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

\+ RFA(COMM) 352/2025 & CM APPL. 36957/2025

M/S CHANDRA ENGINEERS .....Appellant

Through: Mr. Makarand D Adkar, Ms. Amita Sachdeva, Mr. Ankush Mahajan, Mr. Shantanu M Adkar and Ms. Shambhavi Kanade, Advs.

versus

M/S MULTIFRIG MARKETING CO PVT LTD & ANR. .....Respondents

Through: Mr. Jenis Francis and Mr. Rahul Sarkar, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 09.12.2025

C. HARI SHANKAR, J.

1. This appeal is directed against judgment and decree dated 4 June 2025, passed by the learned District Judge (Commercial Court) in CS (Comm) 438/2021[1].

2. The arguments of the appellant and the respondents have essentially revolved around Section 35[2] of the Trade Marks Act, 1999

[1] **Multifrig Marketing Co Pvt Ltd and Anr. v. Chandra Engineers**, hereinafter referred to as "the suit"

[2] **35. Saving for use of name, address or description of goods or services**.- Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods or services.

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in conjunction with Section 29(5)[3].

3. The respondents were the plaintiffs in the suit and the appellant was the defendant. The respondents claimed to be the proprietors of the trademark CHANDRA, registered in their favour in Class 11 with effect from 17 September 1982, for "freezing and cooling machines, ice, safes, Air-conditioning apparatus and stabilizer for air-conditioning apparatus."

4. The respondents claimed to have amassed considerable goodwill and reputation in the mark over a period of time.

5. The respondents claimed, in the plaint, that, sometime in 2021, they came to learn of the fact that the appellant was providing services in connection with the same items in respect of the mark CHANDRA, registered in favour of the respondent, under the trade name CHANDRA ENGINEERS. This, according to the respondents, amounted to infringement, by the appellant, of the registered trademark of the respondents, thereby, entitling the respondents to an injunction against the appellant.

6. Inasmuch as the present appeal is directed against the final judgment and decree passed in the suit, it is not necessary for us to advert to the course of proceedings before the learned Commercial Court. Suffice it to state that the suit went through the entire exercise of trial. The learned Commercial Court framed the following issues as

[3] (5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern

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arising for consideration, on 25 September 2023:

> "1. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendant, its proprietors, etc. from using the registered trademark "CHANDRA" for any of its product as of their? OPP
>
> 2. Whether the plaintiff is entitled for decree of mandatory injunction directing the defendant for delivering all material using the trademark "CHANDRA" as alleged? OPP
>
> 3. Whether the plaintiff is entitled for damages of Rs. 20,00,000/- from the defendant as alleged? OPP
>
> 4. Whether the suit filed by plaintiff no. 2 is barred by law specifically under Section 53 of the Trade Marks Act as alleged? OPD
>
> 5. Whether the suit is barred by limitation? OPD
>
> 6. Whether the suit is not maintainable? OPD
>
> 7. Whether there is no cause of action against the defendant? (OPD)
>
> 8. Relief."

7. On the ground that, by using the mark CHANDRA ENGINEERS, of which CHANDRA was the dominant part, the appellant infringed the respondents' registered trademark CHANDRA, in respect of services which were allied and cognate to the goods for which the mark was registered in the respondents' favour, the learned Commercial Court has proceeded, in the impugned judgment, to grant a decree of permanent injunction, restraining the appellant and all others acting on their behalf from using the mark CHANDRA as their business or trade name, and has additionally awarded ₹ 5 lakhs as damages along with costs.

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dealing in goods or services in respect of which the trade mark is registered.

