

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/APPEAL FROM ORDER NO. 82 of 2026
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/APPEAL FROM ORDER NO. 82 of 2026**

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TINUBHAI BABUBHAI BHALGAMA & ORS.

Versus

ALPESHBHAI RANCHHODBHAI LUNAGARIYA & ORS.

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Appearance:

MS RUSHVI N SHAH(5881) with MR ZAHID K SHAIKH, MR JAWAD Z SHAIKH and MR ARBAZ A SAIYED for the Appellant(s) No. 1,2,3,4

MR CHANDRA KANT for the Respondent(s) No. 1

MR KRUNAL G PATEL(8525) for the Respondent(s) No. 1

NOTICE THROUGH SPEED POST SERVED for the Respondent(s) No. 2,3,4,5,6,7,8,9

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY**

Date : 28/07/2026

**ORAL JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. Heard learned counsels for the parties and perused the record.
2. This appeal under Order 43 Rule 1(r) of the Code of Civil Procedure has been filed against an interlocutory order dated 09.03.2026, passed by the Commercial Court/6th Additional District Judge, Rajkot, granting interim injunction by allowing Exhibit 5 in a Trademark Suit, viz. Commercial Trademark Suit No. 2 of 2025.

3. From a perusal of the judgment impugned, it is noteworthy that the plaintiff, claiming to be an established business of jewellery products and various jewellery items, articles of imitation jewellery, jewellery with ornamental stones, etc., has instituted the aforesaid suit against the appellants/defendants therein for passing off and infringement of trademark and damages. During the pendency of the suit, temporary injunction has been sought restraining the defendant and his assignees/representatives, etc., from using the trademarks "Aditya Jewellers" "Aditya Jewels", "Adityam Jewels" and "Aditya Fashion".

4. The contention of the plaintiff, as noted in the judgment impugned, is that the plaintiff is a proprietorship firm in the name of Aditya Jewellers, having its business place at Rajkot, in the State of Gujarat. The plaintiff is the oldest and leading jewellers in India and has adopted the trademarks "Aditya", "Aditya Jewellers", and "Aditya Jewellers", since 28.03.2007 and has also applied for registration of the trademark "Aditya Jewellers" under Application No. 6359619, dated 21.03.2024, which is pending before the competent Registrar.

5. Various assertions have been made in the plaint about the plaintiff being the first jeweller in Rajkot to obtain BIS Hallmark licence for gold jewellery in the year 2011, and throughout long, continuous, and extensive use of the trademark "Aditya Jewellers", by advertisement and publicity, the plaintiff has acquired significant goodwill and distinctiveness, and is exclusively associated with the trademark "Aditya Jewellers". The further contention is that the plaintiff has *bona fide* and honestly adopted the said

trademark in the year 2007, and the goods being sold by the plaintiff under the said trademark are known for their superior quality, resulting in large sales volumes and substantial revenue generation.

6. The plaintiff has invested considerable amounts in marketing, promotion and advertisement, etc. and it is claimed that by virtue of such prior and extensive use, coupled with substantial sales, the trademarks "Aditya", "Aditya Jewelers" and "Aditya Jewellers", have acquired equitable goodwill and reputation, and became a well-known mark within the meaning of Section 2(zg) of the Trademarks Act, 1999, having also acquired secondary meaning.

7. It is further submitted that the plaintiff recently came to know of various trademark applications filed by the defendants for identical marks or deceptively similar to the plaintiff's mark, which include "Aditya Jewellers", "AdityaJewels", "Adityam Jewels", "Aditya Fashion" and other variations thereof. It is contended that the applications of the defendants for use of the aforesaid mark is in respect of identical goods falling in Class 14. The contention, thus, is that the defendants have adopted and used the impugned mark dishonestly and with *mala fide* intention to ride over the goodwill and reputation of the plaintiff, and cause confusion in the market.

8. The plaintiff has, thus, heavily pressed its case on one factor of being original and prior adopter and user of the mark "Aditya", "Aditya Jewelers", and "Aditya Jewellers".

