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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 20.05.2026

Judgment delivered on: 01.07.2026

Judgment uploaded on: 02.07.2026

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FAO(OS) (COMM) 120/2026 CM APPL. 27051/2026

ASHIANA ISPAT LIMITED

.....Appellant

versus

KAMDHENU LIMITED & ORS.

.....Respondents

Advocates who appeared in this case

- For the Appellant : Mr. Aryama Sundaram and Mr. Chander Mohan Lall, Senior Advs. with Mr Achuthan Sreekumar, Mr. Ankur Sudan, Ms. Anannya Mehan, Mr. Swastik Bisarya, Ms. Vidhi Jain and Mr. Aryan Pathak, Advs.
- For the Respondents : Mr. Mukul Rohatgi, Dr. Abhishek M. Singhvi and Mr. Akhil Sibal, Senior Advs. with Mr. Mohit Goel, Mr. Sidhant Goel, Mr. Sudarshan Bansal, Mr. Abhishek Kotnala, Ms. Soumya Khandelwal, Mr. Arpit Pundir, Mr. Shashwat Mukherjee, Mr. Amit Bhandari, Ms. Ridhie Bajaj and Ms. Sugandh Shahi, Advs.

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



1. The present appeal arises out of the judgement dated 10.04.2026 [‘impugned judgment’] passed by the learned Single Judge in consolidated proceedings arising from cross suits between the rival parties, namely CS (COMM) No. 130 of 2025 instituted by the Appellant/Ashiana Ispat Limited [‘AIL’], and CS (COMM) No. 569 of 2025 instituted by the Respondent No. 1/Kamdhenу Limited [‘KL’]. By the impugned judgement, the Appellant’s application for interim injunction, I.A. No. 3990/2025, filed in its suit seeking, permanent injunction against passing off, in respect of the mark ‘AL KAMDHENU GOLD’ [‘impugned mark’], specific performance of the agreement dated 26.12.2002 [‘2002 Agreement’], and other ancillary reliefs, was dismissed; whereas the Respondent No. 1’s corresponding application, I.A. No. 14115/2025, filed in its counter suit seeking injunction against alleged infringement of the marks ‘KAMDHENU’ and ‘KAMDHENU GOLD’ and other ancillary reliefs, was allowed.

FACTS

2. The facts narrated by the Appellant in the appeal are as follows:

2.1. It is stated that the Appellant operates an extensive nationwide business of manufacturing integrated steel under the mark ‘AL KAMDHENU GOLD’, with a turnover of around Rs. 185.69 crores for the financial year 2025-2026, for the impugned mark.

2.2. It is stated that the rival parties were originally under joint management of KL comprising of both the Jain family and the Aggarwal family from 1996 till 2002; the trademark ‘KAMDHENU’ was conceived and developed in or around 1994 through the joint efforts of both families.



2.3. It is stated that in 1996, an application for registration of the word mark ‘KAMDHENU’¹ in class 6 was filed by the joint management of KL comprising of both the Jain and Aggarwal families, claiming user since April 1991, and in 1997, a formal agreement dated 26.02.1997 [‘1997 Agreement’] was executed, permitting the Appellant to use the said mark for a period of 3 years, reflecting the collaborative nature of the business.

2.4. It is stated that in the year 2002, upon division of the business between the two families, a comprehensive agreement dated 26.12.2002 [‘2002 Agreement’] was executed between the parties with the express objective of demarcating rights in the ‘KAMDHENU’ marks. It is stated that under the said agreement, ownership of the mark ‘KAMDHENU’ vested with Respondent No. 1/KL, whereas the Appellant was expressly conferred the right to adopt, use and seek registration of the impugned mark ‘AL KAMDHENU GOLD’ as its proprietor.

It is stated that the 2002 Agreement further recorded that upon registration of the impugned mark ‘AL KAMDHENU GOLD’, the Appellant would become the exclusive and absolute owner of the said mark and that Respondent No. 1/KL would neither use the said mark nor interfere with the Appellant’s rights vested within the said mark. It is stated that under the said 2002 Agreement, Respondent No. 1/KL had also agreed to withdraw its Trademark [‘TM’] application no. 842704 in Class 6 for the mark ‘KAMDHENU GOLD’ to avoid conflict with the Appellant’s impugned mark and the 2002 Agreement was made binding on both parties, for a tenure of 99 years.

¹ TM application no. 717214



2.5. It is stated that pursuant thereto, the Appellant applied for registration of the impugned mark ‘AL KAMDHENU GOLD’ *vide* application no. 1161758 on 27.12.2002; however, the said application was abandoned in 2008, which occurred due to malafide conduct of the Respondent No. 1/KL and connivance involving the then Trademark Attorney common to both parties. It is further stated that despite a clear undertaking to withdraw its own application, as stated in the 2002 Agreement, Respondent No. 1/KL pursued and allowed its application for ‘KAMDHENU GOLD’ bearing TM application no. 842704 to proceed to registration, and also failed to disclose or withdraw another application for ‘KAMDHENU GOLD TMT’ bearing TM application no. 1009954, thereby acting in breach of the 2002 Agreement.

2.6. It is stated that a subsequent agreement dated 29.01.2021 [‘2021 agreement’] was executed between the parties, which merely governed the licensor-licensee relationship in respect of the mark ‘KAMDHENU’ and ‘KAMDHENU NXT’ and recorded certain commercial arrangements concerning updated products. It is stated that the said agreement does not make any reference to the impugned mark ‘AL KAMDHENU GOLD’, nor does it purport to alter, extinguish or novate the rights crystallized under the 2002 Agreement pertaining to the impugned mark ‘AL KAMDHENU GOLD’,

2.7. It is stated that the dispute escalated when Respondent No. 1/KL issued a termination notice dated 19.09.2024 [‘termination notice’] purporting to terminate the 2021 Agreement on alleged grounds of non-performance. It is stated that the Appellant duly responded to the said notice



on 27.01.2025, disputing the allegations and contesting the purported termination.

2.8. It is stated that the Appellant thereafter filed a fresh application on 05.12.2024 for registration of the mark 'AL KAMDHENU GOLD' *vide* application no. 6742246 in Class 6, claiming user since 26.12.2002; Respondent No. 1/KL not only opposed the said application but also, on 17.12.2024, filed an application bearing TM application no. 6759794, for the identical mark 'AL KAMDHENU GOLD' claiming prior use since 2001.

2.9. On these premises, the Appellant instituted the underlying suit CS(COMM) 130/2025 seeking protection of its rights in the impugned mark and enforcement of the 2002 Agreement.

SUBMISSIONS BY THE APPELLANT

3. Mr. Aryama Sundaram and Mr. Chander Mohan Lal, learned senior counsel appearing on behalf of the Appellant have assailed the impugned judgment on the primary plea that the learned Single Judge has erred in construing the 2002 Agreement as a mere license user arrangement for the impugned mark 'AL KAMDHENU GOLD'. They contend that the 2002 Agreement is not a mere license arrangement but is in the form of a trademark assignment Agreement.

