



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 APEAL FROM ORDER NO. 44 OF 2023
WITH
CIVIL APPLICATION NO. 8247 OF 2023
IN AO/44/2023

M/S. KAILASH MASALA INDUSTRIES THR. PROPRIETER KAILASHCHAND
SHANKARLAL AGRAWAL

VERSUS

ORGANIC KHANDESHI FOOD PRODUCTS AND ANOTHER

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Advocate for the Petitioner : Mr. Vijay B. Patil

Advocate for Respondents : Mr. Bajaj Anil S.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 26.11.2025

PER COURT :

Heard both sides finally at the stage of admission.

2. Being aggrieved by order of rejection of application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (CPC), appellant-original plaintiff has preferred present Appeal from Order. He has filed Regular Civil Suit No. 1/2001 before District Judge-I for perpetual injunction and action for passing off against respondents-defendants. Application Exh. 6 was also been filed along with the plaint.

3. By my order dated 06.10.2025, parties were directed to disclose the status of the suit on the next date. It was not disclosed, therefore, I was required to pass order on 04.11.2025 calling for the report from the Presiding Officer in respect of the status of the proceedings as well as application dated 22.8.2024, which was filed by the respondents for proceeding with the suit. In pursuance of those orders this Court received report of the Presiding Officer dated 19.11.2025 disclosing the status,

various dates and the manner in which the suit proceeded. My anxiety was to know as to why the matter did not proceed further when the impugned order was passed before four years and there was no stay to the proceedings.

4. In this backdrop, the learned counsel for the appellant Mr. Patil submits that the impugned order is unreasoned and cryptic. Most of the text is devoted to the discussion of the case law and the principles laid down therein. No endeavor was made by the learned Judge to compare the trademark of the appellant with the offending trademark. There are absolutely no reasons discussing similarity or deceptive similarity in the trademarks of the parties. It is submitted that it is a fit case to remand the matter for reconsideration of Exh. 6.

5. The learned counsel further submits that the documents were produced by the appellant and prima facie case is made out, which is not properly appreciated by the learned Judge. The appellant is in business since many years and has sufficient turnover and the offending trademark of the respondents is affecting trade, business and good will. It is further submitted that due to pendency of the present appeal the appellant did not proceed with the suit, as the interim injunction has relevance. It is submitted that the appellant is ready to cooperate with the Trial Court if the matter is remanded for fresh decision over application Exh. 6. My attention is also adverted to the principles laid down by various judgments and especially by the Division Bench in the matter of **Sole Proprietor Vs. Siram Institute of India Pvt. Ltd.; AIR 2021 Bom 198.**

6. Per contra, learned counsel Mr. Bajaj relies on affidavit in reply to show that suit did not proceed further due to lapses on the part of the appellant. Even application Exh. 29 has required to be submitted for proceeding with the suit, which was also not been decided. He would submit that the application for registration submitted by the appellant was

contested by his client and the competent authority rejected on 31.01.2024 by a speaking order. It is further submitted that considering the parameters laid down by the Division Bench in the matter of **Sole Proprietor (supra)**, which is referred in the impugned judgment, the Trial Court is justified in rejecting the application Exh. 6. The appellant failed to make out *prima facie* case which is very first parameter laid down by the Division Bench. It is submitted that in the absence of any tangible material to show that there was ever any business or good will of the appellant, the further enquiry into comparison, deceptive similarity is unwarranted. He would support the findings recorded by the Trial Court and prays for dismissal of the appeal.

7. Having considered the rival submissions as well as the report submitted by the Presiding Officer dated 19.11.2025 what transpires is that Regular Civil Suit No. 1/2001 filed for perpetual injunction in respect of infringement of trademark and 'passing off' has not been progressed much, even after four years. The conduct of the parties in pursuance of the report submitted by the Presiding Officer can be dealt with a little later.

8. It reveals from record that the appellant has claimed user of trademark 'Mahalaxmi' since 01.04.2010. The application for registration of the trademark was submitted on 04.05.2021. It was contested by the respondent before the competent authority. By a reasoned order it was rejected on 31.01.2024. The order has been placed on record by the respondents. It shows that the appellant, who was applicant therein had adjourned the matter on couple occasions and had not appeared to work it out. Despite extending opportunity no submissions were made. On merits, his application came to be rejected. The observations of the competent authority has relevance when it comes to the conduct of the appellant.

