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

COMMERCIAL IP SUIT NO. 215 OF 2021

Bhavesh Suresh Kataria ...Plaintiff

Versus

Kataria Insurance Brokers Pvt. Ltd. ...Defendant

WITH
INTERIM APPLICATION NO. 3457 OF 2026
IN
COMMERCIAL IP SUIT NO. 215 OF 2021

Kataria Insurance Brokers Pvt. Ltd. ...Applicant

In The Matter Between

Bhavesh Suresh Kataria ...Plaintiff

Versus

Kataria Insurance Brokers Pvt. Ltd. ...Respondent

WITH
INTERIM APPLICATION NO. 1663 OF 2021
IN
COMMERCIAL IP SUIT NO. 215 OF 2021

Bhavesh Suresh Kataria ...Applicant

In The Matter Between

Bhavesh Suresh Kataria ...Plaintiff

Versus

Kataria Insurance Brokers Pvt. Ltd. ...Respondent

Dr. Birendra Saraf, Senior Advocate *a/w Hiren Kamod, Deeksha Jani, Jinay Jain, i/b Jani & Parikh, for Plaintiff.*

Mr. J. P. Sen, Senior Advocate *a/w Kunal Vaishnav, Monika Tanna, Dhara Modi, Nandita Dethe, Harkiratkaur Ahluwalia, Ameya Gaurd, i/b Singhania Legal Services, for Defendant.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 19, 2026

Judgement:

Context and Factual Background:

1. Interim Application No.3457 of 2026 ("***IA 3457***") is an Application seeking vacation of an order dated December 8, 2025 ("***Interim Order***") passed by a Learned Single Judge of this Court in disposal of Interim Application No.1663 of 2021 ("***IA 1663***") in Commercial IP Suit No.215 of 2021 ("***Suit***").

2. IA 3457 has been filed, specifically pursuant to an order dated May 25, 2026 passed by the Supreme Court ("***Supreme Court Order***") which was of the view that the Interim Order ought not to have been challenged in an appeal since it had been passed without the presence of the Applicant to *contest* the Plaintiff when the hearing that led to the Interim Order was conducted. A Learned Division Bench of this Court had set aside the Interim Order on merits by an order dated February 23, 2026 ("***Division Bench Order***"), which led to the challenge in the Supreme Court.

3. The Supreme Court ruled that the Applicant in IA 3457, Kataria Insurance Brokers Private Limited ("***Defendant***") ought to have sought vacation of the Interim Order before the Single Bench instead of proceeding to appeal the Interim Order before the Division Bench on merits. The Interim Order had granted expansive interim reliefs as prayed, to the Original Plaintiff, Mr. Bhavesh Suresh Kataria, a proprietor of a firm trading as 'Kataria Jewellery Insurance Consultancy' ("***Plaintiff***").

4. The Plaintiff has registered the word mark "KATARIA", bearing Registration No. 4174551, in Class 36 in respect of insurance, financial affairs, monetary affairs and real estate affairs. The Plaintiff has also registered a label mark, bearing Registration No. 1969420, with the word "Kataria" written in a distinctive manner with the letter "I" standing out, and the words "Jewellery Insurance Consultancy" in a strap line below the word "Kataria" and a further smaller strap line containing the words "Gold & Diamond Insurance". The label mark, also in Class 36, is registered in respect of real estate affairs, insurance, financial affairs and monetary affairs. The label mark is registered as of May 21, 2010 while the word mark is registered as of May 13, 2019.

5. The Interim Order, which disposed of Interim Application No. 1663 of 2021 ("***IA 1663***") granted the following prayers:

*(a) **pending the hearing and final disposal** of the suit, **the Defendant** by itself, its directors, employees, servants, agents and all persons claiming under it **be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiff's registered trade marks** bearing Registration Numbers 1969420 and 4174551, both in Class 36 **by using the impugned trade mark KATARIA INSURANCE**, the **impugned domain name/webs www.katarisinusrance.co.in** and the **impugned corporate name containing the mark KATARIA INSURANCE** and/or **any other trade mark, domain name 10) website and corporate name containing the word KATARIA or any other trade mark, domain name, corporate name identical with and/or deceptively similar to the Plaintiff's registered trade marks** in respect of the services covered by the Plaintiff's registrations or in any other manner whatsoever;*

*(b) **pending the hearing and final disposal** of the suit, **the Defendant** by itself, its directors, employees, servants, agents and all persons claiming through it **be restrained by a temporary order and injunction of this Hon'ble Court from rendering, offering, promoting or advertising the impugned services or like services under the impugned trade mark KATARIA INSURANCE**, the **impugned domain name/ website www.katariainsurance.co.in** and **impugned corporate name containing the mark KATARIA INSURANCE and/ or any other trade mark, domain name/ website and corporate name containing the word KATARIA or any other trade mark, domain name/ website and corporate name wading name and style identical with and/or deceptively similar to the Plaintiff's said well-known trade marks**, domain name and said trading name and style **containing the said trade mark KATARIA so as to pass off or enable others to pass off the Defendant's impugned services** and/or business **as and for the said well-known services and/or business of the Plaintiff** or in any other manner whatsoever;*

[Emphasis Supplied]

6. To appreciate the context in which IA 3457 has been filed and to examine the scope of jurisdiction of this Bench while considering IA 3457, an extract of the Supreme Court Order would be appropriate:

> ..... *We have* ***heard learned counsel for the respective parties****.*
>
> ***We have perused the material on record****.*
>
> *During the course of submissions, it was brought to our notice that* ***the respondent did not contest Interim Application No.1663 of 2021*** *filed by the appellant herein in its suit viz., Commercial IP Suit No.215 of 2021.* ***However, the order dated 08.12.2025*** *granting temporary injunction in favour of - the appellant herein* ***was assailed before the Division Bench of the High Court on merits****. The High Court has not appreciated* ***the fact the respondent herein had not contested the aforesaid application and had simply filed the appeals even without seeking vacating of the temporary injunction*** *granted by the learned single Judge on 08.12.2025. However, the* ***Division Bench of the High Court has set aside the order dated 08.12.2025 on merits*** *without appreciating the fact that* ***the respondent herein had not contested the Interim Application*** *filed by the appellant herein before the learned Single Judge.*
>
> ***On that short ground alone****, we set aside the impugned judgment of the Division Bench of the High Court and* ***remand the matter before the learned Single Judge in order to enable the respondent herein to file an application seeking vacating of the order of temporary injunction*** *granted by the learned single Judge on 08.12.2025.*
>
> ***Should an application for vacating the order of temporary injunction be made*** *by the respondent herein,* ***the same shall be considered by the learned Single Judge as expeditiously as possible*** *and* ***in accordance with law****.*

__In view of the nature of the order passed above__, __all contentions on both sides are left open to be advanced before the learned Single Judge__ on the application to be filed by the respondent seeking vacating of the interim order dated 08.12.2025.

__Appeals are allowed and disposed of in the aforesaid terms__"

__[Emphasis Supplied]__

7. IA 3457 has been filed under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 ("***CPC***") read with Section 151 of the CPC – specifically in terms of the Supreme Court Order. A plain reading of the Supreme Court Order would show that the Supreme Court has referred thrice, to the absence of *contest* from the Defendant to IA 1663. The Supreme Court was of the view that in view of the absence of contest, the Interim Order ought not to have been directly appealed against before the Learned Division Bench on merits. The Supreme Court was of the view that the Learned Division Bench ought to have appreciated the fact that the Defendant had not contested IA 1663, and had simply filed the Appeal without seeking vacation of the Interim Order. It is apparent that the Supreme Court took a view that it was inappropriate for the contest on merits to have been considered directly by the Division Bench sitting in appeal, rather than by the Single Bench. On that "*short ground alone*" the Supreme Court set aside the Division Bench Order and decided to "*remand*" the matter to the Single Bench "to *enable*" the Defendant to file an Application seeking vacation of the Interim Order. The Supreme Court Order

also records that "*in view of the nature of the order*" being passed, "*all contentions on both sides are left open to be advanced*" before the Single Bench on the Application seeking vacation of the Interim Order.

8. Indeed, in the view of the Supreme Court, its order was one of remand, leaving all contentions on merits of both sides open for consideration by the Single Bench. The cause of this decision was evidently the absence of the Defendant to *contest* IA 1663 on merits, when it was heard by the Learned Single Judge, which led to the Interim Order being passed. The Supreme Court had perused the record and had heard the parties, which indicates that the Supreme Court was conscious that a reply to IA 1663 had been filed by the Defendant way back in 2021, which was dealt with in the Interim Order, in the absence of the Defendant to contest the reliefs pressed by the Plaintiff.

9. The need for this prelude of the background is necessary because the Suit and IA 1663 had been filed on March 10, 2021, over five years ago. A limited and narrow *ad interim* injunction had been granted in IA 1663, by an order dated March 23, 2021 ("***Ad Interim Order***") limiting the prohibition to the use of a website with the domain name 'www.katariainsurance.co.in', which had been registered by the Defendant and was held to be deceptively similar to the Plaintiff's registered domain name 'www.katariainsurance.com'. Dissatisfied, the Defendant filed Commercial Appeal (L) No. 9760 of 2021

against the Ad Interim Order, which came to be set aside by consent of the parties recorded in an order dated May 19, 2021 before a Learned Division Bench, with a request that the Single Bench hear IA 1663 afresh on merits leaving all contentions open.

10. The Defendant then filed an Affidavit in Reply dated on May 27, 2021 ("***Affidavit in Reply***") raising various defences to resist IA 1663. The Plaintiff filed a rejoinder on June 16, 2021 and pleadings were recorded as being complete by an order dated June 23, 2021. IA 1663 was listed for final hearing and disposal on July 5, 2021. Thereafter, IA 1663 was not heard for over four and half years. It was listed on multiple occasions but could not be heard finally, and no injunction of any nature was in operation throughout this period.

11. IA 1663 was indeed listed thereafter for the first time, after three years, on September 12, 2024. Thereafter, on eight further occasions, the matter was adjourned primarily due to paucity of time. The matter was called out on August 25, 2025, when a Learned Single Bench noted that the Defendant was not present. A final opportunity was given to both parties, and the Plaintiff was directed to intimate that the matter would be finally heard on the next date, to the Defendant. On November 26, 2025, IA 1663 was heard in the Defendant's absence. After one more listing on December 3, 2025 when orders

had been expected to be passed, the Interim Order was eventually passed disposing of IA 1663 in terms of prayer classes (a) and (b), which have been extracted above.

12. Owing to the absence of the Defendant, the Learned Single Judge dealt with each of the contentions of the Defendant as set out in the Affidavit in Reply filed four and a half years earlier, with the assistance of the Learned Advocate for the Plaintiff, who presented why each head of contentions was untenable. Therefore, IA 3457 is founded on the finding of the Supreme Court that the Defendant had not contested IA 1663, and had left open all contentions of both sides on merits. These were to be appropriately considered by the Single Bench on a remand but subject to an application being filed by the Defendant to vacate the Interim Order.

13. It became necessary to set out the aforesaid prefatory context because, the Plaintiff has strenuously argued that IA 3457 is not even maintainable in terms of Order XXXIX Rule 4 of the CPC read with Section 151 of the CPC and that the Supreme Court has directed that the matter be heard "in accordance with law".

14. The Plaintiff would contend that the facts that were available for the Defendant to plead were set out in the Affidavit in Reply and every head of the contentions has been meticulously dealt with in the Interim Order. There

being no new circumstances that have come into existence, the Plaintiff would contend that IA 3457 is a "second bite at the cherry" in the garb of Order XXXIX Rule 4 of the CPC.

15. The Defendant on the other hand would contend that the Supreme Court had sent the parties back to the Single Bench by an explicit "*remand*" leaving all contentions open and had indeed given liberty to file this Interim Application, and therefore, all facets of the matter on merits fall within the scope of consideration by this Court when adjudicating IA 3457, which also invokes Section 151 of the CPC, which would deal with the peculiarity raised by the Plaintiff's objection on maintainability despite the Supreme Court Order.

16. At the core of an application under Order XXXIX Rule 4 is the second *proviso*, which essentially sets out two circumstances to enable a Court to revisit and mould any interlocutory arrangements made earlier – *first*, a change in circumstances; and *second*, undue hardship faced by the Defendant.

Analysis and Findings:

17. In this round, I have had the benefit of detailed submissions as indeed written submissions tendered by Mr. J.P. Sen, Learned Senior Advocate on behalf of the Defendant and Dr. Birendra Saraf, Learned Senior Advocate on behalf of the Plaintiff. With the assistance of Learned Senior Advocates I have examined the record. The points for determination by me are:

A] Whether IA 3457 is maintainable under Order XXXIX Rule 4 of the CPC read with Section 151 of the CPC; and

B] If maintainable, whether the Interim Order warrants a vacation or a variation, having had the benefit of assistance from advocates for the Defendant in this round of hearing.

Maintainability of IA 3457:

18. At the threshold, this issue must be dealt with in order to adjudicate the contentions of the parties on merits.

19. Dr. Saraf would contend that the Interim Order cannot be regarded as an *ex parte* order at all since the Affidavit in Reply was filed by the Defendant and this has been extensively dealt with in the Interim Order. His objection on maintainability of IA 3457 is based on the premise that there has been no change in circumstances whatsoever since the passing of the Interim Order, and the Defendant cannot merely invoke undue hardship without regard to

any change in circumstances causing the hardship. He would submit that IA 3457 is admittedly filed invoking Order XXXIX Rule 4, and therefore, the necessary ingredients for filing such an application not being present, it is simply not maintainable. Dr. Saraf would contend that consideration of the appropriateness of the reliefs granted in the Interim Order, even as of the date on which it was passed, would be untenable because it would lead to a Single Bench sitting in appeal over the view of a coordinate Single Bench (there has been a change in the roster in the interregnum).

20. Mr. Sen would point out that given the efflux of time, the Advocates of the Defendant had lost contact with the Defendant and did not alert the Defendant about IA 1663 having come up for consideration after a lapse of over four years. The Supreme Court having explicitly remanded the matter to this Court, leaving contentions of both sides on merits, open for consideration if any application to vacate the Interim Order is filed, permitting the Defendant to explain why vacation of the Interim Order is warranted, and that too taking into account the absence of the Defendant to contest IA 1663, the present Application is indeed maintainable. In view of the express liberty and direction of the Supreme Court, Mr. Sen would submit, there is no question of treating this Bench's consideration of IA 3457 as an appeal against the Interim Order. He would point out that the Application is referable not just to Order

XXXIX Rule 4 of the CPC but also in the peculiar circumstances of the case, to Section 151 of the CPC.

FINDINGS ON MAINTAINABILITY

Supreme Court Order:

21. Having heard the parties on the aspect of maintainability, in my view, IA 3457 simply has to be adjudicated. One has to be mindful of the context in which IA 3457 has been filed. What is writ large in the Supreme Court Order is the fact that after examining the material on record, the Supreme Court took note of the fact that the Defendant had not been available to contest IA 1663 when it was heard. Considering the Affidavit in Reply being referred to in the Interim Order, the Supreme Court, cognizant of the same, was of the view that the matter of the nature of interim relief must be remanded to the Single Bench.

22. Dr. Saraf may be right in stating that the Affidavit in Reply would point to a written contest in response to IA 1663 but equally one cannot ignore the fact that the Supreme Court was mindful that the Defendant was not present at the hearing to contest the appropriateness of the reliefs granted in the Interim Order. Had the Defendant been present, the inappropriateness of the reliefs sought, as canvassed by the Defendant, would have been available to

influence the adjudication, contesting the submissions on the appropriateness of such reliefs as canvassed by the Plaintiff. Such a contest did not take place in the passing of the Interim Order and this is what has led the Supreme Court to direct the remand of the matter.

23. The Supreme Court has thought it fit, as the ultimate appellate court that the issue of vacation of the Interim Order has to be considered by this Court upon such remand. This is the issue the Supreme Court has explicitly sent for consideration to the Single Bench, and in view of the nature of such a direction, has explicitly left all contentions of the parties on merits open for consideration. Effectively, the Supreme Court has remanded IA 1663 without vacating the Interim Order but clearly granting liberty to move IA 3457 to consider the request for vacation of the Interim Order. Therefore, to hold that the present Application is not even maintainable would fly in the face of the Supreme Court Order and render it nugatory.

24. It would also lead to an absurd and manifestly unjust consequence. The Defendant who challenged the Interim Order on merits and prevailed when both parties participated in a contest there, has been sent back to the Single Bench by the Supreme Court leaving all contentions open, with the mandate of deciding whether the Interim Order deserves to be vacated. To hold that consideration of the need for vacating the Interim Order after the Supreme

Court Order would still constitute an appellate review by a co-ordinate bench is equivalent to contending that the Defendant cannot have IA 3457 adjudicated by a Single Bench on merits. In other words, even while the Supreme Court has held that consideration of an appeal by a Division Bench is inappropriate and has directed that the Single Bench should consider the request for vacating the Interim Order on merits, there should be no ability to stage the contest before this forum. In other words, this Bench must simply make no change to the Interim Order, after which the matter could once again go to a Division Bench on merits – it matters not that it is after such an exercise that the Supreme Court found it fit to ask the Single Bench to consider the prayer for vacation of the Interim Order.

25. Therefore, in my view, this Court is dutybound to examine whether, after hearing the Defendant who is available to contest the matter, it would be appropriate to continue the grant of the reliefs in terms of prayer clauses (a) and (b) as granted in the Interim Order or to vacate it. Any contrary reading would make a mockery of the Supreme Court Order, and that too in its application inter-parties in the very same dispute.

<u>Order XXXIX Rule 4 of CPC:</u>

26. The provisions of Order XXXIX Rule 4 of CPC are noteworthy:

4. Order for injunction may be discharged, varied or set aside.—

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:

Provided further that ***where an order for injunction has been passed after giving to a party an opportunity of being heard****, the* ***order shall not be discharged, varied or set aside on the application of that party*** ***except where such discharge, variation or setting aside has been necessitated by*** *a* ***change in the circumstances****,* ***or unless the Court is satisfied that the order has caused undue hardship*** *to that party.*

[Emphasis Supplied]

27. Rule 4 makes it clear that an injunction may be discharged, varied or set aside by the Court that passed the interim order (under Order XXXIX Rule 1 and 2) at the request of the party that is dissatisfied by the interim order. This is the very basis of the Supreme Court finding it odd that the Defendant filed an appeal instead of coming back to the Single Bench. The ingredients of the second *proviso* fall for interpretation on the issue of maintainability. The two ingredients necessarily are – *first*, change in circumstances; and *second*, undue hardship.

28. Before the second *proviso* can be applied, a logical question to answer is whether this is a case in which the order for injunction was "*passed after giving to a party an opportunity of being heard*". Dr. Saraf would say that it was, since the Affidavit in Reply was on record and was dealt with at length. Mr. Sen would say that an opportunity to file a reply is not the same thing as an opportunity of being heard, and that the Defendant was in fact not heard, because, he would fairly state, the hearing was missed.

29. In my view, on the peculiar facts of this case, whether the second *proviso* has to be strictly applied is rendered moot because of the terms on which the Supreme Court has directed that this matter be heard. The Supreme Court Order records thrice that the Defendant did not *contest* IA 1663. The Interim Order itself records that Advocate for the Plaintiff was heard and that the Defendant "*though having filed an Affidavit in Reply has not appeared*". A written counter alone, without being heard, is not what is contemplated in the "opportunity of being heard" referred to in the second *proviso*, and that too after the Supreme Court has explicitly sent the Defendant back to the Single Bench to be heard.

30. Therefore, Order XXXIX Rule 4 would apply without the fetter of the second *proviso*, and an application by a party "*dissatisfied with such order*"

would be maintainable. In any case, this question is moot considering the liberty granted by the Supreme Court Order.

31. The Supreme Court Order is itself a subsequent development which has, for the first time, created both the occasion and the liberty for these defences to be tested in an effective adversarial contest. The operation of the Interim Order upon a regulated insurance market intermediary restrained from the use of its own corporate name causes undue hardship of the nature envisaged in the second *proviso*, as set out later in this judgement.

32. In any case, neither should the Interim Order be read as a firm and final pronouncement on any facet of the matter (even if its effect is contended to have repercussions associated with a final adjudication) nor do I intend to make such a pronouncement in this judgement. On any facet of the matter, if it is felt that the measures adopted in the Interim Order would have been inappropriate or can be regarded as appropriate with some variation that would be reasonable to expect had the Defendant's perspectives been available on the earlier occasion, then I must examine whether vacation or variation of the Interim Order is warranted in the interests of justice.

33. I cannot help but notice that the absence of the Defendant at the hearing led to the explicit pleadings in Paragraph 3 of the Plaint, which effectively meant the Suit services were insurance services *in the gems and jewellery*

industry, not being noticed, resulting in sweeping and expansive restraints across any and every facet of insurance, coming about in the Interim Order. Indeed, the role of the Plaintiff in the insurance sector formed the basis of the Interim Order – the Interim Order holds that the field of insurance entails a higher degree of trust and faith and that confusion in the minds of participants in the insurance sector and the insurance consumer would necessitate an intervention by the Court.

34. I have dealt with the merits of this element in the second segment of this judgement. Suffice it to say, not only is IA 3457 maintainable, it makes out the need for a consideration of the merits, quite consistent with what the Supreme Court Order had in mind for this Court to do.

35. Dr. Saraf's contention that floodgates would be opened with every person dissatisfied by an interim order getting to take multiple bites at the cherry in the garb of Order XXXIX Rule 4 simply has no appeal because in this case, the Supreme Court Order has squarely remanded the matter to the Single Bench. This specific situation in the matter in hand, is simply not comparable with any and every case where a party hurt by an injunction that is passed after it was heard, files an application under Order XXXIX Rule 4 seeking to be heard afresh about undue hardship or changed circumstances.

Section 151 of CPC:

36. As regards the contention that the Supreme Court Order used the phrase "in accordance with law" and Order XXXIX Rule 4 of the CPC in any case does not permit the Interim Order to be revisited without a change in circumstances and undue hardship owing to such change in circumstances, the provisions of Section 151 of the CPC would fill any perceived gap. The contents of Section 151 of the CPC are extracted below:

> ***151. Saving of inherent powers of Court****.—*
>
> ***Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice*** *or* ***to prevent abuse of the process*** *of the Court.*
>
> ***[Emphasis Supplied]***

37. Indeed, for the ends of justice to be met, quite apart from the rule of law to be followed, this Bench is required to abide by the Supreme Court Order. That apart, flinging out IA 3457 on the ground that it does not fit the second *proviso* of Order XXXIX Rule 4 would lead to an evident abuse of process – shutting the doors of the Court on the Defendant, who has been sent here by the topmost Court of the land. Therefore, the gap perceived between what the Supreme Court Order allowed the Defendant to pursue and what according to the Plaintiff, Order XXXIX Rule 4 allows the Defendant to pursue, would be filled by the provisions of Section 151 of the CPC.

38. The Supreme Court Order directed a "*remand*" in order to "*enable*" an attempt by the Defendant to vacate the Interim Order. Such power of the Supreme Court itself is referable to the provisions of Section 151 of the CPC, without even having to reach out to Article 142 of the Constitution of India. Section 151 squarely provides that nothing in the CPC would erode the inherent power of a civil court in make the ends of justice meet and to prevent abuse of process. The Supreme Court Order and the adjudication of IA 3457 would fall within the parameters of Section 151 of the CPC. Therefore, the contention that this Bench would be sitting in appeal over a coordinate Bench's order is an argument of overreach that is simply not borne out by the contents of the Supreme Court Order. Whether newer documents and material are being introduced in IA 3457 and whether that can at all be looked into, is a matter of merits. Indeed, if this Court seeks to elicit answers from the parties to questions and doubts that arise in its mind to better consider the most appropriate interlocutory arrangement, that would not be shut out at all.

39. I must deal with Dr. Saraf's reliance upon a judgement of the Madhya Pradesh High Court in ***Ravishankar***[1] to indicate that a party that neglected to put its case by its own fault at the original hearing cannot rely upon Order XXXIX Rule 4 to have the case reopened. This contention would not turn the

[1] *Ravishankar & Anr. v. VIIth Additional District Judge, Bhopal & Ors.* – ***1994 SCC OnLine MP 18***

needle in favour of dismissal of IA 3457 outright because in ***Ravishankar***, there was no intervening order of the Supreme Court enabling the Court that passed the interim order to consider the merits of a prayer for vacating the interim order. Likewise, the reliance on ***Pidilite***[2] and ***Pittie***[3], in which this Court has held that an order once passed is final and binding and cannot be reopened except on presentation of any new matter that remained unavailable when the original order was passed, while declaring the law, was not a declaration where a specific order of the Supreme Court, the ultimate appellate court, remanding the matter back to the original Court, intervened. Therefore, the reliance on ***Pittie***, ***Jairaj***[4] and ***Novartis***[5], and the endorsement of ***Ravishankar*** in them would not make any difference to the instant case.

Variation or Vacation of the Interim Order:

40. Since I hold that IA 3457 is indeed maintainable and in fact this Court is duty bound to consider IA 3457, the next issue to consider is whether a vacation of the Interim Order is warranted.

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[2] *Pidilite Industries Limited v. Jubilant Agri and Consumer Products Limited in Notice of Motion No.2168 of 2016 in Suit No.112 of 2014 -* ***Judgement dated October 6, 2016*** *- para 8, 9 and 10*

[3] *Madhavlal Narayanlal Pittie v. Madhavlal Narayanlal Pittie & Ors. –* ***2017 SCC OnLine Bom 1796*** *– para 7*

[4] *Jairaj Devidas v. Hirabhai Shinwar Jadhav –* ***2021 SCC OnLine Bom 13790***

[5] *Novartis Ag & Anr. v. Natco Pharma Ltd. –* ***2024 SCC OnLine Del 2591***

41. Dr. Saraf would submit that the pivotal issue sought to be raised by the Defendant is the correct interpretation of Section 35 of the Trade Marks Act, 1999 ("***TM Act***"). The Interim Order contains an extensive deliberation on this issue. Dr. Saraf would point out that the Interim Order deals with ***Bajaj Electricals***[6]; ***Kirloskar***[7], ***Mahindra***[8]***, Mahendra Paper***[9] and ***MNM Marketing***[10], and only then squarely holds that Section 35 of the TM Act does not apply to incorporated entities that consciously choose their trade names, as opposed to naturally born humans who do not get to choose their names. If the view taken by the Learned Single Judge is a plausible view, he would submit, this Court in consideration of the Interim Application, ought not to revisit that view as if it were an appellate review.

42. The Plaintiff would contend that the Interim Order squarely holds that the Defendant's adoption of the KATARIA name in its corporate name with a view to carry on its insurance broking activity was a dishonest adoption, seeking to piggyback on the trade mark of the Plaintiff. Therefore, even assuming Section 35 can be applied, he would contend, the Defendant would

[6] *Bajaj Electricals Limited, Bombay v. Metals & Allied Products, Bombay and another –* ***1987 SCC OnLine Bom 225***
[7] *Kirloskar Diesel Recon (P) Ltd. & Ors v. Kirloskar Proprietary Ltd. & Ors –* ***1995 SCC OnLine Bom 312***
[8] *Mahindra & Mahindra Ltd. v. Mahendra & Mahendra Paper Mills Ltd. –* ***Order dated 23th April 1998*** *in Notice of Motion No. 3143 of 1998 in Suit 4007 of 1998*
[9] *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd. –* ***(2002) 2 SCC 147***
[10] *Mahindra & Mahindra Ltd. & Anr v. MNM Marketing Pvt. Ltd. & Anr. –* ***2014 SCC OnLine Bom 1343***

not be a beneficiary of the protection afforded by Section 35 of the TM Act, which only protects a *bona fide* use of the family name.

43. Dr. Saraf would also submit that the Defendant seeking to now bring to bear additional judgements in support of IA 3457, seeking to distinguish the judgements relied upon by the Interim Order is impermissible, since allowing reliance on such judgements would lead to IA 3457 becoming an appeal before a coordinate Single Bench – this is an extension of the same premise that has been dealt with in the earlier segment of this judgement.

44. For his part, Mr. Sen would contend that the Defendant is a beneficiary of a statutorily-designed protection under Section 35 of the TM Act. The family name of the Defendant's promoters is Kataria and this is not a name adopted by choice. That apart, Mr. Sen would point to the consistent legacy of multiple businesses promoted by the same family using the KATARIA family name in every business referred to in these proceedings.

45. Mr. Sen would also submit that the Plaintiff has actually pleaded that his services as an insurance agent commenced in 1999 but around 2006, the Plaintiff decided to concentrate on and develop a niche in the area of insuring gems and jewellery, even adopting the trade name "Kataria Jewellery Insurance Consultancy", which clearly shows the intention was to focus on insurance services in a very specific and niche sector. Yet, the Plaintiff has

gone way beyond the very foundational scope of the Suit services, and as a result, the Interim Order strikes at the very root of the Defendant's long-standing registered and licensed insurance broking activity, at the behest of a person who is neither an insurer nor a broker, but an insurance agent who solicits and procures policies of the insurers who appoint him. The Defendant is not even occupying the same space as the Plaintiff and the Defendant is willing to commit to stay away from any participation in any manner in the field of insurance services in the gems and jewellery sector, to enable a fair and equitable co-existence.

46. The Plaintiff's domain name www.katariainsurance.com had been created in September 2007. The label mark was registered as of May 21, 2010 and the word mark KATARIA was registered much later, as of May 13, 2019. Mr. Sen would submit that the registrations point to a claim of usage only from April 7, 2006 while the Plaint asserts on oath that the usage dates back to 2004.

47. Most vitally, Mr. Sen would be at pains to point out that the Section 35 is precisely meant to be a statutory protection for usage of a family's name which cannot be monopolised by someone else with the same family name by claiming to have registered such family name as a trade mark. In this context, Mr. Sen would submit that the Learned Single Judge never had an opportunity

of considering how best to mould the relief sought by the Plaintiff because of the Defendant's absence. He would fairly state that there had been a breakdown in communication and the Defendant simply was unaware of the matter being listed and could not participate and assist the Court with the Defendant's perspective on what would be an appropriate means of assessing the matter.

48. The linchpin of Mr. Sen's submission is that the Defendant is part of a bunch of family businesses with a consistent track record of using the KATARIA name in the names of the businesses right since August 1955. The group entities may have been in the field of automobiles and related activities but the Defendant's business is a natural extension and expansion of these businesses – insuring automobiles sold by the Kataria Group and the use of an inherited surname is precisely what is statutorily protected under Section 35 of the TM Act. The use is *bona fide* and there is nothing in the statute to such protection being available only to individuals, i.e. naturally persons.

49. Mr. Sen would contend that this facet of the matter has been squarely dealt with by the Supreme Court in ***Precious Jewels***[11], where the Supreme Court set aside the order of the High Court of Delhi that had interfered with the use of a shared surname "Rakyan", ruling in favour of members of a family

[11] *Precious Jewels & Anr. v. Varun Gems – **(2015) 1 SCC 160***

who carried on business in their own names in the same field of jewellery. Mr. Sen would also point to decisions of the Delhi High Court in ***Chandra Engineers***[12]; ***Jindal Industries***[13] and ***Vasundhra Jewellers***[14] to buttress the contention that there is no discernible requirement at all for the benefit of Section 35 to only be available to naturally born persons.

50. Mr. Sen would seek to distinguish the reliance upon ***Kirlosker***, ***MNM Marketing***, and ***Montari***[15] by the Plaintiff, and also point out that all these decisions predated the view of the Supreme Court in ***Precious Jewels***. Therefore, Mr. Sen would submit, had the Defendant been available to present these perspectives to the Learned Single Judge, these could have been factored in. That not having occurred, and the Supreme Court having sent the matter back to the Single Bench precisely owing to the absence of the Defendant, this Court must indeed examine these judgements and take a view afresh since merits have been left open by the Supreme Court pursuant to such remand, enabling the matter to be considered by the Single Bench.

[12] *M/s Chandra Engineers v. M/s Multifrig Marketing Co. Pvt. Ltd. & Anr RFA(COMM) 352/2025 & CM Appl. 36957/2025 Division Bench Delhi High Court* ***Judgment dated December 9, 2025***

[13] *Jindal Industries Private Limited v. Suncity Sheets Private Limited and Another –* ***2024 SCC OnLine Del 1632***

[14] *Vasundhra Jewellers Pvt. Ltd. v. M/s Vasundhara Fashion Jewellery LLP & Anr FAO(OS) (COMM) 232/2023 & CM APPL. 55117/2023 Division Bench Delhi High Court* ***Judgement dated August 18, 2025***

[15] *Montari Overseas Limited v. Montari Industries Limited –* ***1995 SCC OnLine Del 865***

51. Referring to balance of convenience, Mr. Sen would point out that the claim quantified in the Plaint is a mere Rs. 5 Lakhs. Therefore, he would submit that the Interim Order is entirely disproportionate inasmuch as for Plaint with such an admittedly low value, a prohibition has been imposed on conduct of the Defendant's business which has had an annual expenditure in the region of Rs.1 Crore just on advertising and sales promotion expenditure.

52. Rebranding the Defendant's business to move away from the trade name that is consistent with all its businesses would inflict a serious cost and also cause enormous confusion and mislead the Defendant's wide-ranging clients who know the Defendant and the Kataria Group by the registered corporate names and the trade names, and this would cause irreparable harm and injury that cannot be undone. If the Suit turns out in the Defendant's favour, for which there is a strong likelihood considering the statutory protection under Section 35 of the Act, Mr. Sen would submit, the finding on balance of convenience would change. He would contend that the conclusions in Paragraph 43(G) of the Interim Order have been reached without any assistance from the Defendant, and is therefore unmindful of the extraordinary consequences, including regulatory consequences, and the public interest dimensions that would follow.

53. Mr. Sen would also point to the turnover of the entire Kataria Group as being in the region of Rs.2,245 Crores in 2020-2021 rising to Rs.4,426.48 Crores in 2024-2025. The advertisement and sales promotion expenditure of the Kataria Group rose from Rs.1.61 Crores in 2020-2021 to Rs.28.97 Crores in 2024-25. He would further contend that in contrast, the Plaintiff's claim of having "a massive business of general insurance beyond jewellery insurance" is entirely misleading simply because a detailed analysis of the policies said to have been issued and annexed at Exhibits 'F' and 'G' in the Reply to IA 3457 would show that most of these are simply renewals of policies made by individual clients and can be reduced to a small set of recurring customers. That apart, he would submit that the aggregate premium represented across the seven years ranging from 2015 to 2022 is a mere Rs.18 to Rs.19 Lakhs. The majority of the individual premiums of such policies range from a few hundred rupees to a few thousand rupees.

54. In sharp contrast, Mr. Sen would submit the Defendant's certified revenue in 2024-25 alone was Rs.13.28 Crores. A handful of incidental fire, burglary and allied policies sold to a recurring set of customers over seven-years cannot convert a self-professed specialized jewellery insurance agency into a broad based general insurance business of a purportedly "massive" scale. This contention, he submits has been adopted by the Plaintiff only to rebuff the legitimate attempt to have the Interim Order vacated, contradicting

the pleaded case set out at the threshold in Paragraph 3 of the Plaint, firmly asserting that the suit services are insurance in the gems and jewellery sector.

55. Therefore, Mr. Sen would submit that the Interim Order deserves to be vacated and discharged or in the alternative, varied so as to confine the restraints contained therein to insurance services relating to the gems and jewellery sector.

FINDINGS ON MERITS

Section 35 of the Act:

56. Having considered the rival contentions after having held that IA 3457 is indeed maintainable for the reasons set out in the earlier segment of this judgement, to my mind the adjudication of merits would involve answering the import of Section 35 of the TM Act. Likewise, considering that the Suit is at an interim stage, taking into account the circumstances of the case, and bearing in mind the objective of ensuring a balanced and fair ordering of an equitable interlocutory measure, the historical conduct of the parties and its implications for the situation at hand, has to also be considered.

57. Section 35 of the Act reads thus:

35. Saving for use of name, address or description of goods or services.—

__Nothing in this Act shall entitle the proprietor__ or a registered user __of a registered trade mark__ __to interfere with any bona fide use by a person of his own name__ or that of his place of business, or of the name, or of the name of the place of business, __of any of his predecessors in business__, or the use by any person of any bona fide description of the character or quality of his goods or services.

__[Emphasis Supplied]__

58. A plain reading of the foregoing would show that the provision overrides all the other provisions of the TM Act. It negates the entitlements conferred by the rest of the provisions of the TM Act from being asserted against *bona fide* use by any person of his own name. Now, the bone of contention between the parties is the interpretation of the term "person" and whether it would only cover natural persons and necessarily exclude any and every corporate name. The second facet is whether the use of the KATARIA family name for incorporating the Defendant and the use of such name by the Defendant for carrying on business is a *bona fide* use of the KATARIA family name of the promoters of the Defendant.

59. On the first part, what has to be remembered is that this matter is currently at an interim preliminary stage. It would not be appropriate to pronounce upon any issue in a definitive final manner that makes the interim arrangement akin to a final relief. Therefore, without intending to pronounce upon this question authoritatively one way or the other, it is necessary to take a *prima facie* view of the matter.

60. A naturally born human being does not have a choice of his name upon being born. A body corporate cannot even exist without a name for it to have a choice in its name. That choice is made by someone else even before it is incorporated. Indeed, the human being does not have a choice of name selection at infancy but a human being can indeed make a choice to change the given name later in accordance with law. On the other hand, it is inconceivable for a company to be incorporated without a name or to change its name without the approval of its shareholders. In that sense if one were to solely focus on the entity, rather than take a commonsensical holistic view of the usage of one's own name, the body corporate has no agency at all of its own for its name. A human being has sovereign agency to take a new name to change it from the name given after birth. Therefore, it can be said that a naturally born human being has stronger sovereign agency over choice of own name.

61. Another perspective would be that the choice of name for a newborn human and for a company to be formed, is a sovereign choice made by human beings. If that choice for a body corporate is made by a human being by adopting the family surname as the corporate name is *bona fide*, such use cannot be lightly interfered with – certainly not on the basis that someone else having the same family surname has registered that very surname as a trade

mark. Section 35 of the TM Act is evidently designed to protect against such an anomaly.

62. The registrant of the family surname as a trade mark would still have all the entitlements to statutory protection under the TM Act against the world at large. It is only against such other persons who use their own name in the course of trade, that such entitlement to statutory protection would have no effect.

63. There is a further nuance – even for a human being, between a given name and a surname, there is an even lesser agency over the family surname. One cannot choose the family one is born into. Unless personal sovereign human agency is deployed to disown a family and thereby a surname, the family name or a surname is inherited and has a high level of 'stickiness'. Therefore, where a business family has used the family surname for all its businesses for generations, for conduct of a newer business in the course of a natural progression, extension or further diversification, the consistent choice of the family name inherited by generations of the family would be hard to assail as not being *bona fide*.

64. One can understand an allegation of absence of *bona fides* in naming a business enterprise with a family name if the promoter of that enterprise has always conducted business using names other than the family name, peculiarly

devised and arbitrarily chosen. Another example of absence of *bona fides* would be where a person changes his own name to that of a trade mark registrant in order to prey upon the goodwill and reputation of the registered trade mark. In such cases, it would be possible to contend that only to enter a certain business to piggyback on the reputation, a businessperson who otherwise always devises a non-family name, has suddenly adopted the family name, pointing to an intent to infringe the trade mark or to pass off.

65. In the instant case, the persons who have promoted and run the Defendant have consistently used their family name Kataria for all their businesses. The automobile businesses of the Kataria family are all named after Kataria. When they extended this role to the connected area of automobile insurance, consistent with past practice, they adopted the very same KATARIA name.

66. In fact, all the trade mark registrations of the Defendant and its group are in the name of Kataria Automobiles Pvt. Ltd. ("***KAPL***") and KAPL had given a no objection for the use of the KATARIA name when incorporating the Defendant. This *prima facie* shows a strong *bona fide* use of the very same KATARIA family name for setting up the Defendant, consistent with how the other business enterprises were set up. To my mind such conduct cannot be brushed aside as an intentional or deliberate choice of corporate name only to

infringe the Plaintiff's registered mark or to build on the Plaintiff's reputation and goodwill. Indeed, the Plaint does not set up the scale and size of the Plaintiff's business to present empirical indicia of its reputation and goodwill for the Plaintiff to be regarded as a well-known name if not a household name but the Plaint itself styles the Plaintiff as a niche specialist in the area of insurance in the gems and jewellery sector.

67. As an overriding point, it must be remembered that all analysis on facets of infringement are linked to Section 35, inasmuch as nothing in the TM Act that confers entitlements to a registrant of a trade mark would enable interference with the *bona fide* use of one's own name. To avoid repetition, this element should be taken as read in all analysis on implications of registration set out later in this judgement.

Scope of the Suit Services:

68. Although the Plaintiff has only been an insurance agent and not a broker, but is said to enjoy a niche reputation in gems and jewellery insurance, indeed the Plaintiff is not restricted to these activities and may expand in future. However, the foundation of the Suit, as is rightly pointed to in Paragraph 3 of the Plaint, which reads thus:

"3. __Sometime in the year 1999, the Plaintiff started the business of offering life and general insurance policies including Jewellers' Block Insurance Policy.__ Sometime __in the year 2004, the Plaintiff started conducting his aforesaid business of providing insurance policies under the name and style Kataria Insurance Consultancy__. Subsequently, __since most of the Plaintiffs clients were from the jewellery trade, from the year 2006 the Plaintiff decided to concentrate and develop a niche in the jewellery market which needed specialized knowledge related to books of accounts, jewellery trade, complex nature of claims among other matters relating to jewellery insurance__. Since then, __the Plaintiff has been offering insurance policies and related services for the Gems and Jewellery sector (hereinafter referred to as "the said services')__. The __Plaintiff has even changed his trading name and style from Kataria Insurance Consultancy to Kataria Jewellery Insurance Consultancy. Till date, the Plaintiff has insured Stock of Diamonds, Gold, Silver, Gem Stones, Cash etc. with other personal insurance for his clients__. The Plaintiff has a professionally __computerized set-up with multi-city presence and has a record of solving 98% of the claims referred to him including a claim of Rs.3.45 crore of Dhanalaxmi Jewellers from Chennai__. The Plaintiff along with his representatives __stationed in different cities across India is the largest jewellery consultant in India__."

__[Emphasis Supplied]__

69. Evidently, the Plaintiff's claim to reputation and goodwill built assiduously, is to its presence in the field of insurance of the gems and jewellery sector. Even the trade name was changed to reflect its specialisation in the gems and jewellery sector. The Plaintiff claims to have moved on from being a mere insurance agent to assisting policyholders in the gems and jewellery sector realise their claims.

70. Before turning to the respective roles of the parties in the insurance sector, it is necessary to record a finding on a contention that occupied a good part of the hearing. In his Affidavit in Reply to IA 3457, relying on the policies at Exhibits "F" and "G", the Plaintiff asserts that he carries on a massive business of general insurance beyond jewellery insurance and that the jewellery niche "*is not the Plaintiff's case and never was*". I am unable to accept the Plaintiff's contention at this *prima facie* stage. This contention is contrary to the case pleaded in Paragraph 3 of the Plaint, extracted above. The contention is also in conflict with the trading style the Plaintiff himself claims to have adopted in 2006 and indeed contrary to the registered label mark he chose to register. At an interlocutory hearing, the foundation of the Suit cannot be widened to expand the injunction obtained.

71. The Defendant's answer, on a policy-by-policy analysis in its Rejoinder, is that those policies reduce to a small and recurring set of customers, that a substantial number of them are annual renewals, and that the aggregate premium across the policy years 2015 to 2022 is in the region of Rs.18 to Rs.19 lakhs, which analysis is not countered with contrary data. A modest number of incidental fire, burglary and allied policies procured for the same recurring clients does not convert a self-described niche jewellery insurance consultancy into a massive general insurance business. In much the same manner, the

Defendant's candid disclosure of some six or seven jewellery-related policies issued since inception would not make the Defendant a participant in the jewellery insurance market.

72. Indeed, this finding is *prima facie* and for the purposes of the interlocutory arrangement alone; the true extent of the Plaintiff's business is a matter for trial.

<u>Roles in the Insurance Sector:</u>

73. One area of consideration is whether there would be any overlap in the field of activity of the parties and the parties express strong disagreement on this issue. Dr. Saraf would point to the Interim Order having clearly held that under Section 29 of the TM Act, the Plaintiff has established that it had a registration of the mark and the mark was being used for insurance under Class 36. Therefore, it has been held that the "*Defendant's services are in the very field of insurance covered by the Plaintiff's registrations*". Dr. Saraf would also contend that the Interim Order rightly holds that both parties being in the field of insurance, the usage by the Defendant is antithetical to the canon of "*one mark one source*" which essentially would mean that the similarity between the marks and the continued use by the Defendant would "*inevitably lead to confusion*", "*diversion of business and dilution of goodwill and thus cause irreparable harm to the Plaintiff as also the consumer*".

74. Mr. Sen would contend that the Defendant is an insurance broker registered with the Insurance Regulatory and Development Authority of India (“***IRDAI***”) to act as a registered market intermediary between the insurer and the insured to negotiate premia for risk coverage. The Plaintiff’s registration is not with IRDAI (agents need not be directly registered with the regulator) but with the insurance companies that issue policies. He would submit that the paths of the two parties would never cross and the observation about both being in the insurance sector is an unduly expansive observation that is not nuanced by the reality of their operations.

75. At this stage of the Suit, it may only be stated that it may not be proper to sweep any and every role by any person having any role in the insurance sector as something that would necessarily cause confusion in the mind of the consumer of insurance. The regulatory framework in the insurance sector entails multiple nuanced regulatory requirements for those playing specific roles. An insurance agent (such as the Plaintiff) is an insurance company’s selling agent and promotes purchase of insurance policies by the insured. An insurance broker (such as the Defendant) is a market intermediary who is the link between the insurance company and the insurance policy purchaser in negotiating the risk premium. As regards assistance in processing of claims, a third-party administrator is another form of market intermediary who has to

be registered with IRDAI and may be engaged by the insurer to help administer the claims.

76. As a matter of law, the position of an insurance agent is governed by Section 42 of the Insurance Act, 1938, which entails appointment of an agent by the insurance companies. No person may act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers. Under the IRDAI (Appointment of Insurance Agents) Regulations, 2016, such appointment of an insurance agent is made by a "Designated Official" of the insurance company, who issues the appointment letter. Therefore, insurance agents are not registered with the IRDAI at all, their appointment being the act of the insurer. The principal of the insurance agent is the insurance company.

77. In sharp contrast, insurance brokers have to be directly registered with the IRDAI, such registration being governed by Section 42D of the Insurance Act, 1938 read with the IRDAI (Insurance Brokers) Regulations, 2018. Insurance brokers are governed by the statutory Code of Conduct set out in Schedule I – Form H of those Regulations, which prohibits an insurance broker from acting as an insurance agent of any insurance company, so as to ensure that no conflict of interest can arise between the role of an insurance broker (of negotiating the premium contracted) and the role of an insurance

agent (whose performance is measured and rewarded by the scale of insurance policies sold to customers).

78. Another way of looking at the issue dealt with above is whether for purposes of adjudicating this matter, the protection flowing from the registration sought to be enjoyed by the Plaintiff covers the entire breadth of Class 36. Rather than answering this question in the abstract, what is noteworthy is that the Plaintiff's own pleaded case is that the Plaintiff is engaged in services connected with insurance in the gems and jewellery sector. The suit services having thus been defined by the Plaintiff, in the interplay with Section 35 of the Act, at an interlocutory stage, in my view, it would not be appropriate to confer a monopoly wider than the case set up by Plaintiff himself. This is why it is difficult to treat the Defendant's operations as being in the very same field of insurance as covered by the Plaintiff's registered intellectual property – an observation in the Interim Order that has been made without the benefit of the distinction being presented by the Defendant.

79. In the peculiar facts of this case, the discussion in this regard by the Supreme Court in ***Vishnudas Trading***[16], is attractive to consider. Indeed, the Supreme Court held that a trader who deals in only some of the articles falling under a broad classification and has no *bona fide* intention to deal in the

[16] *Vishnudas Trading vs. Vazir Sultan Tobacco Co. Ltd. –* ***(1997) 4 SCC 201***

others, should not be permitted to squat over the entire class claiming a monopoly in respect of everything within that classification. The Plaintiff has relied on ***Seamon Seeds***[17] and ***Mauj Mobile***[18] to indicate that ***Vishnudas Trading*** can be distinguished because it was rendered in the case of rectification proceedings and that would not be squarely applicable in an infringement suit.

