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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 6387 OF 2025
IN
COMMERCIAL IP SUIT NO. 612 OF 2025
WITH
INTERIM APPLICATION (L) NO. 18951 OF 2025
IN
COMMERCIAL IP SUIT NO. 612 OF 2025

SAPAT International Private Limited ... Applicant.

In the matter between:

SAPAT International Private Limited ... Plaintiff.

Versus

NIRAVI Consumer LLP and Ors. ... Respondents/Defendants.

Dr. Birendra Saraf, Senior Advocate a/w. Mr. Hiren Kamod, Mr. Praver Sharma, Ms. Suchita Chavan i/by Mr. Prabhakar Jadhav for the Applicant/Plaintiff.

Mr. Alankar Kirpekar a/w. Mr. Chinmay Pagedar, Mr. Ayush Tiwari, Mr. Shekhar Bhagat i/by Shekhar Bhagat and Neelaja Kirpekar for the Respondent/Defendants.

Coram : Sharmila U. Deshmukh, J.
Reserved on : May 05, 2026
Pronounced on : July 21, 2026

ORDER :

1. The captioned Suit came to be filed alleging that the Defendants acts constitute infringement of the plaintiff's registered trade mark "SAPAT" by unlawful use and constitutes passing off their goods as that of the Plaintiff.

2. The interim application seeks *inter alia* injunctive reliefs against the Defendants from manufacturing or marketing the impugned product i.e. tea bearing the impugned mark "SAPAT" resulting in infringement of Plaintiff's registered trade mark in Class 30 and operating counters/outlets/stores for selling tea using the mark "SAPAT" or similar goods or services and against passing off the impugned goods as that of the Plaintiff.

3. The Plaintiff Company was earlier known as Sapat Packaging Industry Private Limited. It is contended that in or around the year 1987, Late Ramashankar Haribhai Joshi founded Sapat & Co. and started selling tea under the name "SAPAT" and also marketed "SAPAT LOTION" followed by launch of tea outlet in the year 1905. The Plaintiff claims to be successor in title of Sapat & Co. in so far as the trade mark "SAPAT" in relation to tea is concerned. The plaint sets out the trade mark registrations obtained by its predecessor in title in Class 30 with the earliest registration of the year 1944 of the mark "ROSE PEKOE" with the device of half moon and star. Subsequently in the year 1957, registration was secured of the word mark "SAPAT" in Class 30. The Plaintiff's predecessor in title had also secured registrations in Class 5 in respect of SAPAT Lotion, SAPAT Malam and the word mark SAPAT in Class 3 and 5.

4. In the year 1995, the partners of Sapat & Co. which included Anish Jayant Joshi and Nikhil Jayant Joshi, who are the present directors of the Plaintiff company, assigned their businesses and the business of tea was assigned to the Plaintiff and the business of health care was assigned to M/s. Sapat & Co. Nashik (Bombay) Private Limited now known as Sapat Global Health Private Limited exclusively. In the records of the trade mark registry, the Plaintiff and the said Sapat Global Health Private Limited came to be recorded as subsequent proprietors of the registered trade marks in Class 30 and Class 3 and 5 respectively.

5. The Plaintiff in the year 2006, secured registration of the



trade mark and its variants in various classes including in Class 30. It is pleaded that every product packaging of Plaintiff mentions the house-mark SAPAT. The sales turnover and the advertisement expenses are set out in paragraph 18 of the plaint.

6. The Defendant No.1 is a partnership firm of Ritu Nikhil Joshi and Defendant No.3 and Defendant No. 2 is the partnership firm of Nikhil Joshi (who is director of Plaintiff Company) and Ritu Nikhil Joshi. The Defendant No.3 has filed rectification applications

against the Plaintiff's registered trade mark "SAPAT". The Defendant No.1 markets its product i.e. tea under the mark "NIRAVI" through outlets/stores/ counters owned/managed by Defendant No.2. Till 19th June, 2024, the Defendant No.2 was procuring tea from the Plaintiff and selling the same under the hoarding/signage/outlets depicting the trademark SAPAT of the Plaintiff, which supply thereafter ceased. The Defendant No.2 while dealing with the Plaintiff Company's products as business arrangement had been using the trade name Sapat & Co. for issuing sales invoices in respect of Plaintiff's tea sold by Defendant No.2.

7. In the last week of June, 2024, the Defendant No. 2 displayed



the signage depicting the brand name "NIRAVI" along with the mark "SAPAT" over its counters/outlets/hoardings without the consent of the Plaintiff. There is exchange of correspondence/notices between the parties by which the Defendant No.2 was called upon to cease and desist from using all trade marks pursuant to the termination of supply of tea to the Defendant No.2. It is submitted that the Plaintiff is not concerned with the mark "NIRAVI" and the objection is to use the mark "SAPAT" by placing the hoarding/signage and also by affixing

adhesive tapes bearing the impugned mark "SAPAT" on the tea sold under the brand name "NIRAVI".

8. By order of 28th January, 2025 passed by this Court, the Defendant's statement was recorded that without prejudice to their rights and contentions, wherever the Defendants are selling tea in packaged form, they shall not use the mark "SAPAT" on the packaging/trade dress and will not use the mark "SAPAT" while advertising its product of packaged tea. Subsequently Interim Application (L) No.18951 of 2025 was filed impleading the partners of Defendant Nos.1 and 2 alleging use of "SAPAT" for marketing "NIRAVI" tea and claiming violation of order dated 28th January, 2025.

9. In the reply affidavits to the Order 39 Rule 2A application, the contention was that the statement made was that Defendants will not use "SAPAT" while selling tea in packaged form and Defendants are selling loose tea and there is no restriction on selling loose tea using trading name "Sapat & Co". The Defendants are engaged in selling loose tea through outlets operating under the trading name i.e Sapat & Co. Nashik since seven decades. The shops at Nashik are displaying the signages to show that they are the authorised re-sellers of SAPAT NIRAVI products originating from Sapat Global

Health Private Limited. The Shop Act license of Sapat & Co. of the year 1973 is annexed to the reply affidavit. It is further stated that in order to avoid any allegation of contempt, the Defendant No.2 instead of issuing bills in the name of Sapat and Co. Nashik, have started using new invoice/bill book.

10. The reply Affidavit to the Plaintiff's application under Order 39 Rule 1 and 2 of CPC contends that the Defendant Nos.1 and 2 are selling health beverages marketed by Sapat Global Health Private Limited and not using the mark "SAPAT" for manufacturing or marketing tea, without prejudice to the contention that Defendant No.2 is entitled to use the mark "SAPAT" even for tea. The Defendants have denied the exclusivity claim of Plaintiff over the mark "SAPAT" in relation to tea business. The Defendants contend that there is no direct evidence of transmission of mark "SAPAT" for tea business from Late Ramashankar Haribhai Joshi to Plaintiff or Sapat & Co. (Bombay) and that the tea business was individually owned by Late Ramashankar Joshi. As Late Ramashankar Joshi died intestate in the year 1958, the rights devolved on all the legal heirs by successorship and not by way of assignment from one legal entity to another. It is stated that there is no official partition between the family members of Late

Ramsahankar Joshi and Late Jayant Joshi in relation to tea business.

11. It is contended that in the year 1897, Late Ramshankar Joshi started trading under the mark "SAPAT LOTION" and in the year 1905, started trading under the name and style "SAPAT" in relation to tea. Thereafter, Late Ramashankar Joshi started conducting business in Class 5 goods through Sapat and Co. Limited till 1947 and the trade mark applications were filed by Sapat and Co. Limited, which came to be assigned to Sapat & Co.-the partnership firm of Ramashankar Joshi in 1947 after the dissolution of Sapat & Co. Limited. The tea business was not conducted under the mark "SAPAT" by Sapat and Co. Limited but under the mark "Rose Pekoe" with device of Chand and Tara, which was applied for registration claiming user since 1907.

12. The mark of "Rose Pekoe" with device of Chand and Tara was assigned to the partnership firm Sapat & Co. In the year 1947, the partnership firm of Sapat and Co. (Bombay and Nashik) was constituted from which Plaintiff seeks to derive the title, whereas the partnership deed of Sapat & Co. of 1947 shows that the firm was not conducting business of tea in the year 1947.

13. In the year 1957, for the first time it was proposed that tea

business would be conducted by the partnership firm i.e. Sapat & Co. and application for trade mark registration was filed on proposed to be used basis and not by claiming user since 1905. It was claimed that the tea business of Late Ramashankar Joshi was never assigned or transferred to Sapat and Co. (partnership firm) till his death and remained the joint property of all legal heirs and no exclusivity can be claimed by Plaintiff over the mark "SAPAT" for Class 30.

14. It is further submitted that Defendant No.1 is not using the mark "SAPAT" in respect of any of the products falling in Class 30. The Defendant No.2 through its trading name Sapat and Co., since last seven decades is selling Class 3 and Class 5 products along with Class 30 products. After the demise of Late Ramashankar Joshi, the tea business was being conducted by Late Shri Jayant Joshi under the trading name Sapat and Co. Nashik. Subsequently Nikhil Joshi joined Late Shri Jayant Joshi and after the demise of Late Jayant Joshi, the deponent i.e. Ritu Joshi is conducting business with her husband in the name and style of Sapat and Co. Nashik, which firm is the property of Defendant No.2 and Defendant No.2 is thus entitled to conduct business of selling loose tea under the trading style "Sapat and Co." Nashik and/or under the trade mark "SAPAT".

15. The franchisees of Sapat Global Health Private Limited are legally and validly depicting the registered mark "SAPAT" on the signage of shops under the written permission of registered proprietor i.e. Sapat Global Health Private Limited, which is entitled to use the mark "SAPAT" with "NIRAVI" for Class 3 or Class 5 goods without any permission from any entity.

16. It is contended that the Defendant No.2 has been purchasing loose tea from the Plaintiff as well as from other traders of loose tea in the market and also reselling other products such as perfume and coffee since the year 1990. Sapat and Co. Nashik was independently carrying on business of selling loose tea from its franchisees at Nashik and nearby vicinity. In the year 2024, as there was FSSAI violation, the Defendant No.2 stopped purchase of the tea from the Plaintiff and the present suit is a counterblast to the NCLT proceedings filed by Nikhil Joshi.

17. The defence of acquiescence is raised as since past 7 decades and at least since 1990, the Plaintiff is aware that the Defendant No.2 and/or Sapat and Co. Nashik is buying loose tea powder from the Plaintiff and also from market and selling it under the trade name Sapat and Co. (Nashik) and also under the trade mark "SAPAT". The Defendant Nos.1 and 2 have decided to discontinue

use of adhesive tapes bearing the mark "SAPAT NIRAVI", which was created solely for promoting Class 5 goods till the hearing of the interim application. Insofar as the representation on the social media pages is concerned, it is contended that the Facebook page is created by a shopkeeper at Manmad, which has now been updated to remove the infringing sentence.

18. Dr. Saraf, learned Senior Advocate appearing for the Plaintiff points out the registration of the Plaintiff as subsequent proprietor of the trade mark SAPAT under Class 30. He submits that the Plaintiff has also applied for variants of the trade mark SAPAT and considering the same, NIRAVI will be associated with the Plaintiff. He submits that the Defendant No.1 was formed in 2024 and Defendant No.2 is formed in 2017 and is converted from partnership firm. He submits that till 2024, the Defendant No.2 was engaged in procuring tea from the Plaintiff and was therefore permitted to sell tea under the hoarding depicting the trade mark SAPAT. He would further point out the admissions in the reply communication addressed by Nikhil Joshi on 23rd April, 2024 that the Plaintiff is entitled to claim exclusivity in the trade mark SAPAT in respect of tea.

19. He submits that a formal cease and desist notice was issued

to the Defendant No. 2 on 4th July, 2024 to cease use of all trade marks/logos belonging to the Plaintiff company as the franchise agreement had expired/terminated, to which there was no objection by Defendant No. 2 and points out the admission in the email of 26th July, 2024 about stoppage of supply of tea by Plaintiff since 19th June, 2024.

20. He submits that the Defendant No.2 claims to be prior adopter and user of mark SAPAT by use of Defendant No. 2 and/or Sapat and Co. Nashik since over five decades. He further points out the affidavit-in-reply filed by Ritu Joshi stating on oath that the Defendant Nos.1 and 2 are not using the mark SAPAT for manufacturing and marketing of tea though at the same time, claiming right to use the mark SAPAT even in respect of tea. He submits that it has been reiterated that Defendant No.1 is not using the mark SAPAT in respect of product in Class 30 voluntarily though the said averment is without prejudice. He would further point out that a claim has been made that Sapat & Co. Nashik is property of Defendant No.2 without any document being on record. He submits that based on a solitary invoice of the year 1990, which is also prior to the assignment of mark in favour of Plaintiff, the right of prior user is sought to be established.

21. He submits that there is no question of acquiescence as the permission to use the trade mark was by reason of Defendant No. 2 marketing the tea supplied by Plaintiff.

22. Drawing attention to the photographs annexed at Page 430 to 432, he submits that the Defendants are displaying the signage of "SAPAT" along with name "NIRAVI" for selling tea and are also affixing adhesive tapes having the mark "SAPAT" on NIRAVI packaged tea. He would further point out the Facebook page of SAPAT tea outlet, Manmad with the introduction that SAPAT tea is now SAPAT NIRAVI loose Tea as also the rate card of NIRAVI which shows SAPAT mixture being sold. He submits that the substantial business of Defendants is tea and points out the photographs annexed to the additional affidavit in Interim Application (L) No.18951 of 2025 to demonstrate that the products which are sold from the Defendant's outlets are mainly tea. He submits that the Defendants have adopted a dubious method of placing a counter of healthcare products in the shops in an obscure manner to support use of the mark SAPAT. He would submit that there are no pleadings and material to show the products sold in these outlets.