9. The paper book of the appeal from order does not reflect any photo copy of the trademark of the appellant or the respondents. It is the foremost duty of the party, who is seeking discretionary relief to disclose the exact

nature of the trademark, either by producing photo copy or colour photo copy for comparison. For the comparison there is absolutely no material on record before this Court. Neither any such attempt is made by the learned counsel for the appellant during the course of arguments.

10. I have gone through the principles culled down from the various judgments placed on record by the parties before the Court below. It is relevant to notice that the Division Bench in the matter of **Sole Proprietor (supra)** has made relevant observations, which is reproduced in paragraph no. 12 of the impugned order. It is reiterated that to establish passing off by the respondents, the applicant must first represent good will and reputation attached to his goods and services. Secondly, the applicant must show that the respondent's acts are likely to lead the public to believe that the goods and services offered by the respondent are the goods and services of the applicant. Thirdly, the applicant has to establish that he is likely to suffer or has suffered damage. In the wake of these principles the Trial Court examined the matter and recorded findings in paragraph nos. 13 and 14.

11. No tangible material is placed on record to show that the trademark of the appellant has been used and a good will has been created. It is the case of the appellant that it has a turnover more than rupees one Crore annually. It is imperative for the appellant to produce tangible material on record to corroborate the business and the good will. It could have produced income-tax returns, bank statements, GST invoices, audited account books. In the absence of any *prima facie* material to satisfy the first parameter, the learned Judge is justified in holding that there no *prima facie* case is made out.

12. Its a matter of record that the application for registration has been rejected by the competent authority. The respondent does not possess the registration but its application is under consideration. The obligation is on the applicant who is claiming temporary injunction to make out *prima facie*

case, balance of convenience and irreparable loss. I have already observed that no attempt is made in present appeal to show the nature of the trademark for the comparison. In that view of the matter, I am unable to accept the submission of learned counsel Mr. Patil that there is no discussion regarding comparison, similarity or deceptive similarity of the trademarks of the parties.

13. The findings recorded by the learned Judge are plausible and reasonable. I do not find any arbitrariness or perversity in the findings. I am being guided by law laid down by the Supreme Court in the matter of **Wander Ltd. Vs. Antox India Pvt. Ltd; 1990 SC (Supp) 727**. It is not permissible for this court to reappreciate the material on record.

14. The conduct of the parties is relevant when the Court is examining validity of the order passed under Order 39 Rule 1 and 2 of CPC. It would be relevant to refer to the judgment of the Supreme Court in the matter of **Ambalal Sarabhai Enterprise Limited and Ors. vs. KS Infraspaces LLP Limited and Ors;** AIR 2020 SC 307, which *inter alia* refers to judgment of **Gujarat Bottling Co. Ltd. and Ors. Vs. Coca Cola Company and Ors.** AIR 1995 SC 2372, which is as follows :

23. **Wander Ltd. (supra)** prescribes a Rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in **Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC 545**, observing as follows:

47....Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court,

and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest....”

15. I have already referred the observations of the competent authority in rejecting the application for registration of the trademark dated 31.01.2024. The civil suit did not proceed further and adjournments are sought by the appellant before the Trial Court under the pretext of pendency of present appeal. I do not find that any endeavor has been made by the appellant for expeditious hearing of present appeal. The learned Presiding Officer has elaborately stated in the report the manner in which the suit proceeded, adjournments sought by the parties and the status of application dated 22.08.2024 Exh. 29. It is apparent from the report that there are lapses on the part of the appellant in proceeding with the suit. In the infringement or passing off action the orders passed in application under Order 39 Rule 1 has significance cannot be justification for protracting the civil suit. The sword of Damocles cannot be kept hanging over respondents for indefinite period. The conduct of appellant is objectionable. No case is made out for remand. No discretion can be exercised in favour of such defaulting appellant.

16. (a) Appeal from Order stands dismissed with costs of Rs. 10,000/- (Rs. Ten Thousand only). The same shall be deposited in the Trial Court and shall be disbursed to the respondents.

(b) Pending Civil Application is disposed of.

(c) Needless to state that the parties shall cooperate with the Trial Court for expeditious disposal of the suit. The Presiding Officer is requested to decide the suit within a period of six months from today.

(c) The observations made in the present minutes of the order are *prima facie* in nature.

(SHAILESH P. BRAHME, J.)

mkd/-