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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 06.05.2026*

\+ **RFA(COMM) 149/2026**

BHHUTPORV ARDH SAINIK KALYAN CANTEEN/ EX-ARDH SAINIK KALYAN CANTEEN,

.....APPELLANT

Through: Mr. Umesh Sharma & Ms Chhaya Sharma, Advs.

versus

ARDH SAINIK CANTEEN & ANR. .....RESPONDENTS

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (*ORAL*)

CM APPL. 16587/2026 *(Exemption)*

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 23278/2026 *(For condonation of delay)*

3. For the reasons stated in the application, the delay of 57 days in re-filing the appeal is condoned.

4. The application stands disposed of.

RFA(COMM) 149/2026 & CM APPL. 16586/2026

5. This appeal has been filed under Section 13 of the Commercial Courts

Act, read with Order XLI of the Code of Civil Procedure, 1908 ['CPC'], against the judgment and decree dated 28.10.2025 ['impugned judgment'] passed by the District Judge (Commercial Court) in CS(COMM) 184/2023.

FACTUAL MATRIX

6. Respondent No. 1 is engaged in providing ready-to-work opportunities to army personnel in various fields for running stores by the name of 'Ardh Sainik Canteen' since 2015. Respondent No. 2 is the proprietor and has a registration for the device mark ' 

bearing TM No. 5188201. It is stated that the words 'Ardh Sainik Canteen' are the dominant feature of this device mark.

6.1. It is stated that the Appellant and his father had approached the Respondents in June 2022 for obtaining a franchise from the Respondents for running and operating a store with the name 'Ardh Sainik Canteen' as well as purchasing goods to be sold at the store, by paying a sum of Rs. 55,000/- [Rupees 5,000/- as registration amount and Rupees 50,000/- as ASC Franchisee service charge]. It is stated that an agreement was executed between the Appellant's father and the Respondents, which was proved during the course of arguments through franchise agreement(s) [Ex. DW1/PX1 and Ex. DW1/PX2]. It is stated that the Appellant and his father learnt about the mode of operation of the franchise store from the Respondents. However, the franchise agreement was not acted upon by the Appellant or his father and the sum of Rs. 50,000 was returned by the

Respondents.

6.2. Subsequently, the Respondents came across an advertisement by the Appellant, and learnt that the Appellant had been using the mark 'Bhhotpurv Ardh Sainik Kalyan Canteen/ भूतपुरअर्द्धसैनिककल्याणकैंटीन, ['impugned mark'], which was deceptively similar to the Respondents' mark and the Appellant was targeting the same consumers as those of the Respondents.

6.3. It is stated that the Respondents issued a legal notice dated 23.01.2023; however, the Appellant denied that the impugned mark was similar to that of the Respondents *vide* reply dated 12.03.2023.

6.4. In these facts, the Respondents filed a suit inter alia seeking a permanent injunction against the Appellant. The matter proceeded to trial, and the parties led evidence during which the facts pertaining to prior franchise agreement and knowledge of the Appellant as regards the Respondents' proprietorship in the mark stood proved.

6.5. The Trial Court passed the impugned judgment in favour of the Respondents and granted damages of Rs. 3,00,000/- [Rupees Three Lakhs only] along with counsel's fee quantified at Rs. 22,000/- [Rupees Twenty-Two Thousand only] as costs, payable by the Appellant, whilst permanently restraining the Appellant from using the mark Bhhotpurv Ardh Sainik Kalyan Canteen / भूतपुरअर्द्धसैनिककल्याणकैंटीन.

7. In these facts, the Appellant has preferred the present appeal.

COURT'S FINDINGS

8. This Court has heard the learned counsel for the Appellant and has perused the record.

9. The Appellant has argued that the suit was filed by two plaintiffs [Respondents herein], and in the impugned judgment, the Trial Court agrees that no document evidencing authorization in favour of the person who filed the suit on behalf of Respondent No. 1 has been brought on record. The Appellant contends that, in view of the said finding at paragraph '11' of the impugned judgment, the plaint ought to have been dismissed.

10. We are unable to accept this contention of the Appellant. The suit has been filed for permanent injunction on the ground that the Appellant's use of the impugned mark infringes the registered mark of Respondent No. 2. The Appellant does not dispute that Respondent No. 2 is the proprietor of the registered trademark.

11. The Trial Court has rightly held that in the absence of any challenge to the maintainability of the suit by and on behalf of Respondent No. 2, the lack of evidence with respect to authorization of the person instituting on behalf of Respondent No. 1 is not sufficient to dismiss the suit at the stage of final arguments.

12. The suit for infringement, having been validly instituted and pursued by Respondent No. 2, who is the registered proprietor of the mark, was maintainable in law, and the objection sought to be raised qua lack of authorization on behalf of Respondent No. 1 was therefore not sufficient to warrant dismissal of the suit. Respondent No. 1 was a proper party, and the suit for infringement could have been maintained by Respondent No. 2

alone.

13. No objection with respect to the lack of authorization on behalf of Respondent No. 1 was raised in the written statement, and therefore, no issue was framed in the suit in this regard. This objection was raised only during final arguments and ought to have been rejected on this ground alone. Even otherwise, Courts have held that an objection with respect to lack of proper authorization on behalf of a corporate entity while instituting the suit is a curable defect, and the corporate entity can produce the due authorization even at the stage of appeal [**Re: United Bank of India v. Naresh Kumar**[1]]. Thus, dismissing this suit on this ground would have even otherwise not been warranted.

We concur with the aforesaid finding returned by the Trial Court, and do not find this ground raised by the Appellant to constitute any valid ground for interference with the impugned judgment.

14. Next, learned counsel for the Appellant has contended that no cogent evidence was led by the Respondents to prove actual confusion amongst the consumers.

15. It is trite law that in cases of infringement, the test to be applied by the Court is whether the impugned mark used by the defendant is identical or deceptively similar to the plaintiff's registered mark. In such cases, any proof of *actual* confusion is not necessary; demonstration of a likelihood of confusion or association is sufficient to sustain an action for infringement by a registered proprietor [**Re: Renaissance Hotel Holdings Inc. v. B. Vijaya**

[1] (1996) 6 SCC 660

Sai and Others[2]]. Furthermore, the aspect of deceptive similarity of the rival marks, where the goods are identical, is not to be decided on evidence but based on the Court's perception. [**Re: K.R. Chinna Krishna Chettiar v. Shri Ambal & Co**.[3] and **WOW MOMO Foods Private Limited v. WOW Burger and Another**[4]**].** In the present case, there is no dispute that the goods dealt with by the parties are identical.

Therefore, in view of the settled law, the aforesaid submission of the Appellant is devoid of merit.

16. In any event, we are of the considered opinion that the impugned mark of the Appellant, i.e., Bhhotpurv Ardh Sainik Kalyan Canteen/ / भूतपुरअर्द्धसैनिककल्याणकैंटीन is deceptively similar to the registered mark of the Respondents, i.e., and its dominant feature 'Ardh Sainik Canteen'. The rival marks are structurally, phonetically, and deceptively similar and convey the same overall commercial impression to an average consumer with imperfect recollection. The rival marks deal in identical goods and cater to the same class of consumers through common and overlapping trade channels. In such circumstances, even minor similarities are sufficient to confuse and mislead an average consumer into believing that the Appellant's goods originate from, are associated with, or

[2] (2022) 5 SCC 1 [Paragraph Nos. 51 and 52]
[3] (1969) 2 SCC 131
[4] 2025 SCC OnLine Del 6545

are endorsed by the Respondents, thereby resulting in infringement of the Respondents' registered mark. Moreover, the facts pertaining to the execution of the franchise agreement between Appellant's father and Respondents show that the adoption of the impugned mark by the Appellant was not honest and was done with due notice of the Respondents' registered mark and the reputation and goodwill attached thereto.

17. Lastly, it is also the contention of the Appellant that the grant of damages of Rs. 3,00,000/- is erroneous.

18. It is settled law that the onus to prove damages is unequivocally upon the plaintiff. The plaintiff must furnish cogent and material evidence that demonstrates the actual loss suffered by the plaintiff on account of the use of the impugned mark by the defendant.

However, on a bare perusal of the documents placed on record, it is evident that the Respondents have not lead any evidence to show the actual loss suffered by them.

19. Nevertheless, in view of the finding of the Trial Court with respect to infringement, the Trial Court was empowered to award nominal damages to the registered proprietor of the mark, who has been able to establish a case of infringement in its favour and against the defendant. Such a plaintiff is entitled to receive compensation for the wrongful actions of the defendant. In this case, the findings show that the Appellant was not an innocent infringer and had adopted the impugned mark, consciously with the intent to ride upon the reputation and goodwill of the Respondents' mark. [**Re: Kabushiki Kaisha Toshiba v. Tosiba Appliances**[5]]. The Appellant was served with a cease-and-desist notice and it failed to stop its infringing

activities even thereafter, compelling the Respondents to file the suit, therefore the Appellant was a wilful infringer and liable to pay nominal damages.

20. In the facts of this case, the father of the Appellant's father had approached the Respondents to seek a franchise for operating a store under the registered trademark. As per the terms of the franchise agreement(s) dated 03.06.2022 [Ex.DW1/PX1 and Ex.DW1/PX2], the Appellant's father undertook to pay franchise charges and also made a substantial payment for purchasing stock from the Respondents for sale from the store. However, the Appellant inexplicably chose not to proceed with the franchise arrangement and, it appears that upon gaining knowledge of the Respondents' business model and modus operandi, commenced an identical business under the impugned mark. The Appellant accepted refund of the amounts paid under the franchise agreement. Thereafter, the Appellant commenced carrying on business operations under the impugned mark from the year 2022, despite being fully aware of the Respondents' prior rights and registered trademark. The conduct of the Appellant, therefore, clearly demonstrates a calculated attempt to appropriate and imitate the Respondents' business, rendering the adoption of the impugned mark dishonest.

In the considered opinion of this Court, the Respondents are entitled to nominal damages. In the facts noted above, the award of damages of Rs. 3,00,000/-, awarded by the Trial Court, cannot be said to be excessive or arbitrary. The said amount appears to be fair and reasonable, keeping in view the terms and conditions of the franchise agreement.

21. This Court concurs with the opinion of the Trial Court, and finds that

[5]2024 SCC OnLine Del 5594 [Paragraph Nos: 138, 139 and 140]

the impugned judgment does not merit interference.

22. Accordingly, the appeal is dismissed.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

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