

advertisements, promotion and extensive use of the goods bearing the marks 'UltraTech', the same are exclusively and solely associated with the Plaintiffs and the Plaintiffs have acquired tremendous goodwill and reputation in the marks which are owned by the Plaintiffs; that the mark 'UltraTech' is a well-known mark in India and has acquired a secondary meaning; that the mark 'UltraTech' is solely and exclusively associated by the members of the public and the traders with the Plaintiffs and none else.

3. It is further submitted that the use of the marks "ULTRA CHAMPION CEMENT", "ULTRA CHAMPION CEMENT The Ultimate Choice", "ULTRA CHAMPION CEMENT Ultimate Choice" and "ULTRA CHAMPION- Champiyano ka Champion (In Devanagari Script)" as depicted in Exhibits G to G-7 to the Plaint, by the Defendant in respect of goods covered by the registration of the Plaintiffs' marks is an infringement of the Plaintiffs' registered trade marks and the Defendant is also passing off their goods as and for the goods of the Plaintiffs; the marks used by the Defendant are deceptively similar to the registered trademarks of the Plaintiffs; the Defendant is also using the deceptively similar placement of material, colour combination, font etc. so as to come as close as possible to the Plaintiffs marks as used by the Plaintiffs on the cement bags; the Defendant is passing off its goods as and for the goods of the Plaintiffs. The Defendant's activities are dishonest and unfair.

4. The Plaintiffs served papers and proceedings comprising of Suit, Notice of Motion, Affidavit in Support thereof, Application seeking leave under Clause XIV on the Defendant. The Plaintiffs have filed an affidavit of service dated 4th July 2014 to that effect. Thereafter, an application for ad interim relief of the Plaintiffs was heard on 7th July 2014 and this Court granted ad interim reliefs to the Plaintiff in terms of prayer Clauses (a) and (b) of the Notice of Motion. The Notice of Motion was finally heard on 31st March, 2016. The Defendant remained absent and after hearing the Advocate for the Plaintiffs, the Notice of Motion was allowed in terms of prayer clauses (a) and (b).

5. The packet containing the Writ of Summons was returned with the remark 'Address is incomplete'. Therefore, the Prothonotary and Senior Master by his order dated 24th April 2015 directed the Plaintiffs to serve the Writ of Summons by substituted service. Accordingly, the Plaintiffs have served the Writ of Summons by way of substituted service by publication in Dainik Bhaskar on 9th July, 2015 and an affidavit dated 13th July 2015 to that effect is filed on 14th July 2015. The Defendant did not appear despite service and therefore by an order dated 1st October 2015 passed by the Prothonotary and Senior Master, the Suit was transferred to the list of undefended suits.

6. The Plaintiffs representative, Mr. Rajesh Lunawat, Senior Manager Central Commercial Coordinator, has led evidence in person by filing his Affidavit in lieu

of examination-in-chief. He confirms the correctness of the contents of the Affidavit as well as the plaint. In support of the Plaintiffs' case the witness has sought to rely upon documentary evidence, which is tendered in the form of a compilation of documents. Mr. Lunawat identified the signature of Mr. Ganesh Nabar, who has verified the plaint on behalf of the Petitioner. The witness confirmed that Mr. Nabar was authorized to file the suit by the Plaintiffs. The witness has in his affidavit of examination in chief led evidence to prove the admissibility of the documents contained in the compilation of documents. The Defendant has not disputed the documents. In view of this evidence, the documents contained in the compilation of documents are duly proved as the same are not disputed/ contested by Defendant. The documents contained in the compilation of documents filed by the Plaintiffs are admitted in evidence. The compilation of documents filed by the Plaintiffs is marked as **Exhibit 'P1'** collectively.

7. I have considered the submissions made on behalf of the Plaintiffs. The Plaintiffs have by oral as well as documentary evidence have established that the Trade Mark 'UltraTech Cement The Engineers Choice' is the trade mark registered in the name of the Plaintiffs. The certified copies of the entry made in the Register relating to the Trade Marks '**UltraTech Cement The Engineers Choice**' in the name of the Plaintiffs clearly proves that the Trade Mark '**UltraTech**' is registered in the name of the Plaintiffs. The Plaintiffs have also

established that the Plaintiffs have been using the products bearing the registered trademark “**UltraTech**” since the year 2003 openly, continuously and extensively. The Plaintiffs have been selling the said products bearing the registered trademark “**UltraTech**” continuously, extensively and exclusively on a growing scale which is evident from the turnover which has risen from Rs.2,251 crores in the year 2003-04 to Rs. 20,018 crores in the year 2012-2013 and the consolidated turnover of the Plaintiff No. 1 is Rs. 83,478 crores as on 31st March, 2013. The Plaintiffs have also produced in evidence the Chartered Accountant Statements of the Plaintiffs turnover and the amounts spent towards advertisements and publicity in respect of the mark ‘Ultra Tech’. The Plaintiffs have established that the mark UltraTech Cement The Engineers Choice’ is solely and exclusively associated by the members of the public and the traders with the Plaintiffs and none else. The Plaintiffs have established that the mark ‘Ultra Tech Cement The Engineers Choice’ is distinctive of the Plaintiffs. The Plaintiffs have established that the Plaintiffs by extensive use of the “UltraTech Cement The Engineers Choice’ and by advertising and promoting the goods bearing the mark “UltraTech Cement The Engineers Choice” have acquired goodwill and reputation in the same which is owned by the Plaintiffs and that mark the ‘Ultra Tech Cement The Engineers Choice’ has reputation in India and is known to the substantial segment of people in India and is a well-known mark of the Plaintiffs as defined in Section 2 (zg) of the Trade Marks Act, 1999.

8. The Plaintiffs have established that the Defendant is using the mark “ULTRA CHAMPION CEMENT”, “ULTRA CHAMPION CEMENT The Ultimate Choice”, “ULTRA CHAMPION CEMENT Ultimate Choice” and “ULTRA CHAMPION- Champiyano ka Champion. The Plaintiffs have produced the actual bags of the Defendant bearing the impugned marks. I have compared the original cement bags of the Plaintiffs bearing the mark UltraTech and the Defendant’s cement bag bearing the marks “ULTRA CHAMPION CEMENT”, “ULTRA CHAMPION CEMENT The Ultimate Choice”, “ULTRA CHAMPION CEMENT Ultimate Choice” and “ULTRA CHAMPION- Champiyano ka Champion (In Devanagari Script)” as used by the Defendant. Upon the comparison of the marks of the Plaintiffs as registered and as used by the Plaintiffs and the Defendant’s mark appearing on the product of the Defendant and used by the Defendant, I find that the marks as used by the Defendant, are deceptively similar to the marks registered in the name of the Plaintiffs and as used by the Plaintiff. The Defendant has copied all the essential and prominent features of the Plaintiffs marks. The Defendant is using the impugned marks in respect of an identical product. The marks used by the Defendant are deceptively similar to that of the Plaintiffs and therefore there exists likelihood of confusion and/or association in the market of the Defendant’s product with the products of the Plaintiffs. The goods of the Defendant bearing the impugned marks looks like an extended range of the Plaintiffs product. This is clear from the appearance and

get up and visual impact of the Defendant's marks appearing on its product that the Defendant is passing off and/or enables others to pass off its goods by using the mark deceptively similar to the Plaintiffs marks. The marks used by the Defendant are phonetically, visually as well as structurally similar to the registered marks of the Plaintiffs as well as the marks as used by the Plaintiffs.

9. I therefore, find that there is a clear attempt on the part of the Defendant to trade upon the goodwill and reputation of the Plaintiffs in the "UltraTech" trademarks. There cannot be any justification for the Defendant for adoption of the impugned mark. The placement of material and its visual and phonetic impact is such that the Defendant is representing that the goods sold by them are the goods of the Plaintiffs. The manner of use of the impugned mark by the Defendant is such that it is bound to result in confusion and deception in the market. The Plaintiffs have established that the Defendant has used the impugned marks and has caused loss and damage to the Plaintiffs.

10. There is nothing on record that militates against anything that has been averred in the Plaint and deposed by the Plaintiffs' witness and proved by him by oral and documentary evidence.

11. The Defendant has not appeared in the proceedings despite service of the Writ of Summons. The evidence of the Plaintiff/witness is uncontroverted.

12. In the circumstances, suit is decreed in terms of Prayer Clauses (a), (b), (c) and (d) of the plaint which are reproduced hereunder :

“(a) that the Defendant by itself, its servants, agents and distributors or representatives or any person claiming through or under them and the like be restrained by a perpetual order and injunction from in any manner in relation to any of its goods from using the marks/labels containing the words “ULTRA CHAMPION CEMENT”, “ULTRA CHAMPION CEMENT The Ultimate Choice”, “ULTRA CHAMPION CEMENT Ultimate Choice”, and “ULTRA CHAMPION-Champiyano ka Champion (in Devanagari Script)” together or by themselves or with any other word or device and/or any other mark or the impugned mark as shown in Exhibit G-G7 and/or other deceptively similar words written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered and well known “UltraTech” trademarks or parts thereof bearing Registration Nos.1244745, 1326528, 1575299, 1544648, 1340606, 1525671, 1525672, 1908355, 1908356, 2080447 and 2080448 so as to infringe the plaintiffs said registered trademarks;

(b) that the Defendant by itself, its servants, agents, representatives or any person claiming through or under them and the like be restrained by a perpetual order and injunction of this Hon'ble Court from using the marks/labels containing the words “ULTRA CHAMPION CEMENT”, “ULTRA

CHAMPION CEMENT The Ultimate Choice”, “ULTRA CHAMPION CEMENT Ultimate Choice”, and “ULTRA CHAMPION-Champiyano ka Champion (in Devanagari Script)” together or by themselves or with any other word or device and/or any other mark or the impugned mark as shown in Exhibit G-G7 and/or any other deceptively similar words written in a stylized manner or in any manner and/or any other deceptively similar mark to the Plaintiff's “UltraTech” trademarks or parts thereof so as to pass off and/or enable others to pass off the Defendant's goods as and for the goods of the Plaintiffs or in some way connected with the Plaintiffs;

(c) that the Defendant be ordered and decreed to pay to the Plaintiffs as and by way of damage of Rs.50,00,000/- (Rupees Fifty Lacs only) on account of the damage suffered by the Plaintiffs by the actions of the Defendant or in the alternative, the Defendant be ordered and decreed to render a true and faithful account of all the profits earned by the Defendant by use of the impugned marks and that the Defendant be further ordered and decreed to pay to the Plaintiffs such amount as may be found due on such account being taken;

(d) that the Defendant be ordered and decreed to deliver up to the Plaintiffs for destruction thereof all the stationery, brochures, pamphlets, forms and all promotional advertising, literature, packing material, poly bags and other materials, articles and effects of the Defendant bearing the impugned mark along

with all stamps, dies, articles, papers and things bearing the impugned marks/labels ““ULTRA CHAMPION CEMENT”, “ULTRA CHAMPION CEMENT The Ultimate Choice”, “ULTRA CHAMPION CEMENT Ultimate Choice”, and “ULTRA CHAMPION-Champiyano ka Champion (in Devanagari Script)” and/or any other articles or materials used for printing the impugned marks/labels;”

13. The office shall return the original documents to the Advocate for the Plaintiffs upon the Advocate for the Plaintiffs handing over Photostat copies of the said documents duly certified by him as true copies.

(S.J. KATHAWALLA, J)