

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

COMMERCIAL APPEAL NO. 273 OF 2025

BETWEEN:

ACC STEEL PVT LTD.,
HAVING REGISTERED OFFICE AT
TEETHI BUNDE, GOKARE,
DEVANAHALLI TALUK, BANGALORE RURAL-562 110
REPRESENTED BY ITS MANAGING DIRECTOR
...APPELLANT
(BY SRI. PROMOD NAIR, SENIOR COUNSEL FOR
SRI. HARSHITH N.BALAKRISHNA.,ADVOCATE(NOC))

AND:

ACC LIMITED
HAVING ITS REGISTERED OFFICE AT
CEMENT HOUSE, 121, MAHARSHI KARVE ROAD,
MUMBAI-400 020.
ALSO AT (REGIONAL SALES OFFICE)
4TH FLOOR, 414-421,
SPELNDOR FORUM BUILDING,
3 JOSOLA DISTRICT CENTRE,
JASOLA, NEW DELHI-110 025
REPRESENTED BY ITS AUTHORISED SIGNATORY,
SRI RAJIV KUMAR CHOUBEY,
S/O MR SURYA NATH CHOUBEY,
AGED ABOUT 48 YEARS.
...RESPONDENT
(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SMT. GITANAJALI MIRIAM MATHEW.,ADVOCATE FOR C/R
(CP NO.3469/2025))

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Location: HIGH
COURT OF
KARNATAKA

THIS COMAP FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.11.2024 PASSED BY THE LEARNED X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (DEDICATED COMMERCIAL COURT) BANGALORE RURAL, BANGALORE IN OS.NO.1019/2021, AND DISMISS THE PLAINT IN OS.NO.1019/2021, IN THE INTEREST OF JUSTICE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.09.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

At the heart of trademark law lies the foundational principle that there must be no likelihood of confusion in the mind of the average consumer. In cases involving composite marks, it is not necessary that the impugned mark replicate the original in its entirety. Even partial imitation may amount to infringement or passing off if it evokes an association with the registered or prior-used mark in the consumer's mind.

The present Commercial Appeal under Section 13(1A) of the Commercial Courts Act, 2015, has been filed

impugning the judgment and decree dated 05.11.2024 passed in Commercial O.S.No.1019/2021 by the X Additional District and Sessions Judge, (Dedicated Commercial Court), Bengaluru Rural District, Bengaluru ('**Commercial Court**' for brevity).

2. For the sake of convenience and to avoid confusion, the parties herein are referred to as per their ranks before the Commercial Court.

Case of the plaintiff:

3. The plaintiff/ACC Limited instituted Commercial O.S.No.1019/2021 before the Commercial Court, against the defendant/ACC Steel Pvt. Ltd. The suit was instituted on 06.10.2020 seeking permanent and mandatory injunction, rendition of accounts and damages in respect of the plaintiff's trade mark "ACC", its logo and the associated artistic work.

4. The plaintiff's case was that it is engaged in the manufacture of cement and ready-mix concrete and had been using the trade mark "**ACC**" since 1938. According to the plaintiff, the mark "ACC" was being used as its Company name, trading style and trade mark for several decades. It relied upon its registrations of the word mark ACC and various ACC

formative marks and contended that, on account of its continuous use, publicity and business activities, the mark had acquired substantial goodwill and reputation. The plaintiff also relied upon the use of the ACC logo, including the red and white colour combination and the particular get-up used on its products.

5. The plaintiff stated that it came across an advertisement relating to the defendant's TMT bars being sold under the mark "**ACC**". It thereafter found that the defendant had incorporated the expression ACC as part of its trade name, namely, **ACC Steel Pvt. Ltd.** According to the plaintiff, the defendant was advertising its products using the mark "**ACC TMT 500**" and was also using a colour combination, font and presentation which, according to the plaintiff, were similar to its ACC mark and logo. The plaintiff further came to know that the defendant had obtained registration of its mark under Class 6, pursuant to application No. 3409808, covering "common metals and their alloys, Metal hardware, metal building materials, TMT bars, Metallic bars".

6. The plaintiff consequently initiated rectification proceedings in respect of the defendant's registration. It

alleged that the defendant had adopted the mark ACC with knowledge of the plaintiff's existing mark and was attempting to take advantage of the reputation attached to ACC. It was also alleged that the defendant's use of the mark, logo, colour combination and get-up amounted to infringement of the plaintiff's trade mark and copyright and constituted passing off.