23. He submits that reliance is placed on one document of 1990 to show use of trading name of Sapat and Co. which was also in

respect of tea purchased from the Plaintiff. He submits that those invoices which are used in the name of Sapat and Co. have now been changed to the Defendant No.2's name as set out in the affidavit-in-reply to the Interim Application (L) No.18951 of 2025. He submits that under the provisions of Section 29 of the Trade Marks Act, 1999 (for short, "Trade Marks Act") even the use of a registered trade mark for the purpose of advertising the goods and services, amounts to infringement. In support, he relies upon the following decisions:

- (i) *Power Control Appliances and Ors. v. Sumeet Machines Pvt. Ltd. and Ors.*¹**
- (ii) *Lupin Limited vs. Eris Lifesciences Pvt. Ltd. and Ors.*²**
- (iii) *Velcro Industries B.V. and Ors. v. Velcro India Ltd.*³**
- (iv) *MCAM Surlon India Ltd. vs. Metalon Marketing Delhi Partnership Firm and Ors.*⁴**
- (v) *Minco India Pvt. Ltd. v. Minco India Flow Elements Pvt. Ltd.*⁵**
- (vi) *Bajaj Electricals Limited v. Metals & Allied Products and Ors.*⁶**
- (vii) *Laxmikant V. Patel v. Chetanbhat Shah and Ors.*⁷**
- (viii) *Gujarat Bottling Co. Ltd. and Ors. v. Coca Cola Company and Ors.*⁸**
- (ix) *Macleods Pharmaceuticals Limited v. Union of India and Ors.*⁹**

1 1994 (2) SCC 448

2 2016 (67) PTC 144 (Bom)

3 1993 (1) ARBLR 465 (Bom)

4 MANU/DE/5691/2024

5 IA(L)/12616/2024 dated 06th January, 2026

6 1998 (8) PTC 133 (Bom)

7 (2002) 3 SCC 65

8 (1995) 5 SCC 545

9 2023 SCC OnLine Bom 408

24. *Per contra*, Mr. Kirpekar, learned counsel appearing for the Defendants points out the array of parties to contend that the dispute is between legal heirs of Late Jayant Joshi. He submits that there is no absolute division of tea business between the family members and if the corporate veil is lifted then it is only one family being the legal heirs of Late Jayant Joshi. He would submit that Defendant No.3 is impleaded unnecessarily and is unconnected with present dispute.

25. Pointing out the pleadings in the plaint, he submits that there is admission that Sapat & Co had been involved in selling Class 5 and Class 30 products simultaneously as one entity since 1905 and there is uninterrupted use of SAPAT since 1897. He points out the admission in the plaint that use of the mark SAPAT is first adopted in relation to SAPAT Lotion. He points out that registration in Class 30 dated 27th July, 1944 was for "Rose Pekeo" with device of Chand Tara Device and that the registration of the word mark SAPAT dated 20th December, 1957 is much later than the use of trade name Sapat & Co. as trade name since 1897 for Class 5 products and/or 1905 for tea outlets. He submits that the plaint pleads that in the year 1995, the trade mark SAPAT came to be assigned to two

different entities for Class 30 and Class 5 and therefore one entity cannot be restrained from advertising its mark as per trade practices.

26. He submits that SAPAT is the house mark and the Plaintiff's websites represent that SAPAT has three sectors i.e. tea, consumer health and social development and thus even after 1995, there is no watertight separation of business of SAPAT group. He submits that the Joshi family is known as Sapat family and hence their personal identity is almost equivalent to their name.

27. He submits that the Plaintiff's grievance is that the signage of SAPAT NIRAVI at the outlets in Nashik from where Defendant No.2 earlier used to sell loose tea under the mark SAPAT will create confusion and it will create association of the mark NIRAVI with SAPAT. He submits that SAPAT NIRAVI mark is owned by Sapat Global Health Private Limited and used in relation to Class 3 and 5 products and hence there is no infringement. He submits that Defendant No.2 is authorised re-seller of SAPAT NIRAVI Class 5 products and is entitled to display the signage at the outlet. He submits that use of NIRAVI in relation to loose tea does not constitute infringement. He submits that there are two registered proprietors of the mark SAPAT in different classes and it has to be

accepted that there is bound to be some association and does not amount to actionable association due to use of SAPAT NIRAVI. He submits that the association, if any, is between SAPAT NIRAVI health beverages and/or NIRAVI tea, which cannot give cause of action to the Plaintiff. He submits that as there are two registered proprietors of mark SAPAT, even if the trade channel is common, the same does not provide cause of action for infringement of trade mark.

28. He submits that as Defendant No.2 is using the mark SAPAT NIRAVI as permitted user of Sapat Global Health Private Limited in respect of Class 5 and just because tea under different mark NIRAVI is sold in the same shop does not constitute infringement.

29. In so far as passing off is concerned, Mr. Kirpekar submits that Sapat Niravi health beverages are sold by Sapat Global Health Private Limited who is the prior adopter and user of the mark SAPAT and is entitled to claim goodwill and reputation from 1897 as Class 5 product i.e. Sapat Lotion were sold prior in point of time as compared to tea. He submits that Plaintiff cannot claim any right over the mark NIRAVI and cannot claim passing off by use of NIRAVI for tea. He submits that signage outside the shop of Defendant No.2 does not amount to misrepresentation. He submits

that the signage represents that SAPAT NIRAVI health beverages are available in the shop. He submits that the product categories in the shop are kept separate for the purpose of indicating the trade origin and points out photographs depicting the signage over the counter.

30. He submits that even the slightest possibility of association is nullified as there is clear notice at point of sale that NIRAVI tea is product of Niravi Consumer LLP. He submits that Defendant No.1 is not interested in creating any association of NIRAVI with SAPAT as loose tea of SAPAT has lost its goodwill.

31. He submits that having acquiesced for more than 30 years accepting such situation, it is not open for Plaintiff to dictate the manner of use by other group entities of their prior used, prior adopted and prior registered mark for their own products.

32. He submits that Sapat & Co. is a partnership firm carrying on its business as M/s Sapat & Co. at Bombay and Nashik since 1947. He points out the annexures to limited affidavit in reply to contend that Sapat & Co. was to conduct its business at Bombay, Nashik and other places. He points out the pleading in the reply affidavit filed by Ritu Joshi to contend that Sapat & Co. was carrying on business at Nashik of trading in tea and Coffee atleast since 1st June, 1973

and the shop act license was renewed on 22nd March, 2010, which is subsequent to the family arrangement of 1995. He would further point out to the purchase invoice of the year 1990 to substantiate the case of Sapat & Co. Nashik being a different entity trading as general merchants and also involved in tea business at Nashik, which was buying tea not only from Plaintiff but also other companies.

33. He submits that by the family arrangement of the year 1995, only registrations of the trade mark were assigned and the business of Sapat & Co. Nashik as general merchants and loose tea sellers continued without any objection. He submits that there is no denial by the Plaintiff to the contention of independent existence of Sapat & Co. Nashik in the pleadings and seeks permission to bring on record the extract of register of firms to show independent existence. He submits that Plaintiff acquiesced in use of the mark SAPAT by Sapat & Co. Nashik.

34. Dealing with the arguments of Dr. Saraf, Mr. Kirpekar would submit that the Plaintiff's claim that tea business started in 1897 is not substantiated by any document and there is no document to show that Late Ramashankar Joshi assigned his mark alongwith goodwill to Sapat & Co. Bombay and Nashik. He submits that Sapat

and Co. Nashik has separate shop act license of 1973 and there is an admission that Late Ramashankar Joshi was carrying on business since 1905 in relation to tea which was carried forward as inherited business by legal entities including Sapat & Co. Nashik.

35. He submits that the SAPAT is a housemark used by all group entities demonstrated from the extract of webpages. He submits that there is no dispute to the assignments and Defendant No.2 is raising the ground of prior and continuous user and acquiescence under law.

36. He submits that the balance of convenience is in favour of the Defendants as Defendant No.2 is continuously using Sapat & Co. Nashik since the year 1897 and as an independent entity at least since 1973 to the full knowledge of the Plaintiff and will suffer irreparable loss despite taking all efforts to indicate the origin of the products. He submits that any injunction will stall the efforts of promotion of health beverages by Sapat Global Health Private Limited which is not even a party to the present suit. In support, he relies upon the following decisions:

- (i) *Proctor & Gamble Health Ltd. and Anr. Vs. Horizon Biochemicals Pvt. Ltd. and Ors.*¹⁰**
- (ii) *Chemco Plastic Industries Pvt. Ltd. in Chemco Plastic***

¹⁰ IA(L) No.39102 of 2025 in COMIP(L)/38975 of 2025 dated 17.03.2026

Industries Pvt. Ltd. v. M/s. Chemco Plast.¹¹

37. In rejoinder, Dr. Saraf would contend that once a mark is assigned, no claim of prior user can be pressed. He submits that every assignor will be a prior user and after the assignment cannot continue to claim rights as a prior user. He would further submit that the Defendant's case in the limited affidavit-in-reply is that in the year 1947, the partnership firm was constituted to conduct the business under the name of Sapat & Co. at Bombay and Nashik and not that there is any separate partnership firm of Sapat & Co. registered at Nashik. He would further point out that the Defendants have contended that the tea business was not carried out by Sapat & Co. Bombay and Nashik after 1947. He submits that Sapat & Co. Nashik Limited was voluntarily wound up and the goodwill and assets were transferred to Sapat & Co. and from Sapat & Co. to the Plaintiff. He submits that in the Plaintiff's specific case that the Defendant No.2 was selling the Plaintiff's tea and therefore common law license was given. He submits that there is no document produced except the invoice of the year 1990, whereas, he could have brought several invoices as well as the Chartered Accountant's certificate.

¹¹ IA/2165/2024 in COMIP No.80/2024 dated 03.12.2025.

38. Rival contention now falls for determination:

39. The cause of action for infringement of Plaintiff's trademark "SAPAT" in relation to tea is placement of hoardings/signages at the outlets of Defendant No.2 bearing the trade mark SAPAT for sale of NIRAVI tea, the sale of NIRAVI tea by Defendant No 2 by affixing adhesive tapes bearing the mark SAPAT on the packaging of NIRAVI tea and price list of tea products displayed from the counters of Defendant No.2 using the mark SAPAT. The additional act of infringement is claimed in the application under Order 39 Rule 2A by reason of advertisement of tea products by issuing invoices in the name of Sapat & Co. Nashik in defiance of the statement recorded in the order of 28th January, 2025 that the Defendants while selling tea in packaged form will not use the mark SAPAT on the packaging/trade dress and while advertising their product of packaged tea.

40. The issues which would arise broadly arise for consideration are:

- (a) Whether Plaintiff has the exclusive right to use the trade mark "SAPAT" in respect of tea.
- (b) Whether the Defendant No.2 is prior user and adopter of mark "SAPAT" by use of trading name Sapat & Co. Nashik for selling tea and other products.

- (c) Whether consequent to the assignment of trademark "SAPAT" in favour of Plaintiff in the year 1995, Sapat & Co. can continue the use of the trademark "SAPAT" in respect of tea.
- (d) Whether Defendant No.2 is entitled to the use of signages depicting the mark "SAPAT" alongwith "NIRAVI" outside its outlets.

41. The reply affidavit of the Defendants assail the Plaintiff's claim to exclusive use of the trademark "SAPAT" in respect of tea business. The conspectus of the Defendant's case is that the tea business was carried out by Sapat & Co. Nashik Limited under the mark "ROSE PEKEO" with device of Chand-Tara. Sapat & Co. Nashik Limited dissolved in the year 1947 and "ROSE PEKEO" trade mark was assigned to Sapat and Co., a partnership firm which was constituted on 1st August, 1947 and engaged only in business of Class 5 products. On 20th December, 1957, Sapat and Co. filed an application for registration of mark SAPAT on proposed to be used basis in Class 30. Late Shri Ramashankar Joshi expired in the year 1958 and till his death was carrying on business of tea under the mark SAPAT and had not assigned or transferred the mark "SAPAT" to Sapat and Co. Bombay at any point of time. In the year 1958, Jayant Joshi starting conducting business of tea under name and

style of Sapat and Co. simultaneously in Bombay and Nashik and till then Sapat and Co. only carried out business in Class 5 products. The mark "SAPAT" and tea business remained the estate of Late Ramshankar Joshi to be inherited by his legal heirs.