3.1. The Appellant contends that Clause 22 of the said Agreement evidences Respondent No. 1's acknowledgement of Appellant's independent proprietary rights akin to ownership in the impugned mark 'AL KAMDHENU GOLD'. The Appellant contends that the contractual arrangement of 2002, recorded from Clause 22 onwards, pertaining to the use of the impugned mark 'AL KAMDHENU GOLD', was distinct and separate from the arrangement pertaining to the use of the mark



‘KAMDHENU’, which was governed by Clauses 1 to 21 of the 2002 Agreement. The Appellant contends that the proprietary rights of the Appellant in the impugned mark recognized under Clauses 22 to 25 and onwards have been wrongly held by the learned Single Judge to be a license-user arrangement.

3.2. The Appellant further contends that, the 2021 Agreement was only confined to the use of the Respondent No. 1’s marks ‘KAMDHENU/KAMDHENU NXT’ for updated products, and the said Agreement was absolutely silent as to the use and ownership of the impugned mark ‘AL KAMDHENU GOLD’.

3.3. The Appellant contends that, thus, there was no novation of the 2002 Agreement recorded between the parties *qua* the Appellant’s proprietary rights in the impugned mark ‘AL KAMDHENU GOLD’, by execution of the 2021 Agreement. It contends that novation cannot be inferred from mere modification or subsequent arrangements unless there is a clear intention to substitute the earlier contract. In this regard, Appellant has placed reliance upon the judgment of the Supreme Court in **Balaji Steel Trade v. Fludor Benin S.A.**², and **Lata Construction v. Dr Rameshchandra Ramniklal Shah**³ and upon the judgment of the High Court of Calcutta in **Juggilal Kamlapat v. N.V. Internationale**⁴.

3.4. The Appellant contends that Clause 34 of the 2002 Agreement, makes it clear that the 2002 Agreement is capable of operating in distinct and severable parts, therefore, even assuming that there was any subsequent modification or arrangement in respect of the use of the trademark

² 2025 INSC 1342

³ AIR 2000 SC 380

⁴ AIR1955 Cal 65



‘KAMDHENU’, the same could not, by itself, affect or extinguish Appellant’s independent proprietary rights in the impugned mark ‘AL KAMDHENU GOLD’.

3.5. The Appellant challenges the finding of the learned Single Judge to the effect that the Appellant’s use of the impugned mark ‘AL KAMDHENU GOLD’ was as a permitted user and that the goodwill generated by the use of the said impugned mark since 2002 enures in favour of the Respondent No. 1. It contends that Section 48(2) of the Trademarks Act, 1999 [‘Act of 1999’] only applies when the permitted user uses a registered mark and in the present case, since the impugned mark ‘AL KAMDHENU GOLD’ was not a registered mark, at the time of execution of the 2002 Agreement, the said statutory provision has no application; therefore, the goodwill in the said mark vests with the Appellant alone.

3.6. The Appellant contends that the Respondent No. 1/KL is estopped from asserting any proprietary rights in the impugned mark ‘AL KAMDHENU GOLD’, in view of the Respondent No. 1’s acknowledgement of Appellant’s proprietary rights in the 2002 Agreement, followed by the letter dated 02.01.2003, addressed by the Respondent No. 1/KL, to the Registrar of Trademarks [‘Registrar’] seeking to withdraw trademark application no. 842704 for the mark ‘KAMDHENU GOLD’. The Appellant contends that, in fact, the Respondent No. 1/KL has never used the marks ‘KAMDHENU GOLD’ or ‘KAMDHENU GOLD TMT’ at any time before the institution of the suit.

3.7. The Appellant further relies upon Clause 22 of the 2002 Agreement to contend that the Respondent No. 1/KL is barred from using the mark ‘KAMDHENU GOLD’ and the registrations obtained by it *vide* TM



application no. 842704 and TM application no. 1009954 are fraudulent. It contends that, thus, 'AL KAMDHENU GOLD' is distinct from 'KAMDHENU' and 'KAMDHENU NXT'; therefore, the Appellant can be allowed to use the said impugned mark during the pendency of the suit.

3.8. The Appellant contends that the Respondent No. 1's trademark application no. 6759794 dated 17.12.2024 for the impugned mark 'AL KAMDHENU GOLD' falsely claims user since 2001, whereas the impugned mark was only coined, for the first time, while executing the 2002 Agreement. It contends that the mark 'AL KAMDHENU GOLD' was coined as a distinctive mark with 'AL' standing for the acronym of the Appellant's corporate name, Ashiana Limited and 'GOLD' was also added to suitably distinguish the impugned mark 'AL KAMDHENU GOLD' from the Respondent No. 1's mark 'KAMDHENU' and therefore, the learned Single Judge fell into error in accepting the Respondent No. 1's false claim of use over the true and continuous use of the Appellant.

3.9. The Appellant contends that in view of its prima facie rights in the impugned mark 'AL KAMDHENU GOLD' being evidenced by the 2002 Agreement and the continuous use of the said mark since 2002-03 by the Appellant, the balance of convenience is in favour of the Appellant and it could not have been enjoined from using the impugned mark contending that the irreparable injury to the Appellant would be irreversible.

SUBMISSIONS BY RESPONDENT NO.1/KL

4. In reply, Mr. Mukul Rohatgi, Dr. Abhishek M. Singhvi and Mr. Akhil Sibal, learned senior counsel for the Respondents have contended that the 2002 Agreement was one composite agreement, whereby the Appellant was permitted to use the trademark 'KAMDHENU' and was also granted



permission to adopt and use the impugned mark 'AL KAMDHENU GOLD'. They contend that the 2002 Agreement evidences that the Respondent No. 1/KL has exclusive rights to the mark 'KAMDHENU' and 'KAMDHENU' formative marks.

4.1. The Respondent No. 1/KL contends that though the 2002 Agreement granted a limited license arrangement for use of the impugned mark 'AL KAMDHENU GOLD' and acknowledged possible transfer of the ownership, the same was contingent only upon the 2002 Agreement remaining in force. The 2002 Agreement stood novated by the 2021 Agreement, and upon the Appellant's failure to pursue trademark application no. 1161758 dated 27.12.2002, which was recorded as abandoned by the Registrar *vide* order dated 07.01.2008, no proprietary rights ever accrued in favour of the Appellant in respect of the impugned mark 'AL KAMDHENU GOLD'. The Respondent No. 1/KL also denies any misconduct by the Trademark Attorney in the abandonment of Appellant's TM application no. 1161758 in the year 2008.

4.2. The Respondent No. 1/KL contends that it is the prior adopter, registered proprietor and long-standing user of the marks 'KAMDHENU', 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT'. It further contends the fact that trademark application no. 842704 for 'KAMDHENU GOLD', as well as trademark application no. 1009954 for 'KAMDHENU GOLD TMT' was pursued by the Respondent No. 1/KL and registered in the year 2003 and 2005 respectively, without any protest from the Appellant, also prove novation of the 2002 Agreement qua the entire Agreement. The Respondent No. 1/KL contends that 2021 Agreement novated and substituted the 2002 Agreement as it materially altered the products,



licensed marks, territory, consideration, term, and quality-control framework and changed the substantive terms of licensed use of the trademark 'KAMDHENU' and 'KAMDHENU NXT' by the Appellant and brought an end to the 2002 Agreement.

4.3. The Respondent No. 1/KL disputes the fact that Appellant used the impugned mark 'AL KAMDHENU GOLD' for its goods between the years 2002 to 2024. It asserts that Appellant's claim of continuous use is unsupported by the record as the invoices relied upon mention the mark 'KAMDHENU' and not 'AL KAMDHENU GOLD'; no segregated sales figures have been produced and Appellant commenced use of the impugned mark for its goods only in the year 2025, that is post termination, as is evident from the documents placed on record.

4.4. Appellant's manufacturing unit has been shut down and by May, 2025, it entered into multiple service agreements (at least 16) with 3rd parties for the manufacture of TMT bars under the impugned mark 'AL KAMDHENU GOLD', in a short period of three [3] months. Appellant has since sold its manufacturing facility to repay its debts and that its listing on the Stock Exchange has been suspended on account of statutory non-compliances.

4.5. Relying on these facts, the Respondent No. 1/KL contends that the Appellant is seeking to traffic in the impugned mark 'AL KAMDHENU GOLD' by entering into licensing and service agreements (16 in number) with third parties and flooding the market with goods on which the Respondent No. 1/KL has no supervisory control.

4.6. The Respondent No. 1/KL contends that the relationship between the rival parties under the 1997 Agreement, 2002 Agreement and 2021



Agreement was undoubtedly of a licensor and licensee, as duly recorded in the said Agreements, and all goodwill generated from the use of the mark 'KAMDHENU' accrued exclusively to the Respondent No. 1/KL. It contends that the novation of the 2002 Agreement includes within its ambit the understanding pertaining to the use and adoption of impugned mark 'AL KAMDHENU GOLD' as well. It contends that when Appellant engaged in acts prejudicial to the mark 'KAMDHENU', the Respondent No. 1/KL terminated the 2021 Agreement *vide* letter dated 19.09.2024, along with all other MoUs and Agreements with Appellant, which could have been subsisting on the date of termination.

ANALYSIS & FINDINGS

5. This Court has heard the learned counsel for the parties and perused the record.
6. We may note at the outset, that while the impugned judgment grants the interlocutory injunction prayed for in I.A. No. 14115/2025 in CS(COMM) 569/2025 filed by the Respondent No. 1/KL, it dismisses I.A. No. 3990/2025 in CS(COMM) 130/2025 filed by the Appellant. The Appellant, by law, is required to file separate appeals against the grant of an interlocutory injunction in CS(COMM) 569/2025 and the rejection of the interlocutory injunction in CS(COMM) 130/2025. We, however, take note that the learned Single Judge *vide* order dated 14.07.2025 passed in CS(COMM) 569/2025 has allowed consolidation of both the suits. In addition, Respondents have not raised any objection with respect to the non-maintainability of one appeal against the impugned judgment. We have also perused the written submissions [at paragraph 20 therein] filed on behalf of the Appellant on 20.05.2025, stating that the Appellant does not intend to



use the Respondent No. 1's trademark 'KAMDHENU' and is only seeking relief so as to be entitled to use the impugned mark 'AL KAMDHENU GOLD'. In these facts, we are entertaining this single appeal to the impugned judgment passed in two suits.

7. At the outset, we note that the Appellant is not asserting any right to use the Respondent No. 1's trademark 'KAMDHENU' on standalone basis and to this extent the injunction granted by the impugned judgment is not in challenge. The Appellant asserts proprietary rights only in the impugned mark 'AL KAMDHENU GOLD' and seeks to restrain the Respondent No. 1/KL from using the marks 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT', as they are deceptively similar to the impugned mark 'AL KAMDHENU GOLD'.

8. We note that the sole basis of the Appellant for asserting its proprietary rights in the impugned mark 'AL KAMDHENU GOLD' is the understanding recorded between the parties in the 2002 Agreement under Clause 22 onwards. The same understanding is also the basis of the Appellant for seeking to restrain the Respondent No. 1/KL from using the marks 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT'. We therefore deem it appropriate to reproduce herein the relevant clauses of the 2002 Agreement, relied upon by the Appellant and examine the steps taken by the Appellant to act upon the said understanding to secure its proprietary rights in the impugned mark 'AL KAMDHENU GOLD':-

"22. That during the subsistence of the said permitted user agreement, the Licensee shall be entitled to adopt and use the trade mark AL KAMDHENU GOLD in relation to steel bars and other cognate and related goods. The expression AL KAMDHENU GOLD will be used in Juxtapose and the words AL, KAMDHENU and GOLD will always



be used in similar size, lettering style and colour scheme. The Licensee will be entitled to file application for its registration under the provisions of Trade and Merchandise Marks Act 1958 as its Proprietors thereof. The Licensor has also filed application for registration of trade mark KAMDHENU GOLD in the Trade Mark office under application No. 842704 in Class 6 in relation to Steel Bars. The Licensor agrees to withdraw the said application without prejudice to his rights and contentions in the trade mark KAMDHENU. The Licensor will have no objection to its adoption, user and registration of the said trade mark AL KAMDHENU GOLD.

23. That up to the time of registration of trade mark AL KAMDHENU GOLD, the Licensor will also be entitled to use the said trade mark in relation to Steel Bars and other cognate and related goods.

24. That upon final registration of trade mark AL KAMDHENU GOLD, the Licensee will become exclusive and absolute owner for the said trade mark. After the registration of the trade mark AL KAMDHENU GOLD with the Licensee, the Licensee shall immediately thereafter cease in all manner the use of the trade mark KAMDHENU and shall thereafter only use the Registered trade mark AL KAMDHENU GOLD in the manner provided hereinabove. The Licensor immediately thereafter i.e., after the grant of registration shall not use the trade mark AL KAMDHENU GOLD. However, the respective goods of the Licensee and the Licensor even after the grant of the aforesaid registration of the trade mark AL KAMDHENU GOLD be yet continued to be jointly marketed by them through common market channels.

25. The Licensee shall have no right to assign or transfer its said registration of AL KAMDHENU GOLD to any party whatsoever or create any third party rights therein and shall assign and transfer the said trade mark only to Shri Naresh Jain and/or Shri Neeraj Jain and/or Shri Satish Kumar Aggarwal and/or Pradeep Kumar Aggarwal or to their legal heirs and successors.

