



2025:DHC:6149-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 189/2025 & CM APPL. 44031/2025, CM APPL. 44032/2025**

SUMAN DEVI AND ANRAppellants
Through: Ms. Ishtha Singh, Adv. with
Mr. Surit Dubey, Adv.

versus

RAKESH KUMAR SHARMARespondent
Through: Mr. Amit Tiwari and Mr.
Sanchit Bhushan, Advs.

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

JUDGMENT (ORAL)

% **25.07.2025**

C. HARI SHANKAR, J.

Facts, and the impugned order

1. In CS (Comm) 410/2025¹, pending before the learned District Judge (Commercial Court)² and from which this appeal emanates, the respondent is the plaintiff and the appellants are the defendants.

2. The appellants assail order dated 2 June 2025 passed by the learned Commercial Court in an application filed by the respondent under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure,

¹ **Rakesh Kumar Sharma v Suman Devi and Anr.**, referred to, hereinafter, as “the suit”


² “the learned Commercial Court” hereinafter



1908³.


3. The suit was instituted by the respondent alleging infringement, by the appellants, of the registered trade mark LABTRONICS of the respondent. The respondent contended that he had coined and adopted the trade mark LABTRONICS in 2001 and was using the mark for scientific and laboratory instruments such as Spectrophotometers, Automatic Potentiometric Titrator, Tablets Disintegration Test Apparatus, Visual colorometer etc.

4. The respondent is also in possession of a valid and subsisting registration in the word mark LABTRONICS for scientific and laboratory instruments such as spectrophotometers, digital flame photometers, titrimeters, polarimeters, microprocessor voltmeters, hydrometers, barometers and microscopes, in Class 9, w.e.f. 5 March 2010, being when the respondent applied for registration. Though there is an averment, in the appeal, that the respondent is not in possession of any trade mark registration, this averment is obviously incorrect as the aforesaid registration of the word mark LABTRONICS in Class 9 is valid and subsisting as on date.

5. The respondent had also obtained a registration for the device mark  LABTRONICS which expired due to efflux of time and was not renewed. This appears to have conveyed an impression to the appellants that the respondent is not in possession of any valid and subsisting registered trade mark.

³ "CPC" hereinafter



6. As we have noted, though the registration of the device mark  LABTRONICS is no longer in existence, as it was not renewed, the respondent continues to be a proprietor of the registered word mark LABTRONICS in Class 9 for the goods noted *supra*.

7. The appellants are using the mark LABTRON INSTRUMENTS for scientific and laboratory instruments.

8. It is not in dispute that Appellant 2 was a former employee of the respondent and that, after leaving the service of the respondent, the appellants have commenced using of the mark LABTRON INSTRUMENTS for scientific and laboratory instruments. As such, the appellants' mark LABTRON INSTRUMENTS is being used for the same goods in respect of which the word mark LABTRONICS stands registered in the respondent's favour in Class 9.

9. It was in these circumstances that the respondent instituted CS (Comm) 410/2025 before the learned Commercial Court alleging infringement, by the appellants, of the respondent's registered trade mark and passing off, by the appellants, of its goods as those of the respondent.

10. By order dated 2 June 2025, the learned Commercial Court has found a *prima facie* case of infringement and passing off, in favour of the respondent and against the appellants. In view thereof, the learned Commercial Court has restrained the appellants from using the mark LABTRON or any mark which is confusingly or deceptively similar



to the respondent's registered word mark LABTRONICS for scientific and laboratory instruments. The learned Commercial Court also appointed local commissioners to visit the premises of the appellants and to seize and inventorise goods found in the premises of the appellants which bore the infringing mark.

11. The reasoning of the learned Commercial Court is contained in the following paragraphs from the impugned judgment:

“8. Keeping in view of the submissions made by the Ld. Counsel, I have gone through the plaint, applications as well as the documents placed on record. The documents from page no. 1 to 2 are the photographs of product of plaintiff and defendant and from page no.3 to 15 are trademark certificates. Invoices and e-way bills of the plaintiff are from page no.16 to 116. Products advertised on social media are from page no.123 to 165. Comparison of plaintiff's trademark/label have been made with that of defendants and after comparing, the trademark/label being used by the plaintiff and defendants, this Court is of the prima facie opinion that the impugned trade mark/label of the products being used by the defendants appears to be deceptively similar to the registered trade marks/labels of the plaintiff.”

9. After considering the documents placed on record and seeing the original as well as infringed trade marks/labels, this Court is of the prima facie view that it is a case of passing off trademarks/labels and copyright of plaintiff. The balance of convenience also lies in favour of plaintiff as plaintiff has been the registered owner and prior user of the aforesaid trade marks/labels. Further, in case of refusal of ex-parte injunction, the plaintiff shall suffer irreparable loss as the infringed products carrying the design (trademark/labels) can easily create confusion in the minds of innocent buyers. Thus, in order to protect the plaintiff from the misuse of their trade marks/labels as well as to save the innocent general public, an ex-parte injunction is required to be given in favour of the plaintiff and against the defendants. Accordingly, application of plaintiff is allowed and thus, an ad-interim injunction order is passed restraining the defendants by themselves as also through their directors, proprietor, partner (if any), servant, agents, assigns, representatives, successors, legal heirs, distributors and all others acting for and on their behalf from using, marketing, selling, offering for sale, advertising or displaying directly or



indirectly or dealing in any other manner or mode in scientific & laboratory instruments namely Spectrophotometers, Ft-Ir Spectrometer, Automatic Potentiometric Titrator, Atomic Absorption Spectrophotometers, Tablet Disintegration Test Apparatus, Visual Colorimeter, Tablet Dissolution Apparatus, Frability Apparatus, Flame Photometers, Colony Counters, Differential Cell Counter, Karl Fisher Titrimeters, Blood Roller Mixer, Digital Tablet Hardness Tester, Digital Melting Point Apparatus, Bulk Density Apparatus, Digital Leak Test Apparatus, Digital Moisture Balance, Polarimeters, Viscometers, Refractometer, Per Thermal Cyclers, Bio Nano Spectrophotometers, Probe Sonicator, Bomb Calorimeters, Ultrasonic Cleaner, High Pressure Liquid Chromatograph (Hplc), Ph Meters, Conductivity/Tds Meters, Photo Fluorometers, Dry Bath Incubator, Photo Colorimeters, Hemoglobin Meters, Potentiometers, Turbidity Meters, Dissolved Oxygen Meters, Water & Soil Testing Kits , Hematology Analyzer, Microplate Elisa Reader, Bio Chemistry Analyzer, Gel Documentation System, Cod Digestion System, Vortex Mixers, Stirrers, Hot Plates, Over Head Stirrers, Centrifuge Machines, Mini Centrifuge, Ultra Pure Water Purification Systems, and Surgical, medical, Trading, retailing, wholesaling, distribution, export import, marketing, advertising and online business services in respect of scientific, medical, surgical, laboratory and industrial instruments; scientific and laboratory instruments etc. goods of the schedule and all allied and cognate goods under the impugned trademark/trade name/label "LABTRON" or any other trade trademark/trade name/label identical with or deceptively similar to the plaintiffs trademark/trade name/label "LABTRONICS" and passing off defendants' goods and business as and for the goods and business of the plaintiff.”

12. Aggrieved by the aforesaid order, the appellants have approached this Court by means of the present appeal under Section 13 of the Commercial Courts Act read with Order XLIII of the CPC.

13. We have heard Ms. Ishtha Singh, learned Counsel for the appellants and Mr. Amit Tiwari, learned Counsel for the respondent.

Appellant’s submissions, and findings thereon



14. The aspect of deceptive similarity

14.1 After her attention was drawn to the fact that the respondent was in fact the proprietor of a registered and subsisting word mark LABTRONICS, Ms. Singh sought to submit that there was no phonetic or other similarity between the marks LABTRONICS and “LABTRON INSTRUMENTS”.

14.2 The submission does not commend itself to acceptance. There is clear similarity between the marks LABTRONICS and LABTRON. The learned Commercial Court has correctly held that the only difference between the two marks was the last syllable “ICS”.

14.3 LABTRONICS cannot be regarded as *publici juris*, or a word which is etymologically common to the English language. It is, therefore, a coined and inventive word and is, therefore, entitled to additional protection even on that ground.

14.4 There is no contest to the assertion of the respondent that the word LABTRONICS had been coined and adopted by the respondent in 2001. Given the fact that Appellant 2 was an employee of the respondent, there is *prima facie* substance in the respondent’s contention that, having left the services of the respondent, the appellants consciously adopted the mark LABTRON INSTRUMENTS for identical goods, so as to create confusion in the market. It cannot be reasonably believed that the adoption, by the appellants, of the mark LABTRON for scientific and laboratory instruments had nothing to do with the fact that the respondent, of



whom Appellant 2 was a former employee, was using, and had registered in its favour, the mark LABTRONICS, for identical goods. The intent was, *prima facie*, to adopt a closely similar mark, in a manner which would confuse the public.

14.5 In any event, it is apparent that, to a person of average intelligence and imperfect recollection, the words LABTRONICS and LABTRON, when used for identical goods, are bound to create confusion or, at the very least, an impression of association between the two marks, either of which would suffice to constitute infringement within the meaning of clause (b) of Section 29(2)⁴ of the Trade Marks Act.

14.6 We are, therefore, in agreement with the learned Commercial Court in its finding that a *prima facie* case of infringement, by the appellants, of the registered LABTRONICS word mark of the respondent, is made out in the present case.

15. Territorial jurisdiction

15.1 Ms. Singh also sought to submit that the suit instituted by the respondent was bad for want of territorial jurisdiction.

⁴ (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.



15.2 We may, in this context, reproduce para 32 of the plaint, filed by the respondent, which deals with territorial jurisdiction, thus:

“32. That this Hon'ble Court has jurisdiction to try and adjudicate the present suit within the meaning of Section 134(2) of the Trade Marks Act, 1999, as the Plaintiff carries business in markets in Delhi through its dealer/distributors (list filed) which are within territorial limits of this Hon'ble Court. The plaintiff also submits that they carry on business and works for profit and gain within the territorial limits of this Hon'ble Court by widely selling its products in Delhi including within the jurisdiction of this Hon'ble Court. The Plaintiff also has various distributors/dealers which are engaged in marketing and supplying said products/goods of the Plaintiff bearing its said trade name/trademarks/label within the territorial jurisdiction of this Hon'ble Court. The Plaintiff also maintains a website <https://www.labtronicspectrophotometers.com/> which is interactive in nature and freely accessible within the jurisdiction of this Hon'ble Court. Further the plaintiff selling his product all over India through [Indiamart.com](https://www.indiamart.com/) which is interactive in nature and freely accessible within the jurisdiction of this Hon'ble Court. The defendants are also soliciting, selling and marketing their products within the jurisdiction of this Hon'ble Court. Even otherwise the defendants are expanding the impugned activities pan India. The plaintiff holds excellent goodwill and reputation in Delhi, which is being infringed and being passed off because of the aforementioned impugned activities of the defendants. The defendant has been selling its products in Delhi and therefore the cause of action has arisen- within the territorial jurisdiction and this Hon'ble Court has territorial jurisdiction to try and entertain the present suit under the provisions of Section 20 of CPC.”

15.3 In view of the fact that respondent specifically averred that it was selling its goods online through websites which were accessible within the jurisdiction of the learned Commercial Court, the contention of Ms. Singh that the suit was bad for want of territorial jurisdiction is also *prima facie* unworthy of acceptance. The law in this regard, as originally enunciated by a Division Bench of this Court



in *Banyan Tree Holdings v A. Murali Krishna Reddy*⁵ has subsequently been modified by the decisions in *World Wrestling Entertainment v Reshma Collection*⁶ and *Tata Sons Pvt Ltd v Hakunamatata*⁷. The relevant paragraphs from the said decisions may be reproduced thus:

From World Wrestling Entertainment

“23. Let us now apply these principles to the type of transaction over the internet, which we have explained above. The website of the appellant/plaintiff refers to various goods and services. It is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods “advertised” on the website of the appellant/plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the appellant/plaintiff through its website, the appellant/plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

21. But, we are not concerned with the question of cause of action between the appellant/plaintiff and its customers in Delhi because the defendants are not such customers and they are, in any event, all residents of Mumbai. What we are examining is whether the third condition specified in *Dhodha House (supra)*⁸ is satisfied or not. In other words, if the contracts and/or transactions entered into between the appellant/plaintiff on the one hand and its customers are being concluded in Delhi, can it not be said that the essential part of the business of the appellant/plaintiff, insofar as its transactions with customers in Delhi are concerned, takes place in Delhi? The offers are made by customers at Delhi. The offers are subject to confirmation/acceptance of the appellant/plaintiff through its website. The money would emanate or be paid from Delhi. Can it not then be considered that the appellant/plaintiff is, to a certain extent, carrying on business at Delhi? In our view, it would be so. Because of the advancements in technology and the

⁵ (2010) 42 PTC 361

⁶ (2014) 60 PTC 452

⁷ (2022) 92 PTC 635

⁸ *Dhodha House v S.K. Maingi*, (2006) 9 SCC 41



rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the ‘physical sense’ is replaced by the ‘virtual’ shop because of the advancement of technology, in our view, it cannot be said that the appellant/plaintiff would not carry on business in Delhi.”

From Tata Sons Pvt Ltd

“22. We are in complete agreement with the above view of the English court. *Even if a website is not directed at customers in a particular country, the fact that they are not restricted by the website to have access to it, is enough to characterise it as targeting. Targeting need not be a very aggressive act of marketing aiming at a particular set of customers. Mere looming presence of a website in a geography and ability of the customers therein to access the website is sufficient, in a given case.* It may not be forgotten that in the matters of infringement of trade mark, it is the possibility of confusion and deception in the mind of public due to infringing trade mark that is good enough for the court to grant injunction.”

15.4 Apropos its earlier decision in ***Banyan Tree Holdings***, the Division Bench of this Court, in ***World Wrestling Entertainment***, observed as under:

“8. With regard to the reliance placed by the appellant/plaintiff on the decision in ***Banyan Tree (supra)***, the learned Single Judge observed that the same was misplaced inasmuch as, according to him, in ***Banyan Tree (supra)*** the question related to the website of a defendant and not that of plaintiff as in the present case. At this juncture itself we may point out that the decision in ***Banyan Tree (supra)*** would not be applicable here just because the questions there pertained to a defendant's website but, because (a) it specifically dealt with a case where it was admitted that the plaintiff did not carry on business within the jurisdiction of the



Court, (b) it was concerned only with the provisions of Section 20(c)⁹ CPC, and (c) it was a case of passing off. In *Banyan Tree (supra)* the Division Bench did not examine the meaning and scope of the expression ‘carries on business’ as appearing in Section 134(2)¹⁰ and 62(2) of the Trademarks Act, 1999 and the Copyright Act, 1957, respectively. That case was decided on the basis of the plea of ‘cause of action’ and not on the basis of the expression ‘carries on business’, which is the case here.”

15.5 In *Indian Performing Rights Society Ltd v. Sanjay Dalia*¹¹, the Supreme Court clarified that, in fact, Section 134 of the Trade Marks Act (and Section 62 of the Copyright Act) had been enacted specifically to tone down the rigour of Section 20 of the CPC, and provide an additional forum where the defendant could be sued:

“14. Considering the very language of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them

⁹ **20. Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction –

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

¹⁰ **134. Suit for infringement, etc. to be instituted before District Court.** –

- (1) No suit—
 - (a) for the infringement of a registered trade mark; or
 - (b) relating to any right in a registered trade mark; or
 - (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

- (2) For the purpose of clauses (a) and (b) of sub-section (1), a “District Court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

¹¹ (2015) 10 SCC 161



to drag the defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression “notwithstanding anything contained in the Code of Civil Procedure” does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and *it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business, etc.* as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and Section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 CPC has been added to the effect that corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, “corporation” can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

18. On a due and anxious consideration of the provisions contained in Section 20 CPC, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, *it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain.* However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also. *The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff.* The rule of convenience of the parties has been given a statutory expression in Section 20 CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties.

19. *The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to*



the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings “because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence”. The impediment created to the plaintiff by Section 20 CPC of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

21. At the same time, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent that the impediment imposed under Section 20 CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc.

22. There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, “notwithstanding anything contained in CPC or any other law for



the time being in force”, emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

23. The provisions of Section 62(2) of the Copyright Act and Section 134 of the Trade Marks Act are *in pari materia*. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of Section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to Section 134(1)(c) in respect of “passing off” continues to be governed by Section 20 CPC.”

(Emphasis supplied)

15.6 As the law stands today, therefore, the position is that (i) Section 134 of the Trade Marks Act provides an *additional forum* where the defendant can be sued, which would be any Court within whose jurisdiction the plaintiff resides or carries on business, subject to the plaintiff not misusing this liberty as noted in ***Indian Performing Rights Society*** and (ii) in the e-commerce regime, any Court, within whose territorial jurisdiction the website of the plaintiff can be accessed, would be regarded as a Court within whose jurisdiction the plaintiff “carries on business” and would, therefore, be competent to try the infringement suit instituted by the plaintiff. *This position is, however, applicable only to infringement suits, and not to suits which are solely for passing off, as Section 134 covers only infringement actions.*

15.7 Resultantly, any court, within the jurisdiction of which an



interactive website of the respondent can be accessed, or the goods of the respondent can be purchased, would have territorial jurisdiction to decide the suit. It is not necessary that an actual transaction has to be concluded across the said website. The test in that regard has been laid down *Banyan Tree Holdings* stands subsequently diluted by this Court in *World Wrestling Entertainment* and *Tata Sons*.

15.8 In that view of the matter, the submission of Ms. Singh that the suit was bad for want of territorial jurisdiction is also not tenable in law.

16. Re. transacting of business by the respondent with the appellants

16.1 Ms. Ishtha Singh's third submission was that the respondent was transacting business with the appellants and could not, therefore, seek an injunction against the appellants. We are unaware of any proscription to be found in the Trade Marks Act, against instituting a suit for infringement against a person with whom one is carrying on business.

16.2 Section 28(1)¹² of the Trade Marks Act is clear and categorical in its mandate. A valid and subsisting registration confers, on the proprietor of the mark, not only the exclusive right to use the mark in respect of goods or service for which it is registered, but also a right to

¹² **28. Rights conferred by registration. –**

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.



relief against the infringement. The categories of reliefs which are available against infringement are set out in Section 135¹³ of the Trade Marks Act. These include, apart from damages, the relief of injunction against the use of the mark by the defendant.

16.3 The Supreme Court has, in its judgment in *Midas Hygiene Industries v Sudhir Bhatia*¹⁴ clearly held that, where the court finds that a case of infringement is made out, an injunction has to follow. The Supreme Court has also held that, in such cases, even delay would not be a ground to restrain the court from granting an injunction on the very first day. In a case of passing off, the Supreme Court has, in its decision in *Laxmikant Patel v Chetanbhai Shah*¹⁵, held that, on the very first day, the Court has not only to grant injunction, but has also to appoint a local commissioner to seize the infringement goods.

16.4 Thus, the fact that the respondent may, or may not, have been transacting business with the appellants, is entirely irrelevant while assessing the respondent's entitlement to injunction. Two considerations alone are of relevance when assessing a plaintiff's claim for injunction against the defendant, in a case of alleged

¹³ 135. **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 infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include and ex parte injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

¹⁴ (2004) 3 SCC 90

¹⁵ (2002) 3 SCC 65



infringement. They are, firstly, whether the defendant has infringed the registered trade mark of the plaintiff within the meaning of Section 29 of the Trade Marks Act; and, secondly, whether the case falls within any of the provisions in the Trade Marks Act in which the defendant, though an infringer, is entitled to protection against an injunction – chiefly, Section 34¹⁶.

17. Scope of interference

17.1 We may also advert, in this context, to the following passage from the judgment of the Supreme Court in *Wander Ltd v Antox (India) Pvt Ltd*¹⁷ in which the scope of interference, by a Court exercising appellate jurisdiction against an interlocutory order passed by the Commercial Court under Order XXXIX Rules 1 and 2 of CPC, in trade mark infringement cases, is clearly delineated:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from

¹⁶ 34. **Saving for vested rights.** – Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

¹⁷ 1990 Supp SCC 727



the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v Pothan Joseph*¹⁸:

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v Jhanaton*¹⁹:...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

17.2 An appeal in such cases, therefore, is not an appeal on facts but an appeal on principle. If the learned Commercial Court has applied the principles of law correctly, this Court is not expected to sit in appeal or reverse the decision of the learned Commercial Court. Nor can the Court substitute its subjective view with respect to aspects such as deceptive similarity and the like, once the learned Commercial Court has taken a view in that regard, unless the view is found to be palpably erroneous or such as would not be taken by any person who is aware of law and the facts of the case.

Conclusion

18. Within these limited parameters, we are of the view that no case arises to interfere in the matter. The appeal is accordingly dismissed in

¹⁸ AIR 1960 SC 1156

¹⁹ 1942 AC 130



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limine.

19. We, however, clarify that the observations contained in this judgment, inasmuch as it deals with an interlocutory order passed by the learned Commercial Court, are only *prima facie*. They would not inhibit the learned Commercial Court in any view that it would seek to take in the matter when it is heard finally.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 25, 2025

dsn