42. It is claimed that there is no assignment of tea business or the mark SAPAT from Ramashankar Joshi to Sapat and Co. partnership firm and consequently Sapat and Co. could not have assigned the mark SAPAT in Class 30 product to the Plaintiff. The records of trade mark registry presents a different picture. The present action is for infringement of trade mark which is governed by the statutory provisions of Trade Marks Act, 1999. The extract of trade mark journal in respect of mark "SAPAT" as regards the application No.182717 dated 20th December, 1957 by Sapat & Co. shows user claim since the year 1896. Apart from the said document, the Defendant's submission overlooks the statutory provisions of Trade Marks Act, 1999, which recognises the exclusive right of a registered proprietor to the use of the trade mark in relation to the goods and services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark. Registered proprietor is defined under Section 2(1) (v) of the Trade Marks Act, as the person who for the time being is

entered in the register as a proprietor of the trade mark. Section 28 and Section 29(1) of the Trade Marks Act, read as under:

“28. Rights conferred by registration.—(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

29. Infringement of registered trade marks.—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2)

(3)"

43. Sections 28 and 29 of the Trade Marks Act, 1999 uses the expression “in relation to goods or services in respect of which the trade mark is registered” and recognises the exclusive right of the registered proprietor to use the mark in relation to the goods and services in respect of which the trade mark is registered. Section 29 speaks of infringement of the trade mark by a person who is not a registered proprietor and who uses an identical/deceptively similar trade mark in relation to goods or services in respect of which the trade mark is registered. Section 29(7) provides that a registered trade mark is infringed by a person, who applies the registered trade mark for advertising goods or services. Dr. Saraf has pitched his case of infringement under Section 29(7) of the Trade Marks Act by reason of the use of the signage outside the outlets of Defendant No.2 depicting the mark SAPAT for selling tea and by issuing invoice of Sapat & Co. Nashik for selling tea.

44. The online status and the legal proceeding certificate pertaining to the trade mark application No.182717 for registration of word mark SAPAT discloses that the application was filed on 20th December, 1957 in Class 30. The user detail is on proposed to be used basis and the name of proprietor is Ramashankar Haribhai Joshi trading as Sapat & Co. and the names of the other partners

are mentioned. The history details records the name of Sapat Packaging Industries Pvt. Ltd. (erstwhile name of Plaintiff) as subsequent proprietor by virtue of indenture dated 5th January, 1995, copy of resolution passed by assignor dated 4th January, 1995, copy of resolution of Sapat Packaging Industries Ltd dated 4th January, 1995, affidavit of Jayant Joshi dated 7th September, 1999 etc. The order of the Registrar was passed on the request on Form TM 25 dated 3rd February, 1995 and 4th May, 1995 dated 12th November, 1999 recording the name of M/s Sapat Packaging Industries Pvt Ltd (erstwhile name of Plaintiff) as subsequent proprietor of the trade mark SAPAT in respect of Class 30 product.

45. The trade mark application No.182717 applied on 20th December, 1957 shows the user detail as proposed to be used, however, the extract of trade mark journal shows that the user is claimed since the year 1896. In any event, the application shows that the word mark was registered in favour of Sapat & Co. and in 1995, the Plaintiff's name was entered as a subsequent proprietor.

46. In respect of the word mark "SAPAT" in Class 5 in respect of Sapat Lotion, the user is claimed since 1907. The history details discloses that the name of proprietor was Sapat & Company Limited and the subsequent proprietor was recorded as Sapat & Co.

and then Sapat & Co. Nashik (Bombay) Pvt Ltd on 24th March, 1995 and thereafter the name of Sapat Global Health Pvt Ltd.

47. Since the year 1995, the name of Plaintiff has been recorded as subsequent proprietor of the mark "SAPAT" in Class 30 products by assignment from Sapat & Co. There is no rectification application filed against the Plaintiff's recordal as subsequent proprietor. The records of the trade mark registry bears testimony to the assignment of the tea business and health business respectively to Plaintiff and Sapat Global Health Pvt. Ltd. as claimed by the Plaintiff. In response to the show cause notice dated 10th April, 2024 issued by the Plaintiff, Nikhil Joshi-partner of Defendant No.2 has explicitly stated "Thus, it is inappropriate on behalf of the Company to claim the exclusivity on the Trade Mark "SAPAT" in relation to any goods except "TEA" and misusing the registration of stopping the others family members or concerns of other family members from filing the Application or obtaining the Registration or using the mark. In other words, the family members are entitled to use the mark "SAPAT" in respect of all other goods save and except for which the mark was used. It is stated that "I further say that, I have no problem if, the Trade Mark "SAPAT" is remaining on

the register in the name of the Company even though the same is not used by the Company for any goods or services except "TEA".

48. The documents produced on record are sufficient to *prima facie* hold that the Plaintiff is the subsequent registered proprietor of the trade mark "SAPAT" in respect of tea and Sapat Global Health Private Limited is the subsequent registered proprietor of the trade mark "SAPAT" in relation to Class 3 and 5 products and are entitled to the statutory protection in their respective class.

49. Dealing next with the issue of Defendant No.2 being prior user and adopter of the mark "SAPAT" even in respect of tea. The claim is that Sapat Lotion was sold in 1897 prior to the registration of the mark SAPAT in respect of tea, which came later in 1957. The registered proprietor was however, Sapat & Co. which subsequently assigned the mark to the Plaintiff in respect of tea and to Sapat Global Health Pvt. Ltd. in respect of Class 3 and 5 products.

50. The Defendant No.2's right is premised on the ground that Defendant No.2 i.e. M/s Arjun Venture (India) LLP is selling class 3 and class 5 products along with Class 30 products, including but not limited to tea through its trading name "Sapat and Co. Nashik" and secondly by reason of entitlement to sell health beverages falling in Class 5 under the mark "Sapat Niravi". The history is traced

claiming that the business of tea and other business was carried out under the trading style Sapat & Co. Nashik, which was run independently by Late Shri Jayant Joshi, after the death of Late Shri Ramashankar Joshi, and, the subsequent joining of Nikhil Joshi and Ritu Joshi in the said business. The firm of Sapat and Co. Nashik is claimed to be the property of Defendant No.2 LLP and entitled to conduct business of selling loose tea under the trade mark SAPAT.

51. The Defendant No.2 in order to substantiate its case of prior use of the mark "SAPAT" by use of trading name Sapat & Co. Nashik, even in respect of tea has produced a solitary purchase invoice of 1990 claiming that Defendant No.2, since decades is the purchaser of loose tea from Plaintiff as well as other traders of loose tea in the market. There is no explanation as to how the Defendant No 2 which is an LLP incorporated on 20th January, 2015 could be trading as Sapat & Co. (Nashik) since last seven decades. There is no document produced to show the manner in which the business of firm Sapat & Co. Nashik devolved upon Defendant No.2. There is nothing on record to show the nexus between Defendant No.2 and Sapat & Global (Nashik), even assuming for the moment that there was an independent existence of Sapat and Co. (Nashik).

52. The invoice of 1990, even otherwise, is prior to the assignment of the mark SAPAT in respect of tea in favour of Plaintiff. Defendant No.2 seeks to raise a claim of independent existence of Sapat & Co. Nashik and right to use "SAPAT" as part of trading name and not as trade mark. If the material on record is perused, the partnership deed of 14th November, 1947 of the constitution of Sapat and Co. placed on record by the Defendant No.2 records that Ramashankar Haribai Joshi, Jadeshvar Kripashankar Joshi, Suryakant Ramashankar Joshi and Priyavadan Ramashankar Joshi have been carrying on business together in partnership under the name and style of Messers Sapat & Co. at Bombay and Nashik. The records of trade mark registry recording the names of subsequent proprietors shows that pursuant to request on Form TM 24 dated 6th November, 1958, the names of all partners except Ramashankar Joshi and with the addition of name of Jayant Joshi trading as Sapat and Co. were recorded as subsequent proprietors. It appears that Jayant Joshi was inducted in place of Ramashankar Joshi after his expiry in the year 1958. Subsequently Nikhil Joshi entered the partnership firm of Sapat & Co. There is no document produced on record to show either induction of Ritu Joshi in the firm of Sapat & Co. after death of

Jayant Joshi or that Sapat & Co Nashik was a distinct entity. Pertinently the purchase invoice of the year 1990 of Sapat & Co. Nashik bears the same address of head office as that of Sapat & Co. Bombay i.e. 113, Cavel Street, Bombay 400 002.

53. The reply affidavit of Ritu Joshi that tea business was not carried out by Sapat & Co. after 1947 runs contrary to the submission that Sapat & Co. (Nashik) was carrying on independent business of loose tea since several decades. It is also pertinent to note that reliance is placed on solitary document of 1990, whereas an entity functioning since seven decades would be in possession of voluminous documents to show its existence. On the other hand, the use of GST registration of Defendant No.2 on invoices of Sapat & Co. Nashik militates against the independent existence of Sapat & Co. Nashik. The solitary purchase invoice of the year 1990 and shop act license of 1973, are not sufficient to persuade this Court to come to a *prima facie* finding that Sapat & Co., Nashik is an independent entity carrying on business under the trade mark SAPAT not only in respect of tea but other products and is now the property of Defendant No.2.

54. In the written submissions filed after conclusion of arguments, permission is sought to bring on record extract from

Register of Firms to demonstrate independent registration of Sapat & Co. Naik since the year 1973, however, no application seeking such relief was filed.

55. Dr. Saraf is also right in contending that once there has been an assignment of the trade mark in Class 30 in favour of the Plaintiff, thereafter the assignor cannot claim any right of prior user. Such conduct would render the assignment nugatory. It cannot be accepted that Sapat & Co. would retain its claim of prior use even after the assignment of the year 1995. It is not the Defendant's pleaded case that Sapat & Co. Nashik was a distinct and separate entity from Sapat & Co. Bombay. In the limited affidavit-in-reply dated 18th December, 2024 in paragraph 24(g), it is pleaded that in the year 1947, a partnership firm was constituted to conduct the business under the name and style of "Sapat & Co. (Bombay and Nashik)". Similar pleadings can be found in paragraph 24(l) that since 1958 onwards Jayant Joshi started conducting business of tea under the name and style of Sapat & Co. simultaneously in Bombay and Nashik. *Prima facie* from the material on record, the defence of Defendant No.2 being prior user and adopter of the mark SAPAT through the trading name of Sapat & Co. Nashik cannot be accepted.

56. The Plaintiff claims that Defendant No.2 was permitted under common law license to use the mark "SAPAT" on the signages outside its outlets as it was selling Plaintiff's product i.e. tea till 19th June, 2024. The contents of the email of 2nd July, 2024 produced at Exhibit V of the plaint refers to the expiry of previous agreement for sale of loose tea between the Plaintiff and the Defendant No 2. The cease and desist notice of Plaintiff dated 4th July, 2024 calls upon the Defendant No.2 to cease use of the Plaintiff's intellectual property. There is response email by the Defendant No.2 stating that the Plaintiff has unilaterally stopped supplies to them since the last supply on 19th June, 2024 and sets out the outstanding amount. The correspondence discloses the business relations between the parties and about the procurement of tea by the Defendant No.2 from the Plaintiff, which explains the use of the mark SAPAT by Defendant No.2 in respect of tea. Defendant No.2 claims that apart from Plaintiff, Defendant No 2 was procuring tea from other vendors. Again, apart from the invoice of 1990, no document has been produced to substantiate the same. Sapat & Co. Nashik is neither shown to be a distinct entity or an entity trading independent of Plaintiff's business relation after the assignment in favour of Plaintiff. The defence of acquiescence also

fails as the use by Defendant No.2 was by reason of common law license given by the Plaintiff during the subsistence of commercial transaction between the Plaintiff and Defendant No. 2.

57. In the limited affidavit-in-reply, there is bare denial to Plaintiff's contention that the supply to the Defendant No.2 has stopped due to illegal activities of Defendant No.2. The affidavit-in-reply however does not deal with the claim of the Plaintiff that the Defendant No.2 was procuring tea from the Plaintiff and selling the same by depicting the trade mark SAPAT of the Plaintiff on the boards/signage of outlets.

58. The Plaintiff has instituted the present proceedings due to the Defendant's continued usage of signage outside its outlets depicting the mark SAPAT along with mark NIRAVI. It cannot be disputed that in so far as use of the mark NIRAVI for tea is concerned, the Defendants are entitled to use the mark. In so far as the mark SAPAT NIRAVI is concerned, the Defendants are entitled to use the mark for marketing products under Class 3 and 5. However, the use of mark "Sapat" for tea would constitute infringement of Plaintiff's trade mark.

59. Mr. Kirpekar would not deny that the Defendant No.2's shops are selling tea under the mark NIRAVI and are also selling Class 5

products under the mark SAPAT NIRAVI. His contention is that by use of SAPAT NIRAVI, there is bound to be association with Sapat Group. The point is that it is not merely an association with mark SAPAT but an association with SAPAT in respect of tea which is actionable. Considering that there are distinct assignments of the mark SAPAT in regard to Class 30 and Class 5 and 3, the use of SAPAT alongwith NIRAVI in outlets selling tea, is bound to create confusion. A trade mark is brand identifier and has the ability to simulate sales. The statutory provisions afford protection by conferring exclusive use of trade mark in relation to products in respect of which the trademark is registered. Mr. Kirpekar would contend that Defendant No.2 has always endeavoured to make efforts to keep the product categories sold under its shops separate for indicating the source. In the written submissions, the Defendants have annexed photographs to show signs at the sales counter indicating the source of origin of SAPAT NIRAVI and that NIRAVI is a product of Defendant No.1. These photographs are not part of the Defendant's pleadings and have been produced in the written submissions. This development appears to have taken place during the pendency of the present proceedings.



60. The signage depicts the mark SAPAT alongwith the mark NIRAVI. Admittedly, in the same outlets, NIRAVI tea as well as SAPAT NIRAVI Class 3 and Class 5 products are sold. The concept of initial interest confusion recognizes that the confusion in the minds of the consumers arises at the stage of purchase and at the time of completing the transaction there is no doubt in the minds of customers regarding the origin of goods. The test which is required to be applied is whether the customer would be confused at the initial stage and would be in a state of transient wonderment, which would apply where the goods are marketed through same trade channels. Even if the sale counters at the Defendant's outlets display the source of origin, the consumers would enter the shops being drawn by the signages outside the outlets under the belief that SAPAT tea is being sold in the shops. After entering the shops, the consumers would be confused as to whether the NIRAVI tea is associated with SAPAT tea. The possibility of association and confusion arises as the same outlets sell tea as well as health beverages. There would have been no scope for confusion in event the outlets depicting the signage SAPAT NIRAVI sells only Class 3 and 5 products.

61. The price list of NIRAVI tea outlets includes an item of "Sapat

mixture”, which is an indication of sale of tea under the mark “SAPAT”. The photographs demonstrate use of adhesive tape depicting the mark “SAPAT” in respect of NIRAVI tea. The social media post of a franchisee of Defendants associates NIRAVI tea with SAPAT. The invoices of the franchisees annexed to the Interim Application (L) No.18951 of 2025 shows the use of trade mark SAPAT on the invoices selling NIRAVI tea or as representing themselves as SAPAT retail outlets, while selling NIRAVI tea.

62. The photographs produced on record along with the additional affidavit of the Plaintiff would indicate that prominence has been given in placards placed outside the outlets to the sale of tea and in a portion of the shop, the health care products have been placed for sale. There is no material produced on record to show the extent of sale of Class 5 products from the shop to substantiate that the outlets depicting the signage SAPAT are essentially outlets for Class 5 products. The depiction of the mark SAPAT along with the mark NIRAVI *prima facie* indicates an association of the mark SAPAT with tea rather than with products falling under Class 3 and 5.

63. The Defendant No.2 having failed to prove its right to use “SAPAT” in respect of tea, the Plaintiff is entitled to injunctive

reliefs. It is not a case of Plaintiff seeking to decide the manner of use of trade mark by Sapat Global Health Private Limited but to restrain the Defendant No 2 who raises an independent claim to use SAPAT in relation to tea. Defendant No.2 asserts an independent positive claim to use the mark SAPAT as trading name of Sapat & Co. in respect of tea on the strength of Sapat & Co (Nashik) and the signages outside its outlets is *prima facie* a representation of the assertion.

64. There can be no doubt that Sapat Global Health Private Limited is entitled to use the mark SAPAT in respect of the Class 3 and 5. There cannot be any insistence by the Defendants to use the mark SAPAT outside outlets selling NIRAVI TEA along with Class 3 and 5 products, when any such use indicates an association with the Plaintiff's mark SAPAT in respect of tea and is bound to lead to confusion.

65. *Prima facie* the Plaintiff has established that it is the registered proprietor of the trade mark SAPAT in relation to Class 30 products. The use of signages outside the Defendant No.2's outlets, after cessation of the business relationship between the Plaintiff and Defendant No.2, the use of adhesive tape of SAPAT on



NIRAVI tea-packaged or loose tea, issuance of invoices by the Defendant's franchisees using the trade mark SAPAT and as Sapat retail outlets while selling NIRAVI tea, the social media posts, the price list of Niravi tea outlets including an



item of "Sapat Mixture" *prima facie* constitutes infringement of the Plaintiff's trade mark "Sapat" in relation to tea.

66. Insofar as the action for passing off is concerned, the test which is required to be applied is of goodwill and reputation, misrepresentation and damage. In ***Laxmikant Patel vs Chetanbhat Shah*** (supra), the Hon'ble Apex Court noted in paragraph 11 as under:

"11. Salmond & Heuston in Law of Torts (Twentieth Edition, at p.395) call this form of injury as 'injurious falsehood' and observe the same having been 'awkwardly termed' as 'passing off' and state:-

"The legal and economic basis of this tort is to provide protection for the right of property which exists not in a particular name, mark or style but in an established business, commercial or professional reputation or goodwill. So to sell merchandise or carry on business under such a

name, mark, description, or otherwise in such a manner as to mislead the public into believing that the merchandise or business is that of another person is a wrong actionable at the suit of that other person. This form of injury is commonly, though awkwardly, termed that of passing off one's goods or business as the goods or business of another and is the most important example of the wrong of injurious falsehood. The gist of the conception of passing off is that the goods are in effect telling a falsehood about themselves, are saying something about themselves which is calculated to mislead. The law on this matter is designed to protect traders against that form of unfair competition which consists in acquiring for oneself, by means of false or misleading devices, the benefit of the reputation already achieved by rival traders."

67. The Plaintiff has been registered as subsequent proprietor of the trade mark SAPAT in relation to tea since 1995 and has placed on record the sales turnover as well as the advertisement expenses which are duly certified by the Chartered Accountant and shows substantial sales. In fact the email from Defendant No.2 shows that for the period from April, 2024 to 19th June, 2024, there was outstanding amount of about Rs. 74 lakhs towards sale of Plaintiff's Sapat tea, which shows the volume of sales. There can be no debate about the goodwill and reputation which has been earned by the Plaintiff in respect of its trade mark SAPAT in respect of tea.

68. Insofar as the misrepresentation is concerned, the use of signages outside its outlets by Defendant No.2 depicting the mark SAPAT, the use of the mark by its franchisees on its invoices, misrepresentation of franchisees as Sapat retail outlets and use of adhesive tape depicting the mark SAPAT for sale of NIRAVI tea constitutes act of misrepresentation that the tea marketed under the mark NIRAVI is associated with the Plaintiff's Sapat tea. Considering the goodwill and reputation of the Plaintiff's mark, the use of the mark by the Defendants would cause loss to its goodwill and reputation. The use the registered mark by the Defendant Nos.1 and 2 constitutes an act of passing off. In so far as Defendant No.3 is concerned, the plaint does not set out any acts attributable to Defendant No.3 which would constitute infringement of trade mark or passing off.

69. In so far as balance of convenience is concerned, the use of the mark SAPAT by Defendant No.2 was by reason of common law license of Plaintiff, as the record shows that Defendant No.2 was marketing tea procured from the Plaintiff. There is nothing on record to show that Defendant No.2 was marketing tea bought from other vendors or other products apart from tea under the trading name of Sapat & Co. Nashik. The use of the mark since last

several decades, if any, is by reason of being permitted by Plaintiff, who had the exclusive right to use the mark SAPAT in relation to tea after the year 1995. The balance of convenience does not favour the Defendants but tilts in favour of Plaintiff.

70. Dealing now with the decisions cited, the case of ***Proctor & Gamble Health Ltd. and Anr. Vs. Horizon Biochemicals Pvt. Ltd. and Ors.*** (supra), was in respect of medicinal product and the contest was between “LIVOGEM” and “LIVOGEM”. This Court in that case had found the rival marks to be visually and phonetically similar, however, had not granted the relief for passing off as there was no material to show misrepresentation. The decision was rendered on the facts of that case and is inapplicable here.

71. In the case of ***Chemco Plastic Industries Pvt. Ltd. v. M/s. Chemco Plast*** (supra), the Court had considered whether the concurrent user of “CHEMCO” can be said to be dishonest. In that case there was material on record indicated that there were multiple opportunities for the Plaintiff to become aware of the presence of the Defendant in the market and that the user of “CHEMCO” was either clandestine or dishonest and applying the balance of convenience held that the blanket order of injunction may not be justifiable. The Court also noted the distinction

between user of "CHEMCO" and "CHEMCO PLAST" as trade mark and "CHEMCO" as part of trade/business name and domain name which was in use by the Defendant since last 25 years. In present case, the Defendant No.2 has failed to prove honest and concurrent use of the mark SAPAT independent of Plaintiff's association.

72. In light of the above discussion, the Interim Application No.6387 of 2025 is allowed in terms of prayer clauses (a) and (d), reads as under:

- "a. Pending the hearing and final disposal of the suit, the Defendants, their directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, retailers, distributors, third party sellers, wholesalers, dealers, agents and all other persons connected with the wrongful acts set out in this plaint (including all distributors/sellers/retailers and marketplaces on the internet) or such persons claiming through or under them or acting on their behalf or under their instructions or acting in concert with them be restrained by an order and injunction of this Hon'ble Court from in any manner manufacturing, packaging, marketing, selling, advertising (including on the internet), offering to sell or dealing in the Impugned Products or any similar goods or any other goods or any material bearing the impugned mark SAPAT or any features thereof or any other mark identical with or similar to or comprising of trademark SAPAT or any part thereof resulting in infringement of registered trade mark no. 182717 in Class 30 in respect of the impugned goods Tea and counters/outlets/stores for selling Tea or similar goods or services or in any other manner whatsoever;
- d. pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendants by itself, its

partners, directors, servants, agents, dealers, distributors, and all persons acting for and on its behalf from using or causing to be used the impugned trademark SAPAT, the impugned trade name SAPAT, and/or any other trading mark/trade name which is identical with and/or deceptively similar to the Plaintiff's mark SAPAT in respect of the goods and services including Tea, counters/outlets/stores for selling Tea or similar goods or services or in any other manner whatsoever so as to pass off or enable others to pass off the Defendants' businesses and/or the impugned goods as and for the Plaintiff's business and/or the said goods, or in any other manner whatsoever;

INTERIM APPLICATION (L) NO. 18951 OF 2025

73. The application under Section 39 Rule 2A of the CPC was preferred claiming non-compliance of the order dated 28th January, 2025, passed by this Court. The order of 28th January, 2025, reads as under:

“ In the reply affidavit filed on behalf of the defendants, in paragraphs 10, 56, 57 and 58, the defendants have stated, without prejudice to their rights and contentions, that they are not using the mark ‘Sapat’ for manufacturing or marketing tea or any product falling in Class 30, although their specific case is that, defendant No.2 is entitled to use the mark ‘Sapat’ for tea also.

2. Apart from this, on instructions, the learned counsel for the defendants makes a statement, without prejudice to the rights and contentions of the parties, that wherever the defendants are selling tea in packaged form, they shall not use the mark ‘Sapat’ on the packaging / trade-dress and they shall also not use the aforesaid mark ‘Sapat’, while advertising their product of packaged tea. This statement shall continue to operate during the pendency of this application.

3. It is further made clear that all rights and contentions of the parties are kept open.

4. Since the pleadings are complete in the present application, list the same for hearing on 17.03.2025 at 3:30 p.m."

74. The statement made by the Defendants was without prejudice to their rights and contentions that wherever the Defendants are selling tea in packaged form, they shall not use the mark Sapat on the packaging/trade dress and they shall not use the mark Sapat while advertising their product of packaged tea. The application claims that the signages over the outlets owned by the Defendant No.2 and the use of Sapat and Co. for selling Niravi tea by issuing cash receipts constitutes non-compliance of the statement made by the Defendants.

75. In the reply affidavit, it is claimed that the statement made was in respect of use of the mark Sapat where tea is sold in packaged form and the Defendants are not selling packaged tea and are selling loose tea through the outlets that are operating under the trading name of Defendant No.2. Insofar as the issuance of invoices is concerned, it is claimed that the order of 28th January, 2025 do not restrict the use of the trading name Sapat and Co. Nashik in relation to loose tea.

76. The additional affidavit of Respondent No.4 claims that what was being sold under the trading name of Sapat and Co. was loose

tea, which is thereafter packed in pouches bearing the mark Niravi.

77. Perusal of the order would indicate that the statement was confined to non-use of the mark Sapat in respect of packaged tea and while advertising their product of packaged tea. There is no material placed on record by the Plaintiff to show that the invoices raised were in respect of packaged tea. The invoices indicate that the most of the invoices raised are in respect of family mixture which according to the Defendants is not packaged tea but loose tea sold by the Sapat and Co. Nashik. There is no reason not to accept the said statement in the absence of material to demonstrate otherwise. Insofar as the application under Order 39 Rule 1 and 2 is concerned, I have already dealt with the same in the preceding paragraphs. The use of signages or invoices etc. though constitutes infringes of the registered trade mark of the Plaintiff, in my view, the signages would not constitute the violation of the statement made before this Court and recorded in the order of 28th January, 2025.

78. In the application there is no specific pleading that the use of the mark Sapat or advertisement of the mark Sapat by the Defendants is in respect of the packaged tea and it is only pleaded that the Defendants are marketing, advertising and promoting sale

of the product i.e. tea. The pleadings by itself is insufficient to arrive at a finding of violation of the order of 28th January, 2025. The order of 19th December, 2025 was passed at the ad-interim stage. Subsequently, in the order of January, 2026, the submission of Mr. Kirpekar was recorded that insofar as the invoices of third party dealers are concerned, the Defendants had communicated to the third party dealers not to use Sapat logo.

79. Upon hearing the learned counsel for the parties at length, this Court is of the opinion that the statement as recorded in the order of 28th January, 2025 was only in respect of the use of mark Sapat on the packaged tea and there is no material on record to demonstrate to show violation of the said statement by use of the mark Sapat in respect of packaged tea. Resultantly, Interim Application (L) No.18951 of 2025 stands dismissed.

[Sharmila U. Deshmukh, J.]

80. At this stage, Mr. Kirpekar, learned counsel for the Defendant seeks a stay of the order passed in IA(L) No.6387 of 2025. The said request is opposed by Mr. Jadhav, learned counsel for the Plaintiff. As there was no interim protection operating, this Court is inclined to stay the order for a period of four weeks.

[Sharmila U. Deshmukh, J.]