26. This Agreement shall automatically terminate upon the happening of any one of the following events:

- (a) Termination of a period of **ninety-nine years** from the date of commencement of this Agreement; or
- (b) **This agreement shall automatically terminate on the grant of registration of the trade mark AL KAMDHENU GOLD to the Licensee.** However, it shall thereafter continue to



exist in respect of the stipulations set out hereinabove and as agreed upon by the parties hereinabove to be followed by them after the grant of registration including that of the joint marketing and common market channels to be followed by both the parties.

....

28. The Licensor and the Licensee agree that
- (a) this agreement shall be binding on both the parties, that is the term and condition shall be binding and application upon both the parties; and
 - (b) all rights granted to the Licensee under this agreement shall not be disturbed in any manner whatsoever;
- Until the final disposal (including the termination of objects, appeal etc.) of the said claims, dispute and controversy.

.....

34. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity, legality or enforceability of the remainder of this Agreement, it being intended that all the rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.”

[Emphasis supplied]

9. The aforesaid clauses of the 2002 Agreement show that the Respondent No. 1/KL acknowledged that during the *subsistence* of the said Agreement, the Appellant was entitled to adopt and use the impugned mark ‘AL KAMDHENU GOLD’, and to apply, to the Registrar, for registration of the said impugned mark as the proprietor. Respondent No. 1/KL also agreed that upon registration, the Appellant shall become the exclusive and absolute owner of the impugned mark. The right of the Appellant to further transfer the proprietary rights in the said impugned mark was also restricted under Clause 25 of the 2002 Agreement. However, until the registration was complete, the Respondent No. 1/KL was also entitled to use the impugned



mark, as provided under Clause 23 of the 2002 Agreement. As a part of this understanding, the Respondent No. 1/KL undertook to withdraw its trademark application no. 842704 for the mark 'KAMDHENU GOLD'.

10. As per the record⁵ of the suits, Appellant took following steps to act upon the said understanding, *qua* asserting proprietary rights in the impugned mark 'AL KAMDHENU GOLD':

- i. It applied for registration of the impugned mark 'AL KAMDHENU GOLD' *vide* trademark application no. 1161758 dated 27.12.2002.
- ii. In the statutory advertisements issued illustratively for complying with Clause 41 of the listing Agreements with the Stock Exchange pertaining to holding of meetings of its Board of Directors, etc. the notice refers to the trademarks 'KAMDHENU', ASHIANA, as well as 'AL KAMDHENU GOLD'. The dates of the advertisements are noted by the learned Single Judge at paragraph 40 of the impugned judgment, and they appear in the years 2004, 2005, 2011, 2014 and thereafter, from 19.01.2025 onwards.
- iii. In the unaudited financial results of the Appellant published, the impugned mark appears in the notice under the corporate name along with the trademark 'KAMDHENU' and 'ASHIANA'.

This is the limited use of the impugned mark by Appellant between 2002 to 2024 evident on record.

⁵ The convenience volume provided by the Respondent No. 1 on 16.05.2026



11. Appellant, inexplicably, failed to pursue trademark application no. 1161758 dated 27.12.2002, and the application was recorded as abandoned by the Registrar *vide* order dated 07.01.2008. No steps were taken by the Appellant to exercise its right to secure proprietary rights in the impugned mark after 2008 by registration or actual use of goods, until the issuance of the termination notice dated 19.09.2024.

12. The Appellant has been unable to show any prima facie use of the impugned mark on goods manufactured by it during 2002 to 2024, and the first use of the impugned mark by the Appellant for its goods is evidenced from an invoice dated 03.06.2025. The certificate of the Chartered Accountant [‘CA’] dated 11.02.2025 relied upon by the Appellant for its sales during the period 2001-02 till 2023-24 does not specify any sales of goods under the impugned mark ‘AL KAMDHENU GOLD’. The CA certificate dated 25.07.2025 certifies turnover from the impugned mark ‘AL KAMDHENU GOLD’ for the financial year 2025-26. This distinction in the contents of the affidavit issued by the same Chartered Accountant [i.e., Mr. Ayush Jain] prima facie shows that there has been no use of the impugned mark on goods by Appellant during the period 2001-02 till 2023-24. It is thus prima facie evident that the Appellant also failed to acquire any common law rights in the impugned mark in 2002-2024 due to non-use of the impugned mark for its goods.

13. Respondent No.1/KL has relied upon the extracts of annual reports of the Appellant for the years 1996 to 2022. It has contended that in these annual reports there is no reference to the mark ‘AL KAMDHENU GOLD’. The said contention has not been disputed by the Appellant. We have perused the cover pages of the reports filed in convenience volume dated



16.05.2026⁶. In fact, in the cover page of the Appellant's annual reports for the period 2016-17 to 2021-22 (five financial years) Appellant only refers to itself as the manufacturer of KAMDHENU-TMT bars. There is no reference to the impugned mark 'AL KAMDHENU GOLD' on the said cover pages. This fact also substantiates the prima facie opinion that the Appellant has not used the impugned mark for its goods and further, justifies the opinion of the learned Single Judge that there is no goodwill or reputation attached to the impugned mark.

14. The Appellant, however, admittedly continued to use the Respondent No. 1's registered mark 'KAMDHENU' as a licensee for its goods during the subsistence of the 2002 Agreement and thereafter, under 2021 Agreement.

15. The Respondent No. 1/KL admittedly terminated the Appellant's license to use the marks 'KAMDHENU' and 'KAMDHENU NXT' *vide* termination notice dated 19.09.2024, whereby 2021 Agreement, all the MoU's and the Agreements between the parties were also revoked. Relying upon the said termination notice, the Respondent No. 1/KL contends that any consent for adoption and use of the impugned mark 'AL KAMDHENU GOLD' granted under the 2002 Agreement also stood terminated. It principally contends that the 2002 Agreement stood novated by the 2021 Agreement.

16. A perusal of the record shows that the Appellant, post the said termination notice dated 19.09.2024, applied for registration of the impugned mark 'AL KAMDHENU GOLD' *vide* TM application no.

⁶ At Tab D



6742246 dated 05.12.2024, which is pending adjudication and commenced production of goods with the impugned mark in the year 2025.