80. It is in this context that the Plaintiff's own pleaded case would provide guidance on the approach to be adopted at the interlocutory stage in the peculiar facts of this case. The facts of this case are not akin to commodities or the passing off with phonetically similar sounding trade names, such as the facts involved in ***Seamon Seeds*** or ***Mauj Mobile***. In contrast, in this case, the name used and sought to be impugned is the KATARIA family name, with implications under Section 35 of the Act. It is in that context that, *prima facie*, the principle underlying ***Vishnudas Trading*** may make a minor contribution to the scales and that too at the interlocutory stage, bearing in mind that the consideration of protection as claimed in the Suit is itself founded on the services relating to insurance in the gems and jewellery sector.

[17] *Seamons Seeds Pvt. Ltd. vs. Mahyco Pvt. Ltd. – Interim Application (L) No. 33512 of 2024 – **Order dated June 24, 2025***

[18] *Mauj Mobile (P) Ltd, v. Mohalla Tech (P) Ltd. –**2023 SCC OnLine Bom 1094***

81. Likewise, whether the registered mark is being used for any segment of the class in which registration has been effected, as dealt with in ***Gujarat Bottling***[19] too would be distinguishable in this case. The contention that the Defendant ought to have sought rectification under Section 47 of the TM Act too would not turn the needle since the reliance by the Defendant is on Section 35 of the Act, which provides that nothing in the Act would allow interference with the use of one's own name, in which case the remedy of rectification would also not be necessary if the benefits of Section 28 themselves are under cloud.

82. For the very same reason, at this stage, the principle of "one mark, one source", and the declaration of law in ***Power Control Appliances*** and in ***Tilaknagar*** can be distinguished in this case. The fields here are distinct, with the Plaintiff having focused on a niche field and even the label mark confirming to such conscious choice, with a small smattering of having been an insurance agent in issuance of insurance policies of other kinds by the Plaintiff's principals.

83. That apart, none of these cases involved an element of Section 35 of the Act. If a strong *prima facie* case exists for *bona fide* use of one's own name, nothing in the Act would enable a registrant of a trade mark to interfere with

[19] *Gujarat Bottling Co. Ltd. & Ors. vs. Coca Cola Co.* – ***(1995) 5 SCC 545***

such use. The analysis of case law cited by either side must not lead to forgetting that the core issue in this case is the applicability of Section 35 of the Act. The cases of ***Mahindra*** and ***Mahendra Paper*** too turned on the element of *bona fide* use of one's own name, which on facts of this case, is distinguishable for the reasons set out in this judgement holding a strong *prima facie bona fide* use of the KATARIA family name by the Defendant's promoters and by the Defendant. Indeed, KAPL has granted a right to the Defendant to use the KATARIA name, and at this stage, it would be wholly inappropriate to give no weightage to the consistent use of the KATARIA family name in the operations of the Defendant in much the same way as done hitherto with all other businesses.

84. Therefore, to summarise, at this *prima facie* stage, it is inappropriate to sweep the roles of the two parties into one composite generic whole of "insurance" – neither party is an insurer and as a matter of the regulatory framework applicable to them, neither party is permitted to play the other party's role in the insurance sector. Therefore, the best approach is to examine the Plaintiff's own pleadings to see the substratum of the Suit – Paragraph 3 of the Plaint extracted above clearly indicates that the subject matter of protection is the goodwill and reputation claimed by the Plaintiff in the field of insurance-related services in the gems and jewellery sector. This is not to shut out the Plaintiff's contentions for pursuit in the proceedings. The key issue is

to fashion a reasonable measure of protection that would balance the competing interests of the parties, pending the hearing and final disposal of the Suit.

Precious Jewels and Implications:

85. The role of the decision of the Supreme Court in ***Precious Jewels*** needs consideration. There is nothing in Section 35 to indicate that it protects only human beings in the use of their own name and that too only those who carry on business only in the form of a sole proprietorship, and that such protection would be lost if the form of a body corporate is chosen to set up a business or that a body corporate would never be able to use its very own name for conduct of trade. Indeed, it is apparent that ***Precious Jewels*** was not shown to the Court on the earlier occasion – perhaps because it was not considered relevant by the Plaintiff. The Interim Order makes no reference to it.

86. The decision in ***Precious Jewels*** was rendered after the decisions relied upon by the Plaintiff to contend that the benefit of Section 35 is restricted to natural persons, the closest being the decision in ***MNM Marketing*** rendered literally four days prior to ***Precious Jewels***. In ***Precious Jewels***, the partners of the plaintiff firm and of the defendant firm belonged to the same family and shared the surname "Rakyan", and both firms carried on the family business of jewellery in Delhi, with their shops abutting each other. The defendants

traded in the name and style of "NEENA AND RAVI RAKYAN", the partners of that firm being Smt. Neena Rakyan and Shri Ravi Rakyan, while the plaintiff firm traded as "Rakyan's Fine Jewellery". Interim relief had been granted against the breakaway faction and the matter reached the Supreme Court at the interlocutory stage. The Supreme Court took the view that it was unjust and improper to prevent the defendants from carrying on business in their own names. The Supreme Court held thus:

> *9. As stated hereinabove, **Section 35 of the Act permits anyone to do his business in his own name in a bona fide manner**. In the instant case, **it is not in dispute that the defendants are doing their business in their own name** and their bona fides have not been disputed. It is also not in dispute that **the plaintiff and defendants are related to each other and practically all the family members are in the business of jewellery**. We have **perused the hoardings of the shops** where they are doing the business and upon perusal of the hoardings **we do not find any similarity between them**.*
>
> *10. **In our opinion, looking at the provisions of Section 35 of the Act, there is no prima facie case in favour of the plaintiff and therefore, the defendants could not have been restrained from doing their business**. We, therefore, quash and set aside the impugned order[1] granting interim relief in favour of the plaintiff and the appeal is allowed with no order as to costs.*
>
> ***[Emphasis Supplied]***

87. Vacating the interlocutory relief suffered by the business styled as "NEENA AND RAVI RAKYAN", the Supreme Court held that the partners used their own names and that their *bona fides* had not been disputed. Both

businesses were in the field of jewellery and abutted each other. Yet, the Supreme Court considered the provisions of Section 35 and held that the use of their own names could not be interfered with. The Supreme Court also perused the hoardings of the two shops and found no similarity between them. The trade name was "NEENA AND RAVI RAKYAN" while the appellant partnership firm was called "Precious Jewels". It is the use of names of the partners (which included the RAKYAN surname, which was part of trade mark of the registrant) that was considered and upheld at the *prima facie* stage. If the usage was to be only by individual human beings, the partnership using their names would be quite similar to the situation where they may have formed a company called, say, Precious Jewels Ltd. and yet used the trade name "NEENA AND RAVI RAKYAN".

88. In my opinion, there is nothing in the provision itself to indicate any relevance for the form of business enterprise that would be covered by Section 35, quite apart from whether a "person" can in its simplest meaning include juridical persons such as bodies corporate. In my view, it would be difficult to hold that when the Kataria Family set up the Defendant namely, Kataria Insurance Brokers Pvt. Ltd., using the KATARIA name in much the same way the family set up its other ventures, all titled Kataria, it would be absurd to hold that the very same individuals who promoted the Defendant may have used the KATARIA name if they ran the business as a proprietorship or as a

partnership but would lose that right if they used the very same name to form a company. Such a reading would wipe out and truncate the individuals' substantive right to so use their own name merely on account of the form of the business enterprise. The contention based on the premise that a body corporate could never claim the benefit of Section 35 would have this outcome as a necessary corollary, which does not lend itself to acceptance.

89. It cannot be said with any assurance that if ***Precious Jewels*** had been presented to the Single Bench on the earlier occasion, the outcome would have been the same. On being presented with ***Precious Jewels***, what appeals to me is that *prima facie*, the form of business organisation has no relevance to the exclusion from monopoly granted under Section 35. I see no reason why there should be an absolute and exhaustive intervention into the business activity of the Defendant and that too at an interim stage, and for no reason other than the fact that the KATARIA word mark, which is surname of many families, is registered in the Plaintiff's name. The Plaintiff indeed has protection against the world at large owing to its registrations, but such protection cannot be absolute and come in the way of even those with the same surname using their own surname for the insurance business in much the same manner as they use that very surname in their other businesses, which indicates *bona fide* use.

90. The decisions relied upon by the Plaintiff are distinguishable on facts – they did not deal with the case of a family that traded in its own surname across business enterprises across decades. While ***Kirloskar*** relates to a breakaway faction that suppressed its connection, ***Precious Jewels*** would address the approach to be adopted. ***Montari*** dealt with company law and not Section 35 of the Act while ***MNM Marketing*** did not entail use of a family surname.

91. In contrast, ***Jindal Industries***, ***Chandra Engineers*** and ***Vasundhara*** engage with the subject in a manner that resonates with me and is indeed consistent with the approach of the Supreme Court in ***Precious Jewels***, namely, that using a name or surname is covered by the exclusion under Section 35. Therefore, having a name or surname registered to claim statutory protection, brings with it the risk of the statutory benefits of registration not working against other families with that surname in view of the protection for use of one's own name under Section 35 being unequivocal. Indeed, the statutory protections that flow from the registration would be available against the rest of the world who do not have that name or surname. Even against those who use the name or surname, unless it is shown that the adoption is not *bona fide*, the protection would be available. In that context, those who incorporated the Defendant have consistently used the KATARIA name in all

their businesses. This is the most commonsensical reading of the law to my mind, at least at this *prima facie* stage.