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8. The operative portion of the impugned judgment reads thus:

> "91. In view of my findings to issues no. 1, a decree for permanent injunction is passed in favour of plaintiff no. 1 only and against the defendant, thereby restraining the defendant, its proprietors, directors, partners, principal officers, agents, family members, servants, dealers, distributors and/ or anyone acting for and on their behalf from using the Registered Trade Mark "CHANDRA" bearing Trade Mark No.395389 as its business/trade name. Plaintiff no. 1 shall also be entitled to damages to the tune of Rs.5,00,000/- along with cost of the suit.
>
> Suit is accordingly decreed in favour of the plaintiff no. 1 only and against the defendant in above terms.
>
> Decree sheet be drawn accordingly.
>
> File be consigned to record room."

9. Aggrieved thereby, the appellant has instituted the present appeal before this Court. We have heard Mr. Makarand D. Adkar, learned Counsel for the appellant and Mr. Jenis Francis, learned Counsel for the respondents at length.

10. Mr. Adkar predicated his case solely on Section 35 of the Trade Marks Act.

11. In order to make out a case in that regard, he took us to the course of certain events culminating in the institution of the suit. He submitted that

(i) Chandra Engineers & Contractors was started as a sole proprietorship by one Phool Chandra, basing the trade name of the proprietorship on his own surname in 1993,

(ii) in 2004, Phool Chandra renamed his proprietorship from

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"Chandra Engineers & Contractors" to "Chandra Engineers",

(iii) on 20 August 2019, Phool Chandra expired, whereafter his sons inherited the business of Chandra Engineers and continued the same business as a partnership firm, and

(iv) during this period, in 2015-16, Chandra Engineers participated, along with the respondents in a tender floated by the Central Public Works Department, in which the respondents participated as Multifrig Marketing Co Pvt Ltd.

12. On 17 January 2021, Respondent 1 issued a cease and desist notice to the appellant, calling on the appellant to desist from continuing the use of the mark CHANDRA ENGINEERS as its trade name. On the appellant failing to do so, the suit was instituted by the respondents before the learned Commercial Court on 28 September 2021.

13. The suit, as we have noted, culminated in the judgment under challenge.

14. Mr. Adkar submits that the issue in controversy is covered by the judgment of this Bench in ***Vasundhara Jewellers (P) Ltd. v. Vasundhara Fashion Jewellery***[4]. He places reliance on Section 35 of the Trade Marks Act and submits that, as CHANDRA was the surname of Phool Chandra, who was the sole proprietorship of Chandra Engineers, which was the predecessor in interest of the appellant firm, the respondent was proscribed, in view of Section 35, from obtaining an injunction against the use of the mark CHANDRA

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by the appellant.

15. He has placed special reliance, in this context, on paras 51 to 56 of the decision in ***Vasundhara***.

16. Responding to Mr. Adkar's submissions, Mr. Francis, appearing for the respondents, has drawn our attention to the cross examination of Mr. Chander Prakash, the Defence Witness who deposed on behalf of the appellant, particularly, on the following deposition:

> "It is correct that the said partnership firm had inherited the business of proprietorship concern of my father. I have not filed any document to show that we four partners had taken over the business of proprietorship concern of my father."

17. Mr. Francis submits that the appellant's witness admitted, in the cross examination, that he had filed no documents to show that the appellant firm had taken over the business of Chandra Engineers, the proprietorship of Phool Chandra. In the absence of any such material, he submits that the appellant cannot be permitted to take advantage of Section 35 of the Trade Marks Act.

18. Mr. Francis further relies on the following enunciation, from the judgement of a Division Bench of this Court in ***Montari Overseas Ltd. v. Montari Industries***[5]:

> "11. It is well settled that an individual can trade under his own name as he is doing no more than making a truthful statement of the fact which he has a legitimate interest in making. But while adopting his name as the trade name for his business he is required