17. Learned Single Judge has dealt with the Appellant's contentions *qua* its alleged proprietary rights in the impugned mark 'AL KAMDHENU GOLD' as derived from the 2002 Agreement, and concluded that in the absence of securing any registration of the impugned mark 'AL KAMDHENU GOLD' in favour of the Appellant, it only had a license for use of the impugned mark in its favour under the 2002 Agreement and the same stood novated upon the execution of the 2021 Agreement. The relevant paragraphs of the impugned judgment are as follows: -

“26. A review of the Agreements indicates that the relationship between the Parties is clearly defined as licensor and licensee. The Agreements consistently state that no right, title, or interest in the KAMDHENU Mark is conveyed to AIL, and all goodwill generated from the use of the KAMDHENU Mark accrued exclusively to KL. In this context, reference may be made to Clause 5 of the 2002 Agreement:

“5. The licensee expressly acknowledges, agrees and admits that

- 1) The said trade mark is the exclusive proprietary rights of Licensor;*
- 2) By use of the said trade mark, the Licensee does not and shall not, nor shall it deemed to have acquired any right, title or interest whatsoever (other than the bare license and right to continue and use them hereunder granted) in, to or over the said trade mark at any time hereafter;*
- 3) Any right, title, interest or goodwill whatsoever which may arise out of the use of the any of the trademarks;*
 - i. Vests with Licensor, who is the exclusive proprietary of the same; and*
 - ii. Shall be deemed to be held by the Licensee for the absolute benefit of licensor.”*

[Emphasis Supplied]



27. Clause 22 of 2002 Agreement provides that AIL shall be entitled to adopt and use the Impugned Mark in relation to steel bars and other cognate and related goods, however, also dictates AIL as to the form and manner of such usage of the Impugned Mark. Clauses 23 and 24 of 2002 Agreement further provide that up to the time of registration of the Impugned Mark as envisaged under Clause 24 of 2002 Agreement, KL will be entitled to use the Impugned Mark in relation to Steel Bars and other cognate and related goods.

28. Clause 24 of 2002 Agreement also, in clear terms, provides that AIL ‘*will become exclusive and absolute owner*’ only upon final registration of the Impugned Mark. The vesting of ownership is thus expressly contingent, and no proprietary rights accrue unless and until such registration is obtained by AIL. Clause 26(b) of 2002 Agreement further provides for automatic termination of 2002 Agreement upon such registration, indicating that the parties to the 2002 Agreement envisaged a transition from a license regime to an ownership regime only upon final registration of the Impugned Mark by AIL.

29. Accordingly, Clauses 22 to 26 of 2002 Agreement, when read conjointly, do not provide for any present transfer of proprietary rights, but merely contemplate a future and contingent possibility of such transfer upon registration of the Impugned Mark in favour of AIL. The pervasive control retained by KL over the manner, scope and continuance of use of the Impugned Mark by AIL including termination rights indicate that there was no assignment of Impugned Mark. The 2002 Agreement, therefore, in substance and effect, constitutes a license user arrangement even in respect of the Impugned Mark, and cannot be construed as being in the nature of an assignment thereof.

...

...

33. In the present case, Recital E of 2021 Agreement expressly takes note of the 2002 Agreement and records the shift in the nature of products from the erstwhile CTD/Tor Steel bars to the next-generation TMT bars, i.e., KAMDHENU NXT, and records that, ‘*in view of the current requirement of reinforcement steel bars*’ KL has developed the next generation TMT bar known as KAMDHENU NXT, and that AIL is ‘now interested to continue the current arrangement between the Parties to manufacture latest and modern version of steel bars’.

34. The language of Recital E also assumes significance inasmuch as it characterizes the very subject matter of 2002 Agreement, CTD/Tor Steel



bars as having become ‘*obsolete*’ reflecting a discontinuity with the earlier regime as under 2002 Agreement. The foundation of 2002 Agreement having ceased to exist, the Parties, by mutual consent, entered into 2021 Agreement to govern their rights and obligations in respect of a new and distinct product. In such circumstances, intention to substitute the earlier agreement is discernible from the terms of the subsequent agreement read in light of the surrounding commercial context.

35. In this conspectus and having regard to the principle that novation under Section 62 is founded on the mutual intention of the parties to substitute a new contract in place of the old, *prima facie* 2021 Agreement constitutes a novation of the 2002 Agreement.

.....

49. If AIL would have obtained registration of the Impugned Mark in terms of 2002 Agreement, AIL could have asserted right over the Impugned Mark. Although AIL initially filed the application for registration of Impugned Mark in December 2002, subsequently the same was abandoned in January 2008. This clearly reflects lack of proactiveness on part of AIL to protect its rights. Although AIL attributes this lapse to its counsel, it remains evident that no substantive efforts were made by AIL to assert rights in the Impugned Mark until nearly sixteen years later, when a new application under TM Application No. 6742246 in Class 6 was submitted on 05.12.2024 after purported termination of 2002 Agreement.

50. Ordinarily, an entity seeking proprietary rights in a mark is expected to exercise due diligence in safeguarding such interests. The delayed filing, particularly following disputes between the Parties, including the receipt of the termination letter dated 19.09.2024 and caution notices issued on 06.11.2024 supports KL’s argument that AIL’s claim of exclusive rights over the Impugned Mark is potentially untenable.”

[Emphasis supplied]

18. Having considered the submissions of the parties, as well as upon a thorough review of the 2002 Agreement and 2021 Agreement as well as the documents of the Appellant filed for proving its use of the impugned mark ‘AL KAMDHENU GOLD’ during the period 2002-2024, we find that



though the Appellant adopted the mark 'AL KAMDHENU GOLD' in the year 2002, it failed to take necessary steps for acquiring statutory rights in the said impugned mark and also use the said mark on its goods during 2002-2024. The consent of the Respondent No. 1/KL recorded at Clause 22 of the 2002 Agreement *qua* the adoption of the impugned mark was a relevant fact, which would have assisted the Appellant to obtain registration of the impugned mark as contemplated in Section 11(4) of the Act of 1999 and to obviate any objection from the Registrar as to the similarity of the impugned mark with the Respondent No. 1's earlier mark 'KAMDHENU'.

The Appellant's conduct of filing trademark application no. 1161758 dated 27.12.2002 for the mark 'AL KAMDHENU GOLD' and then permitting it to be abandoned (in the year 2008), at this *prima facie* stage evidences Appellant's lack of intention to acquire proprietary rights in the said impugned mark. The submission of the Appellant that the Trademark Attorney who filed the application in 2002, failed to protect the interest of the Appellant in the year 2008, cannot be a legal defence to the Appellant's own acts and omissions. It was the obligation of the Appellant to remain vigilant and take appropriate steps to secure the registration so as to acquire statutory proprietary rights. This circumstance is not isolated and has to be seen in the background that the Appellant significantly did not use this mark from 2002 to 2024 for the goods manufactured by it, which further evinces lack of intent to secure its proprietary rights in the impugned mark.

The consequence of the Appellant failing to obtain registration is its failure to acquire proprietary rights as contemplated in Clause 24 of the 2002 Agreement. Since the Appellant relies upon Clause 22 of the 2002 Agreement to claim proprietary rights in impugned mark 'AL KAMDHENU



GOLD’, it is also equally bound by Clause 24 of the said 2002 Agreement, which outlines the terms of acquisition of the said proprietary rights.

