude jurisdiction of civil Court. Hence, suit was maintainable and IA no.4 mis-conceived. And in **Varun Chopra v. Shyam Sunder Chopra,** reported in **2024 SCC OnLine Kar 19904**, under similar circumstances, suit was held maintainable as goods of

both parties were sold within jurisdiction of Court. And ratio laid down in **Zino Davidoff SA v. Mahendra Kumar & Anr.** reported in **2011 SCC OnLine Kar 125**, was that suit for infringement and passing off can be instituted even where part of cause of action arises.

27. On allegation of suppression of material facts, it was submitted plaintiff never claimed it had registration of 'MRN Gold' as word mark but stated essential feature of its mark includes words 'MRN GOLD' and registration certificate itself was produced before trial Court. Further under Section 29(9) of TMA, infringement can occur through use of essential word elements of a mark, irrespective of whether registration was for device or word.

28. It was submitted issues relating to similarity of marks, alleged suppression required full-fledged trial and cannot be decided under Order VII Rule 11 CPC. It was submitted following laying down principles relating to determination of 'specified value' under Section 12 of CCA by this Court, plaintiff filed memo estimating specified value of suit below Rs.3,00,000/-. Therefore, order passed by trial Court relying on

decision in **BTV Kannada Private Limited v. Eaglesight Media Private Limited** reported in **2024 SCC OnLine Kar 12674**, holding that valuation of suit reliefs, provides for return of plaint and not its rejection, was justified and did not call for interference. On above grounds sought dismissal of petition.

SUBMISSIONS IN MFA 7600/2024:

29. Smt.Priya V, learned counsel for plaintiff – appellant submitted in OS no.3700/2024, plaintiff had filed IA no.1 and 2 under Order XXXIX Rule 1 and 2 of CPC for temporary injunction. IA no.1 was filed for restraining defendants etc. from infringing plaintiff's trademark by using trademark **'MR GOLD'** or any other mark that may be identical or deceptively similar to registered trademark of plaintiff. Likewise, IA no.2 was filed for restraining defendants etc. from passing off plaintiff's goods by manufacturing, marketing, advertising, sale or in any manner directly or indirectly using trademark **'MR GOLD'** or any other mark that may be identical or deceptively similar to registered trademark of plaintiff.

30. IAs no.1 and 2 were opposed by defendant by filing objections contending that suit was not maintainable, barred by limitation, plaintiff had suppressed material facts and claiming

that trademark 'MR Gold' of defendant was distinct and dissimilar to plaintiff's mark 'MRN Gold' and as such filed without valid cause of action. Even contention of bar of territorial jurisdiction as well as suit being commercial dispute required to be filed before Commercial Court were also raised. Laches and acquiescence on part of plaintiff was also alleged.

31. It was stated, defendant was part of esteemed MRV Group wherein prefix 'MR' represented family name 'Manvi Rajalbandi', reflected in names of partners, namely MR Suresh, MR Srikant, MR Rohini, MR Shyamsunder, MR Deepti and MR Sangeeta. And word 'GOLD' equivalent to Sona was adopted from Sona Masoori rice. Thus, their mark was independently conceived and *bonafide* adopted, and it was neither identical nor deceptively similar to plaintiff's device mark 'MRN GOLD'.

32. And with business turnover of defendant for financial year 2022-2024 exceeding Rs.60 Crores, grant of temporary injunction would cause grave hardship and irreparable loss to defendant. It was stated, defendant withdrew its application of registration filed on 05.07.2022 as it was not using mark as its *logo*. And plaintiff had registration of device mark with logo only and not word mark. Therefore, it cannot claim exclusive

right over word 'MRN GOLD'. On these grounds prayed for dismissal of applications.

33. Based on contentions, trial Court framed following points:

1. *Whether the plaintiff has made out prima-facie case?*
2. *Whether balance of convenience leans in favour of the plaintiff?*
3. *Whether the plaintiff would suffer irreparable injury or hardship if temporary injunction is refused?*
4. *What order?*

34. And by answering points no.1 to 3 in negative, it answered point no.4 by rejecting IAs no.1 and 2, leading to this appeal. It was submitted impugned order was contrary to law, facts and material on record. That plaintiff was prior adopter and continuous user of trademark 'MRN GOLD' since 2001 and registered proprietor of trademark under Application no.1752294 in Class 30 in respect of rice [**Annexure-G** in plaint]. By long, continuous and extensive use plaintiff had acquired immense goodwill and reputation, and its mark had acquired distinct and secondary meaning in trade. Trial Court failed to appreciate that essential and dominant feature of plaintiff’s registered device mark was expression 'MRN GOLD'

and adoption of mark 'MR GOLD' for identical goods by defendant was deceptive replication of dominant feature of plaintiff's mark. And mere omission of letter ‘N’ did not materially distinguish marks as they were phonetically, structurally and visually similar thereby causing confusion among consumers.

35. Trial Court erred in holding that plaintiff cannot claim protection of word 'MRN GOLD' on ground that its registration was as device mark, when in law protection extends to dominant feature of device mark. It was submitted High Court of Delhi in **Crompton Greaves Consumer Electricals Limited v. Guard Industries Limited** reported in **2024 SCC OnLine Del 1838** held, owner of a trademark was entitled to protection of dominant part of label and cannot be precluded from claiming exclusive rights over such dominant feature. Reference was also made to judgment of Hon'ble Supreme Court in case of **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.** reported in **(2001) 5 SCC 73**, to contend that while determining deceptive similarity, Court must consider overall similarity between marks, including phonetic similarity and not merely dissimilarities and trial Court erred in

comparing only logos violating anti-dissection rule. It was submitted in **South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr** reported in **2014 SCC OnLine Del 1953,** principle of anti-dissection and identification of dominant mark were held to be not antithetical to one another, rather complemented each other. Thus, identification of dominant feature of a mark was crucial and entitled to greater protection.

36. It was submitted, observation about laches and acquiescence was contrary to record and perverse when after plaintiff opposed defendant's Application no.2152306 for registration of mark 'MRN GOLD', defendant withdrew it on 12.09.2017. Plaintiff had clearly stated thereafter defendant's products were not found in market until September 2023, when plaintiff became aware of defendant's renewed use of offending mark and immediately got issued a cease-and-desist notice on 19.09.2023 (**Annexure-C13**) followed by suit. Thus, there was no basis for conclusion about laches or acquiescence.

37. Further, trial Court failed to appreciate adoption of mark by defendant was with dishonest intention to ride on

goodwill of plaintiff evidenced by withdrawal of application and mark and re-introduction after several years.

38. And trail Court erred in relying on chronologically impossible and thus ex-facie fabricated invoices produced by defendant. It was submitted, on one hand defendant claimed to have previously withdrawn trademark registration application in 2017 on account of non-user. Contrary to same, unsigned and unauthenticated invoices were produced to show continuous usage of 'MR GOLD' even during said period. It also failed to notice that defendants' invoices of years 2015 and 2016 feature GST numbers despite Goods and Services Tax being introduced only from 01.07.2017. Consequently, conclusion about continuous usage being based on unreliable material was flawed and as such perverse.

39. Trial Court also failed to take note of conduct of defendant and blatant disobedience of Court orders. It was submitted, despite issuance of ad-interim order of temporary injunction order on 01.06.2024, defendant willfully continued to utilize mark even after appearing in suit on 13.06.2024. It was submitted defiance of Court's authority was currently pending enquiry in Civil Miscellaneous Petition no.853/2024,

demonstrates ill-conduct of defendant. Hence, impugned orders called for interference. Trial Court also did not consider essential ingredients of passing off are goodwill, misrepresentation and damage and mechanically rejected IA no.2. Thus, plaintiff established strong prima facie case, balance of convenience and irreparable injury as well as conduct of defendant about infringement and passing-off. Such being case, rejection of IAs no.1 and 2 by trial Court was not justified.

40. On other hand, Sri Vinay N. learned counsel appearing for Manmohan PN Associates for defendant opposed appeal by contending that impugned order by trial Court was based on material on record and well-reasoned and as held in **Ramakant Ambalal Choksi v. Harish Ambalal Choksi** reported in **(2024) 11 SCC 351,** did not call for interference. It was submitted for want of territorial jurisdiction suit was not maintainable as both plaintiff and defendant carried on business in Raichur and no part of cause of action was stated to arise in Bengaluru and relied on ratio laid down by Hon'ble Supreme Court in **Cotton Corporation of India Ltd. v. United Industrial Bank Ltd.** reported in **(1983) 4 SCC 625**

and this Court in **Smt.Guduma v. Shikandar** reported in **2003 SCC OnLine Kar 588**.

41. It was submitted Hon'ble Supreme Court in **Indian Performing Rights Society Ltd.**'s case (supra), laid down that suit ought to be filed where plaintiff carries on business or where cause of action arises. It was alleged, plaintiff indulged in forum shopping by instituting suit before trial Court and relied on ratio in **Dhoda House** and **Pfizer Enterprises**' cases (supra), to contend that stray sale of goods or production of invoices would not confer jurisdiction unless essential part of business was carried on at place of suing. Moreover, dispute herein would be 'commercial dispute' as defined in Section 2 (c) (xvii) of CCA and filing of suit by deliberate undervaluation to avoid filing it before Commercial Court rendered it untenable by relying on decision of this Court in **Bangalore Blues Entertainment India Pvt. Ltd.**'s case (supra). Further, suit was not only barred by limitation but also on ground of delay, laches and acquiescence. It was submitted, defendant was using mark 'MR GOLD' since 2007 to knowledge of plaintiff even as per plaint from year 2015–16. However, suit is filed in 2024 after eight years. Relying on decisions in **Raghwendra**

Sharan Singh, **Dahiben**'s cases (supra) and **Power Control Appliances v. Sumeet Machines Pvt. Ltd.** reported in **(1994) 2 SCC 448, Kishore Samrite v. State of U.P.** reported in **2013 SCC OnLine SC 1363**, it was submitted long delay amounts to acquiescence, disentitling discretionary relief.

42. Further, defendant bonafide adopted prefix 'MR' in mark 'MR GOLD' from family name 'Manvi Rajalbandi' and gold was generic and common reference to Sona Masoori rice. Thus, by continuous and open use, defendant built substantial goodwill. Relying on ratio in **Reliance Industries Ltd. v. Concorde Enviro Systems Pvt. Ltd., 2016 SCC OnLine Bom 4557,** it was also contended, plaintiff failed to establish deceptive similarity and additional letter "N" in plaintiff's mark distinguished two marks especially as overall trade dress, packaging and get-up were entirely different eliminating likelihood of confusion among consumers.

43. It was further alleged plaintiff suppressed material facts especially that its registration was only of device mark and not word mark 'MRN GOLD' and about pendency of rectification petition challenging validity of its trademark and in **Amar Singh v. Union of India** reported in **(2011) 7 SCC 69,**

suppression of material facts was held to disentitle party from equitable relief. On above grounds prayed for dismissal of appeal.

44. Heard learned counsel for parties, perused impugned order and material on record.

45. **Point for determination in CRP no.614/2024 is**:

> *"Whether trial Court erred in rejecting IA no.4 filed by defendant under Order VII Rule 11 (a) and (d) of CPC?"*

46. **Points for determination in MFA 7600/2024 are**:

> *"Whether finding of trial Court on prima facie case, balance of convenience and comparative hardship are erroneous, contrary to law and capricious rendering order passed on IAs no.1 and 2 unsustainable?"*

47. Though Appeal is filed earlier to revision petition, since finding in revision was likely to render appeal unnecessary, revision petition is taken up for consideration upfront.

48. As noted above, this revision petition is by unsuccessful defendant on IA no.4 filed by him for rejection of plaint on specific grounds namely,

a) *failure to disclose cause of action;*

b) barred by limitation;
c) lack of territorial jurisdiction;
d) suppression of material facts;
e) deliberate under-valuation to avoid jurisdiction of Commercial Court.

