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FAO NO. 95 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 27TH DAY OF OCTOBER 2026 / 5TH KARTHIKA, 1948

FAO NO. 95 OF 2026

AGAINST THE ORDER DATED 10.04.2026 IN IA 4/2024 IN OS
NO.22 OF 2024 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANT/RESPONDENT/DEFENDANT:

GREENMOUNT SPICES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT IX-21A, NEAR GREEN
VALLEY PUBLIC SCHOOL, NELLIKUZHY P.O., KOTHAMANGALAM,
ERNAKULAM 686 691 REPRESENTED BY ITS MANAGING
DIRECTOR, MR. K.I. PAUL, AGED 65 YEARS, S/O. LATE
ISSAC, RESIDING AT KUTTICHIRAKUDIYIL HOUSE, OONNUKAL
P.O., ERNAKULAM, PIN - 686693

BY ADVS.
SHRI.VIZZY GEORGE KOKKAT
SRI.V.BOVAN CHERIAN VARKEY
SHRI.K.HARI SANKAR
SMT.ANJALA FARHATH V.S.
SMT.LIKHITHA MANOJ

RESPONDENT/PETITIONER/PLAINTIFF:

WIPRO ENTERPRISES PRIVATE LIMITED
WIPRO HOUSE, NO 8, 7TH MAIN, 80 FEET ROAD,
KORAMANGALA, 1ST BLOCK, BANGALORE, KARNATAKA 560 034
REPRESENTED BY ITS EXECUTIVE LEGAL AND CONSTITUTE
ATTORNEY, MS. MALAVIKA B., AGED 24 YEARS, D/O.
BALASUBRAMANYAN, RESIDING AT 2ND CROSS ROAD,
RAMACHANDRA REDDY LAYOUT, ITI LAYOUT, SECTOR 2, HSR



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LAYOUT, BENGALURU, KARNATAKA, PIN - 560068

BY ADVS.

SRI.BENOY K.KADAVAN

SMT.LAYA GEORGE

SMT.MARIAM J. MANAVALAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 23.10.2026, THE COURT ON 27.10.2026 DELIVERED THE FOLLOWING:



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“C.R”**C.S.DIAS,J.**

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F.A.O. No.95 of 2026

Dated this the 27th day of October, 2026**JUDGMENT**

The appellant is the defendant in O.S. No. 22 of 2024 on the file of the Additional District Judge-II, Ernakulam. The respondent has instituted the suit seeking to restrain the appellant from manufacturing, advertising, selling, distributing, offering for sale or exporting food products, including sambar powder, and from using the respondent's trade mark, or any identical or deceptively similar mark—including 'BRAHMINS' or 'BRAHMINS SAMBAR POWDER'—on packaging, websites, as a trade name or domain name, either independently or as part of another mark, with or without a prefix or suffix. Along with the suit, the respondent filed an application for temporary injunction



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seeking substantially the same relief as in the plaint. The appellant opposed the application by filing a counter-affidavit. By the order under challenge, the Trial Court allowed the application as prayed for. Aggrieved by the order, this appeal is filed.

2. I have heard Sri. Vizzy George Kokkat, learned counsel for the appellant, and Sri. Benoy K. Kadavan, learned counsel for the respondent.

3. The learned Counsel for the appellant submitted that the impugned order is *ex facie* erroneous. The Trial Court has failed to consider the legal principles on the point and the materials on record in their proper perspective. The appellant's trade mark is 'Greenmount', whereas 'Brahmin Sambar Powder' is used only descriptively to identify the product. The Trial Court has proceeded on the erroneous assumption that the latter expression was being used as the appellant's trade mark. According to the learned Counsel, Ext.A44 document