19. In addition, the Appellant has also, at this prima facie stage, failed to explain its acceptance of the Respondent No. 1’s action of pursuing trademark application no. 842704 dated 24.02.1999 for the mark ‘KAMDHENU GOLD’ and obtaining registration in 2003. The parties at Clause 22 of the 2002 Agreement had agreed that the Respondent No. 1/KL would withdraw the said application, and yet inexplicably, the Respondent No. 1/KL pursued the said application and obtained registration on 17.11.2003. This registration also finds a specific mention at Recital A of the 2021 Agreement, which has been duly signed by both the parties, including the Appellant and acted upon. The Appellant has not provided any explanation of this fact in its pleadings. However, during arguments, it was submitted by the learned senior counsel for the Appellant that the mentioning of TM No. 842704 in Recital A of the 2021 Agreement was not done mindfully and appears to have been slipped in by the Respondent No. 1/KL, as it otherwise has no relevance to the contents of the 2021 Agreement, which only pertains to the mark ‘KAMDHENU’ and ‘KAMDHENU NXT’. We are unable to accept this oral submission of the Appellant at this interlocutory stage, which is not pleaded.

20. The Appellant is bound by the contents of the 2021 Agreement, which is an admitted document. The presumption in fact and law is that Appellant signed the 2021 Agreement after verifying its contents and was therefore aware of TM No. 842704 pertaining to the mark ‘KAMDHENU GOLD’ having been registered in 2003, and yet raised no objection to this action of Respondent No. 1/KL. This circumstance also shows that Appellant has



failed to pursue and secure its proprietary rights on the impugned mark under Clause 22 of the 2002 Agreement.

21. The Appellant has contended that oppositions filed by third parties against its trademark application no. 1161758 dated 27.12.2002 were orchestrated by the Respondent No. 1/KL with the assistance of its Trademark Attorney and were therefore in bad faith, as it was contrary to the understanding recorded in Clauses 22 onwards of the 2002 Agreement. The Appellant has, in its written submissions dated 20.05.2025, averred these facts and relied upon certain documents, however, these documents were not filed before the learned Single Judge, and therefore, we refrain from examining the same in this appeal. The Appellant will be at liberty to raise these issues at trial, and the effect of this will be considered by the Court at the stage of final disposal of the suits. However, these submissions by the Appellant fail to explain why it did not pursue the said TM application no. 1161758 and permitted the application to be abandoned in the year 2008.

22. Therefore, in these admitted facts, where the Appellant failed to take appropriate steps to acquire statutory proprietary rights in the impugned mark 'AL KAMDHENU GOLD' under Clause 22 of the 2002 Agreement, or acquire common law rights by use of the impugned mark, even assuming that Clauses 22 onwards of the 2002 Agreement were not novated with the 2021 Agreement, the issuance of the termination notice dated 19.09.2024 prima facie had the effect of revoking the consent of the Respondent No. 1/KL, earlier granted to the Appellant under the 2002 Agreement, for adopting and using the impugned mark. The reliance placed by the Appellant on Clause 34 of the 2002 Agreement to continue to rely on the understanding recorded at Clauses 22 onwards is misplaced as the



understanding in the said clauses prima facie do not survive the effect of the termination notice dated 19.09.2024, which termination notice prima facie has the effect to revoke the entire arrangement contemplated in the 2002 Agreement.

23. The prima facie findings of the learned Single Judge with respect to novation of the 2002 Agreement with respect to understanding recorded at Clauses 1 to 21, with regards to the mark 'KAMDHENU' was not contested by the Appellant. The Appellant also admitted that it is not using the trademark 'KAMDHENU' for the goods specified in the 2002 Agreement as the same have become obsolete. It has, however, contested the finding of novation *qua* the understanding for use of the impugned mark 'AL KAMDHENU GOLD' recorded in Clause 22 onwards of the 2002 Agreement. There may be some merit in this submission of the Appellant as the 2021 Agreement only deals with new products and the mark 'KAMDHENU' and 'KAMDHENU NXT'. The 2021 Agreement makes no reference to the consent granted by the Respondent No. 1/KL at Clause 22 for the impugned mark 'AL KAMDHENU GOLD'. It was for this reason that we examined the conduct of the Appellant in securing proprietary rights for the impugned mark 'AL KAMDHENU GOLD' during the period 2002-21 and 2021-24; and, in neither period has the Appellant taken requisite steps to acquire proprietary rights. In fact, post 2015, there is no evidence on record, at all, of any use of the impugned mark by the Appellant. Thus, even assuming that there was no novation of the understanding recorded between the parties at Clauses 22 onwards of the 2002 Agreement, however, as held above, Respondent No. 1's consent in the 2002 Agreement to adopt and use



the impugned mark 'AL KAMDHENU GOLD' prima facie stood revoked with the issuance of the termination notice dated 19.09.2024.

24. The Appellant has relied upon certain judgements on the issue of novation of the 2002 Agreement with the 2021 Agreement, however, based on our findings with respect to non-use of the impugned mark and effect of termination notice returned hereinabove, we do not find it apposite, at this prima facie stage, to deal with the said judgements.

25. The Appellant itself in its pleadings⁷ has submitted the effect of Clause 22 onwards of the 2002 Agreement is that of a trademark *assignment* of the impugned mark 'AL KAMDHENU GOLD'. As per this pleading, therefore, Appellant acknowledges that the Respondent No. 1/KL is the proprietor of the impugned mark 'AL KAMDHENU GOLD' and Respondent No. 1/KL has consented to assign the said mark to the Appellant. However, Clauses 22 and 24 of the 2002 Agreement required the Appellant to have the impugned mark registered for acquiring exclusive proprietary rights. But, in the given facts where the Appellant failed to acquire the registration of the impugned mark as per Clause 24 as well as failed to *use* the impugned mark for its goods from 2002-2024, and the Respondent No. 1/KL, with the termination notice dated 19.09.2024, has sought to revoke all Agreements to mean and include the 2002 Agreement, at this interim stage, the prima facie opinion of the learned Single Judge that the Appellant having failed to secure statutory rights as contemplated in Clause 22 and 24 and is not the proprietor of the impugned mark 'AL KAMDHENU GOLD' is a plausible view and does not require any interference in this appeal.

⁷ Paragraph 47 of I.A. No. 3990/2025



26. Appellant's submissions that the impugned mark 'AL KAMDHENU GOLD' is a mark coined by the parties specially for the use of Appellant is persuasive. However, the fact remains that the Appellant has been unable to show, from the documents filed on record, any goodwill earned by the Appellant in the said mark and/or any use of the said mark for its goods prior to the issuance of the termination notice. The limited use of the impugned mark shown by the Appellant prior to the termination notice is by way of statutory notices, which, in our opinion, do not qualify as advertisements of its goods for proving use of the mark so as to acquire goodwill in the said mark for acquiring common law rights.