49. It is fairly well settled that '**cause of action'** is a bundle of facts on which plaintiff bases his claim for reliefs against particular party before particular Court. It is also well settled that a plaint in a suit can be rejected for failure to disclose cause of action under Order VII Rule 11 of CPC. At same time, while trial Court can reject plaint if cause of action mentioned is illusory and result of clever drafting to avoid bar by law, there can be no rejection on ground that cause of action stated in plaint is incorrect or invalid. [**P. Kumarakurubaran v. P. Narayanan** reported in **2025 SCC OnLine SC 975]**.

50. In instant case plaintiff mentions about cause of action and jurisdiction as follows:

> *"33. The cause of action for the suit arose on 13.03.2001 when the plaintiff adopted the trademark 'MRN GOLD', on 03.07.2013 when the plaintiff obtained registration for the trademark 'MRN GOLD', when the plaintiff have been using the trademark 'MRN GOLD' openly, honestly and continuously for over 23 years; in 2015-2016 when plaintiff's got the knowledge of defendant using the infringing trademark; further on first*

> *week of September 2023 when the plaintiff gained knowledge of defendant continuing to seek the mark; on 19.09.2023 when the plaintiff issued a Cease and Desist notice and on 29.09.2023 when the defendant through their counsel replied to the cease and desist notice failing to comply with the demands. The cause of action continues to arise everyday till the defendant is restrained from manufacturing, marketing and selling products under the impugned trademark by an order of permanent injunction by this Hon'ble Court.*
>
> *34. The suit filed by the plaintiff is in time. The plaintiff submits that this Hon'ble Court is vested with jurisdiction as the plaintiff's and defendant's goods are sold within the jurisdiction of this Hon'ble Court. Invoices evidencing sale of the plaintiff's and defendant's goods within the territorial jurisdiction of this Hon'ble Court are produced along with this plaint. Therefore, this Court has the jurisdiction to entertain and adjudicate the suit under the provisions of Section 134 of the Trade Marks Act, 1999 and Section 20 of the Code of Civil Procedure, 1908. It may also be noted that plaintiff's and defendant's products are available for purchase in Bangalore through their online presence on various websites."*

51. Since there is specific pleading about cause of action, there would be no scope for holding that suit is filed without disclosing cause of action. At same time, as it is contended that plaintiff as well as defendant conduct business from Raichur and instead of jurisdictional Commercial or Civil Court, suit filed before trial Court (at Bengaluru) would be barred by law, whether suit is filed on illusory cause of action by clever drafting requires to be examined.

52. Insofar as contention about lack of territorial jurisdiction, it is seen High Court of Punjab in case of **Saroj Kalia v. Lakhwinder Singh** [**2023:PHHC:105741**] as also this Court in **BTV Kannada Private Limited**'s case (supra) have held lack of territorial jurisdiction is not one of grounds specified under Order VII Rule 11 of CPC for rejection of plaint.

53. Contention about suppression of material fact is firstly on allegation that plaintiff failed to produce material evidencing usage of word mark from 2017 to 2022 and suppressing fact that application for registration of word mark was filed only on 24.11.2023 and application was pending till filing of suit. Said contention however requires to be rejected outright as failure to produce material cannot be ground for rejection of plaint under Order VII Rule 11 of CPC. Moreover, there is no prohibition for usage of word mark without registration and it would be open for plaintiff to establish continuous usage in trial.

54. Contention about barred by law is two pronged. Firstly, suit being barred by limitation and secondly filing of suit before Civil Court instead of before Commercial Court by deliberately resorting to undervaluation of reliefs.

55. Insofar as suit being ex-facie barred by limitation, it is contended that plaintiff had knowledge of alleged infringement as early as 2015–2016 and therefore, suit filed on 31.05.2024 is barred by period of limitation specified under Article 88 of Limitation Act, 1963. Reliance in this regard is placed on **Dahiben**'s case (supra), wherein Hon'ble Supreme Court held, where plaint itself discloses suit being barred by law, plaint would be liable for rejection under Order VII Rule 11 (d) of CPC and concept of continuing cause of action cannot be invoked.

