



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

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Date of decision: May 15, 2025

+ CM(M)-IPD 18/2025, CM APPL. 26694/2025-Stay, CM APPL. 26695/2025-Exp

PRINCIPAL COMMISSIONER OF CUSTOMS JAWAHARLAL NEHRU CUSTOMS HOUSE AND ANRPetitioners

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Shreya Lamba, Mr. Rihit Saha and Mr. Umang Mishra, Advs.

versus

LOREAL SA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. The present petition under Article 227 of the Constitution of India was filed seeking the following reliefs:

“a. Quash and set aside the impugned orders dated 05.09.2024, 20.09.2024, 27.09.2024, 19.10.2024 passed in CS(COMM)129/2023 and orders dated 24.10.2024, 11.11.2024 and 17.01.2025 in MISC DJ/3624/2024, passed by the Ld. District Judge (Commercial Court)-02, Patiala House Courts, New Delhi.

2.

b. pass any and such and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;”

2. On 02.05.2025, when the present matter was received on transfer before this Court, Mr. Aditya Singla, learned counsel for the petitioners sought liberty to confine his arguments and reliefs only *qua* the challenge to the order dated 17.01.2025 passed by the learned District Judge (Commercial Court)-02, Patiala House Courts, New Delhi¹ in MISC

¹ hereinafter referred to as “*learned Trial Court*”



DJ/3624/2024 whereby, the learned Revenue Secretary, Ministry of Finance, Government of India was called upon to file an Action Taken Report² within a period of six weeks (paragraph nos.34 and 35). Furthermore, Mr. Aditya Singla also sought to refrain from making any arguments *qua* challenge to the orders dated 05.09.2024, 20.09.2024, 27.09.2024, 19.10.2024 passed by the learned Trial Court in CS (COMM) 129/2023 [OLD No.-TM NO.59/2018]³ and orders dated 24.10.2024 and 11.11.2024 also passed by the same learned Trial Court in MISC DJ/3624/2024 and sought liberty to challenge the same by way of appropriate proceedings before another forum in accordance with law.

3. Thereafter, on 13.05.2025, Mr. Aditya Singla sought some time for addressing arguments on the issue of maintainability and the matter was adjourned for today i.e. 15.05.2025.

4. The issue in the present petition under *Article* 227 of the Constitution of India has arisen out of MISC DJ/3624/2024, which was separately opened subsequent to passing of the judgment and decree dated 19.10.2024 in CS (COMM) 129/2023 filed by the respondent/ plaintiff M/s. Loreal SA against the defendant no.1 therein *M/s Graphics Traders & Ors.*, the petitioner no.1/ defendant no.2 Office of the Principal Commissioner of Customs and the petitioner no.2/ defendant no.3 Commissioner of Customs (RI&I), seeking the following reliefs:

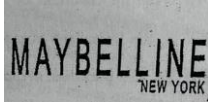
“a) For a decree of permanent injunction restraining the defendant no.1 by itself/themselves as also through his/their individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on its behalf from using,

² hereinafter referred to as “*ATR*”

³ hereinafter referred to as “*CS(COMM) 130/2023*”

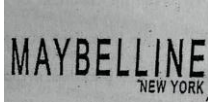


selling, soliciting, importing (in any manner or from any other port), exporting, displaying, advertising or by any other mode or in any manner using the Plaintiff's said trademarks MAYBELLINE, BABY LIPS (with or without MAYBELLINE) and trademarks/labels/packaging and/or any other word/mark/label/packaging which may be identical with and/or deceptively similar to the plaintiff's said

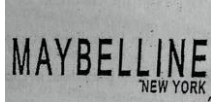
trademark/label MAYBELLINE,  BABY LIPS (with or without MAYBELLINE) in trading of cosmetics and toiletries, hair care products and beauty products including make-up preparations and accessories used therefore and other allied/related products and from doing any other acts or deeds amounting to or likely to:-

i. Infringement of plaintiff's registered trademarks/labels as mentioned above.