27. Learned Single Judge has also examined the claim of the Appellant on the threshold of passing off and concluded that Appellant has been unable to show any goodwill for the impugned mark 'AL KAMDHENU GOLD'. The deliberations of the learned Single Judge are set out at paragraph nos. 38 to 44 for the impugned judgment.

We are unable to take a contrary view, as no material has indeed been brought on record by the Appellant to prove it earned any goodwill in the impugned mark through advertisements from the years 2002 to 2024.

28. The Appellant has contended that Section 48(2) of the Act of 1999 has been wrongly relied upon by the learned Single Judge, as the said section can have no applicability to the impugned mark 'AL KAMDHENU GOLD', as the said mark is not registered and the use of the said mark by the Appellant is therefore not governed by Section 48(2) of the Act of 1999 and would not enure to the benefit of Respondent No. 1/KL. We are not adjudicating on this contention, in view of our findings on the Appellant's



failure to prove use of the mark and secure proprietary rights in the impugned mark.

We however observe that, as a matter of fact, the Respondent No. 1/KL has not shown any independent use of the impugned mark 'AL KAMDHENU GOLD' for its goods in these proceedings. The effect of this has been considered by us later in this judgement.

29. Learned Single Judge after concluding that the Appellant has no proprietary rights in the impugned mark 'AL KAMDHENU GOLD', and has failed to prove any independent goodwill in the said mark, declined to grant the injunction prayed for by the Appellant in its I.A. No. 3990/2025 in CS(COMM) 130/2025. It thereafter, proceeded to consider the injunction application I.A. No. 14115/2025 filed by the Respondent No. 1/KL in CS(COMM) 569/2025. The discussion of the learned Single Judge is at paragraph nos. 47 to 54 and 56 of the impugned judgement, which reads as under: -

“47. KL has placed reliance on its registrations for Marks incorporating 'KAMDHENU GOLD' and related formative marks. The expression 'KAMDHENU GOLD', which forms dominant part of the Impugned Mark is admittedly coined by KL and when taken as a whole, constitutes a combination of two words being arbitrary and not descriptive of the goods in question. The Impugned Mark wholly incorporates KL's registered Mark 'KAMDHENU GOLD', with the addition of the prefix 'AL', which, prima facie, does not alter the essential character of the Mark 'KAMDHENU GOLD'. The dominant and distinctive element of the Mark 'KAMDHENU GOLD' thus stands appropriated in its entirety.

48. Admittedly, since the execution of 2002 Agreement, AIL's business activities are largely in relation to the manufacture of goods under KAMDHENU Mark for KL, pointing to a market association of the KAMDHENU Mark including the Mark 'KAMDHENU GOLD' with KL, instead of AIL. Given the identity of the goods, structural, phonetic and conceptual similarity and the prominence of the element



‘KAMDHENU GOLD’ in the Impugned Mark, any concurrent use of the Impugned Mark by AIL is likely to cause confusion leading to association of AIL’s use of the Impugned Mark with KAMDHENU Mark and result in diversion of trade.

49. If AIL would have obtained registration of the Impugned Mark in terms of 2002 Agreement, AIL could have asserted right over the Impugned Mark. Although AIL initially filed the application for registration of Impugned Mark in December 2002, subsequently the same was abandoned in January 2008. This clearly reflects lack of proactiveness on part of AIL to protect its rights. Although AIL attributes this lapse to its counsel, it remains evident that no substantive efforts were made by AIL to assert rights in the Impugned Mark until nearly sixteen years later, when a new application under TM Application No. 6742246 in Class 6 was submitted on 05.12.2024 after purported termination of 2002 Agreement.

50. Ordinarily, an entity seeking proprietary rights in a mark is expected to exercise due diligence in safeguarding such interests. The delayed filing, particularly following disputes between the Parties, including the receipt of the termination letter dated 19.09.2024 and caution notices issued on 06.11.2024 supports KL’s argument that AIL’s claim of exclusive rights over the Impugned Mark is potentially untenable.

51. The Annual Reports submitted by AIL do not indicate that the marketability of AIL’s products is dependent on the use of the Impugned Mark. Furthermore, AIL has not provided evidence to demonstrate that its sales are significantly influenced by the use of the Impugned Mark. The records also show that KL has substantial sales figures and advertising expenditures, which support the conclusion that the marks ‘KAMDHENU’/‘KAMDHENU GOLD’ serve as the primary and established identifiers for KL’s goods and business. This increases the likelihood that consumers may associate AIL’s products or business with those of KL.

52. Undisputedly, AIL’s adoption of the Impugned Mark stems solely from 2002 Agreement and does not originate independently. Given these circumstances, pending a conclusive determination regarding the Parties’ rights under the Agreements and the ongoing Applications for registration of the Impugned Mark by both AIL and KL, AIL does not have any right to use the Impugned Mark independently.

53. Any use of the Impugned Mark by AIL is likely to adversely affect KL, potentially causing irreparable harm to KL’s asserted rights.



Accordingly, the balance of convenience favors KL, as KL is the registered proprietor of ‘KAMDHENU’, ‘KAMDHENU GOLD’, and ‘KAMDHENU GOLD TMT’.

54. KL has also provided evidence of use, goodwill, and reputation associated with the KAMDHENU Mark, ‘KAMDHENU GOLD’ and ‘KAMDHENU GOLD TMT’. This establishes KL’s entitlement to protection against any actions that might diminish the goodwill attached to the KAMDHENU Mark in the marketplace.

.... ..

56. Given that the products at issue are reinforcement steel bars utilized in transportation and infrastructure projects, where safety and structural integrity are critical, any defect or deficiency associated with goods bearing the Impugned Mark may reasonably be associated with KL, thereby impacting KL’s reputation and goodwill. The nature of these products makes monetary compensation insufficient for such injury. Therefore, permitting AIL to continue use of the Impugned Mark is likely to cause irreparable harm to KL. Accordingly, KL has established prima facie case for infringement and passing off, warranting the grant of an interim injunction in favour of KL and against the Defendants in the KL Suit.”

[Emphasis Supplied]

30. Appellant has contended that the Respondent No. 1/KL never used ‘KAMDHENU GOLD’ or ‘KAMDHENU GOLD TMT’ at any time prior to 2024. It contends that the use of the Respondent No. 1/KL for the said mark is only from 2025 onwards. It contends that the findings of the learned Single Judge with respect to reputation and goodwill in the said marks in favour of the Respondent No.1/KL are unsupported by the record.

We have considered the aforesaid submissions of the Appellant. The said submissions of the Appellant would have been relevant if the interlocutory injunction had been granted only on the threshold of passing off *qua* the marks ‘KAMDHENU GOLD’ and ‘KAMDHENU GOLD TMT’. However, the learned Single Judge has granted the interlocutory injunction against the Appellant on the basis of prima facie finding of



infringement as the Respondent No. 1/KL are admittedly the registered proprietor of the mark 'KAMDHENU GOLD' bearing TM no. 842704, mark 'KAMDHENU GOLD TMT' bearing TM no. 1009954 and the mark 'KAMDHENU' bearing TM no. 717214.