56. As noted above, suit is filed not only on allegation of infringement of plaintiff's trademark but also passing off and Hon'ble Supreme Court in **Bengal Waterproof Ltd.**'s case (supra) held in case of continuing infringement, fresh period of limitation begins after every sale of offending material. As there is specific assertion about continued sale of offending material, plaintiff would be entitled for benefit of Section 22 of Limitation Act, 1963. Same would be in tune with ratio in **Hasmukhrai & Co.**'s case (supra).

57. Insofar as lack of territorial jurisdiction of trial Court on ground that both parties are carrying on business at Raichur and no part of cause of action arose in Bengaluru and therefore

plaintiff indulged in forum shopping relying on ratio in **Indian Performing Rights Society Ltd**'s case (supra). Indeed, in said decision it is held Section 134 of TMA provides additional forum and same cannot be misused to drag defendant to a distant place and as per decisions in **Dhoda House** and **Pfizer Enterprises** (supra) it is held mere sale of goods or stray transactions do not confer jurisdiction, same is required to be rejected for simple reason that said contention would not fall within any of sub-rules (a) to (f) of Order VII Rule 11 of CPC.

58. Lastly, contention about deliberate undervaluation to void jurisdiction of Commercial Courts is based on ratio laid down in **Bangalore Blues Entertainment India Pvt. Ltd.**'s case (supra). While considering application under Order VII Rule 11 of CPC even documents submitted along with plaint can be looked into. Plaintiff has produced copy of legal notice got issued by it to defendant on 19.09.2023, in which plaintiff makes claim for damages of ₹25,00,000/- (Rupees Twenty-five Lakhs) as advance towards proposed damages with actual damages to be determined on production of books of accounts by defendant.

59. Admittedly, one of prayers in suit is for preliminary decree for rendition of accounts of profits of defendant and final decree for recovery of profits, which was valued by plaintiff to be more than Rupees 25 Lakhs in its legal notice. There is no statement abandoning said assessment and for valuing reliefs notionally. By undertaking to pay additional court fee for prayer (c) if more amount is awarded by way of damages after ascertaining accounts, plaintiff keeps his options open. Even in memo filed before trial Court on 02.07.2024, plaintiff merely states 'specified value' of subject matter of suit to be below Rs.3,00,000/- without particulars.

60. There is no dispute about implied bar of jurisdiction of Civil Courts in case of disputes falling within definition of *commercial dispute* with specified value of more than Rs.3,00,000/- (Rupees Three Lakhs only). In **BTV Kannada Private Limited**'s case (supra) this Court held that in case of commercial disputes, valuation of relief has to be as per Section 12 of CCA. In **Bangalore Blues Entertainment India Pvt. Ltd.**'s case (supra), this Court has held valuation of IPR suits cannot be arbitrary or whimsical and plaintiff cannot undervalue relief to evade rigors of CCA which amounts to

forum shopping and abuse of process. In view of fact that plaintiff valued damages to be more than Rupees 25 Lakhs in its legal notice, valuation of suit relief at Rs.1,000/- for purposes of Court fee and jurisdiction would fall within above stated mischief. Consequently, suit filed before Civil Court instead of commercial dispute before Commercial Court under CCA, would be without jurisdiction. While passing impugned order, trial Court lost sight of above fact. Consequently, its finding holding suit maintainable before it would be perverse warranting interference.

61. For above reasons, point for consideration in CRP no.614/2024 is answered in affirmative. As a result, points for consideration in MFA no.7600/2024 are rendered infructuous. Consequently following:

ORDER

(i) Revision Petition is ***allowed*** with costs, order dated 19.08.2024 passed by XVIII Additional City Civil and Sessions Judge, Bengaluru ('trial Court'), on IA no.4 in OS no.3700/2024 ('suit') filed under Order VII Rule 11 is set-aside; said IA no.4 is

allowed and as a result thereof, plaint stands rejected.

(ii) As a result, MFA no.7600/2024 is ***dismissed*** as infructuous.

(iii) It is clarified that above findings (except on tenability of civil suit) are on *prima facie* consideration of available material and would not come in way of plaintiff filing commercial dispute, for which purposes all contentions of both parties are kept open to be decided therein.

(iv) Pending application in MFA no.7600/2024 stands disposed of.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 61