



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

% *Judgment delivered on: 31.01.2026*

+ **CS(COMM) 97/2020**  
SABU TRADE PVT LTD .....Plaintiff  
Versus  
RAJ KUMAR SABU & ANR .....Defendants

**Advocates who appeared in this case**

For the Plaintiff : Mr. J. Sai Deepak, Senior Advocate along with Mr. Lalltaksh Joshi & Ms. Ananya Sanjiv Saraogi, Advocates.

For the Defendants : Mr. Divyakant Lahoti, Ms. Vindhya Mehra, Mr. Samridhi Bhatt & Ms. Nupur Kumar, Advocates for Defendant No.1.

+ **CS(COMM) 761/2016**  
MR. RAJKUMAR SABU .....Plaintiff  
Versus  
MS. KAUSHALYA DEVI SABU & ORS. .....Defendants

**Advocates who appeared in this case**

For the Plaintiff : Mr. Divyakant Lahoti, Ms. Vindhya Mehra, Mr. Samridhi Bhatt & Ms. Nupur Kumar, Advocates.

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**CORAM:**  
**HON'BLE MR. JUSTICE TEJAS KARIA**



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## **JUDGMENT**

**TEJAS KARIA, J**

### **INTRODUCTION:**

1. The core controversy between the Parties in CS(COMM) 97/2020 (“**Suit**”) and CS(COMM) 761/2016 (“**Connected Suit**”) is about the proprietorship, adoption and use of the Mark ‘SACHAMOTI’ in relation to *Sabudana* and allied edible products.

### **FACTUAL BACKGROUND:**

2. The Suit earlier numbered as OS No. 148 of 2016 and filed before the District Court, Salem by Sabu Trade Private Limited against Mr. Rajkumar Sabu (“**Rajkumar Sabu**”) and AVMH Corporation i.e., Defendant Nos. 1 and 2, respectively, was transferred to this Court by the Supreme Court *vide* common order dated 18.07.2019 passed in Transfer Petition (C) Nos. 1676 of 2017, 1328 of 2018 and Civil Appeal Nos. 5644-5645 of 2019.

3. It is the case of Sabu Trade Private Limited that Kaushalya Devi Sabu and Gopal Sabu, the directors of Sabu Trade Private Limited, after having achieved success in the business by the name, M/s Sabu Traders (“**ST**”) i.e., the predecessor of Sabu Trade Private Limited, decided to incorporate a private limited company in the year 1993 and accordingly a company in the name of M/s Sabu Export Salem Pvt. Ltd. (“**SESPL**”) was incorporated on 05.05.1993 and the name of said company was changed to M/s Sabu Trade Private Limited (“**STPL**”) on 09.08.2006 with the following directors:

- (i) Kaushalya Devi Sabu
- (ii) Gopal Sabu



(iii) Shivnarayan Sabu

(iv) Rajkumar Sabu

4. It is the case of STPL that STPL is the true proprietor and prior user of the Mark 'SACHAMOTI' and that Rajkumar Sabu while being associated with STPL as a director and dealer / distributor, and dealing in goods bearing the Mark 'SACHAMOTI' in that capacity allegedly surreptitiously obtained trade mark registrations for the Mark 'SACHAMOTI' in his personal name.

5. The Connected Suit is filed by Rajkumar Sabu before this Court against the directors of STPL, i.e., Kaushalya Devi Sabu, Gopal Sabu arraigned as Defendant Nos. 1 and 2, respectively and STPL arraigned as Defendant No. 3 ("**Defendants**") permanently restraining the Defendants from using the Mark 'SACHAMOTI'.

6. It is the case of Rajkumar Sabu that the Mark 'SACHAMOTI' is registered in favour of Rajkumar Sabu in Class 30 *vide* application No. 1169859 and that on the basis of an affidavit dated 08.06.2016 of Late Smt. Chandrakanta Sabu, the mother of Rajkumar Sabu and Gopal Sabu ("**Affidavit**") the rights, title and interest in the Mark 'SACHAMOTI' stand assigned to Rajkumar Sabu, in 1997.

#### **APPLICATIONS ARISING FOR CONSIDERATION:**

7. In view of the overlapping factual matrix of the Suit and Connected Suit, the following Applications filed by the Parties in the Suit and Connected Suit are being decided by way of this common Judgment:

#### **Applications relating to Amendment of Pleadings**

8. I.A. No. 10994/2020 is filed by STPL for amendment of the Plaintiff in the Suit and I.A. No. 11028/2020 is filed by the Defendants for amendment



of the Written Statement in the Connected Suit (“**Amendment Applications**”), under Order VI Rule 17 read with Section 151 Code of Civil Procedure, 1908 (“**CPC**”) seeking following amendments:

9. STPL seeks the following amendments to the Plaintiff in the Suit:
  - (i) amendment of Paragraph No. XV containing averments relating to sales figures and advertisement expenditure;
  - (ii) insertion of Paragraph Nos. XXXV (A) to XXXV (G) containing allegations of breach of fiduciary duty, fraud and fabrication of the Affidavit;
  - (iii) amendment of Paragraph No. XXXX and Paragraph No. XXXXI relating to valuation of the Suit and
  - (iv) amendment of the Prayer clause by introducing relief to declare the Affidavit null and void and a direction to Rajkumar Sabu to transfer the rights in the Mark ‘SACHAMOTI’.
10. The Defendants in the Connected Suit seek amendment of Paragraph No. XIII of the Written Statement in the Connected Suit, which contains averments relating to sales figures and advertisement expenditure.

#### Applications relating to Interrogatories

11. I.A. No. 8922/2020 in the Suit is an application filed by STPL under Order XI Rule 2 of the CPC, as amended by the Commercial Courts Act, 2015 (“**CC Act**”), read with Chapter IV of the Delhi High Court (Original Side) Rules (“**Rules**”) and Section 151 CPC seeking permission to administer interrogatories filed as List of Interrogatories premised on the alleged inconsistencies in pleadings filed by Rajkumar Sabu, affidavits filed by Rajkumar Sabu before the Trade Marks Registry, and also the stand taken by Rajkumar Sabu in relevant proceedings.



12. I.A. No. 8923/2020 in the Connected Suit is an application filed under Section 151 CPC, seeking permission to rely upon the interrogatories filed in I.A. No. 8922/2020 in the Suit, along with the answers thereto. (**“Interrogatories Applications”**)

Applications relating to Additional Documents

13. I.A. No. 11390/2020 in the Connected Suit is an application under Section 151 CPC and I.A. No. 22008/2025 in the Suit is an application filed under Order XI Rule 5 of the CPC as amended by the CC Act, both filed by Rajkumar Sabu seeking to file the following additional documents:

- a. The response from the Public Information Officer, Regional Transport Office, Sankagiri, dated 24.11.2020, received on 01.12.2020 to the RTI dated 10.10.2020 filed by Rajkumar Sabu.
- b. The police complaint dated 18.06.2021 filed by Gopal Sabu / director of STPL before Tilak Marg, Police Station (“PS”) against Rajkumar Sabu, alleging forgery and fabrication of the Affidavit and the closure report dated 13.09.2021.
- c. The chargesheet dated 09.12.2024 filed under Sections 420, 467, 468, 471, 193 and 34 of the Indian Penal Code, 1860 (“IPC”) in FIR No. 240 of 2021, registered at PS Juni, Indore against STPL and its directors for allegedly forging the assignment deed dated 01.03.2016.
- d. A translated copy of cross-examination of Mr. Gopal Sabu / director of STPL dated 03.06.2022 in CC No. 82/2018. (**“Additional Documents”**)



### Criminal Miscellaneous Application

14. CRL.M.A. 12366/2020 in the Connected Suit is an application filed by Rajkumar Sabu under Section 340 read with Section 195(1)(b) of the Code of Criminal Procedure, 1972 ("CrPC") read with Sections 193, 209, 465, 467, 468, and 471 IPC, seeking initiation of inquiry against the Defendants in the Connected Suit for allegedly filing forged and fabricated documents before this Court and making false statements and averments.

### **SUBMISSIONS ON BEHALF OF STPL AND THE DEFENDANTS IN THE CONNECTED SUIT:**

#### Amendment Applications:

15. The following submissions were made in respect of the Amendment Applications by STPL and the Defendants in the Connected Suit:

15.1 The proposed amendment in the form of Paragraph No. XV of the Plaintiff in the Suit and Paragraph No. XIII of the Written Statement in the Connected Suit seeks to correct the alleged typographical errors / clarification in the original pleadings relating to sales figures and advertisement expenditure owing to an alleged error in quantum. The originally pleaded sales figures and advertisement expenditure, are the combined figures of ST i.e., a sole proprietorship firm of Kaushalya Devi Sabu and STPL wherein Kaushalya Devi Sabu is also a director. ST and STPL can be called one economic entity as both businesses were parallel and simultaneous.

15.2 The proposed addition of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit, relating to the allegations of breach



of fiduciary duty, seeks to explain and elaborate on pleadings already contained in Paragraph Nos. XIX, XXI and XXV in the original Plaintiff wherein it is averred that Rajkumar Sabu had fraudulently and illegally without the permission and knowledge of STPL during his tenure as the director / dealer and agent of STPL surreptitiously got the Mark 'SACHAMOTI' registered under No. 1169859 and 1421804 in Class 30.

- 15.3 The proposed addition of Paragraph Nos. XXXV(E) to XXXV (G) to the Plaintiff in the Suit, is in response to subsequent plea taken by Rajkumar Sabu in the Connected Suit filed on 09.06.2016 *qua* the allegedly forged Affidavit of Late Smt. Chandrakanta Sabu executed on 08.06.2016, both dates subsequent to the filing of Plaintiff on 02.06.2016 in Suit as originally filed before the District Court, Salem as O.S. No. 148 of 2016. STPL had no opportunity to deal with the Affidavit through the Plaintiff in the Suit, however, STPL has denied the Affidavit in the Connected Suit claiming it to be false and fabricated and specific averments have been made in the Written Statement to that effect in the Connected Suit.
- 15.4 The proposed addition of Paragraph No. XXXX (vi), Paragraph Nos. XXXX (vii), Paragraph No. XXXXI to the Plaintiff in the Suit pertaining to cause of action and court fee are consequential amendments to the proposed amendments sought in the form of Paragraph Nos. XXXV (A) to XXXV (G) to the Plaintiff in the Suit and are built on existing pleadings as filed in the original Plaintiff in the Suit.



- 15.5 The proposed amendments are sought as a matter of abundant precaution and to elaborate and explain the stand already taken by STPL in the Suit and by the Defendants in the Connected Suit. The proposed amendments are necessary to decide the real question of controversy, i.e., who is the owner of the Mark 'SACHAMOTI'.
- 15.6 There are no contradiction or a new stand that is now being taken up by way of the proposed amendments sought through the Amendment Applications, no admission of any kind has been withdrawn by STPL and that there is no change in the nature of relief sought in the Suit and the Connected Suit.
- 15.7 The Amendment Applications stand on a higher pedestal as the Amendment Applications have been filed before framing of issues and before commencement of trial. Thus, no prejudice would be caused to the Defendants in the Suit or Rajkumar Sabu in the Connected Suit, if the Amendment Applications are allowed.
- 15.8 Reliance was placed on ***LIC Vs Sanjeev Builders*** 2022 SCC Online SC 1128, to submit that the Supreme Court in ***Sanjeev Builders (supra)*** allowed amendment of plaint sought after 30 years and reiterated that the courts be liberal in granting amendment of pleadings, and that if a prayer for amendment merely adds to the facts already on record, the amendment would be allowed.
- 15.9 Reliance was also placed on ***Dinesh Goyal Vs Suman Agarwal*** 2024 SCC Online SC 2615, to submit that the Supreme Court in



**Dinesh Goyal** (*supra*) affirmed a liberal approach to allow amendments of pleadings, even after a trial has started, to ensure the ‘real question of controversy’ is decided.

15.10 The proposed amendments in the Amendment Applications are essential for the purpose of determining the real question of controversy between the Parties and thus deserves to be allowed.

**Interrogatories Applications:**

16. The following submissions were made in respect of the Interrogatories Applications by STPL and the Defendants in the Connected Suit:

16.1 The allegations that some of the invoices filed by STPL are forged and fabricated, were issued to the entity of Rajkumar Sabu i.e., Shiv Trading Company (“STC”), which Rajkumar Sabu never objected to or called in question at the time of the transaction. The Interrogatories Applications require Rajkumar Sabu to place on record STC’s purchase register for the relevant period which would reveal that the allegedly forged and fabricated invoices relate to the real transactions.

16.2 There are contradictions and falsehood in the pleadings filed by Rajkumar Sabu, such as in Paragraph No. 4 of the Plaintiff in the Connected Suit it is stated that ‘*M/s Shiv Trading Company was established in Indore by Smt. Chandrakanta Sabu in 1972 and in 1982, she adopted the trade mark SACHAMOTI*’ whereas application No. 1169859 in class 30 for the Mark ‘SACHAMOTI’ filed on 28.01.2003 claims user statement as 28.07.1997, thus, not claiming the user of the Mark ‘SACHAMOTI’ since 1982. The affidavit filed by Rajkumar



Sabu in 2003 in application No. 1169859 in class 30 further stated that STC is in business of Trading i.e., selling and not manufacturing. Therefore, as STC was not in the business of manufacturing and operating only in trading, the goods were sourced from STPL who had AGMARK for SACHAMOTI, i.e. the first AGMARK holder for Sabudana in India.