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demonstrates that 'Greenmount' is the distinctive mark and 'Brahmin Sambar Powder' merely describes the product; the concurrent use of the expressions, therefore, does not cause any confusion or deception. The learned Counsel also argued that the Trial Court has failed to properly interpret Section 30(2) of the Trade Marks Act, 1999 ('Act', for brevity). The word 'Brahmin' denotes a traditional Hindu community having a cultural association, and sambar is an integral part of their cuisine. The expression 'Brahmin Sambar Powder' is generic and descriptive and is protected by Section 30(2)(a) of the Act. Ext. B1 series documents establish uninterrupted use of the trade name 'Greenmount Brahmin Sambar Powder' since 2011. The learned Counsel further submitted that the products of both parties have co-existed in the market for years without any confusion in the minds of their respective customers or consumers. The respondent's predecessor applied for registration only on 06.06.2008. Therefore, no exclusive



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right can be claimed over the expression 'Brahmins Sambar Powder'. Learned Counsel also contended that the Trial Court has failed to consider the scope of Sections 15 and 17 of the Act. He accordingly prayed that the appeal be allowed and the impugned order be set aside.

4. Learned counsel for the respondent opposed the appeal. Relying on the decision of the Hon'ble Supreme Court in **Wander Ltd. & Others v. Antox India Pvt. Ltd.** [1990 Supp. SCC 727], he submitted that an appellate court ought not to substitute a discretionary order passed by the court of first instance unless such discretion has been exercised arbitrarily, capriciously or perversely. There is no such infirmity in the present order. In 2023, the respondent acquired the Brahmins group business together with its trade mark and goodwill and is now the owner of the trade mark 'Brahmins'. The respondent holds 29 registrations for the word 'Brahmins', which is a dominant feature in respect of food products. The respondent's



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predecessor had launched 'Brahmins Sambar Powder' in 1989 using a distinctive recipe. The product is one of the respondent's leading products. Nearly 120 products manufactured by the respondent are marketed in India and abroad through extensive promotion and a wide distribution network. The learned Counsel further submitted that, due to continuous use and promotion, the trade mark and name 'Brahmins' have acquired distinctiveness, and is a well-known household brand. Following consumer complaints, the respondent discovered that the appellant had marketed products under the expression 'Brahmin Sambar Powder', thereby causing confusion in the minds of consumers. In spite of the respondent's predecessor issuing a cease-and-desist notice to the appellant, they did not stop the infringement, leading to the institution of the suit. Annexures R1(a) to R1(m) certificates substantiate the respondent is the owner of the trade mark 'Brahmins'. The Trial Court, after considering



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the rival pleadings and materials on record, has correctly passed the impugned order. The appeal is devoid of merit and is only liable to be dismissed.

5. The question for determination is whether there is any error or illegality in the impugned order warranting interference by this Court.

6. The controversy concerns the appellant's use of the word 'Brahmin' and the expression 'Brahmin Sambar Powder' on its products. The respondent relies on the certificates of registration of trade marks issued by the Registrar of Trade Marks under Section 23(2) of the Act read with Rule 56(1) of the Trade Mark Rules, 2017, marked as Annexures R1(a) to R1(m), and claims ownership of the trade mark 'Brahmins' in relation to various products falling under thirteen classes, including 'Brahmins Sambar Powder'.

7. The statutory provisions material for the determination of this appeal are Sections 27 to 30 and



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Section 135 of the Trade Marks Act, 1999. They are extracted hereinbelow for convenience:

“27. No action for infringement of unregistered trade mark.—(1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

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

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

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

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



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render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of-

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which-

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he-

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who



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applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising-

- (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or
- (b) is detrimental to its distinctive character; or
- (c) is against the reputation of the trade mark.

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

30. Limits on effect of registered trade mark.- (1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use-

(a) is in accordance with honest practices in industrial or commercial matters, and

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark

(2) A registered trade mark is not infringed where-

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services;

(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available or acceptance in any place or country outside India or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;

(c) the use by a person of a trade mark—

(i) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk or which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or



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(ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of the mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark;

(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services, as the case may be;

(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of-

(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

(4) Sub-section (3) shall not apply where there exists legitimate reasons for the proprietor to oppose further dealings in the goods in particular, where the condition of the goods, has been changed or impaired after they have been put on the market.

135. Relief in suits for infringement or for passing off.-

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.



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(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:-

- (a) for discovery of documents;
- (b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;
- (c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff....."

8. Sections 27 and 28 of the Act delineate the framework for trade mark protection. Section 27(1) bars proceedings for infringement of an unregistered trade mark, while Section 27(2) preserves the independent remedy of passing off. Under Section 28, a valid registration confers on the registered proprietor an exclusive right to use the mark in relation to the goods or services for which it is registered and to seek relief for infringement, subject to the provisions under the Act and any conditions or limitations attached to the registration. Section 29 identifies the circumstances under which the use of a mark may constitute infringement. Section 29(2) addresses the relevant combinations of identity or similarity



between the marks and the goods or services, and the likelihood of confusion or association. Section 30 lays down the effect of a registered trade mark. Section 30(1) permits use for identifying the proprietor's goods or services only if the use accords with honest practices in industrial or commercial matters and does not take unfair advantage of, or cause detriment to, the distinctive character or repute of the mark. Section 30(2)(a) excludes infringement where the use genuinely indicates the kind, quality, quantity, intended purpose, value, geographical origin, time of production or other characteristics of the goods or services. Section 135 provides for the reliefs available in suits for infringement or passing off, including injunctions, damages and specified *ex parte* or interlocutory orders.

9. At the interlocutory stage, this Court is not required to decide whether the respondent would ultimately establish the infringement after trial. The immediate inquiry is whether the materials on record satisfies the



trinity parameters, including a prima facie case, to sustain the temporary injunction granted by the Trial Court.

10. The principal plank of the appellant's defence rests on Section 30(2)(a) of the Act. According to the appellant, the product is marketed under the distinctive mark 'Greenmount', while 'Brahmin Sambar Powder' is used only to describe the product, which is a popular cuisine of the Brahmin community, over which the respondent cannot state any claim. Therefore, the appellant has not infringed the respondent's mark. The appellant further relies on its alleged continuous use of the above name, and the absence of any confusion in the minds of consumers. The respondent, on the other hand, claims that it acquired the Brahmins group business, including the trade mark and goodwill, in 2023 and is the proprietor of the mark 'Brahmins'. It relies on 29 registrations for the word 'Brahmins' and representations in which the said word is a dominant feature, in relation to food products. The



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respondent asserts that its predecessor¹⁶ launched 'Brahmins Sambar Powder' in 1989 using a distinctive recipe, and relies on the registration certificates, produced as Annexures R1(a) to R1(m), in support of its claim to have registered rights across thirteen classes of products.

11. Section 30(2)(a) does not confer an unrestricted licence to use a registered expression merely because the user characterises it as descriptive. Its application turns on whether, viewed in its context, the expression is genuinely used to indicate the kind or another characteristic of the goods. Conversely, the existence of a registration does not relieve the proprietor of the obligation to establish the elements required by the statutory provision. The competing claims must be assessed in the light of the registration particulars and the overall presentation of the product, including the prominence, placement and relative size of the words and the presence of other distinctive features. These matters can only be decided after a full-



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fledged trial and not at the interlocutory stage.

12. Ext. A1 inauguration notice dated 13.07.1987, prima facie indicates that Brahmins food products was launched in 1987. Ext. A2 municipal licence dated 04.07.1987, supports the respondent's case that its predecessor was licensed to manufacture curry powder. The respondent has also relied on Exts. A9 to A28 documents to prove the registrations for products incorporating the word 'Brahmins' in different classes. Ext. A23 is a status page and registration certificate relating to the application to substitute the respondent as the subsequent purchaser of the trade mark. Going by the appellant's own case, use of the name 'Greenmount Brahmin Sambar Powder' commenced only in 2011. At this stage, these materials lend prima facie support to the respondent's claim of prior use. The appellant's reliance on the mark 'Greenmount' does not, by itself, answer the question of infringement: a product may bear one mark



identifying its manufacturer while another expression may be presented in a manner that suggests a commercial association. Equally, the mere appearance of a word on packaging does not establish infringement. The relevant consideration is how the average consumer is likely to perceive the mark and the product as a whole, in the context of the goods concerned. The appellant's plea of prior or continuous use must likewise be tested against the precise mark used, the goods for which it was used, the nature and extent of the use, and the applicable registration particulars. Nor does the assertion of peaceful co-existence, by itself, settle whether the impugned use is lawful or whether confusion is likely. The respondent's registration and claim of longstanding use, as well as the appellant's defence of descriptive use, are matters to be adjudicated.

13. The Trial Court, after analysing the facts, the materials on record and the principles laid down in the



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decisions in **Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Others** [2022 KHC 6064], **Pernod Ricard India Private Limited & Another v. Karanveer Singh Chhabra** [2025 SCC Online SC 1701], **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories** [AIR 1965 SC 980], **A.C. Krishnan v. Nambisans Dairy Pvt. Ltd.** [1997 KHC 32] and **Rajeev K.P. v. Unais K.K.** [2025 KHC 2308], has arrived at a conclusion that the respondent had satisfied the three fold principles for an order of temporary injunction, and has granted the relief sought.

14. In **Shruti Manav Sharma v. Sunanina Singh** [2026 KHC OnLine 6611], the Supreme Court has explained the principles governing the grant of an order of temporary injunction, and the limited scope of appellate interference with discretionary orders of the said nature. The relevant passages are extracted below:

"22. The Indian formulation, adopting the American Cyanamid language, is found in **Wander Ltd. & Anr.** (supra), where this Court held that the interlocutory remedy is intended "to preserve in status quo the rights of the parties which may appear on a prima face case." This



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preservative purpose is echoed in the structure of the statute itself: Order XXXIX R.1(a) speaks of property "in danger of being wasted, damaged or alienated," and S.94 of the Code speaks of preventing "the ends of justice from being defeated." This Court (*Zenit Mataplast Pvt. Ltd. v. State of Maharashtra & Ors.*, (2009) 10 SCC 388) explained that an interim order is intended to protect the subject - matter of the proceedings until disposal of the case, so that the ultimate relief, if the party succeeds, is not rendered meaningless.

VIII. PRIMA FACIE CASE: A SERIOUS QUESTION TO BE TRIED

24. The threshold for a prima facie case is a modest one. It does not require proof of title; it requires only that the claim not be frivolous or vexatious - a serious question to be tried. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at on that evidence (*Martin Burn Ltd. v. R. N. Banerjee*, AIR 1958 SC 79).

25. The classic modern statement is **Dalpat Kumar v. Prahlad Singh**, (1992) 1 SCC 719:

"The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide which needs investigation and a decision on merits."

26. This Court elucidated the meaning of expression 'prima facie case' in **Gujarat Bottling Co. Ltd. & Ors.** (supra) to mean that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability that of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. The expression 'prima facie case' means a substantial question raised bona fide which needs investigation and decision on merits and the Court, at the initial stage, cannot insist upon a full proof case warranting an eventual decree (*Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors.*; (2001) 5 SCC 568, *Ramakant Ambalal Choksi v. Harish Ambalal Choksi &*



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Ors.; (2024) 11 SCC 351 and State of Kerala v. Union of India; (2024) 7 SCC 183).

IX. BALANCE OF CONVENIENCE

28. The Court, while dealing with the prayer for injunction has also to advert itself to the second essential ingredient for grant of injunction viz. 'balance of convenience'. In order to determine whether the balance of convenience lies, the Court must weigh two matters. The first is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were to be resolved in his favour. The second matter is that the defendant's need to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated by an undertaking if the uncertainty were to be resolved in defendant's favour at the trial (Halsbury's Laws of England, Fourth Edition, Vol- 24, para 856, American Cynamid Co. and Ethicon Ltd.; (1975) 1 All ER 504 and Fellowes and Son v. Fisher; (1975) 2 All ER 829).

29. The aforesaid principle has been reiterated with approval by this Court in **Wander Ltd. & Anr.** (supra) and it has been held that need to protect the plaintiff against the injury by violation of his right for which he cannot be compensated in damages recoverable in the action if the uncertainty were to be resolved in his favour has to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights for which he would not be adequately compensated. The Court, therefore, must weigh one need against another and determine where the 'balance of convenience' lies.

IRREPARABLE INJURY

31. The Court, while dealing with the prayer for grant of injunction is required to consider the third essential ingredient viz. irreparable injury. This Court in **Gujarat Bottling Co. Ltd. & Ors.** (supra) has held that the Court is required to satisfy itself that the party seeking injunction needs protection from the consequences of apprehended injury and the injury is such which cannot be adequately compensated by way of damages. Thus, the Court is required to satisfy itself that in case an injunction as prayed for is not granted, the party seeking the same will suffer irreparable injury.

32. A party is not entitled to an order of injunction as a matter of



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right. The grant of interlocutory injunction is a remedy which is discretionary in nature. However, such a discretion has to be exercised on the touchstone of trinity test viz. prima facie case, balance of convenience and irreparable injury (Shiv Kumar Chadha v. Municipal Corporation of Delhi & Ors., (1993) 3 SCC 161). It is equally well settled legal proposition that the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the Court with clean hands (Seema Arshad Zaheer & Ors. v. Municipal Corpn. of Greater Mumbai & Ors., (2006) 5 SCC 282).

33. This is precisely the injury that is irreparable in the sense in which equity uses that word. Loss of controlling shareholding in family companies, or the creation of third - party rights in properties acquired with the proceeds of disputed transfers, that a subsequent decree cannot unwind, is the paradigm of such injury; it is not mere financial loss capable of computation and recovery from a solvent party, of the kind that courts, following **Evans Marshall & Co. Ltd. v. Bertola SA** ([1973] 1 WLR 349), have held to be adequately met by an award of damages. No decree for money could restore to the appellants the specific shareholding and properties in question, once alienated to third parties during the pendency of the suit.

XI. THE STANDARD OF APPELLATE INTERFERENCE

36. An order on an application for temporary injunction is a discretionary one, and an appellate court does not ordinarily substitute its own discretion for that of the court of first instance, save where the discretion has been exercised arbitrarily, capriciously or perversely, or in ignorance of the settled principles governing the grant or refusal of such relief. The principle laid down in **Wander Ltd. & Anr.** (supra) which has been approved by subsequent decisions of this Court (**Shyam Sel and Power Limited v. Shyam Steel Industries Limited**, (2023) 1 SCC 634 and **Ramakant Ambalal Choksi** (supra)), has been guiding the appellate courts in the country for decades while exercising the appellate jurisdiction considering the correctness of the discretion and jurisdiction for grant or refusal of interlocutory injunctions. The order of the learned Single Judge, resting as it does on seven specific findings addressing the nature of the original plaintiff's interest under the Will, the doubt surrounding its finality, the plea of undue influence, and the alter - ego character of the defendant entities, cannot be said to be arbitrary, capricious or perverse, nor to have been passed in ignorance of settled principle. It is, on the contrary, an order squarely anchored in the three conditions that govern



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the grant of interim injunction. The Division Bench's substitution of its own appreciation of the Will, of the parties' conduct, and of the applicability of statutory provisions bearing on the final merits, for the exercise of discretion by the learned Single Judge, was not warranted on the standard it had itself correctly recited, and constitutes precisely the kind of interference that Wander Ltd. & Anr. (supra) forbids.

(emphasis given)

XII. THE VICE OF THE MINI – TRIAL

37. Before parting with these appeals, we consider it necessary to record our disquiet at a recurring feature of orders passed under Order XXXIX of the Code, and of appellate orders reviewing them, that reach this Court. Such orders are, with increasing frequency, running into pages of close analysis of the rival documents, weighing the probable outcome of issues of title, undue influence or fraud, and expressing views, in substance, on which party is likely to succeed at trial. Orders become lengthy for a single reason: the court passing them has, whether consciously or not, entered upon the final merits of the controversy and conducted what is, in substance, a mini - trial upon affidavits and documents that properly await the leading of evidence.

38. This is not what Order XXXIX requires, nor what the law permits - whether of the court of first instance or of an appellate court reviewing it. Lord Diplock's caution (*American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396), that the interlocutory stage is not the occasion to resolve conflicts of evidence on affidavit or to decide difficult questions of law calling for mature consideration, has been consistently accepted in India. This Court (*Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.*, (1999) 7 SCC 1), emphasised the court's reluctance to decide difficult questions of law or fact at the interlocutory stage. The scope of examination on an application under Order XXXIX - and, equally, of an appeal against an order made on such an application - is confined to the limited and threshold question whether the plaintiff has shown a serious dispute meriting investigation at trial; it does not extend to an examination of the final effect, probative value or ultimate merits of the documents annexed to the pleadings, which is the trial court's task, to be undertaken after evidence and not before."

15. In Midas Hygiene Industries Pvt. Ltd. and Another



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v. Sudhir Bhatia and Others [2004 KHC 467], the Supreme Court held that, in cases involving infringement of a trade mark or copyright, an injunction would ordinarily follow.

Applying the principles laid down in the afore-cited decisions to the facts and materials on record, and for the reasons set out herein above and in the impugned order, I am satisfied that the respondent has established a prima facie case, supported by materials indicating prior commercial use of the 'Brahmins' trade mark. The balance of convenience is also in favour of the respondent. If the impugned use is ultimately found to infringe the respondent's rights, its continued use may erode the distinctiveness of the trade mark and cause injury not readily compensable in damages. These conclusions are tentative and shall not prejudice the final adjudication of the suit. I find no arbitrariness or perversity in the impugned order warranting inference by this Court. The appeal is meritless and is accordingly dismissed. The Trial



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Court is directed to decide the suit, ²⁵ in accordance with law, untrammelled by any observation made either in the impugned order or in this judgment.

Sd/-

C.S.DIAS, JUDGE

rmm/24/10/2026



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APPENDIX OF FAO NO. 95 OF 2026

RESPONDENT ANNEXURES

Annexure R1 (a)	True Copy of the Trademark Registration Certificate with No. 5820846 in class 3 issued to the Plaintiff dated 18.05.2025
Annexure R1 (b)	True copy of the Trademark Registration Certificate with No. 5820851 in class 5 issued to the Plaintiff dated 17.10.2024
Annexure R1 (c)	True copy Of the Trademark Registration Certificate with NO. 5820853 in class 29 issued to the Plaintiff dated 05.02.2026
Annexure R1 (d)	True copy of the Trademark Registration Certificate with NO. 5820855 in class 30 issued to the Plaintiff dated 01.05.2026
Annexure R1 (e)	True copy of the Trademark Registration Certificate with No. 5820857 in class 43 issued to the Plaintiff dated 27.11.2025
Annexure R1 (f)	True copy of the Trademark Registration Certificate with NO. 5786278 in class 29 and 30 issued to the Plaintiff dated 02.08.2025
Annexure R1 (g)	True copy of the Trademark Registration Certificate with No. 5786281 in class 29 and 30 issued to the Plaintiff dated 07.06.2025.
Annexure R1 (h)	True copy of the Trademark Registration Certificate with NO. 5786283 in class 29 and 30 issued to the Plaintiff dated 21.09.2024
Annexure R1 (I)	True copy of the Trademark Registration Certificate with No. 5786284 in class 29 and 30 issued to the Plaintiff dated 19.04.2025.
Annexure R1 (j)	True copy of the Trademark Registration Certificate with No.4541270 in class 43 issued to the Plaintiff dated 04.05.2024
Annexure R1 (k)	True copy of the Trademark Registration Certificate with No.4541265 in class 29 issued to the Plaintiff dated 06.12.2023



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- Annexure R1 (l) True copy of the Trademark Registration Certificate with No. 5908270 in class 29 issued to the Plaintiff dated 04.10.2025
- Annexure R1 (m) True copy of the Trademark Registration Certificate with No. 5908271 in class 30 issued to the Plaintiff dated 02.05.2024.
- Annexure R1 (n) True copy of the interim order dated 21/3/2025 in I.A No. 4/2025 in os. 15/2025.
- Annexure R1 (o) True copy of the Judgment dated 25/11/2025 in O.S 15/2025.
- Annexure R1 (p) True copy of the Compromise Decree dated 25/ 11/2025 in O.S 15/2025.
- Annexure R1 (q) True copy of the notice dated 01.02.2023 issued by the Respondent and the response dated 02.03.2023 from Manjilas Food Tech Private Limited.