92. ***Precious Jewels*** was decided by the Supreme Court at an interlocutory stage. Neither side has pointed out to me what transpired in the main matter thereafter. It appears from publicly available case law that eventually, as a matter of common law, a Learned Division Bench of the Delhi High Court set aside an order of dismissal of the underlying suit by a Learned Single Bench, moulding the relief that the legitimate use of "NEENA AND RAVI RAKYAN" may continue but at a distance beyond a two-kilometre radius of the main family's shop.

93. Nothing in this subsequent decision is being commented upon by me in this judgement except to state that at the interlocutory stage, an appropriate moulding of relief would be warranted in the matter in hand, particularly taking into account that the matter is at an interlocutory stage.

Passing Off Action:

94. As regards the contention that the goodwill and reputation of the Plaintiff would lead to a valid allegation of passing off, and that a claim of passing off being a common law right, would need consideration without regard to the contours of the TM Act, it must be noted that the essence of the

Suit is formulated to protect the goodwill and reputation said to have been earned in the area of insurance in the gems and jewellery sector. The value of the Suit is a mere Rs. 5 Lakhs. Even without empirical data, if the Plaintiff could be regarded as having built a name and reputation in a niche field of gems and jewellery insurance, and that the Plaintiff is entitled to further build upon such reputation to enter into other areas of natural expansion, it still begs the question as to whether that would disentitle those who incorporated the Defendant from using their own Kataria family surname.

95. To my mind, at this *prima facie* stage, in view of the discussion above, the breadth and sweep of the Interim Order goes well beyond the field of operation of the Plaintiff. The Defendant has been a *bona fide* user of the KATARIA family name, which has been used to set up the other enterprises of the Kataria Group. The Defendant too has been set up by the Kataria Family to enter the insurance sector as a natural progression of their automobile dealership business. The strength of statutory protection under Section 35 by way of exclusion from interference by registrants of the KATARIA name cannot be wished away in absolute terms.

96. I have already made observations about whether the parties can be conclusively said to be engaged in the "same services". For the reasons already recorded, a strong case of *bona fide* use has been made out to invoke the

exclusion from restraint conferred by Section 35 of the Act, and the very same analysis applies squarely to the contentions of passing off. It cannot be stated, at this *prima facie* stage that the consistent use of the KATARIA family name was aimed at feeding off the reputation and goodwill of the KATARIA trade mark registered by the Plaintiff.

Prior User; Non-Joinder; and Delay:

97. A word about contentions of prior use and the plea of non-joinder of KAPL, which is the registrant of the trade mark used by the Kataria Family, would be in order. I am not convinced that one can take an approach of looking solely to the Defendant, ignoring the Kataria Family, which admittedly incorporated the Defendant using their own name. Indeed, the Defendant came into existence only in 2014 but the very process of incorporating the Defendant is a means of use of the Kataria Family's own name in the course of trade. In addition, Mr. Sen points to material on the record including KAPL's board resolution dated October 25, 2013 according no objection to the formation of the Defendant; a Chartered Accountant's certificate certifying KAPL's income from insurance services for the years 1997 to 2003; an invoice dated August 24, 2002; an insurance policy dated March 14, 2002 and correspondence of Maruti Insurance Brokers Limited, recording remuneration for insurance services from January 2003. It is also claimed that KAPL

registered the domain name www.kataria.co.in on February 12, 2004, prior to the Plaintiff's registering its domain name www.katariainsurance.com.

98. *Prima facie*, this material is relevant in furtherance of *bona fides*. The Defendant was formed in 2014 to be an insurance broker, by the Kataria Family whose automobile dealership had been placing insurance business since the 1990s. Therefore, it is difficult to hold that the incorporation of the Defendant or the choice of name for such incorporation is a contrivance or a device aimed at feeding off the Plaintiff's goodwill and reputation.

99. I have already stated my opinion on the use of the KATARIA name by the Defendant's promoter family constituting *bona fide* use of their own name for purposes of Section 35. In my view, it would be appropriate to leave the question of whether past usage by the Kataria Family would enure to the benefit of the Defendant as a mixed question of fact and law for adjudication in the course of the trial. The plea is a serious and arguable one and cannot be rejected out of hand at this interim stage.

100. On the issue of non-joinder, the Plaintiff is *dominus litis* and has a right to choose whom to arraign. Leaving out KAPL is the Plaintiff's choice and any infirmity, if perceived from such exclusion, is a matter of implications in the trial of the Suit. In any case, the analysis at this stage does not rest on the subsistence of KAPL's registrations but whether documented past usage brings

about a strength in the case for *bona fide* use. Therefore, I find it unnecessary to decide the plea of non-joinder for purposes of an appropriate interlocutory arrangement. Leaving this purely to as a matter for trial, I make no finding on this issue at this stage.

101. Likewise, the competing contentions on the alleged delay in assailing the Defendant does not need a conclusive finding at this stage. The Plaintiff did become aware of the Defendant being incorporated in 2014 and engaged in correspondence then. At this stage, the registration the Plaintiff relied upon was the label mark. The next round of objections took place in 2019-2020 and the KATARIA word mark was registered in 2019. The Suit was instituted in 2021. Delay alone would not defeat the action brought by the Suit, but whether the adoption was dishonest would be material. For the reasons spelt out above, I have held that *prima facie*, the use is *bona fide* and the adoption of the KATARIA name for setting up the Defendant and the use of that name by the Defendant is not dishonest. How the interlocutory arrangement must be fashioned would however factor in the timelines emanating from the conduct of the parties. The hardship and inconvenience that would arise from one or another type of interlocutory arrangement is itself informed by the pace of action of the parties. The Defendant is *prima facie* entitled to lean on the sense of comfort that he may be legitimately expected to have had considering that neither did the regulatory authorities moved by the Plaintiff take any

decisive action on the basis of the Plaintiff's grievances, nor did the Plaintiff himself institute the Suit before 2021.

102. This is not to say that the reliefs granted would necessarily have to be vacated in toto. The Plaintiff too has used www.katariainsurance.com as its domain name for a significant length of time, with no quarrel from the Defendant. The Defendant created a near-identical domain name www.katariainsurance.co.in which may cause initial confusion which may be resolved only after the user gets to know that the two operate in different spheres. When approaching a business online, if the service provider does not build traction with the consumer rapidly, the consumer would move on to other competing service providers due to such initial confusion. This is not in the best interests of either party. Therefore, specifically holding that the issue of acquiescence too is a question of fact to be answered by trial of evidence to be led, I have preferred to mould an appropriate interlocutory relief instead of an absolute ban that is currently in operation.

Correspondence with the ROC:

103. Correspondence between the Defendant and the Registrar of Companies, Ahmedabad has come up for consideration in the submissions by both sides. At the threshold of registration of the company, in December 2013, a conditional undertaking was taken from a proposed director of the

Defendant. The Registrar of Companies, Ahmedabad ("***ROC***") came to notice the existence of the Plaintiff's trade mark registration later upon the Plaintiff's Chartered Accountant objecting by a letter dated January 28, 2014. The registration then enjoyed by the Plaintiff was the label mark, which puts it beyond doubt that the registration was presented in connection with insurance relating to gems and jewellery, although the specification of services in Class 36 was cast in wider terms.

104. The label mark registered by the Plaintiff in 2010, claiming use dating back to 2006, is unmistakable in its scope. It uses the word "Kataria", which in itself could have been difficult to register as a word mark, but uses the letter 'I' in a distinctive manner evidently to emphasize that 'I' stands for insurance. Lest there be any doubt, the legend below the name "Kataria" written as a prominent and distinguishing feature of the label, makes it clear that the area of operation was the gems and jewellery sector and that the trademark was aimed at servicing the gems and jewellery sector.

105. At the time of incorporation of the Defendant, an undertaking was given that "*if any objection regarding the name of the company arises in future, we would take necessary actions and may consider alteration of the name of the company, if required*". Upon the Plaintiff's objection, the ROC invoked that undertaking by its letter dated February 25, 2014, calling upon the Defendant

to change its name, failing which action would be initiated. The Defendant replied to the ROC on March 27, 2014, setting out the history of the Kataria Group since 1955 and asserting its entitlement to its promoters' family surname — the same assertions on the law as are made in answer to the Suit, in reply to IA 1663 and in IA 3457. No further action, direction or penalty has followed from the ROC in the period of over eleven years since.

106. Indeed, the word mark "KATARIA" came to be registered later in 2019, also claiming user from 2006. The Plaintiff renewed its grievance in 2020 and complained to the ROC as well as the IRDAI, this time, armed with the registration of the word mark "Kataria". Evidently, there is no sign of any traction to these complaints. Whether the benefit of the registration, which would be available against the world at large, would also be available against the Defendant which is promoted by the Kataria Family, which used its own name to incorporate the Defendant and to use the same name in its operations, is the question to ask.

107. I have dealt with above, my opinion on the "*bona fide use by a person of his own name*" as referred to in Section 35. The question really is whether the engagement with the ROC in 2013-2014 would necessarily render the Defendant's use of the KATARIA name to fall in the bracket of not being a *bona fide* use. The submission to the ROC in 2013-2014, that the Defendant

would "*consider*", changing its name "*if required*", is not something that can be seen as a binding absolute commitment to change the name without an adjudication of whether such entitlement to use the family name has been taken away by operation of Section 28 of the Act, notwithstanding the provisions of Section 35 of the Act.

108. At this interlocutory stage of the Suit, I am not convinced that the Defendant should be required to give up its very corporate name on the ground that it wrote to the ROC that it would consider altering its name if required. The requirement to so alter the name would arise if the Suit were decreed against the Defendant or even if an interim relief were to be adverse to the Defendant and that went unchallenged or challenge were rejected. Instead, in this case, challenge led to the Interim Order being set aside by a Learned Division Bench and a challenge of that appellate order being set aside by the Supreme Court on the sole ground of an application being necessitated before the Single Bench and not in appeal, leaving all contentions on merits open.