- 16.3 Further, contradictions and falsehood in the pleadings filed by Rajkumar Sabu arise in the form of copyright No. A-103337/2013 applied in 2013 with year of first publication as 1997 naming Rajkumar Sabu as author of the Mark 'SACHAMOTI' as opposed to the pleadings filed by Rajkumar Sabu in the Suit, wherein it is pleaded by Rajkumar Sabu that Late Smt. Chandrakanta Sabu was the adopter / author of the Mark 'SACHAMOTI'.
- 16.4 Rajkumar Sabu in the Written Statement filed in the Suit has also stated that '*The contents in paragraphs XXX and XXXI are partially admitted to the extent that the Plaintiff herein has filed a Rectification Petition before IPAB to challenge the registration of impugned trademark SACHAMOTI. But, the remaining contents are strongly denied and the plaintiff is put to strict proof of the same. Defendant No. 1 submits that Smt. Chandrakanta Sabu is the originator and original adopter of the trademark SACHAMOTI in the year 1982 and the Defendant No. 1 is the successor of the said trademark after he became the sole proprietor of M/S. Shiv Trading Company in 2000.*' However, Rajkumar Sabu according to his own statement



became a Sole Proprietor of STC in 2000, therefore, Rajkumar Sabu could not have become sole proprietor or such user in 1997.

16.5 Therefore, the interrogatories as filed are necessary to address these inconsistencies and facilitate adjudication of the dispute in the Suit and the Connected Suit and further shorten the litigation between the Parties.

Additional Documents:

17. The following submissions were made by STPL and the Defendants in the Connected Suit in respect of the application for Additional Documents:

Objection as to relevance

17.1 Rajkumar Sabu has nowhere contended in I.A. No. 11390/ 2020 filed in the Suit that the Additional Documents are relevant for adjudication of Crl. M.A. No. 12366 of 2020 filed in the Connected Suit. Thus, the Additional Documents may be seen only from their relevancy, if any, to the Amendment Applications.

17.2 The Additional Documents bear no reference to bills or sales figures or advertisement expenditure and thus, do not have any relation, connection or relevancy *vis-à-vis* the amendments sought through the Amendment Applications either.

17.3 The provisions of the CC Act may not be stretched to permit parties to file closure reports of criminal complaint, chargesheet and cross-examination in another criminal trial for adjudication of civil suits without establishing any relevancy as it results in delay in adjudication of the trial itself.



17.4 The false and frivolous plea of Rajkumar Sabu that allegedly Late Smt. Chandrakanta Sabu adopted the Mark 'Sachamoti' remains to be adjudicated by this Court. In this regard, the Defendants in the Written Statement filed in the Connected Suit have already pleaded as follows;

*"6. That the contents of para 6 of the Plaintiff are baseless, false, frivolous and therefore denied. It is denied that Smt. Chandrakanta Sabu had any rights and ownership in SACHAMOTI which could have entitled her to make any such alleged transfer of the said brand SACHAMOTI to the Plaintiff. The Plaintiff has not filed any documentary proof of the said alleged transfer."*

#### Objections to specific documents

17.5 The police complaint dated 18.06.2021 was closed due to pendency of the Suit, which is indicative from a perusal of the closure report dated 13.09.2021 to be read with the handwritten note of the SHO. Thus, police complaint dated 18.06.2021 and the closure report dated 13.09.2021 are not relevant and no benefit can inure to Rajkumar Sabu due to the police complaint dated 18.06.2021 and the closure report dated 13.09.2021.

17.6 Rajkumar Sabu has selectively filed the chargesheet dated 09.12.2024 filed in FIR No. 240 of 2021 to create prejudice against STPL before the Supreme Court in SLP(Crl.) No. 10783 of 2024 which is pending adjudication and filed by STPL in relation to quashing of FIR No. 240 of 2021, as any observations made in relation to the said chargesheet by this Court will be used by Rajkumar Sabu to his advantage in SLP(Crl.) No. 10783 of 2024. The chargesheet dated 09.12.2024 filed in FIR No. 240



of 2021 has no substantive evidentiary value and it simply contains allegations against the accused.

17.7 The chargesheet dated 09.12.2024 filed in FIR No. 240 of 2021 as filed by Rajkumar Sabu, deliberately conceal and suppress order dated 01.07.2021 passed by the High Court of Madhya Pradesh in MCRC No. 28120 of 2021 filed by STPL for quashing FIR No. 240 of 2021 registered at the behest of Rajkumar Sabu whereby further action pursuant to the FIR registered on 24.05.2021 as FIR No. 240 of 2021 at PS Juni Indore, District Indore was stayed and it was directed that no coercive action be taken against STPL. After MCRC No. 28120 of 2021 was dismissed by the High Court *vide* final order dated 29.07.2024, STPL filed SLP (Crl.) No. 10783 of 2024 wherein *vide* order dated 20.08.2024, the Supreme Court directed that no coercive action be taken against STPL. SLP (Crl.) No. 10783 of 2024 is pending adjudication as on the present date.

17.8 It is mentioned in the chargesheet dated 09.12.2024 filed in FIR No. 240 of 2021 as filed by Rajkumar Sabu that STPL applied for registration of the Mark ‘Sachamoti’ in 2010 ‘*without the knowledge of the complainant*’. Rajkumar Sabu was a director of STPL from 05.05.1993 till his resignation on 14.08.2015, thus, it cannot be assumed that Rajkumar Sabu had no knowledge about the registration of the Mark ‘Sachamoti’ in 2010. The fact that Rajkumar Sabu was a director at STPL from 1993 till 2015 is a material fact which finds no mention in the chargesheet dated 09.12.2024. The abuse of process of law by



Rajkumar Sabu and the fact that Rajkumar Sabu is hand in glove with the police is evident as the police have stated in the chargesheet dated 09.12.2024, that '*the ownership of the above intellectual property Sachamoti brand (class 30) belongs to the applicant*'. The ownership of the Mark 'Sachamoti' is the fundamental issue pending adjudication before this Court in the Suit and Connected Suit.

17.9 It is mentioned in the chargesheet dated 09.12.2024 that ST and STPL forged the assignment deed dated 01.03.2016 for assignment of rights in respect of the Mark 'SACHAMOTI' from Kaushalya Devi Sabu, to STPL ("**Assignment Deed**") and the agreement for allotment of shares dated 05.03.2016. Both the signatories to the Assignment Deed i.e., Mrs. Kaushalya Devi Sabu and Gopal Sabu have admitted their signatures on the Assignment Deed and the agreement for allotment of shares. Thus, there cannot be any forgery in relation thereto. Further, the Assignment Deed and the agreement for allotment of shares, admittedly, came to the knowledge of Rajkumar Sabu when both these documents were filed by STPL in its suit bearing OS No. 148 of 2016 i.e., the Suit filed on 02.06.2016. STPL itself disclosed the said documents with the Suit. The Assignment Deed and the agreement for allotment of shares pertains to ownership of the Mark 'Sachamoti' which is the fundamental issue pending adjudication before this Court in Suit and the Connected Suit. Thus, it is a purely civil dispute.



17.10 It is mentioned in the chargesheet dated 09.12.2024 that the '*creation of Sachamoti brand by late Chandrakanta Sabu and not by Kaushalya Sabu has been accepted by the accused in the order dated 22.3.2024 in FAO OS 6212024 in Delhi High Court*'. The chargesheet is dated 09.12.2024 and prior to it on 30.08.2024, STPL had moved an application for clarification of order dated 22.03.2024 seeking rectification of inadvertent observations recorded in order dated 22.03.2024 to the extent of above said alleged 'accepted' position. STPL has never pleaded the creation of Sachamoti brand by late Chandrakanta Sabu and has consistently contested and disputed the same which is evident from the Plaintiff in the Suit; Written Statement in the Connected Suit; appeal bearing FAO(OS) (COMM) No. 61 and 62 of 2024; as well as in pleadings that STPL filed before the Supreme Court and other High Courts in proceedings against Rajkumar Sabu.

17.11 The chargesheet dated 09.12.2024 adds section 193 of IPC on the ground that STPL did not produce the original of the Assignment Deed and agreement for allotment of shares before the police. The original Assignment Deed and agreement for allotment of shares both are filed by STPL in this Court, and thus, if the originals are lying before this Court, the non-production of the original of the Assignment Deed and agreement for allotment of shares cannot operate against STPL. The adjudication of Assignment Deed and agreement for allotment of shares is pending before this Court in the Suit.



Thus, alleged false evidence under section 193 IPC in the form of the same documents in FIR No. 240 of 2021 is double jeopardy which is done only to cause prejudice to STPL in the Suit.

- 17.12 FIR No. 1347 of 2022 is registered at the behest of Rajkumar Sabu for alleged violation of order dated 05.11.2020 passed by this Court in the Connected Suit and a contempt application bearing I.A. No. 8441 of 2022, filed by Rajkumar Sabu prior to registration of FIR No. 1347 of 2022 for the same grievance i.e., alleged violation of order dated 05.11.2020, is pending adjudication till date. FIR No. 1347 of 2022 immediately refers to MCRC No. 28120 which was filed by STPL for quashing of FIR No. 240 of 2021 wherein the chargesheet dated 09.12.2024 has been filed. Thus, the police are confusing facts and trying to create a false case against STPL where none exists.
- 17.13 In FIR No. 1347 of 2022, *vide* order dated 03.11.2022, the Supreme Court also directed that no coercive steps be taken against STPL until further orders by the High Court in the petition under Section 482 Cr.P.C. bearing MCRC No. 43601 of 2022. MCRC No. 43601 of 2022 was dismissed by the High Court of Madhya Pradesh on 29.07.2024 which was challenged by STPL before the Supreme Court and *vide* order dated 03.09.2024, the Supreme Court continued operation of earlier order dated 03.11.2022. The said SLP is also pending adjudication.



17.14 The copy of cross-examination of Gopal Sabu also has no relevancy. The portion from the cross-examination referred to by Rajkumar Sabu in the Additional Documents, was a result of a generic nod by Gopal Sabu during the course of cross-examination and Gopal Sabu never verbally answered the question referred by Rajkumar Sabu in affirmative. Consequently, when Rajkumar Sabu twisted a generic nod of Gopal Sabu to record an answer that Gopal Sabu never gave, Gopal Sabu immediately gave a voluntary statement clarifying his position.

17.15 As regards the allegation that despite merger ST continued to file GST returns is concerned, ST continued to file nil GST returns due to an outstanding tax refund and thus, mere filing of GST return by ST has no relevancy to facts and circumstances of the present case.

17.16 Thus, the Additional Documents sought to be brought on record are not vital for the efficacious hearing and adjudication of the present case and therefore, ought not to be permitted to be taken on record.

Crl.M.A. No. 12366/2020 in Connected Suit:

18. The following submissions were made in respect of Crl.M.A. No. 12366/2020 by the Defendants in the Connected Suit:

18.1 The allegedly forged and fabricated invoices were issued in 1996. As per the standard practices at that time the invoices were issued by hand on a paper bill. There is always a margin or an error when bills are issued by hand and a misspelt of a



letter or number was always a possibility. It is due to this reason that industry practice has evolved and the bills nowadays are electronically generated to mitigate the said margin of error.

- 18.2 The Defendants at that time during usual course of trade issued hundreds of bills in a day by hand due to which some clerical error may or may not have crept in, however, the same does not mean that the invoice is false or fabricated or that the Defendants had no sale during the relevant period.
- 18.3 Rajkumar Sabu till the August 2015 was one of the directors of STPL. Rajkumar Sabu being the director of STPL had free and full access to all the relevant documents of the STPL including but not limited to books of account of STPL.
- 18.4 The invoices filed by the Defendants in the Connected Suit are genuine and accurate as the same are prepared from the copies from the sales tax returns filed by the Defendants in the Connected Suit. Rajkumar Sabu had filed, in the proceedings before the IPAB, certain invoices of the Defendants pertaining to the year 2001 bearing the Central and State sales tax number; which Rajkumar Sabu is now claiming to be invalid post 1997. Rajkumar Sabu is estopped from diluting his earlier stand.
- 18.5 The Defendants' business is well spread out and the Defendants have voluminous sales. STPL is not a fly by night company. The accounts of STPL are regularly audited and the balance sheets are filed before the Registrar of Companies. The invoices filed by the Defendants in the Connected Suit are prepared from the copies from the sales tax returns filed by the



Defendants. Sales tax records of STPL would show that sales tax was deposited against the transactions reflected in the allegedly false invoices.

- 18.6 The statement of sales figures and advertisement expenditure as obtained from the Ministry of Corporate Affairs Website (“**MCA Website**”) and filed by Rajkumar Sabu to allege discrepancy in the sales figures and advertisement expenditure as filed by the Defendants in the Connected Suit, only contains the figures of STPL’s Head Office at Salem and does not include sale from its operation branches of Indore and Nagpur, which is well within the knowledge of Rajkumar Sabu, who was the distributor of STPL for the region of Madhya Pradesh and thus dealing with Indore branch as well as one of the director of STPL from May 1993 to August 2015. The Defendants in the Connected Suit have nowhere mentioned or claimed that the sales figures and advertisement expenses pertain exclusively to STPL.
- 18.7 There are many discrepancies in the Government department’s website making it not a reliable source and we have not yet reached the stage where Government records are fully digitized and up-to date especially in relation to records dating as far back as early 90s and that.
- 18.8 The Interrogatories Applications specifically requiring Rajkumar Sabu to place on record the purchase register for the relevant period would reveal that the transactions to which the allegedly forged and fabricated invoices relate to were real



transactions. Therefore, Crl. M.A. No. 12366/2020 in the Connected Suit cannot be adjudicated without trial and without the adjudication of the Interrogatories Application.