9. However, a perusal of the order impugned indicates that the defendants in their written statement have come out with the categorical assertions that the present suit is false, frivolous, and vexatious, and is not maintainable either in law or facts. The plaintiffs have no cause of action for filing the proceedings for passing off or infringement.

10. The defendants are the prior, continuous and *bona fide* users of the mark "Aditya Jewellers" since 09.05.2002, and they are the registered proprietors of the said mark. In support of this contention, the registration certificates, sale invoices, balance sheets, income tax returns, user affidavits, and other relevant documents were annexed along with the written statement and it was categorically pleaded that in view of Section 27(1) of the Trademarks Act, 1999, infringement proceedings in respect of an unregistered mark are not maintainable, and the defendants being registered proprietors, are protected under Section 28 of the Trademarks Act, 1999.

11. It is the case of the defendants in the written statement that the plaintiff has suppressed material facts, produced selective and contradictory documents, and failed to establish continuous use since 28.03.2007, as claimed. Many of the sale invoices of the plaintiff begin only from the year 2014, balance sheets were of the year 2017-18, and the promotional documents are from 2021 onwards, which contradict the plaintiff's assertion of a long-standing goodwill and reputation. It is also the case of the defendants that the Registrar had raised objection against the plaintiff's

trademark under Section 11(1) of the Act, 1999, which further demonstrates the existence of prior similar marks on record.

12. The whole claim of the plaintiff of having goodwill, misrepresentation or damage, which are essential ingredients of passing off against the defendants, are unsustainable. The plaintiff has not come with clean hands and filed the suit with *mala fide* intention arising out of business rivalry. There is no prima facie case in favour of the plaintiff and the balance of convenience rather lies in favour of the defendants.

13. Taking note of the contentions of both the parties in their respective pleadings, namely the plaint and the written statement, the trial court has returned the findings in paragraphs '17 to 25', which reads as under :-

"17. Heard learned counsels for the respective parties and perused the case file very carefully. This Court has gone through the aforesaid judgments cited by the respective parties. This Court has also gone through the written arguments filed by the plaintiff as well as defendant no. 1 to 4.

18. The plaintiff has instituted the present suit contending that he has been carrying on business in the name and style of "Aditya Jewellers" since the year 2007. The Defendant, in his written statement and submissions, has contended that he has been carrying on business under the name "Aditya Jewellers" since the year 2002. The Defendant obtained registration of his trademark in the year 2021 and has produced the Registration Certificate on record. The Plaintiff, on the other hand, does not hold any trademark registration.

19. In order to establish that he is the prior user, the Defendant has produced certain documentary evidence, including approximately five bills for the period from 2002 to 2006. Upon perusal of the said bills, it appears that only one bill for each year has been produced.

Further, the said bills neither disclose any full address of the concerned party, nor consist signature of any authorized person. The remaining bills are computerized bills which do not mention any VAT or GST number and signature of receiver party. Prima facie, the said bills do not appear to be reliable and seem to have been subsequently created.

20. The Defendant has stated that he commenced business in the year 2002 and has shown his turnover for the year 2023 as Rs. 60,00,000/-. The Plaintiff has stated that he commenced business in the year 2007 and has shown his turnover for the year 2023 as Rs. 30,00,00,000/-. In support of his claim, the Plaintiff has produced bills, balance sheets, Chartered Accountant's certificate, registration certificates, VAT number, GST number, details of advertisements undertaken for his business, expenses incurred towards such advertisements, and customers' invoices.

21. Even assuming, for the sake of argument, that the Defendant has been carrying on business since 2002 and the Plaintiff since 2007, the turnover of the Plaintiff is nearly fifty times that of the Defendant. The Plaintiff has undertaken large-scale advertisements and has also promoted his business through social media. Despite this, the Defendant has not, till date, instituted any proceedings against the Plaintiff, nor issued any notice, nor raised any objection regarding the Plaintiff's trademark.