[4] **2025 SCC Online Del 5660**
[5] **1996 PTC (16) 142 (Del)**

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> to act honestly and bonafidely and not with a view to cash upon the goodwill & reputation of another. An individual has the latitude of trading under his own name is in recognition the fact that he does not have choice of name which is given to him. However, in the case of a Corporation the position is different. Unlike an individual who has no say in the matter of his name, a company can give itself a name. Normally a company cannot adopt a name which is being used by another previously established company, as such a name would be undesirable in view of the confusion which it may cause or is likely to cause in the minds of the public. Use of a name by a company can be prohibited if it has adopted the name of another company.
>
> It is well settled that no company is entitled to carry on business in a manner so as to generate a belief that it is connected with the business of another company, firm or an individual. The same principle of law which applies to an action for passing off of a trade mark will apply more strongly to the passing off of a trade or corporate name of one for the other. Likelihood of deception of an unwary and ordinary person in the street is the real test and the matter must be considered from the point of view of that person. Copying of a trade name amounts to making a false representation to the public from which they have to be protected. Besides the name of the company acquires reputation and goodwill, and the company has a right too to protect the same. A competitor cannot usurp the goodwill and reputation of another. One of the pernicious effects of adopting the corporate name of another is that it can injure the reputation & business of that person".

19. Mr. Francis' contention is that, as Chandra Industries is a corporate name, it cannot seek the advantage of Section 35 of the Trade Marks Act, which is available only to natural persons.

20. The issue, therefore, narrows down to whether the appellant can or cannot seek the advantage of Section 35.

21. We may, in this context, briefly comment on the structure of the Trade Marks Act.

22. Infringement is defined in the various sub-sections of Section

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29, particularly Section 29(1) to 29(4)[6]. Section 29(5) deems the use of a registered trade mark by another person as his trade name, or part of his trade name, or the name of his business concern, or part thereof, dealing in the goods or services in respect of which the trademark is registered, as infringing.

23. Registration of a mark as a trade mark under the Trade Marks Act entails, *vide* Section 28(1), two consequences.

24. Section 28(1) entitles the registrant of a validly registered trade mark to the right to exclusively use the mark to the exception of the rest of the world, and to seek relief against infringement in case infringement is found to occur.

25. The species of reliefs available against infringement are

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[6] **29. Infringement of registered trade marks**. –
(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.
(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—
(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,
is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.
(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.
(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—
(a) is identical with or similar to the registered trade mark; and
(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and
(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

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envisaged in Section 135(1)[7] of the Trade Marks Act, which includes injunction as well as damages.

26. There are, however, statutory exceptions both to infringement as defined in Section 29 as well as to the remedies available to a person who is the registered proprietor of an infringed mark under Section 28(1). Section 30 sets out circumstances in which, even if the ingredients of Section 29 are satisfied, infringement would not be deemed to take place.

27. Section 31 onwards deals with circumstances in which, even if infringement is found to occur within the meaning of Section 29, and even if Section 30 does not apply, no injunctive relief can be sought. In other words, if the case falls within the circumstances envisages by Sections 31 to 35 of the Trade Marks Act, the aspect of infringement becomes inconsequential as, in such cases, even if infringement exists, no injunctive relief can be granted.

28. Once such circumstance is to be found in Section 35. Section 35 proscribes interference, by the proprietor of a registered trademark, with the *bona fide* use, *inter alia,* by a person, of the name of any of his predecessors in business. As such, even if the use, by the person, of the name of his predecessor in business would amount, facially, to infringement within Section 29, no injunction against such use can be granted in view of the proscription contained in Section 35.

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[7] **135. Relief in suits for infringement or for passing off**.—(1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the

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29. That is, precisely, the case that Mr. Adkar seeks to espouse and Mr. Francis seeks to dispute.

30. On consideration of the facts and the law on the subject, we find ourselves in agreement with Mr. Adkar in his submission that the case is covered by the judgment of this Bench in ***Vasundhra***.

31. Admittedly, Chandra Engineers was a proprietorship of Phool Chandra. There is legally no difference between a proprietorship and its proprietor. It may, therefore, be taken that it was Phool Chandra who adopted the trade name Chandra Engineers using his own surname.

32. Though an opinion was mooted, in ***Goenka Institute of Education & Research v. Anjani Kumar Goenka***[8]**,** to the effect that the benefit of Section 35 would be available only if the full name of the proprietor or of the predecessor in interest was used, and not if only part thereof was employed, this Court, in ***Vasundhra***, noted that the said proposition was stated even in ***Goenka*** to be merely orbiter. In ***Vasundhra***, we have held that there is no proscription in Section 35 from the use even of the first name or the surname of the proprietor as the mark of the enterprise itself. There is no requirement that the complete name should be used. In that case, "Vasundhra" was the first name of the original proprietor who had adopted use of the name, which was Vasundhra Maitri. In the present case, the only difference

infringing labels and marks for destruction or erasure.

[8] **(2009) 40 PTC 393 (DB)**

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is that "Chandra" is not the first name, but the surname of Phool Chandra, who was the proprietor of Chandra Enterprises.

33. The cross examination of DW-1, to which Mr. Francis himself has drawn our attention, clearly elicited the response that respondent firm had inherited the business of Phool Chandra's proprietorship of Chandra Enterprises. Though Mr. Francis has emphasised the fact that no documents had been filed to prove this fact, once this response had been elicited by the respondent himself in cross examination of the appellant's witness, it becomes binding on the respondent, especially in the absence of any evidence to the contrary.

34. In that view of the matter, we are of the opinion that the case clearly falls within the parameters of use, by the appellant, of the name of his predecessor in interest, as envisaged by Section 35.

35. The only other matter which remains for consideration, therefore, is whether the use was *bona fide.*

36. The learned Commercial Court has opined, in para 64 of the impugned order, that the appellant's claim of *bona fide* use was undermined by the awareness of the plaintiff's prior registered trademark and potential for deception in shared tender processes, suggesting an intent to exploit the plaintiff's goodwill.

37. We cannot subscribe to this line of reasoning. There is no dispute about the fact that Phool Chandra was actually the name of the proprietor of Chandra Engineers. There is, therefore, no reason for us

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to doubt the *bona fides* of the adoption, by Phool Chandra, of his own surname as the name of his proprietorship. The mere fact that the appellant may have been aware of the registered trademark of the respondent cannot lead to any inference that the adoption of "Chandra Engineers" as the name of the proprietorship of Phool Chandra was lacking in *bona fides.* The fact that there may have been "potential for deception" in shared tender processes is purely speculative and, again, cannot be a basis for doubting the *bona fides* of the adoption, by Phool Chandra, of the name "Chandra Engineers", from his own surname.

38. One may note, here, that it is not as though Phool Chandra adopted a name which is completely foreign to his own name for his proprietorship. The name he used for his proprietorship was his own surname. In such a case, unless there is positive evidence to show lack of *bona fides*, there would be a presumption that the use of the mark was *bona fide.*

39. We are also not in agreement with the contention that the benefit of Section 35 is available only to natural persons. The paragraph from ***Montari*** to which Mr. Francis drew our attention does not positively say so. All it says is that while a natural person may not have an option in the choice of name which he adopts, a corporate entity can always adopt an alternate name. That, to our mind, is no answer to the issue. If, within the parameters of Section 35, the Phool Chandra was entitled to use his surname as the name of his proprietorship concerned, there is no reason why he should be forced or compelled to adopt any alternate name.

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40. We, therefore, feel that the case squarely falls within the parameters Section 35 of the Trade Marks Act.

41. As such, we are unable to agree with the decision of the learned Commercial Court that the respondent was entitled to an injunction against the appellant.

42. We, therefore, set aside the impugned judgment of the learned Commercial Court.

43. The suit filed by the appellant against the respondent shall, therefore, stand dismissed.

44. The appeal stands allowed in the aforesaid terms.

45. If any moneys have been deposited by the appellant consequent to the passing of the impugned order, they would be returned to the appellant with the interest which may have been accrued thereon, on the appellant approaching the Registry for that purpose.

46. The appeal is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 9, 2025/AR/RJD

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