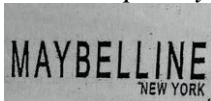
ii. Passing off and violation of the plaintiff's rights in the plaintiff's

said trademark MAYBELLINE,  BABY LIPS (with or without MAYBELLINE)

iii. Infringing the Copyright in the artwork of the plaintiff's said

trademarks/labels/packaging viz. MAYBELLINE,  BABY LIPS (with or without MAYBELLINE)

b) Restraining and direct the defendant no. 2 & 3 from releasing and Defendant No.1 from obtaining release of impugned goods under trademark/label MAYBELLINE, BABY LIPS (with or without MAYBELLINE) and trademarks/labels/packaging and/ or any other word/mark/label/packaging which may be identical with and/or deceptively

similar to the plaintiff's said trademark MAYBELLINE,  NEW YORK, BABY LIPS (with or without MAYBELLINE) presently lying in the custody of Defendant No. 2 & 3 being consignment under Bill of Entry No. 4560421 dated 26/12/2017.

c) For a direction to Defendant No. 2 & 3 to absolute confiscate the impugned counterfeit goods bearing the Plaintiff's trademark/label under consignment under Bill of Entry No. 4560421 dated 26/12/2017 and liberty to the Plaintiff to destroy the said impugned goods in accordance with law.



- d) For an order for rendition of accounts of profits earned by the defendant no. 1 by its impugned illegal trade activities and a decree for the amount so found in favour of the plaintiff on such rendition of accounts.*
- e) To direct the defendant no. 1 to disclose details of the exporter/supplier from where such impugned goods have been supplied including the complete name, address, email id, contact number, bank details and other details relevant to the supplier of the impugned goods.*
- f) To direct the Defendant No.1 to disclose the details of all the entities involved in the infringement chain of the impugned goods including the details of shipping line, clearing agent, freight forwarder, mode of payment, bank transactions PAN details etc. and any other agency involved.*
- g) Restraining the defendant No.1 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.*
- h) To direct the Defendant No. 2 to expedite the adjudication & destruction proceedings.*
- i) For an order for cost of proceedings and*
- j) For such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

5. In the wake of the above, Mr. Aditya Singla submits that the sole relief sought before the learned Trial Court, qua the petitioners herein, was confiscation and non-release of the impugned counterfeit goods bearing the respondent's/ plaintiff's trademark/ label under consignment, i.e. bill of entry number 4560421 dated 26.12.2017.

6. During the course of hearing, Mr. Aditya Singla has handed over a copy of CS(COMM) 129/2023 as also the judgment and decree dated 19.10.2024 passed by the learned Trial Court, since the same have inadvertently not been filed as a part of the record before this Court. Considering the nature of the issue raised by the petitioners, as also since no



relief has been claimed against the respondent herein, the said documents are taken on record.

7. As per Mr. Aditya Singla, despite passing of the judgment and decree dated 19.10.2024, the same learned Trial Court by virtue of a separate order of even date has duly acknowledged that “*Vide separate detailed judgment of even date, announced in open court, the suit is decreed in favour of plaintiff and against the defendants with cost of the suit. Decree sheet be drawn up.*” and proceeded with initiation of MISC DJ/3624/2024, wherein the impugned order dated 17.01.2025 has been passed.

8. Of the many grounds taken, Mr. Aditya Singla has confined his arguments *qua* maintainability of the petition in the present form by submitting that it is a settled position of law that neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit.

9. Mr. Aditya Singla submits that since the judgment and decree dated 19.10.2024 had been passed by the learned Trial Court, the proceedings pending before the said Court became final and the learned Trial Court became *functus officio* and could not have exercised jurisdiction of issuing show cause notices and calling for Action Taken Reports especially, since no execution was filed/ is pending against the said judgment and decree dated 19.10.2024 and no fresh proceedings by way of MISC DJ/3624/2024 could have been initiated by the learned Trial Court. In order to substantiate his aforesaid submissions, he relies upon the pronouncements by the Hon’ble Supreme Court in ***Harshad Chiman Lal Modi v. DLF Universal***



*Ltd.*⁴ as also *Dr. Jagmittar Sain Bhagat v. Director, Health Services*⁵.