7. On these allegations, the plaintiff sought the reliefs contemplated under Section 135 of the Trade Marks Act, 1999 (**'the Act'**), including permanent injunction restraining the defendant from using ACC or any deceptively similar mark, including as part of its trade name, an injunction in respect of the plaintiff's ACC logo and copyright, amendment of the defendant's corporate name, delivery of infringing material for destruction, rendition of accounts and damages of Rs.10 lakhs.

8. On these allegations, the plaintiff sought permanent injunction restraining the defendant from using ACC or any deceptively similar mark, including as part of its trade name, an injunction in respect of the plaintiff's ACC logo and copyright, amendment of the defendant's corporate name, delivery of infringing material for destruction, rendition of accounts and damages of Rs.10 lakhs.

II. Case of defendant:

9. The defendant, **ACC Steel Pvt. Ltd.**, entered appearance and filed its written statement denying the allegations in the plaint.

10. The defendant traced the origin of its mark to a partnership firm by name **Prime Alloys**, consisting of Moidutty and C. Musthafa, which, according to the defendant, had been carrying on business in TMT steel rods under the mark "**ACC TMT 500**" from 2015. Prime Alloys had applied for registration of the mark in Class 6 in 14.11.2016 and had authorised Mascom Steel India Pvt. Ltd. to manufacture TMT bars under the said mark. Thereafter, the partners of Prime Alloys and the directors of Mascom Steel India Pvt. Ltd. formed ACC Steel Pvt. Ltd., which was incorporated on 04.02.2019. The defendant also drew attention to the Assignment Deed dated 28.12.2019 whereby the trademark "ACC TMT 500" came to be assigned to ACC Steel Pvt. Ltd by Prime Alloys.

11. The defendant further pleaded that the expression "**ACC**" had been coined, in 2015, from the first letters of the names of the fathers of the partners and the name of the place where they were carrying on business. It was therefore

contended that the adoption of ACC was independent, bona fide and for the purpose of identifying the defendant's own goods. The defendant maintained that its business consisted of iron, steel, galvanised steel, steel pipes, tubes, steel sections and other steel and iron products, whereas the plaintiff was engaged primarily in cement and ready-mix concrete.

12. The defendant contended that its goods fell under **Class 6**, whereas the plaintiff's relevant registrations were principally under **Class 19**, and that the two businesses and goods were distinct. It therefore denied the allegation that its use of ACC could result in confusion or passing off. The defendant also relied upon its registrations obtained from the Trade Marks Registry in 2016 and contended that the registrations had been granted after following the prescribed procedure.

13. The defendant disputed the plaintiff's claim that ACC was a well-known trade mark and pointed out that 2 of the trademark registrations cited were not valid, as the plaintiff had failed to renew them in 2013.

14. It was also contended that the plaintiff was not engaged in the manufacture or sale of TMT steel and had not

established use of ACC in relation to steel products. According to the defendant, registration in one class could not by itself confer rights over goods falling in another class.

15. The defendant denied infringement of copyright and contended that copyright registration could not give the plaintiff a monopoly over the expression ACC or over colour combinations used in trade. It also disputed the allegation of passing off and contended that purchasers of cement and steel were sufficiently aware of the distinction between the two products and their respective manufacturers.

III. Issues

16. On the basis of the pleadings, the Commercial Court framed the following issues:

1. *Whether the plaintiff proves that the defendant has infringed his registered trade marks "ACC" by using identical or deceptively similar marks for his goods and as part of his trade name?*
2. *Whether the plaintiff proves that the defendant has infringed his registered copyright in logo "ACC" by copying and using identical or deceptively similar logo for his goods?*
3. *Whether the plaintiff proves that the defendant is passing off his goods as those of the plaintiff by using the*

mark "ACC", which is identical or deceptively similar to the registered marks of the plaintiff?

4. Whether the plaintiff proves that the defendant has illegally earned profit on account of illegal adoption and unauthorised use of the plaintiff's registered marks "ACC" for his goods and as part of his trade name?

5. Whether the defendant proves that the impugned mark "ACC", adopted for his goods and as part of his business is in good faith and with honest intention and it distinguishes his goods from that of the plaintiff?

6. Whether the plaintiff is entitled to the reliefs sought?

7. What order or decree?

17. The plaintiff examined its authorised signatory **Nitin Sharma as PW-1** and marked 49 documents as Ex.P1 to P49. The defendant examined its Managing Director as **DW-1** and marked documents as Ex.D1 to D20, though the Commercial Court recorded that no documentary evidence was produced in support of certain aspects of the defence.

IV. Reasoning and Findings of the Commercial Court:

18. The Commercial Court considered Issue Nos.1 and 5 together. It relied upon the plaintiff's eight trade mark registration certificates and the documents produced to establish its use of the ACC mark and found the registrations to be valid and subsisting as on the date of the suit. The

defendant's case was that ACC had been adopted by its predecessors from the first letters of the names of the fathers of the partners of Prime Alloys and the place where they carried on business. The Court found that this explanation was not satisfactory, as no documentary evidence had been produced to establish the names of the fathers of the partners of Prime Alloys or the fact that they were conducting their business in Chinnakanur, Tamil Nadu. Alternatively, the trademark certificates produced along with the historical data of the defendant reflected notable discrepancies to the detriment of the defendant's claims. On comparison of the marks, the Court held that the mere addition of the words "TMT 500" did not take away the similarity arising from the use of ACC, with the same font and colour scheme as "ACC". The contention that the difference in the classes of goods by itself excluded infringement was also not accepted. The Court further rejected the contention that purchasers of steel and cement products were a sophisticated class of consumers who would not decide to purchase goods merely because of the trade name and would necessarily enquire into the source and quality of the goods. Accordingly, Issue No.1 was answered in the affirmative and Issue No.5 in the negative.

19. As regards Issue No.2, the plaintiff relied upon its copyright registration documents, Ex.P33 to Ex.P36, in respect of the ACC label and artistic work. The Court found the plaintiff to be the registered owner of the said artistic work and also considered the evidence of PW-1 regarding its creation. On comparing the defendant's mark with the plaintiff's logo, the Court found similarity in the presentation, font and colour combination. Relying upon the decision rendered in ***Societe Des Produits Nestle, S.A. & Another v. Montu Sadhu & Others¹***, it held that the defendant had used an identical or deceptively similar artistic work. Issue No.2 was, therefore, answered in the affirmative.

20. On Issue Nos.3 and 4, the Court considered the plaintiff's long-standing use of ACC, its advertisements, business activities, dealers and distributors, and the manner in which the defendant had used ACC as part of "ACC TMT 500". Taking note of the absence of documentary support for the defendant's explanation for adoption of the mark and the non-production of the alleged assignment deed from Prime Alloys. It held that the difference between cement and steel did not, in

¹ 2014 SCC OnLine Del 1580

the circumstances of the case, prevent a finding of passing off. Accordingly, it answered Issue Nos.3 and 4 in the affirmative.

21. On the question of relief, the Commercial Court granted the injunctions sought by the plaintiff and directed the defendant to amend its trade name in the records of the Ministry of Corporate Affairs. It further directed delivery of the products and other materials bearing the infringing mark for destruction and ordered rendition of accounts of the profits earned through the unauthorised use of the plaintiff's mark. However, the claim for **Rs.10 lakhs as damages** was not granted, as the Court found that sufficient material had not been placed to quantify the alleged damages or establish the profits earned by the defendant. The plaintiff was, however, permitted to pursue the claim in the proceedings for rendition of accounts, if otherwise permissible in law.

V. Conclusion and Decree

22. The Commercial Court accordingly decreed the suit **in part with costs**. The defendant and persons acting on its behalf were permanently restrained from using the mark **ACC**, or a deceptively similar mark, in relation to its business, products, or services, including as part of its company or

trading name. The injunction also covered the use or reproduction of the plaintiff's ACC logo and the use of ACC as part of the name **ACC Steel Pvt. Ltd.**

23. The defendant was further directed to amend its trade name in the records of the Ministry of Corporate Affairs, deliver the infringing products and materials for destruction, and render accounts of profits earned from the unauthorised use of the plaintiff's registered trade mark. The claim for damages of Rs.10 lakhs in the suit itself was declined, while liberty was reserved to the plaintiff to claim the same in the proceedings for rendition of accounts.

24. Aggrieved by the said judgment, the defendant has filed the present appeal on the following, among other grounds.

25. The defendant contends that the Commercial Court has failed to properly appreciate the evidence and, in particular, has ignored the documents produced by the defendant. It is urged that the mark **"ACC TMT 500"** was adopted by the defendant's predecessors in relation to a specific steel product, that the adoption was bona fide, and that the defendant had obtained registration of the mark in Class 6 and Class 9 after following the procedure before the Trade

Marks Registry. The defendant further contends that the plaintiff's use and registration of ACC relate principally to cement and allied products falling under Class 19, whereas the defendant is dealing with steel and other metal products falling under Class 6. It is therefore contended that the plaintiff cannot claim an exclusive right over ACC in respect of goods in which it neither carries on business nor had a subsisting registration, particularly when the defendant's registration was valid and subsisting.

26. It is further contended that the Commercial Court failed to properly consider the distinction between the respective goods, their trade channels, and the manner in which the marks are used. According to the defendant, the words "**TMT 500**", the nature of the steel products, and the defendant's composite mark distinguish it from the plaintiff's ACC mark used for cement and ready-mix concrete. The defendant also disputes the finding regarding passing off and copyright infringement and contends that there was no evidence of actual consumer confusion or likelihood of confusion between the two products. The defendant challenges the consequential directions for amendment of its company name, delivery of products and materials, and rendition of

accounts, contending that those directions could not have been issued when the defendant claimed to have adopted and used its registered mark bona fide and in respect of goods different from those of the plaintiff.

Objections of the Plaintiff:

27. The plaintiff disputes the defendant's contention that the impugned judgment suffers from any error in appreciation of the evidence. It is contended that the Commercial Court, after considering the pleadings, oral evidence, and documents produced by both sides, rightly found that the defendant had adopted and was using the mark **"ACC"** in a manner amounting to infringement of the plaintiff's registered and well-known trade mark, passing off and infringement of its copyright. The plaintiff relies upon its long and extensive use of the mark ACC and the goodwill and reputation acquired by it, and contends that the defendant's use of ACC as part of **"ACC TMT 500"** and **"ACC Steel Pvt. Ltd."**, together with the manner in which the mark and logo were presented, could not be treated as an independent or bona fide adoption. The plaintiff therefore supports the findings recorded by the Commercial Court on Issues 1 to 5 and submits

that the defendant has merely repeated the very contentions which were considered and rejected by the Commercial Court.

28. The plaintiff further contends that the distinction sought to be made by the defendant between cement and steel products and between Classes 6 and 19 does not, in the facts of the case, defeat the plaintiff's claim. According to the plaintiff, the defendant's use of the essential and distinctive feature **"ACC"**, including as part of its corporate name and trade mark, has the effect of associating its goods with the plaintiff and diluting the goodwill attached to the mark. The plaintiff also points out that injunctions had been operating from 09.10.2020, were confirmed on 14.01.2022 and culminated in the permanent injunction granted by the judgment dated 05.11.2024. It is therefore contended that the directions issued by the Commercial Court, including the restraint against use of "ACC", amendment of the corporate name, delivery of infringing material and rendition of accounts, were consequential to the findings recorded after trial and ought not to be interfered with.

29. We have heard the learned Senior Counsel Sri. Pramod Nair, appearing for Sri. Harshith N. Balakrishna, learned

counsel for the appellant/defendant and the learned Senior Counsel Sri.Dhyan Chinnappa, appearing for Smt. Gitanjali Miriam Mathew, learned counsel for the respondent/plaintiff.

30. Having heard the learned counsel appearing for the parties and on perusal of the material available on record, the only question that arises for our consideration in this appeal is, as to whether the judgment and decree passed by the Commercial Court calls for interference by this Court.

31. The defendant's principal defence is that the plaintiff's registration of "ACC" does not cover steel products and that the defendant's goods fall in a different class. The contention proceeds on the assumption that the rights of the plaintiff have to be examined only with reference to the particular class in which the mark was originally registered. Section 28, however, has to be read subject to the other provisions of the Act. Section 31 makes the registration *prima facie* evidence of its validity. The plaintiff has placed its registrations and the history of its use of "ACC" on record and has established continuous and extensive use of the mark from the earlier decades. The defendant, on the other hand, cannot derive any conclusive advantage merely from the registration

obtained by it for "ACC TMT 500". The material before the Court shows that the defendant's registration bearing Application No.3409808 was challenged in rectification proceedings and its registration was stayed by the Intellectual Property Appellate Board on 26.10.2020. Thus, the defendant's registration cannot be treated as putting the plaintiff's prior rights beyond examination in the present proceedings.

32. The subsequent recognition of "ACC" as a well-known trade mark is also a material circumstance which the defendant's argument does not adequately meet. The plaintiff's mark was included by the Trade Marks Registry in the list of well-known trademarks pursuant to the procedure under Rule 124 of the Trade Marks Rules, 2017. Section 11(6) of the Act requires consideration of the knowledge and recognition of the mark amongst the relevant section of the public, the duration, extent, and geographical area of its use, the extent of its promotion and publicity, the duration and geographical area of its registrations and the record of successful enforcement. Section 11(7) of the Act further refers to the number of actual and potential consumers, the persons involved in the channels of distribution and the business circles dealing with the goods. These factors are borne out from the material relied upon by

the plaintiff: the long period of use of "ACC", its extensive publicity, sales and distribution, its registrations in several classes, and the reputation acquired in the construction industry. The recognition of the mark as well-known was therefore not based upon the registration alone, but upon the cumulative circumstances which the statute requires to be considered.

33. The significance of this recognition becomes apparent when the defendant's contention that the marks of the parties cover different classes, namely Classes 6 and 19, is examined. Section 11(2) of the Act itself contemplates protection of a well-known mark even where the later mark is sought to be registered for goods which are not similar, where use without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier mark. Section 29(4) of the Act similarly provides protection where the later mark is identical or similar, the goods are not similar, and the registered mark has a reputation in India, if the subsequent use without due cause takes unfair advantage of or is detrimental to its distinctive character or repute. Therefore, even assuming that cement and TMT steel are to be treated as dissimilar goods, the difference in classification by itself does

not conclude the matter. The Commercial Court was justified in examining the reputation of "ACC", the identity of the essential mark, the manner of its adoption and the likely effect of such use.

34. There is also material which takes the case beyond a mere comparison of two entries in the classification. The plaintiff's case was that cement and steel are both used in construction, are dealt with through overlapping trade channels and are directed towards substantially the same class of persons connected with construction activity. The Commercial Court also considered evidence of actual inquiries made by persons who believed that the defendant's products had some association with the plaintiff. This circumstance assumes significance when the defendant has adopted the plaintiff's mark in its entirety and has used "ACC" not merely on the product but also as part of the corporate name "ACC Steel Private Limited". The use of "TMT 500" after "ACC" does not remove the appropriation of the distinctive feature which identifies the plaintiff.

35. The manner in which the mark was adopted is another circumstance which cannot be considered in isolation.

The defendant relied upon an explanation that "ACC" was coined from the names of the fathers of its promoters and the place of business. The Commercial Court considered this explanation along with the material produced by the parties and did not find sufficient supporting material to accept it as a justifiable reason for adoption. At the same time, the plaintiff established that "ACC" had been continuously associated with it for several decades and that the mark had acquired substantial recognition. The defendant thereafter adopted the same three-letter mark, used it prominently in "ACC TMT 500" and incorporated it into its corporate name. The plaintiff also relied upon similarity in the font, colour combination, overall get-up and representation of the mark, as well as instances of confusion in the market. These circumstances were available to the Commercial Court to determine whether the adoption was bona fide and whether the defendant's use was likely to lead to an association with the plaintiff.

36. The defendant's reliance upon Section 28 does not take the matter any further. The section itself begins with the words "subject to the other provisions of this Act". The statutory right flowing from registration is consequently not an independent defence to a claim based upon an earlier and

reputed mark where the conditions of infringement are otherwise established. Likewise, Section 31 gives prima facie evidentiary value to registration; it does not prevent the Court from examining the competing rights of the parties or the effect of the subsequent use. The defendant's registration having itself been stayed in the rectification proceedings is a further circumstance which weakens the attempt to treat that registration as determinative of the defendant's right to continue using the mark.

37. The provisions relied upon by the defendant relating to Sections 51 and 122 also do not assist its case. Section 51 concerns the power of the Registrar to call for information regarding an agreement relating to a registered user, whereas Section 122 affords protection in respect of acts done or intended to be done in good faith pursuant to the Act. Neither provision creates a substantive right to use another proprietor's registered mark. The defendant therefore cannot use those provisions to overcome the findings independently arising under Sections 28 and 29 as well as the law concerning passing off.

38. The defendant's contention that there could be no infringement because the plaintiff was principally engaged in cement and the defendant in steel also overlooks the finding regarding the character of the mark itself. The plaintiff's evidence was not confined to the existence of a registration. It covered the duration of use, reputation, publicity, distribution, recognition in the construction sector and enforcement of the mark. Those are precisely the circumstances relevant under Section 11(6) for determining whether a mark has acquired well-known status. Once those circumstances are considered along with the statutory recognition of "ACC" as a well-known trade mark, the defendant cannot reduce the controversy to a comparison of Class 6 and Class 19 alone.

39. The use of "ACC" as part of the defendant's corporate name gives a further and independent factual basis for the injunction. The plaintiff specifically relied upon Section 29(5), contending that the defendant had appropriated the registered mark as part of its trade name. The corporate name was not an incidental reference to "ACC", the defendant carried on its business as "ACC Steel Private Limited". The Commercial Court was therefore entitled to consider the corporate name

use together with the use of “ACC TMT 500” on the goods while determining the relief to be granted.

40. The findings relating to copyright and passing off also cannot be separated from the manner in which the defendant presented its products. The plaintiff placed material regarding the similarity in the stylised presentation of “ACC”, the colour combination and the overall get-up. The Commercial Court also recorded the plaintiff’s prior reputation and the circumstances indicating actual market confusion. The case is therefore not one where the defendant merely happened to use a common descriptive expression on an unrelated product. The essential mark was identical, the defendant used it as its principal identifying expression, it was incorporated into the company name, and the evidence regarding the presentation of the mark and market inquiries was considered by the Commercial Court.

41. The permanent injunction must also be considered in the light of the history of the proceedings. The plaintiff had obtained an *ex parte* interim injunction on 09.10.2020, which was confirmed on 14.01.2022, and after trial the Commercial Court passed the decree dated 05.11.2024. The defendant thus

had the opportunity to contest the plaintiff's claim on pleadings and evidence over the course of the suit. The Statement of Objections specifically records that the defendant has not identified any misapplication of law, procedural irregularity, violation of natural justice or specific error in appreciation of the evidence which would warrant interference with the decree.

42. Trademarks are central to the identity, survival, and growth of any business operating in a competitive commercial environment. They enable enterprises to establish consumer trust and preserve the goodwill built over time through substantial investments in quality, service, and brand visibility. For consumers, trademarks serve as indicators of the source and consistent quality of goods or services across different providers, thereby enabling them to make informed choices, which may, at a minimum, affect taste and preference, and at a maximum, impact their health and well-being. It is, therefore, imperative that intellectual property rights are robustly protected against infringing entities that seek to unfairly capitalize on another's goodwill, to the detriment of both the rightful owner and the end consumer.

43. The findings of the Commercial Court consequently rest upon distinct and cumulative matters: the plaintiff's substantially earlier use of "ACC"; the extensive reputation and goodwill acquired by the mark; its formal recognition as a well-known trade mark; the statutory protection available to such a mark beyond the particular class of registration; the defendant's use of the identical essential mark on TMT products; the use of "ACC" as part of its corporate name; the similarity in the presentation and get-up; the evidence regarding market inquiries and confusion; and the defendant's inability to establish the asserted independent origin of the mark by satisfactory material. On these findings, the defendant's attempt to rest its entire defence on the distinction between the classes of goods and on its own registration does not displace the decree passed after trial.

44. In view of the foregoing discussion, we find no ground to interfere with the findings recorded by the Commercial Court. At this stage, it is also appropriate to notice Section 135(1) of the Act, which provides for the reliefs that may be granted in a suit for infringement of a trademark or for passing off. The provision contemplates the grant of an injunction and at the option of the plaintiff, either damages or

an account of profits, together with such other relief as the Court may deem fit. Therefore, once the Court, on appreciation of the material on record, finds infringement or passing off, the relief under Section 135 of the Act must be considered having regard to the nature of the infringement and the circumstances of the case.

Accordingly, the appeal is ***dismissed*** with no order as to costs.

Pending I.As. do not survive for consideration, hence, they stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM