

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.34 OF 2022

WITH

CIVIL APPLICATION NO.9230 OF 2022 IN AO/34/2022

Harikishan Pandurang Mundada, H.U.F.
represented by its Karta
Shri Harikishan Pandurang Mundada,
Age - 48 years, Occupation - business,
carrying on business in the name and style of
'Mundada Foods', having its principal place
of business at G-12, M.I.D.C. area,
Latur - 413531, Maharashtra, India. ... **Appellant**
(Ori. Plaintiff)

Versus

1. Yash Industries having its address/office
at Nagar Road, Tintarwani, Taluka Shirur,
District Beed, Maharashtra – 431130, India.
2. Mahadeo Sadashiv Khedkar having
his address at Nagar Road, Tintarwani,
Taluka Shirur, District Beed,
Maharashtra – 431130, India. ... **Respondents**
(Ori. Defs)

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Advocate for Appellant : Mr. Hiren Kamod a/w Mr. Vaibhav
Keni, Ms. Neha Iyer and Proutima Ray i/b Ashwin V. Sakolkar.

Advocate for Respondent No.1 : Mr. Rahul R. Totala a/w Mr.
Swapnil V. Lohiya and Mr. Sidhant Somani.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 05.12.2025

PRONOUNCED ON : 12.12.2025

JUDGMENT :

1. Heard both sides finally with their consent.

2. Appeal is directed against order dated 25.03.2022 below Exh.5 rejecting application for temporary injunction preferred in Special Civil Suit No.1 of 2021, pending before District Judge-4 Beed.

3. Appellant has filed Special Civil Suit No.1 of 2021 against the respondents to restrain them from infringement of appellant's ;

(i) registered trade mark and label mark as "SUNRICH"

(ii) registered design

(iii) copy right

(iv) committing tort of passing of the good products.

Application Exh.5 was filed under Order 39 Rule 1 and 2 of CPC. Respondents have contested the proceedings. The Trial Court had granted ad-interim relief vide order dated 28.02.2022. By impugned order, application Exh.5 was rejected. The suit is still pending before the Trial Court.

4. The controversy pertains to registered trade mark, label mark, design of the appellant as "SUNRICH". It is contended that since 2004-2005, the trade mark was being adopted and

thereafter variants were introduced. Appellant is stated to be in business since 2004-2005 in packaged aerated drinking water. It is pleaded that there is huge turn over, business and goodwill of the appellant. It is alleged that respondents have infringed the statutory rights of the appellant by their sale of a product YashRich. They also ventured in mineral aerated packaged drinking water. It is stated that respondents have dishonestly adopted impugned trade mark which is closely and deceptively similar to the appellant's trade mark. That is the cause shown for filing suit.

5. Respondents have contested the suit on the ground that SUN, RICH and AQUA are generic words. The appellant cannot claim any monopoly or exclusivity. The respondents are stated to have registered trade mark which is neither phonetically or visually similar to the trade mark and label of the appellant. All the allegations of appellant are denied.

6. Learned counsel Mr. Hiren Kamod made elaborate submissions relying upon various judgments of High Court and Supreme Court. He has also referred to Commercial Miscellaneous Petition No.40094 of 2022 and the interim order

passed therein. He tried to demonstrate from the colour photo copies of the trade mark and the label, the mischief of the respondents. According to him, Trial Judge committed patent illegality in rejecting the application and the decision is against law laid down by Supreme Court in the matters of ***Amritdhara Pharmacy Vs. Satyadeo Gupta [AIR 1963 SC 449]*** and ***Hiralal Parbhudas Vs. Ganesh Trading Company and others [1984 (4) PTC 155 (Bom.)]***. Impugned order is contended to be against the settled principles of law.

7. According to him, the principles of wonderment are overlooked. It is an error of jurisdiction to conduct microscopic examination. It is further submitted that respondents strategically and deliberately adopted the trade mark, the label and the design to mislead the customer for causing huge loss to the appellant. Besides above submissions, learned counsel strenuously canvassed various submissions to make out a case of temporary injunction.

8. Per contra, learned counsel for the respondents relied on affidavit-in-reply to repel the claim of the appellant. He supported impugned order. It is submitted that appellant

suppressed that it learnt about the trade mark, label and design of the bottle of the respondents in December 2021. It is further submitted that a false suit has been filed to create monopoly in the business. The trade mark, label and the design of the respondents is stated to be legal and as per settled practices. It is submitted that a threadbare analysis of the matter is not permissible at the interlocutory stage.

9. It is predominantly canvassed by learned counsel Mr. Totla that there was possibility of the settlement between the parties. My attention is adverted to interim orders passed on 09.10.2024 and 24.10.2024 in the present appeal to buttress that in pursuance of the talks of the compromise, the respondents stopped the production of the bottle of the old design and adopted a new design. During the course of a hearing, learned counsel has made candid statement that in a collateral proceeding before the principal seat also it was disclosed the change of design of the bottle and the label. It is demonstrated before me by showing the colour photo copy of old label and the changed label. The changed design of the bottle is also shown to me. In view of the submissions, I called upon the respondents to submit the affidavit disclosing the

supervening events. Accordingly, additional affidavit/undertaking was tendered on 04.12.2025.

10. The affidavit tendered by the respondents is countered by written submissions-cum-rejoinder filed by the appellant. The purport of the rejoinder is that subsequent changes do not defeat cause of action, and it still survives. The subsequent changes fortify appellant's case and the validity of the impugned order needs to be tested independently.

11. The affidavit tendered by the respondents categorically discloses the change of design of the bottle and the label as well as stoppage of production of the old bottle. The following statements in the affidavit are relevant :

“6. It is also pertinent to note that during the course of the hearings of the present appeal, the Respondents have handed over to this Hon'ble Court the changed design of the bottle along with the new label of the bottle to the Appellants which is also duly recorded in order dated 09.10.2024 and 24.10.2024 passed in the captioned Appeal. The order dated 24.10.2024 also recorded that the Respondents have also stopped the production of bottle having old design.”

“7. The Respondents since has already changed the design and label of the bottle which is already stated by me in reply Affidavit dated 5.07.2023 filed in rectification proceedings

before Hon'ble Bombay High Court, which is within the knowledge of the Appellants and since Respondents are not using the impugned design of the bottle and impugned label of the bottle since 01.02.2023, it also undertakes additionally that it shall in future also not use, sale, manufacture, produce the impugned design and impugned label.”

12. In view of the candid statements referred above, I find that it is not necessary to decide the controversy between the parties. Special Civil Suit No.1 of 2021 is still pending. Due to supervening events and the statements made by the respondents on affidavit, no immediate loss is likely to be caused to the business and the goodwill of the appellant. Both parties have raised intricate questions of law and facts which can be better dealt with after the full-fledged trial. The irreparable loss apprehended by the appellant has been taken care of by the affidavits referred above.

13. The subsequent events and the undertaking tendered by the respondents have reduced pressing urgency in the matter. Already four years are over and suit has not been progressed much. For in-depth inquiry into the intricacies, full-fledged trial is the only solution. I find no merits in the objections raised by the appellant to the affidavit or undertaking.

14. This Court is guided by the principles laid down by the Supreme Court in *Wander Ltd. and Anr. Vs. Antox India P. Ltd. [1990 (Supp) SCC 727]*. The submissions of both the parties cannot be answered unless there is re-assessment of the material. In the given facts and circumstances of the case, I find it appropriate to relegate the parties for the full-fledged trial, instead of interfering in the impugned judgment and order.

- (i) Appeal from order is disposed of and learned District Judge-4, Beed shall expeditiously decide Special Civil Suit No.1 of 2021 within a period of eight (8) months from today.
- (ii) The affidavit shall be treated to be undertaking of the respondents.
- (iii) In view of disposal of Appeal from Order, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-