18.9 Though the Defendants were granted AGMARK certification on 19.07.1993, however, since the Defendants had applied for the above certification on 30.03.1993 and were in imminent anticipation of the same, the Defendants had in a *bona fide* belief started using the tagline '*Use Always Sachamoti and Chakra Traders*' since the date of application for the said certification.

18.10 There is no forgery in allegedly forged sales tax return from 06.04.1994 till 28.11.1994 of ST filed with reply to I.A. No.22008 of 2025 which reflects invoice dated 01.08.1994 and 02.09.1994, and that determination of the same is a matter of trial which will be proved or disproved during the course of evidence and thus cannot be decided at an interim stage in suit proceedings.

18.11 Reliance was placed on *Vishal Kapoor v. Sonal Kapoor*, 2014 SCC OnLine Del 4484 and *Dharampal Satyapal Sons (P) Ltd. v. IFB Agro Industries Ltd.*, 2019 SCC OnLine Del 11519 to submit that an application alleging perjury under section 340 of CrPC is to be decided at the time of final decision of the case and not at the interim stage and that the said provision cannot be resorted to satisfy a private grudge of the litigant, that an application under section 340 of CrPC, if allowed at an interim stage, would give a handle to one party against the other party



and give an unfair advantage to one party over the other party in suit proceeding, that where an allegedly forged document may cause a very serious or substantial injury to a person but where such document is just a piece of evidence, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice is minimal, the Court may not consider it expedient in the interest of justice to make a complaint.

18.12 Thus, as no case made out under Section 340 CrPC against the Defendants in the Connected Suit, Crl. M.A. No. 12366/2020 in the Connected Suit deserves to be dismissed.

#### **SUBMISSIONS ON BEHALF OF RAJKUMAR SABU:**

19. The following submissions were made on behalf of Rajkumar Sabu:
  - 19.1. Rajkumar Sabu was a never dealer / distributor of STPL at any point of time. The government fee of the trade mark applications was also not paid from the Defendants' money.
  - 19.2. The Mark 'SACHAMOTI' never belonged to any of the Defendants in the Connected Suit and, therefore, could not in any way be said to be covered by the fiduciary relation of Rajkumar Sabu with STPL.
  - 19.3. The only reason that the suit filed before District Judge, Salem was prior was because the Defendants in Connected Suit had maliciously hacked into Rajkumar Sabu's email account, which contained privileged information and communication with his lawyer regarding filing of the Suit against the Defendants and



that the Suit filed by STPL before the District Judge, Salem was a precipitate action as a counter to such an anticipated action by Rajkumar Sabu. An FIR dated 16.07.2016, bearing No. 55/2016 at PS Cyber Cell, Indore has also been lodged against the Defendants in the Connected Suit for hacking the email account of Rajkumar Sabu. After investigation, the Police has filed a chargesheet against the Defendants in the Connected Suit. The directors of STPL namely Gopal Sabu, Vikash Sabu and Vishal Sabu are out on bail in connection with the offence of hacking the personal and professional e-mail ID of Rajkumar Sabu.

19.4. STPL in the various pleadings and documents has taken stands, varying from admitting that the Mark 'SACHAMOTI' was registered in the name of Rajkumar Sabu and that STPL would take a no objection certificate from Rajkumar Sabu for registration in its name, to the Mark 'SACHAMOTI' being coined by one of the directors of STPL namely Kaushalya Devi Sabu, to the current stand of the term 'SACHAMOTI' being coined by Gopal Sabu.

Amendment Applications:

20. The following submissions were made by Rajkumar Sabu in respect of Amendment Applications:

Amendments are substantive, not clerical

20.1 STPL and the Defendants in the Connected Suit by seeking the amendments are attempting to change the nature of the Suit, improve their case and evade the consequences of making allegedly false statements and false claims. STPL has placed



these allegedly false sales figures and advertisement expenditure on record before various authorities and courts and till date no such clarification of the ‘combined figures’ has ever been placed on record. Therefore, the Amendments Applications ought not to be allowed.

- 20.2 The sales figures and advertisement expenditure, which allegedly have been deliberately misrepresented by STPL are relied upon by STPL before various authorities in order to assert the allegedly false claim on the Mark ‘SACHAMOTI’. By way of the Amendment Applications, STPL in the Suit and the Defendants in the Connected Suit are seeking to make changes in the sales figures and advertisement expenditure and also qualify the said figures to be ‘combined’ i.e., both of ST and STPL. The sales figures and advertisement expenditure sought to be amended have been represented to be for all marks of STPL including ‘CHAKRA’, ‘SABU’, ‘Gopal with Sabu’ etc., before various authorities. By way of the Amendments Applications, STPL and the Defendants in the Connected Suit are seeking to change that stand and represent the said figures as only ‘for’ the Mark ‘SACHAMOTI’ in place of ‘including’ the Mark ‘SACHAMOTI’.
- 20.3 In the Written Statement filed by the Defendants in the Connected Suit, two CA certified sales and promotion expenses of ST for the period 1984 to 2006 and of STPL for the period - 1993 to 2015, have been filed. A perusal of these documents shows that the amendment sought to be made now belatedly, is



bogus and an abuse of the process of law.

- 20.4 STPL had previously filed two applications being I.A. No. 7474/2020 relating to valuation of the Suit and Court fees, and I.A. No. 8939/2020 for amendment of the Plaintiff in the Suit seeking an amendment of the sales figures and advertisement expenditure after the same had been brought to the notice of the Court by Rajkumar Sabu as being false and fabricated. I.A. No. 7474/2020 was allowed *vide* Order dated 28.08.2020, and I.A. No. 8939/2020 was dismissed as withdrawn *vide* Order dated 05.10.2020 as not being in the correct format.
- 20.5 STPL filed I.A. No. 8939/2020 in the Suit as a counter blast to Crl. M.A. No. 12366/2020 in the Connected Suit, seeking an amendment of the allegedly false sales figures and advertisement expenditure after the same had been brought to the notice of the Court by Rajkumar Sabu. I.A. No. 8939/2020 in the Suit also sought to add certain paragraphs containing further allegations and alleged misdoings of Rajkumar Sabu, *vis-à-vis* the registration of the Mark 'SACHAMOTI' in his name.
- 20.6 By way of I.A. No. 10994 of 2020 in the Suit, STPL is also seeking to amend word 'SACHA MOTI' mentioned at various places in the Plaintiff in the Suit with the Mark 'SACHAMOTI' without any pleading. Thus, such amendments are not permissible.
- 20.7 An affidavit by Gopal Sabu filed before the Trade Marks Registry in application No. 2226836, for trade mark



‘SACHAMOTI’ applied by STPL, IPAB rectifications-ORA302/2015/TM/MUM and ORA/303/2015/TM/MUM filed by STPL, copyright rectification filed by STPL for copyright No. A-103337 of 2013, Salem suit O.A. 148/2016 which is now the Suit, Affidavit by Gopal Sabu filed before the Trade Marks registry in application No. 3094770 for trade mark ‘SACHAMOTI’ in Class 39 applied by STPL, the appeal before High Court of Madras being CMA No. 846/2018 filed by STPL, reply filed on behalf of STPL in SLP (Civil) No. 1472-1473/2019 filed before the Supreme Court, ‘SACHAMOTI’ multiclass application no. 4416374 filed by STPL in 2020 has time and again stated that the sales figures and advertisement expenditure referred to by STPL only pertain to STPL without any mention of ST and include the Mark ‘SACHAMOTI’, as opposed to the position sought to be introduced by way of the amendment of Paragraph No. XV of the Plaintiff in the Suit and Paragraph No. XIII of the Written Statement in the Connected Suit as being exclusively for the Mark ‘SACHAMOTI’.

20.8 The allegedly false sales figures and advertisement expenditure have been used by STPL to get an injunction against Rajkumar Sabu for the Mark ‘SACHAMOTI’ from the High Court of Madras at Chennai, and an injunction in a suit, being O.S. No. 150/2018 pending between STPL and another brother Shivnarayan Sabu before the Civil Judge, Salem with respect to the Mark ‘SACHAMOTI’. STPL in O.S. No. 150/2018 has used the allegedly false sales figures and advertisement expenditure



for the mark 'Sabu' to obtain an injunction against Shivnarayan Sabu, against the latter's use of the mark 'Sabumoti'.

- 20.9 STPL has also filed / submitted the allegedly false sales figures and advertisement expenditure before the Trade Marks Registry in its reply dated 27.03.2017 to the opposition in respect of the trade mark application No. 3498692 for the mark 'Gopal with Sabu', and in the reply dated 01.01.2017 to the examination report in respect of the mark 'Chakra' for trade mark application No. 2226838. STPL has also used the same figures in the application No. 4285508 for registration of the word mark 'Sabu' and in application No. 3094770 for registration of the Mark 'SACHAMOTI' under Class 39 before the Trade Marks Registry.
- 20.10 After using the allegedly false sales figures and advertisement expenditure to register other marks and obtaining injunction orders in its favor, STPL seeks to amend the pleadings, to use the sales figures earlier used for the Mark 'SACHAMOTI' as '*including other trademarks*' to now only '*for trademark Sachamoti*'. Thus, STPL is committing fraud against Rajkumar Sabu, other authorities and public at large.
- 20.11 The allegedly false sales figures and advertisement expenditure that are sought to be amended now without any documentary support are substantial amount, which cannot be merely a '*typographical error*'. The Supreme Court has defined '*typographical error*' as 'A mistake made in the printed / typed material during a printing / typing process. The term includes



errors due to mechanical failure or slips of the hand or finger, but usually ignores errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error.' An amendment seeking to change pleadings substantially which have been heavily relied upon by STPL cannot be said to be a '*typographical error*'. It is an intentional and calculated strategy to demonstrate exaggerated and inflated figures before the authorities / courts to form an opinion in its favour. The same can be demonstrated from the table reproduced below:

Financial Year	Figures as per Statement filed by Sabu Trade Private Limited at Delhi High Court		Figures as per Audited Financial Statements filed with Registrar of Companies (Ministry of Corporate Affairs (MCA) Website)			Differences in Sales	Differences in Sales Promotion Expenses
	Sales Statement	Sales Promotion Expenses	Sales	Sales Promotion & Advertising			
1993-94	1,02,31,703	1,14,457	1,83,286	5,650	1,00,48,417	1,08,807	
2002-03	37,50,000	1,14,494	1,99,980	0	35,50,020	1,14,494	
2003-04	3,83,70,796	62,633	0	0	3,83,70,796	62,633	
2004-05	4,56,99,944	1,30,546	3,27,174	0	4,53,72,770	1,30,546	
2005-06	6,77,70,660	66,779	3,86,943	0	6,73,83,717	66,779	
2006-07	7,82,74,868	5,01,820	1,27,50,412	25,338	6,55,24,456	4,76,482	

20.12 When the Mark 'SACHAMOTI' was applied for by Rajkumar Sabu in the year 2003 / 2005 and registered in his favour in 2006 / 2008 after following the due process of law, at that time also STPL had no right in the Mark 'SACHAMOTI' as per the Assignment Deed. Rajkumar Sabu resigned from STPL in August 2015 and the Suit was filed on 02.06.2016. If the alleged assignment through the Assignment Deed had taken place only



on 01.03.2016, i.e., after the resignation of Rajkumar Sabu as director from STPL then there cannot be any ground for breach of any fiduciary duty by Rajkumar Sabu as averred through the proposed addition of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit.

20.13 STPL cannot rely upon the Assignment Deed against which FIR No. 240 of 2021 has been lodged by Rajkumar Sabu against the Defendants in the Connected Suit on 24.05.2021 at PS Juni, Indore. Against FIR No. 240 of 2021, Gopal Sabu and Kaushalya Devi Sabu have filed MCRC No. 28120/2021 under Section 482, CrPC, before the High Court of Madhya Pradesh, Bench at Indore, seeking quashing of FIR No. 240 of 2021. Therefore, there is no plausible explanation as to why the averments relating to the Assignment Deed were not raised earlier when the same was within STPL's knowledge at the time of instituting the Suit on 02.06.2016.

20.14 STPL has made a claim in its Written Statement in the Connected Suit, that ST merged with STPL in the year 1993. It has been stated in the Assignment Deed and deed of indenture that ST closed its business in 2016 and hence, there is an assignment of the Mark 'SACHAMOTI' to STPL in 2016. However, the chargesheet dated 09.12.2024 filed in connection to FIR No. 240 of 2021 registered at PS Juni, Indore after an investigation revealed, *inter alia*, that ST continued to file GST returns till 2021, thereby proving both creation of the Assignment Deed and deed of indenture, to be allegedly false,



criminal, misleading and ill-intended.

- 20.15 The Amendment Applications seeks to amend and add Paragraph Nos. XXXV (E), (F) and (G) which are with respect to the Affidavit. The reason provided by STPL for belatedly adding Paragraph Nos. XXXV (E), (F) and (G) to the Plaintiff in the Suit that STPL did not get any opportunity to rebut the Affidavit is false and misleading. STPL had filed a counter claim in the Connected Suit before this Court which was later withdrawn, however there was no prayer made against the Affidavit in the said counter claim filed by STPL.
- 20.16 STPL was aware of the Affidavit and had opportunity to deal with the Affidavit. However, STPL sought to wait for five (5) years before raising any issue in the Suit, with respect to the Affidavit. While challenging the order passed by the District Court, Salem wherein the grant of interim injunction was denied to STPL, STPL itself has filed all the documents filed by Rajkumar Sabu in the Suit, before the High Court of Madras and yet no prayer in regard to declare the Affidavit as forged or fabricated was made before the District Court, Salem or the High Court of Madras or the Supreme Court. Thus, at no stage before the High Court of Madras in appeal or till the amendment filed in February 2020, no objection on the validity of the Affidavit was raised by STPL.
- 20.17 STPL has not adduced any evidence demonstrating that the Affidavit is allegedly false and fabricated. Mere assertions by STPL regarding a fact cannot be the basis of discarding the



Affidavit. The Affidavit was never questioned STPL when Late Smt. Chandrakanta Sabu was still alive. After the demise of the deponent Late Smt. Chandrakanta Sabu on 30.10.2016, STPL is now seeking to challenge the Affidavit, belatedly.

20.18 There is no explanation for the delay in filing the Amendment Applications and how STPL and / or the Defendants in the Connected Suit exercised due diligence which led to the filing of the Amendment Applications at this belated stage. Thus, in the absence of any explanation filing the Amendment Applications at this belated stage, the Amendment Applications cannot be allowed leading to STPL and / or the Defendants in the Connected Suit take advantage of their own wrong.

#### Prejudice to Rajkumar Sabu

20.19 STPL had taken benefit of the Plaintiff to gain an injunction order from the Madras High Court. The same sales figures and advertisement expenditure were presented and filed before the Supreme Court in SLP (C) 1472-1473 of 2019 to vacate the stay granted in favour of Rajkumar Sabu. Thus, the amendment sought to be made through the Amendment Applications would greatly prejudice Rajkumar Sabu as there is no way of going back in time to defend and counter the allegedly false sales figures and advertisement expenditure of STPL. Thus, having taken the advantage and benefit of the contents of the Plaintiff, STPL cannot now be allowed to approach the Court with unclean hands and take advantage of the same.



20.20 The Amendment Applications are an after-thought, and has been filed as an attempt to render an explanation to the allegedly false sales figures and advertisement expenditure as brought to the notice of this Court by way of Crl. M.A. No. 12366/2020 in the Connected Suit. The pleadings in the Suit are also complete. By amending the Plaintiff at this stage to mask criminality and improvising stand, which has been brought to the notice of this Court by Rajkumar Sabu through Crl. M.A. No. 12366/2020 in the Connected Suit, STPL wants to restart the process of completion of the pleadings which would delay the entire trial.

20.21 The amendments made to improve pleadings and better the claim cannot be allowed after more than five years from filing of the Suit, and the Connected Suit. The amendments sought through the Amendment Applications are also barred by the principles enshrined under Order II Rule 2 of the CPC.

20.22 Reliance was placed on *Eknath Nivrutti Hegadkar v. Aagatrap Dyanu Ghodake*, 2021 SCC OnLine Bom 770, *LIC v. Sanjeev Builders (P) Ltd.*, (2022) 16 SCC 1, *Basavaraj v. Indira*, (2024) 3 SCC 705, *South Konkan Distilleries v. Prabhakar Gajanan Naik*, (2008) 14 SCC 632, *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCC OnLine SC 65 to submit that amendments cannot be allowed when relief seeking declaration is barred by limitation.

20.23 Therefore, the Amendment Applications deserves to be dismissed.



### Interrogatories Applications:

21. The following submissions were made in respect of the Interrogatories Applications:

#### Interrogatories are not in the prescribed format

21.1 I.A. No. 8922/2020 in the Suit has been belatedly filed by STPL after more than four years from the institution of the Suit and three years of filing of the Written Statement by the Defendants in the Suit, with the intent to delay the trial in the Suit and the Connected Suit and only to try and ascertain as to what evidence Rajkumar Sabu has against the Defendants in the Connected Suit to support Crl. M.A. No. 12366/2020 in the Connected Suit pending adjudication before this Court.

21.2 As per due procedure of law as provided under the Rules, STPL is required to file an application seeking interrogatories within 15 days of the receipt of written statement from the defendant. Whereas, STPL has filed Interrogatories Applications after a period of 3.5 years from the date of filing of Written Statement in the Suit.

21.3 I.A. No. 8922/2020 in the Suit is also liable to be dismissed for non-compliance to the form and format provided in Form-2 in Appendix C of the CPC as amended by the CC Act. As per Form-2 of Appendix C, STPL is obligated to specify the Defendant who is to answer the said interrogatories. However, STPL has generically mentioned '*Defendant*' rather than specifying whether Defendant No. 1 or Defendant No. 2 are to answer the said Interrogatories. Due to such non-conformity of



the format and mandatory statutory requirements, I.A. No. 8922/2020 in the Suit is liable to be dismissed.

- 21.4 Form-2 of Appendix C also provides the form and manner in which the interrogatories are to be framed. However, STPL has put forth the interrogatories in the manner which *prima facie* show that they are in the nature of cross-examination.
- 21.5 STPL is attempting to misuse the process of law and is attempting to obtain information from Rajkumar Sabu, which is not relevant at this stage as well as to the trial. STPL has also failed to disclose a reasonable cause for seeking Interrogatories from Rajkumar Sabu after the completion of pleadings in the Suit and the Connected Suit.
- 21.6 I.A. No. 8922/2020 in the Suit has also not been served to Defendant No. 2 in the Suit. Thus, in the absence of service to all the Parties to the Suit, I.A. No. 8922/2020 in the Suit must be dismissed.

Interrogatories amount to fishing enquiry and cross examination

- 21.7 I.A. No. 8922/2020 in the Suit is a fishing and roving enquiry in order to fill up the lacuna in the STPL's own case. I.A. No. 8922/2020 in the Suit also seeks information from Rajkumar Sabu which is irrelevant, unnecessary and privileged in nature and cannot be so disclosed, and is not related to the matter in question involved in the Suit.
- 21.8 It has been held in a catena of judgments by the various Courts of the Country that the interrogatories which are in the nature of cross-examination will not be allowed and information that can



be obtained in cross examination cannot form the subject matter of interrogatories. Some of the Interrogatories as put forth by STPL and listed at Nos. 3, 4, 11, 31 are in the nature of cross-examination. STPL through the interrogatories is *mala fide* attempting to make roving enquiries and is trying to seek information on issues that can be sought at the stage of cross-examination of Rajkumar Sabu.

#### Reply to the inconsistencies flagged by STPL

- 21.9 The term ‘SACHAMOTI’ was coined by Late Smt. Chandrakanta Sabu in the year 1982, i.e., the same year when Late Smt. Chandrakanta Sabu coined the Mark ‘CHAKRA’ and handed over all rights, title and interest to Gopal Sabu in respect of the Mark ‘CHAKRA’. Thereafter, the complete rights, title and interest in Mark ‘SACHAMOTI’ were transferred by Late Smt. Chandrakanta Sabu to Rajkumar Sabu in the year 1997 and hence 28.07.1997 is mentioned in the trade mark applications filed by Rajkumar Sabu.
- 21.10 Late Smt. Chandrakanta Sabu had transferred the complete rights, title and interest in the Mark ‘SACHAMOTI’ to Rajkumar Sabu in the year 1997, when Rajkumar Sabu was also a partner in STC. As Rajkumar Sabu was in Indore looking after the business of STC with Late Smt. Chandrakanta Sabu, the use of the Mark ‘SACHAMOTI’ continued to be made. Thereafter, it was only in the year 2000, when Late Smt. Chandrakanta Sabu retired from the day to day functioning of the business of STC, Rajkumar Sabu took over as the sole proprietor of STC.



21.11 The alleged inconsistencies raised by STPL incorporates the sales made from 28.07.1997, i.e. after the Mark 'SACHAMOTI' was transferred to Rajkumar Sabu and depicts the proportional / *pro-rata* sales for the period 28.07.1997- 31.03.1998. Rajkumar Sabu has stated it to be from 01.04.1997-31.03.1998 in order to maintain uniformity in the particulars.

21.12 The alleged inconsistencies raised by STPL is inclusive of the total sales and sales expenses incurred for the promotion and advertisement of the Mark 'SACHAMOTI' by STC including while it was under the aegis of Late Smt. Chandrakanta Sabu as well as Rajkumar Sabu. Further, the alleged inconsistencies raised from the pleadings as filed by Rajkumar Sabu before the Trade Marks Registry refers to the sales made from the year 1997 onwards, specifically from 28.07.1997 till 31.03.1998, i.e., from the date when the Mark 'SACHAMOTI' was transferred to Rajkumar Sabu from Late Smt. Chandrakanta Sahu. Thus, the table incorporated therein depicts the actual sales for the period 28.07.1997-31.03.1998, however, Rajkumar Sabu has stated it to be from 01.04.1997-31.03.1998 in order to maintain uniformity in the particulars. Thus, there are no contradictions as alleged by STPL to support the Interrogatories Applications.



Additional Documents:

22. The following submissions were made in respect of applications for Additional Documents:

Relevance of documents

- 22.1. The Additional Documents are important to show / prove the wrongful, *mala fide* conduct of STPL and its directors, of making false statements, filing allegedly false / misleading evidence and forged fabricated documents, which as a consequence, renders STPL and its directors liable to be held accountable for their conduct in playing fraud on this Court and Rajkumar Sabu, including the abuse of process of law.
- 22.2. The Additional Documents are vital for the efficacious hearing and adjudication of the present case, as they *prima-facie* / admittedly establish that STPL or its directors are not the prior adopter-user of the Mark 'SACHAMOTI', and it is only Late Smt. Chandrakanta Sabu who had coined the Mark 'SACHAMOTI' in the year 1982; and thereafter, transferred the right, title and interest in the Mark 'SACHAMOTI' to Rajkumar Sabu as has been recorded in Affidavit, whose authenticity has also been verified and confirmed by a witness.
- 22.3. The Additional Documents show that after enquiry, the complaint dated 18.06.2021 filed by Gopal Sabu / director of STPL before PS Tilak Marg, against Rajkumar Sabu came to be closed on the statement of one Advocate Rajesh Solanki, who has stated that Smt. Chandrakanta Sabu signed the Affidavit in his presence and that during the cross-examination, Gopal Sabu



admitted before the Additional Judicial Magistrate, Salem, that Late Smt. Chandrakanta Sabu is the adopter of the Mark 'SACHAMOTI', and later retracted from the same.

- 22.4. The Additional Documents were not in possession / custody of Rajkumar Sabu at the time of filing of Written Statement in the Suit and / or the Plaintiff in the Connected Suit, as they have come into existence only thereafter i.e., during the pendency of the Suit and the Connected Suit. Therefore, despite exercising due-diligence, the Additional Documents could not have been brought on record at the time of filing of the Written Statement in the Suit or Plaintiff in the Connected Suit. No prejudice will be caused to STPL or the Defendants in the Connected Suit, if the Additional Documents are taken on record.
- 22.5. Even though the Additional Documents are not part of the pleadings before this Court, Rajkumar Sabu has filed the Additional Documents explaining their relevance-importance for the adjudication of the dispute between the Parties while contesting the Appeal bearing FAO (OS) (COMM.) Nos. 61 and 62 filed by STPL and its directors, against the injunction order dated 05.03.2024 before the Division Bench of this Court. The Additional Documents being a part of the record before the Appellate Court wherein STPL is the Appellant, it is a matter of record that STPL and its directors are already aware / in knowledge of the Additional Documents and their existence.
- 22.6. In response to Crl. M.A. No. 12366/2020, the Defendants in the Connected Suit had contended that the government records



pertaining to the vehicles were not maintained properly and may not be updated. Consequently, Rajkumar Sabu had sought the records from the Government Authorities by invoking the process under the Right to Information Act, 2005. The response to the RTI application shows that the vehicle as contended by the Defendants in the Connected Suit to have carried a weight of 10080 Kgs, is a two wheeler manufactured by a company named Hero Honda. The RTI response also shows that the details of the vehicle No. 'TN52A 1554' are the same as what had been filed by Rajkumar Sabu along with Crl. M.A. No. 12366/2020. Thus, the contentions of the Defendants in the Connected Suit that the documents maintained by the Government Authorities are not accurate cannot be entertained.

22.7. Thus, the Additional Documents are relevant for adjudication of dispute in the Suit and the Connected Suit and hence be taken on record.

**CRL.M.A. 12366/2020 in Connected Suit:**

23. The following submissions were made in respect of Crl. M.A. 12366/2020 in the Connected Suit:

**Prima facie case of falsehood**

23.1 The theory of '*combined figures*' is a concocted, bogus and false stand taken by the Defendants in the Connected Suit only as an afterthought to evade the consequences of the false statements and evidence made by them before the court of law. The chart of combined figures provided by the Defendants in the



Connected Suit also does not match the figures from the balance sheets of STPL or ST or the charts filed by the Defendants along with their Written Statement in the Connected Suit.

- 23.2 On perusal of the documents annexed by the Defendants along with the Written Statement in the Connected Suit, it is clear that the same sales figures and advertisement expenditure of STPL are now being shown as the combined sales of STPL and ST in the proposed Paragraph XIII of the Written Statement in the Connected Suit. This fallacy shows the commitment of the alleged offence by the Defendants putting on record allegedly false and fabricated documents and pleadings which the Defendants in the Connected Suit knew to be false.
- 23.3 The Defendants in the Connected Suit have admitted in their reply that the invoices were '*prepared from the copies from the sales tax returns filed by Defendants.*' Thus, these invoices have been allegedly fabricated to give false evidence before, and to mislead this Court.
- 23.4 Rajkumar Sabu was the director of STPL only from 1993-14.08.2015. The Defendants in the Connected Suit have started quoting the allegedly false sales figures and advertisement expenditure only after the resignation of Rajkumar Sabu from STPL and Rajkumar Sabu's refusal to issue no objection certificate in favour of the Defendants in the Connected Suit for registration of the Mark 'SACHAMOTI'. Rajkumar Sabu was aware of the actual sales figures and advertisement expenditure of STPL till the date Rajkumar Sabu was the director of STPL



i.e., 14.08.2015. Since Rajkumar Sabu had resigned from STPL in August 2015, Rajkumar Sabu did not have direct access to the STPL's records to prove forgery. Rajkumar Sabu, after taking legal advice, accessed the available records from the MCA Website.

- 23.5 In the Written Statement filed in the Connected Suit the Defendants have stated that ST got merged with STPL on 05.05.1993. However, even after being non-existent post-merger, the Written Statement filed in the Connected Suit states that ST assigned the Mark 'SACHAMOTI' to STPL on 01.03.2016 as it was decided to close business of ST. The Charge sheet in relation to FIR No. 240 of 2021 states that the Police found ST's GST being active in the year 2021. Thus, the Defendants have taken contradictory stand in the Connected Suit.
- 23.6 The Defendants in the Connected Suit have now admitted that the sales figures and advertisement expenditure filed by Rajkumar Sabu on the basis of record available with MCA website are the actual sales and promotion figures of STPL which reveals that at the time when Rajkumar Sabu applied for the Mark 'SACHAMOTI', that is on 28.01.2003, for application No. 1169859 and on 15.02.2006 for application no. 1421804, the actual sales of sago of STPL for year 2002-2003 was nil and similarly in the year 2005-2006 was merely Rs. 3,86,943.
- 23.7 The invoices of ST from 1993 to 1996 also mention the new State Sales Tax and Central Sales Tax Number, allotted to STC



only in the year 1997. An error can be made of quoting an old Central Sales Tax Number even after its expiry. However, the quoting of new Sales Tax Number which were allotted only in the year 1997, to be effective from 15.07.1997, on invoices issued between 1993-1996 is allegedly an act of falsification and fabrication of false invoices by the Defendants in the Connected Suit.

- 23.8 Lorry numbers mentioned on invoices relied on by the Defendants in the Connected Suit for carrying 20 tons of sago from Salem to Indore, as per official RTO information obtained through RTI are also of a motorcycle, ambassador car, etc.
- 23.9 The only clarification put forth by the Defendants in the Connected Suit on the allegations of forgery of invoices is that the same were raised on STC and thus if direction as sought for in I.A. No. 8923/2020 in the Connected Suit is passed and purchase register directed to be produced, the position as to the invoices will stand clarified. However, the purchase register for the period 01.04.1993 to 22.07.1993 is already filed by Rajkumar Sabu along with the replication in July 2016. As per the Defendants in the Connected Suit during this period, invoice No. 48 dated 11.06.1993, is issued to Rajkumar Sabu. However, as per the purchase register maintained by Rajkumar Sabu, invoice No. 48 pertains to 'starch' and not 'tapioca'. The allegedly forged invoice No. 48, mentions in hand - Sago common, Sachamoti.



23.10 The allegedly fabricated documents and false pleadings of the Defendants in the Connected Suit containing the allegedly false sales figures and advertisement expenditure are intended to be used in evidence in the present judicial proceeding before this Court, causing this Court to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of the present proceedings.

23.11 Based on the alleged falsified pleadings and / or fabricated documents, the High Court of Madras in the judgment dated 07.01.2019 in CMA No. 846/2018 and CMP No. 6995/2018 had observed that:

*“34. In the present case, there is prima facie evidence of advertisement and/or sales promotional activities undertaken by the appellant. There is also prima facie evidence to show the volume of business of the appellant company. Admittedly, the trial Court failed to appreciate the documents produced by the appellant.”*

23.12 Although the judgment dated 07.01.2019 in CMA No. 846/2018 and CMP No. 6995/2018 was set aside by the Supreme Court *vide* Order dated 18.07.2019 in C.A. No. 5644-6545/2019, however, the High Court of Madras had formed an opinion on basis of such false statement, evidence and pleadings filed by the Defendants in the Connected Suit.

23.13 Reliance was placed on *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370, wherein the Supreme Court, *inter alia*, observed that:

*“23. ... It is possible that such forged document or forgery may cause a very serious or substantial injury*



*to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."*

23.14 Reliance was further placed on ***Pritish v. State of Maharashtra***, (2002) 1 SCC 253, wherein the Supreme Court observed that:

*"9. ... that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is*



*not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”*

23.15 Reliance was placed on ***KG Marketing India v. Rashi Santosh Soni***, 2024 SCC OnLine Del 4553 wherein the plaintiff therein had filed and relied upon newspaper advertisements which were subsequently admitted to be forged and fabricated and earlier had sworn a statement of truth vouching for their authenticity. This Court, in ***KG Marketing India* (supra)** after holding that such reliance on forged and fabricated documents coupled with a false affidavit disclosed offences in relation to the Court proceedings, formed the opinion that a case was made out for registration of a complaint under Section 340 CrPC and directed the Registrar General to lodge a complaint before the concerned Judicial Magistrate and transmit the entire record for action in accordance with law, besides dismissing the suit filed on the basis of such forged newspaper advertisements with costs.

23.16 Reliance was placed on ***S.P. Chengalvaraya Naidu v. Jagannath***, (1994) 1 SCC 1 to submit that fraud is an act of deliberate deception to gain an advantage, and non-production or withholding of a vital document relevant to the litigation amounts to playing fraud on the Court, that a judgment or decree obtained by playing fraud on the Court is a nullity and has to be treated as a nullity by every court and can be challenged even in collateral proceedings, that there is a legal duty cast upon the



plaintiff to come to court with a true case and prove it by true evidence, as one who comes to the Court must come with clean hands and that a person whose case is based on falsehood has no right to approach the Court and can be summarily thrown out at any stage of the litigation.

23.17 Reliance was placed on *HS Bedi v. National Highway Authority of India*, 2016 SCC OnLine Del 432 wherein this Court, while examining the scope of Section 209 of the IPC, *inter alia*, observed that unless it is ensured that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations, that in order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation otherwise scarce and valuable time is consumed or more appropriately, wasted in a large number of uncalled for cases. This Court in *HS Bedi (supra)* further observed that it is necessary to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit, that it is a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs and that in appropriate cases the Courts may consider ordering



prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

23.18 Reliance was further placed on *Syed Nazim Husain v. Additional Principal Judge*, 2003 SCC OnLine All 2358 wherein the Allahabad High Court observed that:

*“4. In my view, if an application is moved in the pending case bringing to the notice of the court that any false evidence knowing well has been filed or fabricated in such proceedings, the court should dispose of the said application first before proceeding any further or before recording of further evidence.”*

### **ANALYSIS AND REASONING:**

#### **Amendment Applications:**

24. Before advertizing to the facts of the case, it is necessary to state the law governing an application under Order VI Rule 17 CPC. Order VI Rule 17 CPC reads as under :-

*“17. Amendment of pleadings. —The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

25. The Supreme Court in *Revajeetu Builders & Developers v. Narayanaswamy & Sons*, (2009) 10 SCC 84 on analyzing both the English and Indian cases, reiterated some basic principles which ought to be taken into consideration while deciding an application under Order VI Rule 17 of CPC-



- (i) Whether the amendment sought is imperative for proper and effective adjudication of the case;
- (ii) Whether the application for amendment is *bona fide* or *mala fide*;
- (iii) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (iv) Whether refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (v) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (vi) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

26. It is a settled law that where the amendment is sought before commencement of trial, the Court is required to be more liberal in its approach while deciding an application under Order VI Rule 17 of CPC and bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

27. The law settled on the subject requires that the Courts must not refuse *bona fide*, legitimate, honest and necessary amendments and should never permit *mala fide*, worthless and / or dishonest amendments.



28. Thus, the principles governing an application under Order VI Rule 17 of the CPC are well settled. While the Court is empowered to permit amendment of pleadings at any stage of the proceedings, such discretion provided under Order VI Rule 17 of the CPC is guided by the principles as above.

29. In the present case, the amendments sought by STPL in the Suit can broadly be classified into four categories, namely:

- (i) amendment of Paragraph No. XV containing averments relating to sales figures and advertisement expenditure;
- (ii) insertion of Paragraph Nos. XXXV (A) to XXXV (G) containing allegations of breach of fiduciary duty, fraud and fabrication of the Affidavit;
- (iii) amendment of Paragraph No. XXXX and Paragraph No. XXXXI relating to valuation of the Suit and
- (iv) amendment of the Prayer clause by introducing relief to declare the Affidavit null and void and a direction to Rajkumar Sabu to transfer the rights in the Mark 'SACHAMOTI'.

30. The explanation offered for seeking the amendment of the sales figures and advertisement expenditure pleaded in Paragraph No. XV of the Plaintiff in the Suit and in Paragraph No. XIII of the Written Statement in the Connected Suit is 'typographical errors', for the addition of Paragraph Nos. XXXV (A) to XXXV (G) containing allegations of breach of fiduciary duty, fraud and fabrication of the Affidavit is that the amendments therein are merely clarificatory in nature, for the amendment of Paragraph No. XXXX and Paragraph No. XXXXI relating to valuation of the Suit and the Prayer clause by introducing declaratory relief relating to the Affidavit is that the occurrence



of Affidavit is allegedly a subsequent event and that the same is necessary for the purpose of determining the real questions in controversy between the Parties along with a prayer for direction to Rajkumar Sabu to transfer the Mark 'SACHAMOTI' registrations under Nos. 1169859 and 1421804 in class 30 to STPL.

31. As the explanation offered for each of the proposed amendment to the Plaintiff in the Suit and the Written Statement in the Connected Suit is distinct, each amendment is required to be considered on the basis of its respective explanation.

32. The amendments relating to sales figures and advertisement expenditure have been sought on account of typographical errors. The Supreme Court in *J. Samuel v. Gattu Mahesh*, (2012) 2 SCC 300 defined 'typographical error' as under:

*"21. In the given facts, there is a clear lack of "due diligence" and the mistake committed certainly does not come within the preview of a typographical error. The term "typographical error" is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code."*

[Emphasis supplied]

33. A change of figures from ₹1,02,31,703 to ₹1,17,66,997; from ₹3,750,000 and ₹1,14,494 to ₹2,10,67,236 and ₹1,42,992 respectively; from ₹62,633 to ₹47,988; and from ₹6,77,70,660 to ₹6,78,95,750 cannot be characterised as mistakes arising from the printing or typing process, mechanical failure, or mere slips of the hand or finger. The variations sought



to be made through the proposed amendments to Paragraph No. XV of the Plaintiff in the Suit and in Paragraph No. XIII of the Written Statement in the Connected Suit involve substantial numerical changes affecting the overall quantum of the pleaded figures and cannot be regarded as clerical in nature.

34. It is also contended on behalf of STPL that the sales figures and advertisement expenditure originally pleaded were combined figures of ST and STPL, treating both entities as one economic unit. If the sales figures and advertisement expenditure were consciously pleaded as consolidated figures of two entities, yet described merely as sales figures and advertisement expenditure without attribution to any specific entity, the same cannot, in the same breath, be characterised as a typographical error. The justification put forth by STPL therefore appears to be inconsistent.

35. It is also required to be taken into consideration that the original sales figures and advertisement expenditure have been represented before various fora and statutory authorities as figures pertaining to all marks of STPL, including marks 'CHAKRA', 'SABU', 'GOPAL with SABU' and the Mark 'SACHAMOTI'. The Amendments Applications seeks to change that stand and represent the sales figures and advertisement expenditure as being only for the Mark 'SACHAMOTI' instead of 'including' the Mark 'SACHAMOTI'. No explanation has been put forth by STPL justifying this change in stand taken in the original Plaintiff.

36. Such variations cannot reasonably be attributed to typographical errors, and, therefore, the amendments to Paragraph No. XV of the Plaintiff in the Suit and Paragraph No. XIII of the Written Statement in the Connected Suit sought on the ground of typographical errors does not inspire confidence.



37. It is also important to take into account that the pleadings in the Suit were affirmed on affidavit, and the Managing Director of STPL, *vide* affidavit dated 20.02.2020, has deposed that the facts stated in the Plaintiff in the Suit are true and correct to his knowledge. The affidavit dated 02.07.2016 filed by a Director of STPL also verifies the Written Statement in the Connected Suit, containing the identical sales figures and advertisement expenditure again deposing that the facts stated in the Written Statement in the Connected Suit are true and correct to his knowledge. If pleadings so verified on affidavits are permitted to be freely altered in the absence of any satisfactory explanation, the sanctity attached to pleadings and affidavits would stand diluted. A liberal approach under Order VI Rule 17 CPC does not imply that amendments must be allowed as a matter of course. The discretion vested in the Court can be exercised where the amendment is *bona fide*. In the absence thereof, the proposed amendments relating to Paragraph No. XV of the Plaintiff in the Suit and Paragraph No. XIII of the Written Statement in the Connected Suit cannot be permitted.

38. The second set of amendments as sought in the Amendment Applications by way of addition of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit concern the relationship between the Parties, alleged violation of fiduciary obligations and the alleged circumstances surrounding the registration of the Mark 'SACHAMOTI' in favour of Rajkumar Sabu. On a comparison of the original Plaintiff and the proposed amendments, it is apparent that the amendments sought to be introduced by way of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit are based on the averments already contained in the Plaintiff. The original Plaintiff refers to the relationship between the Parties, the position of Rajkumar Sabu as a director



of STPL, his resignation in August 2015, and that the registration for the Mark 'SACHAMOTI' was obtained during the period when Rajkumar Sabu was associated with STPL. The proposed amendments by way of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit do not introduce any new facts, transactions and do not set up an independent or distinct cause of action but only offers a different or additional approach to the same facts. The proposed Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit seek to set out the legal consequences alleged to arise from Rajkumar Sabu's alleged conduct as pleaded in the original Plaintiff, including the nature of the relationship between the Parties and the duties asserted to flow therefrom, therefore, in view of the settled law governing an application under Order VI Rule 17 CPC, the proposed amendments in the form of addition of Paragraph Nos. XXXV (A) to XXXV (D) to the Plaintiff in the Suit deserves to be allowed.

39. The amendments seeking to incorporate pleadings by way of addition of Paragraph Nos. XXXV (E) to XXXV (G) to the Plaintiff in the Suit challenging reliance placed on the Affidavit similarly do not transform the nature of the Suit. The Affidavit is a document relied upon in the dispute relating to the Mark 'SACHAMOTI', and a challenge thereto constitutes a responsive and defensive pleading within the same cause of action. The proposed amendments are necessary for adjudication of the real question of controversy between the Parties and to enable this Court to effectively examine the rights claimed by the Parties in respect of the Mark 'SACHAMOTI'. The Written Statement in the Connected Suit based on the same factual matrix also contains the averments relating to the Affidavit.

40. As regards the contention of Rajkumar Sabu that the Amendment Applications are barred under Order II Rule 2 CPC, the same is devoid of



merit. The Supreme Court in *Sanjeev Builders* (*supra*) has discussed Order II Rule 2 CPC in detail as under:

*"48. In Upendra Narain Roy v. Janaki Nath Roy [Upendra Narain Roy v. Janaki Nath Roy, 1917 SCC OnLine Cal 121 : AIR 1919 Cal 904] , a Division Bench of the Calcutta High Court had an occasion to consider this question. Woodroffe, J. has observed : (SCC OnLine Cal)*

*"... As regards the other point it has more ingenuity than substance. It proceeds on the erroneous assumption that the amendment was prohibited by Order 2 Rule 2. This Rule does not touch the matter before us. It refers to a case where there has been a suit in which there has been an omission, to sue in respect of portion of a claim, and a decree has been made in that suit. In that case a second suit in respect of the portion so omitted is barred. That is not the case here. In the present case the suit has not been heard but a claim has been omitted by, it is said, inadvertence. To hold that in such case an amendment should not be allowed would be to hold something which the Rule does not say and which would be absurd. The Rule says "he shall not afterwards sue," that is, it assumes that there has been a suit carried to a decision, and a subsequent suit. It does not apply to amendment where there has been only one suit. As the plaintiff had in law a right to apply for an amendment before the conclusion of his suit, it cannot be said that any rights of the respondent in the Pabna suit are affected. Such a contention is based on the erroneous assumption that nothing could be done by way of amendment of the Calcutta suit to remove the objection that the claims on the previous mortgage or charge were not sustainable. A case would fall within Order 2 Rule 2, only if a plaintiff fails to apply for amendment before decree, and then brings another suit. The plaintiffs are not doing that but asking for amendment in the one and only suit they have brought. This is, therefore, not a case in which the amendment either affects rights to the other party, or otherwise prejudices him."*

*(emphasis supplied)*

*49. A Constitution Bench of this Court, considering the scope and applicability of Order 2 Rule 2CPC, in Gurbux Singh v. Bhooralal [Gurbux Singh v. Bhooralal, 1964 SCC OnLine SC 101 : AIR 1964 SC 1810] , held as under:*



*“6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out : (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS No. 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable.”*

*50. So far as Gurbux Singh [Gurbux Singh v. Bhooralal, 1964 SCC OnLine SC 101 : AIR 1964 SC 1810] is concerned, we may clarify that the entire consideration in the said case by this Court was to the fact that there was a relinquishment of a claim by the plaintiff therein, but the relevant point which was considered by this Court was that the relief had become time-barred. The ratio of the said judgment is that the relief being barred by limitation, Order 2 Rule 2CPC only came in as an adjunct. However, Gurbux*



*Singh [Gurbux Singh v. Bhooratal, 1964 SCC OnLine SC 101 : AIR 1964 SC 1810] makes it clear that the bar of Order 2 Rule 2CPC applies only to the subsequent suits.”*

41. In view of the settled legal position as reiterated by the Supreme Court in *Sanjeev Builders* (*supra*), it is evident that the bar under Order II Rule 2 CPC operates only in the context of a subsequent suit and has no application to amendments sought in a pending suit. In the present case, the Amendments Applications have been filed in the same suit instituted by STPL, prior to its determination. Accordingly, the objection raised by Rajkumar Sabu under Order II Rule 2 CPC is misconceived and is liable to be rejected.

42. On the aspect of time barred reliefs claimed in an application under Order VI Rule 17 CPC, it is contended on behalf of Rajkumar Sabu that the proposed amendments by way of addition of Paragraph Nos. XXXV (A) to XXXV (G) are time barred and therefore, ought not to be allowed.

43. In *Sanjeev Builders* (*supra*), the Supreme Court also examined the scope of Order VI Rule 17 CPC, particularly in the context of amendments allegedly introducing time-barred claims. It was observed in *Sanjeev Builders* (*supra*) that all amendments are to be allowed which are necessary for determining the real question of controversy, provided they do not cause injustice or prejudice to the other side and that limitation does not affect the power of the court to allow the amendment, if it is required in the interest of justice and that delay in seeking amendment by itself is not a ground to disallow the amendment, and where the question of limitation is arguable, the amendment may be allowed while keeping the issue of limitation open to be decided at trial. It was further held in *Sanjeev Builders* (*supra*) that where the proposed amendment does not introduce a new cause of action, but is only an additional or different approach to the same set of facts, such amendment can



be permitted even after expiry of the statutory period of limitation and that amendments, which merely relate to the relief, and are predicated on facts already pleaded, ordinarily deserve to be allowed.

44. Thus, the guiding principle, as reiterated, is that courts should adopt a liberal and non-hypertechnical approach, especially where allowing the amendment would avoid multiplicity of proceedings and enable effective and proper adjudication of the controversy. The principles laid down in *Sanjeev Builders* (*supra*) make it clear that the mere objection of limitation is not, by itself, determinative of an application under Order VI Rule 17 CPC. In the present case, the proposed amendments do not introduce a new or independent cause of action but arise from the same factual matrix already pleaded and relate to a document which is already responded to in the Connected Suit.

45. The proposed addition in the form of Paragraph Nos. XXXV (E) to XXXV (G) to the Plaintiff in the Suit is necessary for a just determination of the real question of controversy between the Parties and is not likely to cause any injustice or prejudice to the Defendants in the Suit.

46. The amendments to Paragraph No. XXXX and Paragraph No. XXXXI relating to valuation of the Suit, the Prayer clause in the form of addition of Prayer clauses (i) and (j) in Paragraph No. XXXXII of the Plaintiff in the Suit are consequential to the proposed amendments in Paragraph Nos. XXXV (A) to XXXV (G).

47. In the present case, Rajkumar Sabu seeks to rely on *Pirgonda Hongonda Patil* (*supra*) to contend that an amendment seeking declaration, allegedly barred by limitation, is impermissible.

48. In *Pirgonda Hongonda Patil* (*supra*), the Supreme Court was concerned with an amendment sought in a suit instituted under Order XXI



Rule 103 CPC, where the original plaint suffered from a defect in pleadings as the plaintiff therein had failed to set out the averments relating to title as against the obstructing defendant therein. The amendment permitted by the High Court after putting the plaintiff therein on the terms as to costs, and upheld by the Supreme Court, supplied further and better particulars in support of an existing claim for possession and declaration observing the concerned amendments to be necessary to cure a pleading defect and to enable adjudication of a dispute, which was within the scope of the original suit therein.

49. It was held in *Pirgonda Hongonda Patil* (*supra*) that though Courts would, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation, limitation is only a factor in the exercise of discretion and does not affect the power of the Court to allow an amendment where the interests of justice so demand and that the determinative consideration is whether the amendment introduces a fresh or new cause of action, or whether it merely removes a defect so as to enable effective adjudication of the real controversy between the parties. Thus, reliance placed on *Pirgonda Hongonda Patil* (*supra*) to contend that an amendment seeking declaration allegedly barred by limitation is impermissible, overlooks the express ratio of the judgment, which recognises the discretionary power of the Court to allow amendments notwithstanding limitation, where the amendment does not change the nature of the suit and is necessary for determining the real questions of controversy.

50. As regards the reliance placed by Rajkumar Sabu on *Basavaraj* (*supra*) and *South Konkan Distilleries* (*supra*) is concerned, the said decisions are factually distinguishable. In *Basavaraj* (*supra*) the amendments were sought



after the commencement of trial and in *South Konkan Distilleries (supra)* the Supreme Court declined the amendments because there was no explanation for a delay of thirteen and a half years in filing an application for amendment of the written statement and counter claim therein. The Defendants in the Connected Suit has also averred that:

*"20. ...It is submitted that Smt. Chandrakanta Sabu (now 86 yer old) neither originated nor used the trade marks "Sacha Moti" "Chakra" or "Shivjyoti" as proprietor thereof nor filed any application for registration of trade mark nor obtained any Agmark/license / permission from any authorities to manufacture or pack the goods Sabudana under any of the trade marks, as alleged, hence no question arose for transferring any right in any of the trade marks, as alleged in para under reply. The Plaintiff has . not filed any document to substantiate the aforesaid alleged transfer of brands by Smt. Chandrakanta Sabu to the Defendants as alleged. ...The Defendants, after having obtained the copy of the said purported Affidavit which is a part of the suit filed by the Plaintiff, got alerted and have got the said purported signature of Smt. Chandrakanta Sabu verified from a Handwriting expert namely J.K. Consultancy having its office at Vardhman Star Citi Mall, 321, LSC-III, Sector-7, Dwarka, New Delhi-110075. The Defendants have submitted the documents carrying genuine signature of Smt. Chandrakanta Sabu and also the copy of purported Affidavit dated 08.06.2016 purported to be carrying the signature of Smt. Chandrakanta Sabu. The aforesaid handwriting expert has categorically certified that the purported signatures of Smt. Chandrakanta Sabu appearing on the purported Affidavit dated 08.06.2016 as filed along with the suit of the Plaintiff, are not genuine and are fake. It is re-iterated that the alleged facts mentioned in the said Affidavit with regard to the alleged adoption, use and transfer of SACHAMOTI, CHAKRA and SHTVJYOTI brands, are false and liable to be rejected."*

Therefore, since the real question in the Suit and the Connected Suit is identical, and the Written Statement filed by the Defendants in the Connected Suit already contain averments relating to the Affidavit, it is in the interest of justice and necessary for complete adjudication of the real controversy in



question that the proposed amendment relating to Paragraph Nos. XXXV (E), (F) and (G) and the consequential prayer as proposed by STPL be allowed. As *South Konkan Distilleries* (*supra*) is factually distinguishable, reliance placed thereon by Rajkumar Sabu is, therefore, of no assistance to Rajkumar Sabu.

51. In *Eknath Nirutti Hegadkar* (*supra*), the original suit, as instituted, was a suit *simpliciter* for permanent injunction, founded solely on alleged possession. The plaintiff therein had not sought any relief of declaration of title. The amendment application was moved after more than eight years, seeking, for the first time, a declaratory relief of title. It was in this factual matrix the High Court of Judicature at Bombay in *Eknath Nirutti Hegadkar* (*supra*) held that the proposed amendment therein would alter the nature of the original suit therein by introducing a fresh cause of action barred by limitation under Article 58 of the Limitation Act, 1963.

52. However, in Suit, the Parties have set out their rival versions concerning ownership of the Mark 'SACHAMOTI', and the reliefs of injunction as originally pleaded are founded on asserted proprietary rights. The proposed amendment relating to the Affidavit, pertains to an event subsequent to the filing of the Suit. The Connected Suit which relates to the same controversy as in the Suit and the Written Statement filed in the Connected Suit already contains averments relating to the Affidavit. In this backdrop, the proposed amendment containing averments relating to the Affidavit and the proposed declaratory relief relating to the Affidavit does not introduce a new or independent cause of action, but seeks complete adjudication of a controversy which is at the core of the pleadings in the Suit and the Connected Suit. Therefore, the proposed amendment sought by



addition of Paragraph Nos. XXXV (E) to XXXV (G) and Prayer clauses (i) and (j) in Paragraph No. XXXXII to the Plaintiff in the Suit do not change the nature of the Suit, but facilitate complete adjudication of the disputes between the Parties. Thus, the ratio of *Eknath Nivrutti Hegadkar (supra)* is confined to cases where a wholly new declaratory relief, barred by limitation, is sought to be introduced in a suit originally framed only for injunction, and has no application to the facts of the present case. Accordingly, the proposed amendments by way of addition of Paragraph Nos. XXXV (E) to XXXV (G) and Prayer clauses (i) and (j) in Paragraph No. XXXXII to the Plaintiff in the Suit deserves to be allowed.

53. In view of the discussion above, the proposed amendments to Paragraph No. XV to the Plaintiff in the Suit and Paragraph No. XIII of the Written Statement in the Connected Suit are rejected. The proposed amendments by way of addition of Paragraph Nos. XXXV (A) to XXXV (G), amendment of Paragraph No. XXXX and Paragraph No. XXXXI relating to valuation of the Suit and Prayer clause (i) and (j) to Paragraph No. XXXXII to the Plaintiff in the Suit are allowed. The amended Plaintiff in the Suit shall be filed within a period of four weeks from date. The Defendants in the Suit are granted liberty to file the amended Written Statement in the Suit only to the extent of responding to the amendments in the Plaintiff in the Suit as allowed *vide* this Judgment, within a period of four weeks from date.

54. Accordingly, I.A. No. 10994/2020 in the Suit and I.A. No. 11028/2020 in the Connected Suit are disposed of with the above directions.



### Interrogatories Applications:

55. Before examining the Interrogatories as sought to be placed to Rajkumar Sabu by STPL in the Suit, it is necessary to take into account the law governing discovery by interrogatories:

56. Provisions related to discovery by interrogatories are given under Order XI Rule 2 of CPC as amended by the CC Act, *inter alia*, provides as under:

*“2. Discovery by interrogatories.—*

*(1) In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer:*

*Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose : Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness...”*

57. The purpose of providing the procedure of discovery by interrogatories in the CPC is to shorten the litigation with the ultimate object of facilitating an early and expeditious disposal of the suit.

58. The interrogatories enable a party to obtain an admission from the opponent which renders his burden of proof a bit lighter. The whole idea or purpose of the provisions contained in Order XI Rule 2 of the CPC as amended by the CC Act is to save time and cost by confining the controversy or narrowing down the points of differences or disputes. The power to serve interrogatories is not meant to be confined within narrow technical limits and is to be encouraged as it is a means of obtaining admissions of parties and to be used liberally whenever the interrogatories can shorten litigation and serve the interest of justice.



59. As a general rule, the interrogatories should be allowed so long as the interrogatories sought to be served, are relating to and relevant to matters in question having reasonable and close connection.

60. The Court is not, at this stage, to examine as to what would be the impact of the answer of the interrogatories. The Court, at the stage of administration of interrogatories, has to only consider whether the answer to the interrogatories would have some bearings on the issues involved in the case and as to whether they relate to any matter in question to the suit. The law with regard to the interrogatories is thus well settled.

61. When the interrogatories proposed to be administered through the Interrogatories Application are examined in the light of the settled legal principles as stated above, it is clear that answer to the interrogatories shall have bearings on the issues involved in the Suit and the Connected Suit.

62. I.A. No. 8922/2020 in the Suit seeks leave to administer interrogatories premised on the alleged inconsistencies in pleadings filed by Rajkumar Sabu, affidavits filed before the Trade Marks Registry, and stand taken by Rajkumar Sabu in relevant proceedings in relation to the Mark 'SACHAMOTI'. The proposed interrogatories are, thus, directly connected to the controversy in dispute.

63. The objection raised by Rajkumar Sabu that the Interrogatories Application is belated, is not fatal to the present proceedings. Mere delay, by itself, does not disentitle a party from seeking leave of the Court, particularly when the trial has not yet commenced. In the present case, the Suit and the Connected Suit is still at the pre-trial stage and evidence has not begun. The contention on behalf of Rajkumar Sabu that I.A. No. 8922/2020 in the Suit



has been filed after four years or beyond the stipulated period does not, *ipso facto*, render the Interrogatories Applications untenable.

64. The submission on behalf of Rajkumar Sabu that I.A. No. 8922/2020 in the Suit is defective on the ground that the same does not specify whether Defendant No. 1 or Defendant No. 2 is to answer the proposed interrogatories is also misconceived. A plain reading of I.A. No. 8922/2020 in the Suit makes it evident that the Interrogatories filed along with I.A. No. 8922/2020 in the Suit are directed to and are required to be answered by Rajkumar Sabu. In these circumstances, the use of the expression '*Defendant*' does not create any ambiguity as to the person who is to answer the Interrogatories, when I.A. No. 8922/2020 in the Suit makes it evidently clear by stating that '*...seeking interrogatories from the Defendant- Mr. Rajkumar Sabu*'. Therefore, the objection to the Interrogatories Applications raised on this count is untenable.

65. The objection raised by Rajkumar Sabu that I.A. No. 8922/2020 in the Suit is liable to be dismissed for non-compliance with Form-2 of Appendix C to the CPC, as amended by the CC Act and that STPL has put forth the Interrogatories in the manner, which *prima facie* show that they are in the nature of cross-examination also cannot be accepted. Merely because the interrogatories are in the nature of cross-examination is no basis for denying the interrogatories. Certainly, whatever can form the subject matter of interrogatories can form the subject matter of cross examination. However, notwithstanding the same, a provision has been made in the CPC. Cross examination may not be necessary in view of the replies to the interrogatories. Thus, the test to be applied in dealing with an application for discovery by interrogatories is not whether it can form subject matter of cross examination or not, but is of relevancy and expediency.



66. However, it is also well settled that interrogatories cannot compel admissions on questions of law or mixed questions of law and fact. Interrogatory No. 16 of the List of Interrogatories filed along with I.A. No. 8922/2020 in the Suit seeks a determination as to whether the dealers referred to in Exhibits P-48 to P-52 of the Plaintiff's Documents in the Suit can be identified as 'agents' of STPL. The existence or otherwise of an agency relationship is a mixed question of law and fact. As Interrogatories cannot be used to compel admissions on questions of law or mixed questions of law and fact, Interrogatory No. 16 of the List of Interrogatories filed along with I.A. No. 8922/2020 in the Suit falls outside the permissible scope of Order XI Rule 2 CPC as amended by the CC Act and is, therefore, not permitted to be administered.

67. Accordingly, in view of the discussion above, Rajkumar Sabu i.e., Defendant No. 1 in the Suit is directed to answer Interrogatories listed at Nos. 1 to 15 and 17 to 32 of the List of Interrogatories filed along with I.A. No. 8922/2020 in the Suit within a period of four weeks on an affidavit.

68. I.A. No. 8922/2020 in the Suit is accordingly allowed. Insofar as I.A. No. 8923/2020 in the Connected Suit is concerned, it merely seeks permission to rely upon the said Interrogatories in the Connected Suit. Given that the Suit and the Connected Suit arise out of the same factual matrix and involve an identical issue in dispute, I.A. No. 8923/2020 in the Connected Suit is allowed and Defendants in the Connected Suit are permitted to rely on Interrogatories filed in I.A. No. 8922/2020 in the Suit and their answers thereto.

69. Accordingly, I.A. No. 8922/2020 in the Suit and I.A. No. 8923/2020 in the Connected Suit are disposed of with the aforesaid directions.



Additional Documents:

70. Both the applications filed by Rajkumar Sabu for bringing on record Additional Documents in the Suit and in the Connected Suit are filed under Order XI Rule 1 (5) of the CPC as amended by the CC Act. The application filed by Rajkumar Sabu in the Suit for bringing on record Additional Documents ought to have been filed under Order XI Rule 1(10) of the CPC as amended by the CC Act. However, as it is a settled law that mere non-mentioning of a correct provision is not fatal to the application if the power to pass such an order is available with Court, the application filed by Rajkumar Sabu in the Connected Suit for bringing on record the Additional Document is treated as having been filed under Order XI Rule 10 of the CPC as amended by the CC Act.

71. Order XI Rule 1 (5) and 1 (10) of the CPC as amended by the CC Act provides that:

*“1. Disclosure and discovery of documents.—*

*(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.*

*xxx xxx xxx*

*(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.”*

72. It is submitted on behalf of Rajkumar Sabu that the Additional Documents are relevant to demonstrate alleged fabrication and misconduct by STPL and its directors, and therefore ought to be considered by this Court.



Whereas it is submitted on behalf of STPL that the Additional Documents do not have any relation, connection or relevancy *vis-à-vis* the amendments sought through the Amendment Applications and that, as no submissions has been made on behalf of Rajkumar Sabu that Additional Documents are relevant for adjudication of Crl. M.A. No. 12366 of 2020 in the Connected Suit, the Additional Documents may be seen only from their relevancy, if any, to the Amendment Applications. It is further submitted on behalf of STPL that the provisions of the CC Act may not be stretched to permit parties to file closure reports of criminal complaint, chargesheet and cross-examination in another criminal trial for adjudication of civil suits without establishing any relevancy as it results in delay in adjudication of the trial itself.

73. Order XI Rule 1(5) and Rule 1(10) of the CPC as amended by the CC Act bars the Court from allowing the plaintiff to rely on documents which were in the plaintiff's / defendant's power, possession, control or custody and not disclosed along with the plaint / written statement, save and except by leave of the Court and which leave shall be granted only upon the plaintiff / defendant establishing reasonable cause for non-disclosure along with the plaint / written statement. In a commercial suit, the plaintiff / defendant along with the plaint / written statement is required to file all documents pertaining to the suit irrespective of, whether the same are in support of or adverse to the claim of the plaintiff / defendant.

74. The Supreme Court in ***Sudhir Kumar v. Vinay Kumar G.B.***, (2021) 13 SCC 71 considered Order XI Rule 1(5) in detail and observed that:

*"9.5. Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of*



*court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.*

*9.6. Therefore a further thirty days' time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order 11 Rule 1(3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint."*

[Emphasis supplied]

75. The Written Statement in the Suit was filed on 05.04.2017. The Plaintiff in the Connected Suit was filed on 09.06.2016. The Additional Documents namely the police complaint dated 18.06.2021 filed by Gopal Sabu / director of STPL before Tilak Marg, PS against Rajkumar Sabu, alleging forgery and fabrication of the Affidavit and the closure report dated 13.09.2021, the chargesheet dated 09.12.2024 filed under Sections 420, 467, 468, 471, 193 and 34 of the IPC in FIR No. 240 of 2021, registered at PS Juni, Indore against STPL and its directors for allegedly forging the assignment deed dated



01.03.2016 and a translated copy of cross-examination of Mr. Gopal Sabu / director of STPL dated 03.06.2022 in CC No. 82/2018 and the Additional Document namely the response from the Public Information Officer, Regional Transport Office, Sankagiri, dated 24.11.2020, received on 01.12.2020 to the RTI dated 10.10.2020 filed by Rajkumar Sabu sought to be filed in the Connected Suit came into existence subsequently of the filing of the Written Statement in the Suit and the Plaintiff in the Connected Suit. Thus, the rigour of establishing the reasonable cause in non-disclosure along with plaint / written statement may not arise as the Additional Documents sought to be taken on record are discovered subsequent to the filing of the Written Statement in the Suit and Plaintiff in the Connected Suit.

76. STPL and the Defendants in the Connected Suit have objected to the filing of the Additional Documents on the ground that no submissions have been advanced on behalf of Rajkumar Sabu regarding their relevance to the adjudication of Crl. M.A. No. 12366 of 2020 filed in the Connected Suit, and that the Additional Documents, if at all, may be examined only for their relevance to the Amendment Applications. However, it is specifically averred in I.A. No. 22008/2025 filed in the Suit that:

*“8. ....all the above-mentioned Additional Documents which are sought to be brought on record are vital for the efficacious hearing and adjudication of the present case, as they prima-facie/admittedly also establish that neither the Plaintiff nor its Directors' are the prior adopter-user of the TM 'SACHAMOTI', and it is only mother of Mr. Gopal Sabu and Defendant No.1 who had coined the mark 'SACHAMOTI' in the year 1982; and thereafter, transferred the right, title and interest in it, to Defendant No.1 (as has been rightfully recorded in Affidavit dated 08.06.2016, whose authenticity has also been verified I confirmed by a witness).”*



As there is a specific averment in I.A. No. 22008/2025 in the Suit that the Additional Documents are '*vital for the efficacious hearing and adjudication of the present case*', objection raised by STPL and the Defendants in the Connected Suit on this ground is misconceived.

77. Also, the objection raised by STPL that the provisions of the CC Act may not be stretched to permit parties to file closure reports of criminal complaint, chargesheet and cross-examination in another criminal trial for adjudication of civil suits without establishing any relevancy as it results in delay in adjudication of the trial itself, is concerned, it is a settled law that, in any event, taking the Additional Documents on record does not, in any manner, compromise the right of STPL or the Defendants in the Connected Suit to object to the Additional Documents, their veracity, their genuineness or their admissibility or relevance in evidence, at the appropriate stage. Accordingly, the Additional Documents are allowed to be taken on record, while reserving the right of STPL and the Defendant to challenge the relevancy at the stage of trial.

78. I.A. No. 11390/2020 in the Connected Suit and I.A. No. 22008/2025 in the Suit are disposed of with the aforesaid directions.

**CRL.M.A. No. 12366/2020 in Connected Suit:**

79. The question that arises for determination is whether (i) the statements and averments made by the Defendants in the Connected Suit, and (ii) that the documents filed with the Written Statement in the Connected Suit are forged and fabricated, constituting an offence of perjury and warranting criminal proceedings under Sections 340 and 195(1) of the CrPC.

80. Before considering the submission made by the Parties on the present application, it is important to first set out the law governing initiation of



criminal proceedings under Section 340 read with Section 195 (1) of the CrPC read with Section 193, 209, 465, 467, 468 and 471 of IPC.

81. Section 340 of CRPC provides that:

*“Procedure in cases mentioned in section 195-*

*(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-*

*(a) record a finding to that effect;*

*(b) make a complaint thereof in writing;*

*(c) send it to a Magistrate of the first class having jurisdiction;*

*(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*

*(e) bind over any person to appear and give evidence before such Magistrate.*

*(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.*

*(3) A complaint made under this section shall be signed,-*

*(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*

*(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.*

*(4) In this section, “Court” has the same meaning as in section 195.”*

82. It is the case of Rajkumar Sabu that the pleadings relating to sales figures and advertisement expenditure of STPL and invoices of ST from 1993 to 1996 relied upon by the Defendants in the Connected Suit are forged and



fabricated, and that the Defendants in the Connected Suit have knowingly placed false and fabricated invoices on record to mislead this Court. It is submitted on behalf of Rajkumar Sabu that such conduct affects the administration of justice and therefore warrants initiation criminal proceedings under Section 340 CrPC.

83. The Defendants in the Connected Suit, *inter alia*, submitted that the allegations of forgery are disputed questions of fact, that the invoices filed by the Defendants in the Connected Suit are prepared from the copies from the sales tax returns filed by the Defendants and that since the invoices were issued by hand on a paper bill there is always a margin or an error when bills are issued by hand and a misspelt of a letter or number was always a possibility due to which some clerical error may or may not have crept in any said bill. It is further submitted by the Defendants in the Connected Suit that no invoice has been forged or fabricated and all the documents filed by the Defendants in the Connected Suit are genuine documents and in fact sales tax on the allegedly forged and fabricated invoices was deposited with the government, therefore, no case for initiation of criminal proceedings under Section 340 CrPC.

84. The jurisdiction under Section 340 CrPC is not automatic upon an allegation of forgery / fabrication. The Court must first be satisfied that (i) an offence affecting the administration of justice appears to have been committed, and (ii) it is expedient in the interests of justice to conduct an inquiry at this stage.

85. In the present case, the invoices alleged to be forged and fabricated form part of the main dispute regarding ownership of the Mark 'SACHAMOTI'. The genuineness and evidentiary value of the allegedly



forged and fabricated invoices are matters which are yet to be adjudicated in the Connected Suit and any finding on their genuineness would necessarily require appreciation of evidence, which is yet to be led.

86. The reliance has been placed by Rajkumar Sabu in support of the present Application on ***KG Marketing India*** (*supra*). In ***KG Marketing India*** (*supra*) this Court directed the filing of a complaint under Section 340 CrPC is distinguishable as the offence of forgery / fabrication of a document filed by the plaintiff therein was admitted by the plaintiff and that a complaint was directed to be filed only when the trial therein was concluded and the concerned suit was disposed of. Therefore, ***KG Marketing India*** (*supra*) is of no assistance to Rajkumar Sabu in the present Application at this stage.

87. In support of the present Application, the reliance was further placed on ***Iqbal Singh Marwah*** (*supra*) and ***Pritish*** (*supra*). In ***Iqbal Singh Marwah*** (*supra*) the principal controversy revolved round the interpretation of the expression '*when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court*' occurring in clause (b)(ii) of sub-section (1) of Section 195 CrPC. In ***Pritish*** (*supra*) the issue revolved around whether would-be accused have a right to participate in the preliminary inquiry under Section 340 CrPC. It is pertinent to note that, both ***Iqbal Singh Marwah*** (*supra*) and ***Pritish*** (*supra*) recognise the discretionary nature of the power under Section 340 CrPC and also provide premise that such power is to be exercised only when the Court is satisfied that it is expedient in the interests of justice to do so, and do not support the case for immediate initiation of proceedings under Section 340 CrPC on basis of allegations of forgery raised against a party during the pendency of the proceedings.



88. The reliance is further placed on decision in *Syed Nazim Husain* (*supra*) to support the initiation of criminal proceedings against the Defendants in the Connected Suit. The decision in *Syed Nazim Husain* (*supra*) was rendered in the context of proceedings before a Family Court and in a writ petition confined to the postponement of consideration of an application under Section 340 CrPC. The judgment in *Syed Nazim Husain* (*supra*) did not undertake an examination of the statutory requirement of forming an opinion as to whether it is expedient in the interests of justice to initiate prosecution and did not deal with situations involving disputed questions of fact requiring trial. In any event, the observations therein are specific to the facts of that case and cannot override the settled principles laid down by the Supreme Court, which emphasise that initiation of proceedings under Section 340 CrPC is discretionary and ordinarily ought not to be undertaken during the pendency of proceedings, where the veracity of allegedly forged and fabricated documents is yet to be adjudicated. Thus, the decision in *Syed Nazim Husain* (*supra*) does not advance the case of Rajkumar Sabu.

89. As regards the allegations of forgery and fabrication of the invoices of ST from 1993 to 1996 issued to STC are concerned, the basis on which such an allegation is levelled against the Defendants in the Connected Suit i.e., the notice allotting new Central Sales Tax Number and the State Sales Tax Number in the year 1997, is disputed by the Defendants in the Connected Suit and admittedly the purchase register of STC as filed by Rajkumar Sabu, which may be relevant as submitted by the Defendants in the Connected Suit to tally the information reflected on the allegedly forged and fabricated invoices of ST from 1993 to 1996 issued to STC is allegedly not complete.



90. As regards the allegedly false sales figures and the advertisement expenditure, it is apparent, in view of the Amendment Applications filed by STPL in the Suit and the Defendants in the Connected Suit that the sales figures and the advertisement expenditure as originally pleaded by the Defendants in the Connected Suit are not the figures STPL in the Suit and the Defendants in the Connected Suit intended to aver in the original pleadings. Although the prayer sought in I.A. No. 10994/2020 in the Suit and I.A. No. 11028/2020 in the Connected Suit seeking the amendments to the sales figures and advertisement expenditure is rejected above while observing that '*Such variations cannot reasonably be attributed to typographical errors, and therefore the submission that the amendments to Paragraph No. XV of the Plaintiff and Paragraph No. XIII of the Written Statement in the Connected Suit are sought on the ground of typographical errors does not inspire confidence.*', whether the sales figures and the advertisement expenditure as originally pleaded by the Defendants in the Connected Suit are deliberately pleaded to mislead the Court or it was a genuine error can only be determined after the trial is concluded.

91. The law provides that the mere fact that a person has made a contradictory / inconsistent statements in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the IPC; but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged, the Court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more



specifically referred to in Section 340 CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution.

92. There is no cavil with the propositions laid down in *H.S. Bedi (supra)* and *S.P. Chengalvaraya Naidu (supra)*. However, having regard to the facts and circumstances of the present case, the question whether it is expedient in the interests of justice to initiate an inquiry under Section 340 of CrPC can be appropriately determined only upon conclusion of the trial.

93. The observations of Division Bench of this Court in *Vishal Kapoor (supra)* are also relevant to the present case:

*"6. It is unfortunate that neither counsel drew attention to the law on the matter. One of us (Rajiv Sahai Endlaw, J.) had occasion in Punjab Tractors Ltd. v. International Tractors Ltd. 167 (2010) DLT 490 to deal with the said aspect and on a conspectus of the case law on the subject, held as under:-*

*18. In my opinion, an application under section 340 of the cr.pc ought to be normally considered at the time of final decision of the case only and not at the interim stage as the defendants/applicant have pressed in the present case. It is the settled legal position that the said provision cannot be resorted to, to satisfy a private grudge of the litigant. In fact the very genesis of this provision is to prevent complaints being filed of offences having been committed in relation to the court proceedings; it was felt that if such complaints are permitted to be filed, the same may be used to force the other party into giving up its claim/defence or to dissuade witnesses from appearing before the courts under threat of criminal prosecution. It was held as far back as in *Rewashankar Moolchand v. Emperor AIR 1940 Nagpur 72* that proceedings under Section 340 Cr.PC should not be resorted to when the criminal case is calculated to hamper fair trial of issue in the civil court before which the matter would probably go on for longer. This court also in *Jindal Polyester Ltd. v. Rahul Jaura 124 (2005) DLT 613* and in *Kuldeep Kapoor v. Susanta Sengupta 126 (2006) DLT 149* has held that applications*



*under section 340 of the Cr.pc should be dealt with at the final stage only and not at the interim stage. I also find a consistency of view in this regard in the other High Courts. The law is that a prosecution for perjury should not be ordered by the court before the close of the proceedings in the case in which false evidence is given. It is highly wrong for a court to take action under the said provision against a witness or a party for giving false evidence when trial is underway.*

*21. Formation of *prima facie* opinion that a person charged has intentionally given false evidence is a condition precedent for directing lodging of a complaint. The existence of mens rea or criminal intention behind act complained of will have to be looked into and considered before any action under section 340 of the cr.pc is recommended. Before setting the criminal law into motion, the court should exercise great care and caution and it must be satisfied that there is reasonable foundation for the charge in respect of which prosecution is directed. No prosecution ought to be ordered unless reasonable probability of conviction is found. Considering the nature of the documents and evidence in relation whereto offences are alleged to have been committed, I find the said ingredients to be lacking in the present case.”*

[Emphasis supplied]

94. Thus, it is required to examine not merely whether allegations of falsehood are made, but whether the alleged false statements are of such nature that they have a direct bearing on the administration of justice and warrant immediate action under Section 340 CrPC. In the present case, the alleged falsehoods pertain to disputed sales figures and advertisement expenditure, ST invoices from 1993 to 1996, whose veracity is contested by the Parties. These issues are linked with the real question in controversy relating to proprietorship and prior use of the Mark ‘SACHAMOTI’ and cannot be conclusively determined without appreciation of evidence during



the trial. At this stage, the alleged falsehoods pertaining to sales figures and advertisement expenditure, and the invoices of ST for the period 1993 to 1996, cannot *prima facie* be said to constitute a falsehood supported by unimpeachable evidence which has misled this Court into forming any determinative opinion in the present proceedings. Such alleged falsehoods can be appropriately adjudicated at the stage of trial through examination and cross-examination of witnesses. Therefore, invoking the powers under Section 340 CrPC in the facts of the present case, at this stage, would be inappropriate.

95. Therefore, having regard to the facts and circumstances of the present case, and considering the settled law on initiation of proceedings under Section 340 CrPC, the application under Section 340 CrPC against the Defendants in the Connected Suit cannot be entertained. The question of whether any averment made before this Court, or the ST invoices from 1993 to 1996, are false, deliberate, and of a nature warranting action under Section 340 CrPC can be examined only after the trial is concluded. Accordingly, the decision of this Application under Section 340 CrPC is deferred to be considered along with the final hearing while keeping all the rights and contentions of the Parties open.

96. The present Application being CRL.M.A. No. 12366/2020 filed in the Connected Suit is kept pending and shall be taken up along with the final hearing of the Connected Suit after completion of the trial in both the Suit and Connected Suit.



## **CONCLUSION:**

97. In view of the above, I.A. No. 10994 of 2020 in CS(COMM) 97 of 2020 for amendment of the Plaintiff is partly allowed and proposed amendments pertaining to averments relating to the allegations of breach of fiduciary duty, fraud and fabrication of the Affidavit and consequential amendments relating to the valuation of the Suit and the Prayer clause are allowed and proposed amendments to the sales figures and advertisement expenditure are rejected. The amended Plaintiff in the CS(COMM) 97 of 2020 shall be filed within a period of one week from date. The Defendants in CS(COMM) 97 of 2020 are granted liberty to file the amended Written Statement to the Amended Plaintiff in CS(COMM) 97 of 2020 only to the extent of responding to the amendments in the Plaintiff in CS(COMM) 97 of 2020 as allowed *vide* this Judgment, within four weeks from date of service of amended Plaintiff.

98. I.A. No. 11028 of 2020 in CS(COMM) 761 of 2016 for amendment of the Written Statement for amending the sales figures and advertisement expenditure is hereby dismissed.

99. I.A. No. 8922 of 2020 in CS(COMM) 97 of 2020 is allowed and Defendant No. 1 is directed to answer Interrogatories listed at Nos. 1 to 15 and 17 to 32 of the List of Interrogatories filed along with I.A. No. 8922/2020 within a period of four weeks from the date on an affidavit.

100. I.A. No. 8923 in CS(COMM) 761 of 2016 is also allowed and the Defendants in CS(COMM) 761 of 2016 are permitted to rely on Interrogatories filed in I.A. No. 8922/2020 in CS(COMM) 97 of 2020 and their answers thereto.

101. I.A. No. 11390/2020 in CS(COMM) 761 of 2016 and I.A. No. 22008/2025 in CS(COMM) 97 of 2020 are allowed and the Additional



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Documents filed along with the said Application are directed to be taken on record.

102. CRL.M.A. No. 12366 of 2020 in CS(COMM) 761 of 2016 is kept pending and shall be taken up along with the final hearing of CS(COMM) 97 of 2020 after completion of the trial in both CS(COMM) 97 of 2020 and CS(COMM) 761 of 2016.

**TEJAS KARIA, J**

**JANUARY 31, 2026/ 'HK'**