22. In view of these facts, it appears that the Plaintiff is the prior user. The Plaintiff has further stated that couriers and customers frequently approach the Plaintiff, and that the Defendant is wrongfully using the Plaintiff's trademark, thereby causing substantial loss to the Plaintiff's business. Considering the Plaintiff's turnover and customer base, it is evident that he has established goodwill and reputation in the market. The Plaintiff has also obtained registration of his "A" mark trademark in the year 2019 and has filed an application before the Registrar seeking cancellation of the Defendant's trademark.

23. Thus, considering the submissions advanced by the Plaintiff and the documentary evidence produced on record, the Plaintiff has established a prima facie case. The balance of convenience also lies in favour of the Plaintiff. The competing claims of prior use involve disputed questions of fact which cannot be conclusively determined without evidence.

24. The plaintiff's business operations are on a significantly larger scale compared to those of the defendant. If the defendant is permitted to continue use of an identical or deceptively similar mark during pendency of the suit, there exists a real possibility of consumer confusion and dilution of the plaintiff's goodwill. With regard to irreparable injury, it is well settled that goodwill and reputation are intangible assets which cannot be precisely quantified in monetary terms. The erosion or dilution of brand identity, once permitted, may cause damage which cannot be easily undone. In the facts of the present case, continued parallel use of the same trade name in the same line of business is likely to cause confusion among consumers and adversely affect the plaintiff's brand value. Such injury would not be adequately compensable in damages. Furthermore, this Court has placed reliance upon the judgment of Hon'ble Apex Court in the case of Satyam Infoway Ltd. v. Sifynet Solutions (P) Limited -2004 (6) SCC 145, it is held that "It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement." If an injunction is not granted, the Plaintiff is likely to suffer irreparable loss which cannot be adequately compensated in monetary terms.

25. Hence, in view of the aforesaid discussion, plaintiff is required to be protected and therefore, present application at Exh. 5 is required to be allowed and accordingly, this Court pass following order:"

-// ORDER //-

(i) Application Exh. 5 stands allowed.

(ii) The defendants No. 1 to 4, their proprietors, partners, agents, servants, employees, assigns, representatives, dealers, distributors and all other persons acting on their behalf are hereby restrained till pendency of the main suit from soliciting, networking, manufacturing, marketing, packaging, using, exporting or directly or indirectly including online market places and E-commerce websites or through social media, dealing in the goods being Jewellery and Jewellery products including their imitation and any other allied and cognate goods under the trademark ADITYA JEWELLERS or any other identical and / or similar deceptively trademark / label / packaging / trade dress to that of the plaintiff's trademark "Device of A", "ADITYA JEWELLERS", and "ADITYA JEWELLERS" whether being used independently or with any prefix or suffix thereby amounting to infringement of the device mark/trademark/label of the plaintiff and passing off and violation of the device mark / trademark / lable of the plaintiff and indulging in falsification and unfair and unethical trade practices.

(iii) It is clarified that nothing observed herein shall be construed as an expression on the merits of the case at trial, and the observations are confined to the adjudication of the present interim application.

(iv) The cost of this application shall be decided at the time of final disposal of the suit."

14. From a bare reading of the said findings, it is evident that the trial court has accepted the claim of the defendants being registered trademark owners of the mark "Aditya Jewellers", registration of which was obtained in the year 2021 and has noted that the registration certificate produced by the defendants is on record.

15. It is also noted by the trial court that the defendants have produced documentary evidences, including bills, for the

period from 2002 to 2006. However, it has further noted that only one bill for each year had been produced. The remaining bills though are computerized bills, but they do not mention any VAT or GST number and signature of the receiving party.

16. With these findings, the trial court has opined that the bills produced by the defendants do not appear to be reliable and seem to have been subsequently created. The finding returned by the trial court in paragraph '19' of the judgment impugned to discard the evidence produced by the defendants along with the written statement is completely contrary to the spirit of the law pertaining to the grant of temporary injunction, which rests on three ingredients, "prima facie proof, balance of convenience and irreparable loss", which are to be established by the plaintiff and not by the defendants.