31. In view of the TM registration nos. 1009954 and 717214, we are, therefore, of the considered opinion that the finding of the learned Single Judge that Appellant's use of the impugned mark infringes the said registered marks is correct and does not merit any interference, and the injunction is liable to be maintained on the findings of infringement alone.

32. On the aspect of the balance of convenience, considering the fact that the Appellant's own manufacturing unit has been shut down, and the relief sought by it is only to enable third parties (appointed post issuance of termination notice) to manufacture goods under the impugned mark, we find no ground of interference with the findings of the learned Single Judge. Similarly, the reasons recorded by the learned Single Judge on the aspect of irreparable injury also require no interference.

33. The Appellant admittedly sells its goods under its house mark ASHIANA, and is therefore free to continue its steel business under the said mark.

34. We, however, have reservations as regards to the findings returned by the learned Single Judge on the issue of prior use by the Respondent No. 1/KL of the impugned mark 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' at paragraph 54 of the impugned judgment, as the material on record does not indicate any independent use by the Respondent No. 1/KL of the marks 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' for its goods prior to the institution of the suits in the year 2025.



35. In addition, undoubtedly, as per Clause 22 of the 2002 Agreement, Respondent No. 1/KL had undertaken to withdraw its trademark application no. 842704 dated 24.02.1999 for the trademark 'KAMDHENU GOLD'. The Respondent No. 1's action of pursuing the said application, during the subsistence of the 2002 Agreement and issuance of the registration certificate on 17.11.2003, has not been sufficiently explained by the Respondent No. 1/KL.

The Appellant has placed on record a letter dated 02.01.2003, stated to have been issued by the Respondent No. 1/KL, addressed to the Registrar of Trademarks for the withdrawal of the said application no. 842704. The said registration has prima facie been obtained in contravention of the 2002 Agreement. However, this TM registration for the mark 'KAMDHENU GOLD' finds mention in the subsequent 2021 Agreement, and the said Agreement has been signed by the Appellant, which prima facie shows that the Appellant either condoned or overlooked this breach of the Respondent No. 1/KL. Similarly, the Respondent No. 1's action of pursuing trademark application no. 1009954 dated 17.05.2001 for trademark 'KAMDHENU GOLD TMT', which was registered on 13.06.2005, is also contrary to the understanding between the parties as recorded in the 2002 Agreement.

The bad faith of the Respondent No. 1/KL in pursuing the said applications contrary to Clause 22 of the 2002 Agreement is writ large and also evident from the fact that it has not shown any use of the said marks prior to the year 2025. These marks i.e., 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' have been used by the Respondent No. 1/KL only post termination notice dated 19.09.2024 to checkmate the Appellant. However, since the Appellant itself frittered away its rights under the 2002



Agreement, this Court finds no ground to restrain Respondent No. 1/KL from using the said registered marks at this interim stage pending final disposal.

36. It is however, directed that, any use by the Respondent No. 1/KL of the aforesaid marks 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' on its goods shall be subject to the final decision in CS(COMM) 130/2019, and the Respondent No. 1/KL will not be entitled to claim any equities on account of its use of the said mark during the pendency of the suit.

37. The Appellant has explained that the impugned mark 'AL KAMDHENU GOLD' was coined keeping in view its corporate name, Ashiana Limited. A perusal of Clauses 22 and 23 of the 2002 Agreement indeed shows that the Respondent No. 1/KL acknowledged the superior rights of the Appellant to adopt 'AL KAMDHENU GOLD' subject to the condition stipulated in Clause 24 of the 2002 Agreement. The Appellant indeed adopted the said mark in the year 2002 and used it in its corporate filings, even though its use on goods has not been established. In these facts, the Respondent No.1's recent action of applying for registration of the impugned mark 'AL KAMDHENU GOLD' *vide* trademark application no. 6759794 dated 17.12.2024 is *prima facie* not in good faith and only intended to exclude the Appellant from getting the registration.

Respondent No. 1/KL has never used the said impugned mark, and it is therefore hereby restrained from now using the said mark for its goods during the pendency of these suits. The balance of convenience in this regard is in favour of the Appellant so as to protect its rights during the pendency of the suits.



38. The scope of interference, while hearing appeal against the order passed by a Commercial Court, in Intellectual Property matters, under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 [‘CPC’] stands settled by the judgment of the Supreme Court in **Wander Ltd. v. Antox India (P) Ltd.**⁸. The relevant paragraph reads as under: -

“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

⁸ 1990 Supp SCC 727

⁹ AIR 1960 SC 1156



“... 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]

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

40. Thus, as summarized by the coordinate Bench in **Sanjay Gupta and Vinay Gupta v. Vineet Jain, Proprietor of Vijay pal 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 Appellate Court would interfere; otherwise, factual and discretionary evidence and findings of the Commercial Court are ordinarily immune from interference in an appeal.

41. We have examined the Appellant’s submissions keeping these settled principles in mind.

¹⁰ 1942 AC 130

¹¹ 2025 SCC OnLine SC 1701

¹² 2026: DHC:1248-DB



42. In view of the aforesaid findings, we are of the considered opinion that the learned Single Judge has rightly observed that the Appellant, having failed to obtain statutory and common law rights in the impugned mark which is deceptively similar to the Respondent No. 1's registered marks 'KAMDHENU', 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' cannot be permitted to use the impugned mark post the termination of the license agreements as well as revocation of the consent for the adoption of the impugned mark 'AL KAMDHENU GOLD', at this interlocutory stage. The said directions are necessary for preserving the rights of the Respondent No. 1/KL in its suit CS(COMM) 569/2025, pending final determination.

43. We have, however, issued directions *qua* the Respondent No. 1's use of the mark 'KAMDHENU GOLD' and 'KAMDHENU GOLD TMT' at paragraph '36' and restraint *qua* the Respondent No. 1's use of the impugned mark 'AL KAMDHENU GOLD' at paragraph '37' of this Order. These directions and restraints are necessary for preserving the rights of the Appellant in its suit CS(COMM) 130/2025, pending final determination.

44. The Appellant has contended that the findings returned by the learned Single Judge on the rights of the parties under the license agreements in the impugned judgment on novation, etc. are final in nature and would prejudice the final determination of the suit. In our considered opinion, the said apprehension of the Appellant is misplaced as it is settled law that the findings returned in the orders passed for deciding interim injunction application are *prima facie* in nature and do not bind the Court while deciding the suit finally. We, however, clarify for the benefit of the parties that any observation made by the learned Single Judge and this Court for



deciding the interlocutory application and this appeal are prima facie and will not bind the Court which shall finally decide the suits.

45. With the aforesaid directions, the present appeal stands dismissed. Pending applications, if any, stands disposed of.

46. No order as to costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JULY 01, 2026/IB/AJ