

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO(D) No.1/2024

M/s Tulip overseas through its proprietor
Talib Mehraj (age 26 years)
S/o Mehraj -u- Din
R/o Shah Mohalla, Awanti Bhawan
Soura, District Srinagar

...Appellant(s)

Through:- M/s Rahil Habib & Efraan Habib,
Advocates

Versus

M/s Tulip Overseas through its proprietor
Naveed Ahmad S/o Mohd. Yousuf
R/o Firdous Colony, Buchpora, Srinagar.

...Respondent(s)

Through:- Mr. Taha Khalil, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
(through virtual mode)
HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

ORDER
29.08.2025

Sanjeev Kumar J

1. This civil first appeal filed in terms of Section 13 of the Commercial Courts Act, 2015 read with Order XLIII of the Code of Civil Procedure arises out of an interim order dated 14th February, 2024 passed by the Court of Additional District Judge (Bank Cases), Srinagar ["Commercial Court"] in file No.1A/01/2023 titled M/s Tulip Overseas v. Tulip Overseas, whereby the Commercial Court has modified its earlier ex-parte order dated 30.11.2023.

2. Briefly stated, the facts leading to the filing of this appeal are that the appellant through its proprietor Talib Mehraj has filed a suit for permanent prohibitory injunction restraining the respondent from infringement of trade mark/passing off etc. It is pleaded by the appellant in his plaint that he is engaged in the business of re-packaging of clothing and footwear, import of goods and other allied and related goods and stands registered in the name of “Tulip Overseas” under the Trade Marks Act, 1999. The respondent without having any registered trademark is using the trade mark of the appellant “Tulip Overseas” with an intention to deceive the public and cheat the consumers. The respondent is passing off its products as if the same are being marketed by the appellant. The appellant placed on record certificate of GST registration, registration certificate under FSS Act, 2006 and registration of its trade mark under the Trade Marks Act, 1999. The suit of the appellant is resisted by the respondent, who, in his written statement, has taken a stand that, though, he is also using the same brand name i.e. “Tulip Overseas” but he is dealing in another line of business and, therefore, case for passing off or breach of trademark is not made out.
3. Having considered the rival contentions in light of the documentary evidence on record, the Commercial Court was of the *prima facie* opinion that the two i.e. appellant and the

respondent deal in different commodities and have a different line of business, as such, use of one trade name i.e. “Tulip Overseas” by one does not affect the business of the other. The Commercial Court, thus, modified its ex-parte order of restraint dated 30th November, 2023 and provided that the respondent may use the brand name “Tulip Overseas” in respect of his business of food and beverages, which is different from the business of re-packaging of clothes, footwear, dry fruits, pulses and spices. However, the respondent shall not use the brand name “Tulip Overseas” in any form including registered device mark in form of artistic symbol as reflected in registration certificate issued in favour of the appellant under the Trade Marks Act, 1999 in respect of his line of business. Dissatisfied with this order passed by the Commercial Court on 14th February, 2024, the appellant is before us in this appeal.

4. After arguing for a while and on being told that the issue between them can be temporarily resolved till disposal of the suit by making an arrangement, which would take care of both the parties, learned counsel appearing on both the sides were quick to record their consent.
5. Accordingly, with the consent of the parties, order impugned dated 14th February, 2024 passed by the Commercial Court is redrawn as under:-

“That the respondent shall not use the registered trade mark “Tulip Overseas” in any form with regard to the products for which the appellant is registered under the Trade Marks Act, 1999. With regard to the items of business other than those for which the appellant is registered under the Trade Marks Act, 1999, both the parties shall use the trademark in the following manner:

- a) The appellant shall conduct its trade and business in the brand name of “*Tulip Overseas (Talib)*”.
- b) Similarly, the respondent shall conduct its trade and business under the brand name of “*M/s Tulip Overseas (Naveed)*”

- 6. This arrangement shall remain in operation till the suit is finally decided by the Commercial Court.
- 7. The appeal shall stand disposed of in the above terms.

(Sindhu Sharma)
Judge

(Sanjeev Kumar)
Judge

JAMMU
29.08.2025
Vinod,PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No