17. Further, it is settled that at the stage of temporary injunction, no mini trial can be conducted and the court will make an effort to find out the case of the plaintiff from the plaint itself and the evidence produced by it, on a prima facie look, as to whether the plaintiff has made out its case for grant of temporary injunction.

18. In any case, in the process of grant of temporary injunction, evaluation of evidence of the parties on the weight of it or the reliability or sufficiency thereof, cannot be looked into. In any case, the defendants' evidence cannot be discarded at the stage of grant of temporary injunction on the premise of being unreliable documents when no trial can be conducted at that stage.

19. The fact remains that the defendants, by bringing some evidence on record, had proved that he had commenced business in the year 2002 and his turnover for the year 2023 was Rs. 60 lakhs and further, that he is a registered trademark owner of the mark "Aditya Jewellers", with respect to which the plaintiff has sought injunction.

20. It is also an admitted fact, as noted in the judgment impugned, that the plaintiff does not hold any trademark registration and, on its own, claimed to be using the trademark since the year 2007, though would base its claim on the assertion of having acquired goodwill its effort of due publicity of the trademark and bringing good quality goods in the market.

21. Be that as it may, on two undisputed facts, i.e., the defendants being a registered trademark owner, entitled to the protection under Section 28 of the Trademarks Act, 1999, and also being the prior user of the said mark, the case of the plaintiff about infringement and passing off by the defendants under the trademark of the plaintiff, at least, could not be said to have been proved prima facie.

22. The question as to whether the plaintiff has acquired goodwill by continuous usage of the trademark "Aditya Jewellers" since the year 2007, or the trademark is a well-known trademark as claimed under Section 2(zg) of the Trademarks Act, 1999, and is entitled for injunction against the defendants, who are registered trademark owners, on the premise that the defendants are not using the said mark since the year 2002 and started using it only recently, are the

questions to be decided at the stage of trial, after evidence are led by the parties.

23. The assertion with regard to the dishonest adoption of trademark by the defendants, with respect to which the plaintiff, has acquired goodwill or reputation in India, cannot be said to be proved *prima facie* merely by looking to the turnover of the plaintiff.

24. The question as to whether the plaintiff is entitled for relief of infringement of the registered trademark against the defendant, for the plaintiff's trademark being a well-known trademark having reputation in India, is to be tried considering the provisions of Section 29 of the Trademarks Act, 1999.

25. There is no question of dishonest adoption by the defendants for the simple reason that the defendants are the prior user, and have got registration of the trademark, as per own case of the plaintiff in the year 2021, much prior to the institution of the suit. For the above, the main ingredient for grant of temporary injunction, namely, *prima facie* case has not been proved in favor of the plaintiff. The other two ingredients, in any case, do not lean in favour of the plaintiff for the mere fact that the *prima facie* case for grant of temporary injunction has not been proved, in view of the reasoning given above.

26. With the above, we find that the trial court has committed a grave error of law in granting temporary injunction in favour of the plaintiff with the wrong finding in

paragraph '22', that it appears that the couriers and customers frequently approaching the plaintiff communicated that the defendants are wrongfully using the plaintiff's trademark, thereby causing substantial loss to the plaintiff's business. The trial court has committed a grave error of law in granting injunction merely considering the plaintiff's turnover and customer base, to hold that he has established goodwill and reputation in the market, which was actually the subject matter of trial.

27. With the above, we reach at an irresistible conclusion that the temporary injunction granted against the defendants/appellants herein vide judgment and order dated 09.03.2026 in Exhibit 5 filed in Commercial Trademark Suit No. 2 of 2025 cannot be allowed to sustain. The judgment and order dated 09.03.2026 passed below Exhibit 5 in Commercial Trademark Suit No. 2 of 2025 is accordingly, set aside.

28. The appeal stands allowed. No order as to costs. Connected civil application would not survive and shall stand disposed of, accordingly.

29. It is clarified that the trial court shall decide the suit independently on the evidence led by the parties, without being influenced by any of the observations made hereinabove.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI