



2026:DHC:935-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO (COMM) 318/2025****M/S AWADH OILS PRIVATE LIMITED**AppellantThrough: Mr. Rajul Shrivastav and Ms.
Nayan Gupta, Advs.

versus

SHRI KAUSHAL GOYAL & ORS.RespondentsThrough: Ms. Swathi Sukumar, Sr. Adv.
with Ms. Tanzeela Farheen and Ms. Vidhi
Jain, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT (ORAL)**

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03.02.2026**C. HARI SHANKAR, J.**

1. The appellant instituted CS (Comm) 422/2025¹ against the respondent before the learned District Judge (Commercial Court)-02², North-West District, Rohini, alleging that the respondents were using trade marks of which “KALA GHODA” was the sole or the prominent part for mustard oil, edible oils and allied products, and were, thereby, passing off their goods as those of the appellant.

2. The appellant has no registration, under Section 23 of the Trade Marks Act, 1999³, for the mark KALA GHODA, whether in word or device form. The respondent, on the other hand, is the proprietor of registrations of the mark KALA GHODA, though the appellant has

¹ “the suit” hereinafter

² “the learned Commercial Court” hereinafter

³ “the Act” hereinafter



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filed applications for removal of the said marks from the Register of Trade Marks, under Section 57 of the Act.

3. No proceeding for infringement lies against a registered trade mark, as the very definition of infringement, in Section 29 of the Act, envisages the infringer being neither the proprietor, nor the permissive user, of the infringing trade mark. This position also stands settled by various judicial pronouncements, including *S. Syed Mohideen v. P. Sulochana Bai*⁴.

4. The suit, therefore, would lie only for passing off, the right to sue for which stands saved by Section 27(2) of the Act.

5. The appellant filed, with the appeal, an application for interim injunction under Order XXXIX of the Code of Civil Procedure 1908, praying that the respondents be restrained, pending disposal of the suit, from using the mark KALA GHODA.

6. By order dated 15 September 2025, the learned Commercial Court has held that it has, *prima facie*, no territorial jurisdiction to entertain the suit and has proceeded, further, to reject the prayer for interim injunction both on the ground that it has, *prima facie*, no territorial jurisdiction, as well as on merits.

7. On the issue of whether, at the Order XXXIX stage, a Court can proceed to return findings on merits, having already opined that it has no territorial jurisdiction, we have no doubt that it cannot. Having held, *prima facie*, that it has no territorial jurisdiction, if a Court

⁴ (2016) 2 SCC 683



proceeds to examine the merits of the case, it would amount to exercising a jurisdiction which, even as per its own assessment, it *prima facie* does not possess. A Court cannot, to our mind, consciously act *coram non iudice*.

8. On whether the Court can, having held that it *prima facie* has no territorial jurisdiction, dismiss the application for interim relief *on that basis*, a Division Bench of this Court has, in para 23 of its decision in *Allied Blenders & Distillers Pvt Ltd v. R.K. Distilleries Pvt Ltd*⁵, held that it can:

“23.To put it differently, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 CPC that this court has territorial jurisdiction and that the plaint ought not to be returned, *he may fail in obtaining an order of interim injunction on the ground that the plaintiff's entitlement is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable.....*”

(Emphasis supplied)

9. We are required, therefore, only to examine, in the first instance, whether the learned Commercial Court was correct in its view that it did not, *prima facie*, have territorial jurisdiction. If it was, the decision to reject the application under Order XXXIX would be entitled to be upheld even on that sole ground.

10. Having heard learned Counsel for the parties and perused the averments relating to territorial jurisdiction as contained in the plaint filed by the appellant, we find ourselves in agreement with the *prima facie* view expressed by the learned Commercial Court that it had no territorial jurisdiction to entertain the matter.

⁵ (2017) 69 PTC 493 (Del-DB)



11. With respect to territorial jurisdiction, the plaint avers thus:

56. That this Hon'ble Court has the jurisdiction to try and adjudicate the present suit. The Defendants are making sales, networking, making clandestine and surreptitious sales, offering for sale, and supplying, purveying, displaying, and soliciting their impugned products in various markets of New Delhi. The Defendants are soliciting and intending to sell their impugned products in New Delhi by making clandestine and surreptitious sales and distribution of the impugned products.

57. That the Plaintiffs have a strong and credible apprehension that the Defendants will expand their operations under the said trademark in Delhi, owing to the greater sales opportunities, and better connectivity to the place of manufacturing and the threat that the Defendants will sell the impugned products within the jurisdiction of this Hon'ble Court is credible and imminent, thus, a substantial and integral part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. In addition, the Defendants infringing activities are likely to have a dynamic effect on the Plaintiffs' business, both current and forthcoming, within the territory of Delhi. The dynamic effect of the Defendants' impugned activities are being felt in Delhi. Thus, the whole or part of the cause of action for filing the suit has arisen within the territorial jurisdiction of this Hon'ble Court within the meaning of Section 20(c) of the Code of Civil Procedure, 1908. This Hon'ble Court thus, further has the jurisdiction within the meaning of Section 62(2) of the Copyright Act, 1957.

12. The averments with respect to territorial jurisdiction as contained in paras 56 and 57 of the plaint are unsupported by any document whatsoever. They, by themselves, do not make out a case of territorial jurisdiction within the meaning of Section 20 of the CPC so as to permit the appellant to invoke the jurisdiction of the learned Commercial Court. It is trite that territorial jurisdiction cannot be created by bald pleadings, unsupported by any material to which, far from any evidence being filed with the suit, even supportive averments are missing.



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13. We are not concerned, here, with any final finding on jurisdiction, returned by the learned Commercial Court. The impugned order holds that no *prima facie* case of existence of territorial jurisdiction is forthcoming from the plaint, read with the documents filed therewith.

14. The findings are clearly justified.

15. Having thus concurred with the *prima facie* finding of the learned Commercial Court on the aspect of territorial jurisdiction, we see no reason to disturb the decision of the learned Commercial Court to deny interim relief to the appellant.

16. Accordingly, we find no cause to interfere with the impugned order of the learned Commercial Court which is accordingly upheld. We make it clear, however, that our findings are only *prima facie* in nature and intended to dispose of the present appeal and would not stand in the way of any further proceedings of the learned Commercial Court in arriving at any view in any further proceedings which may be undertaken before it in connection with the suit.

17. The appeal is accordingly dismissed.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

FEBRUARY 3, 2026/AR