Summary of Findings and Appropriate Interim Measures:

109. The Supreme Court Order has explicitly kept all contentions on merits open for consideration by this Court as a Single Bench to examine any application for vacation of the Interim Order. I cannot but help notice that the Defendant's advocacy to even point to the scope of the Suit, was unavailable to

assist the Court when IA 1663 was disposed of. This led to a wide and expansive prohibition including restraint on the use of "Kataria Insurance" even in the corporate name, despite the name being the use of the family name. Likewise, the expanse and scope of the reliefs granted as prayed, goes well beyond the field of insurance in the gems and jewellery sector and any reasonable natural progression and expansion of the Plaintiff's role in such field.

110. Moreover, IA 1663 came to be heard four and a half years after pleadings had been completed, and the Defendant, which fairly apologises for the breakdown in its own arrangements, was not present. A robust adversarial contest of ideas therefore did not take place. It was on that ground alone that the Supreme Court effected a "*remand*" to "*enable*" the Defendant to seek a vacation of the Interim Order, by directing that an application for vacation of the Interim Order may be filed.

111. Now that this issue has been sent back to the Single Bench leaving all contentions on merits open, in my view, for an appropriate order disposing of IA 1663 (that has been remanded) along with IA 3457 (that seeks vacation of the Interim Order), the scale and scope of interlocutory protection necessary to preserve the subject matter of the Suit needs calibration.

112. Having heard both sides, I have come to the following conclusions, among which, all views on the merits are *prima facie* in nature, and made solely for the purposes of the interlocutory arrangement:

A] IA 3457 is maintainable. The Interim Order having been passed without the Defendant being heard when IA 1663 was finally heard, and in any event, the Supreme Court Order is itself a change in circumstances and a binding direction by the last court of the land. The operation of the Interim Order upon a regulated market intermediary restrained from the use of its own corporate name causes undue hardship. Any gap perceived between what the Supreme Court Order permitted and what Order XXXIX Rule 4 permits stands filled by Section 151 of the CPC;

B] The foundation of the Suit, as set out in Paragraph 3 of the Plaint, is insurance and related services for the gems and jewellery sector. The Plaintiff's contention in reply to IA 3457 that he carries on a massive general insurance business and that the niche formed no part of his case is *prima facie* not consistent with the explicit own pleadings in the Suit, and one cannot expand the scope of the Suit in interlocutory proceedings. The Plaintiff has himself pleaded as to the trading style he adopted in 2006 and to the label mark he chose to register to demonstrate his reputation in the chosen niche area of operations;

C] Neither party is an insurer, and as a matter of the regulatory framework applicable to them, neither is permitted to play the role of the other — the Plaintiff being an insurance agent appointed by his principals and the Defendant a broker registered with the IRDAI. The roles of the two parties cannot be swept into one composite generic whole of “insurance”;

D] The protection flowing from a registration in Class 36 does not, at the interlocutory stage, extend across the entire breadth of that class. On the principle in ***Vishnudas Trading***, it would be inappropriate to confer a monopoly wider than the case set up by the Plaintiff himself; and for the same reason the canon of “one mark, one source” as declared in ***Power Control Appliances*** and in ***Tilaknagar*** is distinguishable on the facts of this case;

E] Section 35 is not restricted to natural persons in the conduct of business and even if so, such natural person’s conduct of business would include the activity of incorporating a company to conduct business with the use of one’s own name;

F] The use of the KATARIA family name by the promoters of the Defendant, in incorporating it and in carrying on the business of insurance broking through the Defendant, is *prima facie* a *bona fide* use of their own name, consistent with the naming of every other enterprise of the Kataria Group, and cannot be characterised as a contrivance to feed off the Plaintiff's goodwill and reputation. The decisions relied upon by the Plaintiff are distinguishable on facts, while ***Precious Jewels***, ***Jindal Industries***, ***Chandra Engineers*** and ***Vasundhra Jewellers*** support this reading;

G] The very same analysis applies to the claim in passing off. It cannot be stated at this *prima facie* stage that the consistent use of the family name was motivated by a design to feed off the reputation and goodwill claimed by the Plaintiff;

H] The application of Section 35 of the Act to the facts of this case necessarily involves answering mixed questions of fact and law that would involve the leading of evidence at the trial of the Suit. Likewise, the question of whether past usage by the Kataria Family enures to the benefit of the Defendant, and whether there has been any acquiescence by the Plaintiff, are matters that need to be tried. On the plea of non-joinder, the Plaintiff being *dominus litis*, no finding is made and that plea is left entirely to the trial. Pending such trial, the competing interests of the parties must be adjusted;

I] The Defendant's engagement with the ROC in 2013-2014, in which it stated that it would "*consider*" altering its name "*if required*", is not a binding and absolute commitment to change its name. In the factual matrix involved, such a "requirement" can only arise when the Suit is decreed, or when such an interim relief is granted and a challenge to it fails;

J] The interim reliefs granted are, in their expanse and reach, an absolute prohibition of a kind commensurate with a finding that no defence to the Suit is possible, and would require the Defendant to undergo a complete rebranding at an interim stage. Both the undue hardship thereby occasioned and the balance of convenience call for a recalibration of the Interim Order rather than either a blanket prohibition or a complete vacation of it. Equities can be adjusted, even accounting for the Defendant having been made aware that hurdles may be placed in the path of the use of its name; and

K] The Plaintiff's website www.katariainsurance.com using both "KATARIA" and "insurance" was set up at a prior point of time, and the Defendant states that it has taken down its website www.katariainsurance.co.in. Maintenance of that position, coupled with a clear differentiation of the Defendant's new domain name and prospective social media presence and a clear disclosure that the Defendant has nothing to do with the Plaintiff or with insurance services relating to the gems and jewellery sector, is the appropriate way of addressing the risk of initial confusion. The mechanics are set out in the directions that follow.

113. Before setting out the arrangement, I must also record that Mr. Sen, on instructions from the Defendant, has undertaken to this Court that, pending the hearing and final disposal of the Suit, it shall not deal with any facet of insurance in the jewellery and gems sector. The Defendant has also undertaken to pay such damages or costs as this Court may award as compensation for allowing IA 3457. Those undertakings are accepted and the Defendant shall remain bound by them.

114. In the result, in substitution of the interim reliefs granted in the Interim Order dated December 8, 2025, the following interim measures shall apply, pending the hearing and final disposal of the Suit – each of these measures is integrally interwoven with the rest since, in my opinion, this comprehensive arrangement is necessary to achieve the best balance of competing interests of the parties:

A] The Defendant shall not engage in any manner whatsoever in playing the role of any market intermediary in the field of insuring any activity in the gems and jewellery sector;

B] The Defendant shall be free to continue to use its corporate name without any alteration in it. The Defendant would not be required to change its name in its insurance broking license issued by the IRDAI or in the certificate of incorporation issued by the ROC;

C] As a counterbalancing measure, also taking on board the Defendant's commitment made to Court that Defendant will steer clear of all insurance-related activity in the gems and jewellery sector, the Defendant is also directed to keep safe distance in the formulation of a new domain name on the internet and in its social media accounts, so as to not cause any confusion even if such confusion may be regarded only as initial confusion that may get resolved as and when the user of the respective websites discovers that the two channels are different;

D] Towards this end, the smooth usage of the Plaintiff's website www.katariainsurance.com shall not be interfered with, and the Defendant shall not revive, transfer or otherwise deal with the domain name www.katariainsurance.co.in, which shall be kept dormant pending the hearing and final disposal of the Suit. Instead, the Defendant shall set up a website with a domain name that distinctly differentiates itself from the phrase "Kataria Insurance", which is the only phrase used in the Plaintiff's domain name, namely, www.katariainsurance.com It is clarified for the avoidance of doubt that the other website with domain name www.policyleader.co.in may revive without any interference, subject to compliance with this judgement;

E] The Defendant shall make it clear in its new domain name that it is an insurance *broker* and has nothing to do with the field of insurance in the gems and jewellery sector, and adopt a reasonable and discernible communication approach to make this clear to the world at large. Consistent with its commitment to steer clear of any facet of insurance relating to the gems and jewellery sector, although the role of the Defendant is different from the role of the Plaintiff in the field of insurance, the Defendant shall prominently display on its website that it has nothing to do with the Plaintiff or its proprietor and the business activities of the Plaintiff;

F] The Defendant shall maintain true and faithful accounts of the revenue earned by it in the conduct of its insurance broking business under its corporate name, pending the hearing and final disposal of the

Suit, and shall file in this Court a statement of such accounts, certified by its statutory auditor, once in every six months;

G] Liberty is granted to either party to apply in the event of any difficulty in operationalising this arrangement.

115. Because the Defendant has already been put to serious and undue hardship, on reflection I am satisfied that my initial inclination to impose severe costs on the Defendant for having missed the earlier round of hearing of IA 1663, which has led to three more rounds of litigation at the same stage (the appeal to the Division Bench; the appeal to the Supreme Court; and consideration of IA 3457) needs to be tempered. Moreover, costs must ordinarily follow the event.

116. Considering the reasons for which I have made a variation of the Interim Order, it would be fair to defer the award of commercially reasonable costs to the stage of trial for appropriate consideration at the stage of final disposal.

117. In the result, IA 3457 is ***allowed*** in the aforesaid terms and the Interim Order dated December 8, 2025 stands varied as above. IA 1663, which stood remanded by the Supreme Court Order, is ***disposed of*** in the same terms, varying and restating the interlocutory relief as above.

118. Since the application of Section 35 of the TM Act to the facts of this case will have to be determined upon evidence, it is desirable that the Suit itself proceeds with expedition. The Registry shall list the Suit along with all the remaining attendant applications, if any, under the caption "***For Directions***" four weeks from today.

119. After the judgement was pronounced, Learned Advocate for the Plaintiff sought a stay of the operation of the judgment for a period of four weeks. However, for the reasons already set out in the judgement and in view of the circumstances that have arisen, in my view, no such stay ought to be granted.

120. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]