10. This Court has heard the submissions of the learned counsel for the petitioners and perused the documents on record as also the judgments cited at Bar.

11. The aforesaid reveals that, *admittedly*, the sole relief sought by the respondent before the learned Trial Court against the petitioners herein was only *qua* confiscation and non-release of the impugned counterfeit goods bearing the respondent's trademark/ label under consignment, i.e. bill of entry number 4560421 dated 26.12.2017. Also, *admittedly*, the learned Trial Court decreed CS(COMM) 129/2023 *vide* its judgment and decree dated 19.10.2024 in favour of the respondent. At the same time, *vide* a separate order passed by the same learned Trial Court on 19.10.2024, proceeded to pass the following directions:-

"... ..Record further shows that Reply-cum-Affidavit dated 19-9-2024 under the signature of concerned Deputy Commissioner of Customs, IPR Cell, Special Investigation and Intelligence Branch (Import) was filed before this Court on 20-9-2024. Thereafter, Status Report in the form of affidavit dated 26-9-2024, under the signature of concerned Commissioner of Customs was filed before the Court on 27-9-2024 followed by another Status Report in the form of affidavit dated 14-10-2024 under the signature of concerned Commissioner of Customs.

Having gone through the record, it is noted that in the inquiry report, copy of which, is annexed with the last Status Report dated 14-10-2024, it is recorded in Para No.6(d) that the panel counsel did not communicate the Court direction to the Centralized Legal Cell. In view thereof, Court finds it expedient in the interest of justice to call for the comments from the said panel counsel namely Sh. Satish Aggarwala, Advocate who was previously representing defendant nos. 2 and 3 in this matter, for next date."

⁴ (2005) 7 SCC 791

⁵ (2013) 10 SCC 136



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... .. In view of above discussion, the Show Cause Notice is kept pending and before issuing appropriate directions, the Court deems it appropriate to have benefit of the comments of the panel counsel of defendant nos. 2 and 3, as directed hereinabove, and to go through the Manual, 2019. Accordingly, the Ahlmad is directed to prepare separate file in this regard and to register it in the Misc. category and to place the copies of orders dated 20-1-2024 onwards till date, as also the copies of entire communications previously placed on record by the previous panel counsel of defendant nos. 2 and 3 and copies of all the Status Reports by way of affidavits filed from time to time, in the said Misc. File and to put up the same before this Court on the next date.

Ahlmad is further directed to call for the comments from panel counsel namely Sh. Satish Aggarwala, Advocate after providing copy of the Enquiry Report filed alongwith the Status Report dated 14-10-2024 for his information and necessary compliance.

The Misc. File is directed to be placed before this Court for issuing appropriate directions on 24-10-2024 at 12:30 p.m. ”

12. Therefore, by virtue of the order dated 19.10.2024, wherein the learned Trial Court has categorically acknowledged that “*Vide separate detailed judgment of even date, announced in open court, the suit is decreed in favour of plaintiff and against the defendants with cost of the suit. Decree sheet be drawn up.*” as also ordered to consign the file pertaining to CS(COMM) 129/2023 instituted by the respondent to the record room. In effect, the learned Trial Court could not have given any direction for opening a new file i.e. MISC DJ/3624/2024 by *suo moto* assuming jurisdiction and take up the same and pass repeated directions therein on 24.10.2024, 11.11.2024 and 17.01.2025.

13. As per the settled position of law, a Court which does not statutorily, or otherwise, have jurisdiction to try and entertain a proceeding, cannot *suo*



moto confer/ assume jurisdiction upon itself by any manner and/ or any reason whatsoever. What emerges therefrom is that the learned Trial Court had, even after passing of the judgment and decree dated 19.10.2024 *suo moto* conferred/ assumed jurisdiction of its own for the best reasons known to itself.

14. Reliance in this regard is placed upon ***Harshad Chiman (Supra)***, wherein the Hon'ble Supreme Court has been held as under:-

*“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) **Jurisdiction over the subject matter**. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. **Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.***

*31. In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated 317. Consent and waiver. **Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled.** Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. **No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a***



matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

32. *In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.*

33. *In Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 : AIR 1954 SC 340, this Court declared;*

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties." (emphasis supplied)"

[Emphasis supplied]

15. Reliance is also placed upon *Dr. Jagmittar Sain Bhagat (Supra)* wherein, the Hon'ble Supreme Court has held as under:-

"9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/ Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute

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11. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing; “it is an objection going to the nullity of the order on the ground of want of jurisdiction”. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue.”

16. The judicial dictum cited above clarifies the existing legal position as it stands today.

17. At the end of the day, the learned Trial Court was dealing with CS (COMM) 129/2023, being a suit for decree of permanent injunction restraining the defendant no.1 therein along with other ancillary reliefs therewith, which stood decreed on 19.10.2024, leaving nothing surviving therein.

18. Under these circumstances, after decreeing the suit *vide* the judgment and decree dated 19.10.2024, the learned Trial Court could not have proceeded and/ or passed the order dated 19.10.2024, especially, since after passing of the decree, the file was “*consigned to the record room*” and the learned Trial Court became *functus officio* and it did not profess/ have any ‘special powers’ to either reopen and/ or keep it pending for a purpose not connected with the proceedings, more so, since it was never part of the *lis inter se* the parties before it. Despite thereto, the learned Trial Court commenced proceedings in MISC DJ/3624/2024. Thus, under the existing scenario, the order dated 17.01.2025 passed by the learned Trial Court is *non-est*. This Court reiterates that jurisdiction is conferred not assumed. The learned Trial Court erred in moving ahead with *suo moto* commencing with



the proceedings in MISC DJ/3624/2024 without having jurisdiction to do so. As per the settled position of law, a Court which does not statutorily, or otherwise, have jurisdiction to try and entertain a proceeding cannot *suo moto* confer/ assume jurisdiction upon itself in any manner and/ or any reason whatsoever.

19. *Admittedly*, even though the petitioners have participated in MISC DJ/3624/2024 before the learned Trial Court and had given up their challenge to all the orders barring that of 17.01.2025 passed therein before this Court on 02.05.2025, the same would not and in fact cannot preclude this Court to take into account the cumulative facts that the learned Trial Court is acting without any jurisdiction to try and/ or entertain the proceedings not before it and accordingly proceed for adjudication of the present petition under *Article 227* of the Constitution of India which empowers the High Courts to exercise “...*superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction*”.

20. Even though the law *qua* exercising the rights under *Article 227* of the Constitution of India is well settled that the High Courts should not exercise its power of superintendence at the drop of a hat, however, at the same time, it is also a settled position of law that on coming across any patent perversity in the orders of any Court and/ or Tribunal which is glaringly visible, the High Courts applying the equitable principles, should exercise its power to keep strict overall administrative and judicial control over any Court and/ or Tribunal under its jurisdiction. The High Courts are required to step in, if called for, when such a situation, as above, is brought to the notice.



21. The present case is such wherein, the patent error is apparent on the face of the record, which if permitted to stand, shall lead to traversity of justice. The learned Trial Court cannot be allowed to proceed against the Statute and this Court has to stand by the principles of equity, justice and good conscience, more particularly, when the suit itself stood decreed on 19.10.2024 by the very same learned Trial Court.

22. As a result, upon a wholistical consideration of the factual matrix involved coupled with the provisions of Statute, as also the existing position of law, in the considered opinion of this Court, the present petition under Article 227 of the Constitution of India is maintainable in the present form before this Court.

23. In view thereof, the present petition is allowed and the order dated 17.01.2025 passed by the learned Trial Court in MISC DJ/3624/2024 is set aside. Resultantly, the proceedings initiated by the learned Trial Court in MISC DJ/3624/2024 and the orders passed therein are also set aside.

24. A copy of this order be sent to the concerned District Judge for information and compliance.

25. The present petition alongwith the pending applications stands disposed of.

SAURABH BANERJEE, J.

MAY 15, 2025/So