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O.A.Nos.1 & 2 of 2025
& A.No.743 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.Nos.1 & 2 of 2025 in
C.S.(Comm.Div)No.2 of 2025
and
A.No.743 of 2025
in O.A.No.1 of 2025

O.A.Nos.1 & 2 of 2025

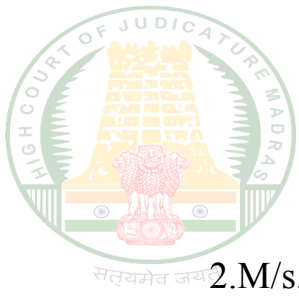
1.Mr.Amit Agarwal,
Sole Proprietor of M/s. Seetu Electricals
No.136/1, Govindappa Naicken Street, Chennai - 600 001.

2.M/s.Seetu Orbit Cable India Pvt. Limited
Represented by its Director, Mr.Amit Agarwal,
3rd floor, No.36, Govindappa Naicken street, Parrys,
Sowcarpet, Chennai, Tamil Nadu-600 001.

... Applicants

-VS-

1.Mr.Shiv Kumar Gupta,
A-40, Third Floor, Vivek Vihar Phase 2,
Jhilmil, Delhi 110 095.



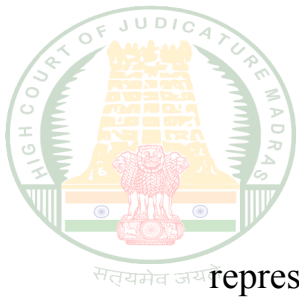
O.A.Nos.1 & 2 of 2025
& A.No.743 of 2025

2.M/s.ADL Orbit Cable (India)
Plot No.46-48, SIDCUL, Sector 8A,
Integrated Industrial Estate, Haridwar,
Uttarakhand-249 403.

.. Respondents

Prayer in O.A.No.1 of 2025:Original Application filed under Order XIV, Rule 8 of O.S.Rules Read with Order XXXIX Rule 1 of C.P.C., 1908, praying for an ad interim injunction restraining the Respondents/Defendants, by itself, its lawful assignees, men, servants, agents, distributors, stockiest, representatives or anyone claiming through or under them from in any manner infringing the applicant's/plaintiff's registered trademarks “ORBIT” by manufacturing, marketing, using or in any other manner dealing with electrical products or any allied and cognate products under the trademark ORBIT/ADL ORBIT or in any other manner similar and identical to the Plaintiffs registered trademark ORBIT pending disposal of the suit.

Prayer in O.A.No.2 of 2025:Original Application filed under Order XIV, Rule 8 of O.S.Rules Read with Order XXXIX Rule 1 of C.P.C., 1908, praying for an ad interim injunction restraining the Respondents/Defendants, its lawful assignees, men, servants, agents, distributors, stockiest,



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representatives or anyone claiming through or under them from in any manner passing off and/or enabling others to pass off the Respondent/Defendants' products under the trademark ORBIT/ADL ORBIT as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trade mark and/or label that is identical in with that of the plaintiffs' ORBIT trade mark or in any other manner similar and identical to the plaintiffs Trade Mark ORBIT pending disposal of the suit.

In both OAs:

For Applicants : Mr.M.S.Bharath
for Mr.Ashok Kumar J Daga

For Respondents: Mr.P.S.Raman, Senior Counsel
for Mr.Gautam S.Raman

A.No.743 of 2025

1.Mr.Shiv Kumar Gupta,
A-40, Third Floor, Vivek Vihar Phase 2,
Jhilmil, Delhi 110 095.

2.M/s.ADL Orbit Cable (India)
Plot No.46-48, SIDCUL, Sector 8A,
Integrated Industrial Estate, Haridwar,
Uttarakhand-249 403.

.. Applicants

vs.



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1.Mr.Amit Agarwal,
Sole Proprietor of M/s. SEETU Electricals
No.136/1, Govindappa Naicken Street, Chennai - 600 001.

2.M/s.Seetu Orbit Cable India Pvt. Limited
Represented by its Director Mr.Amit Agarwal,
3rd floor, No.36, Govindappa Naicken street, Parrys,
Sowcarpet, Chennai, Tamil Nadu-600 001.

.. Respondents

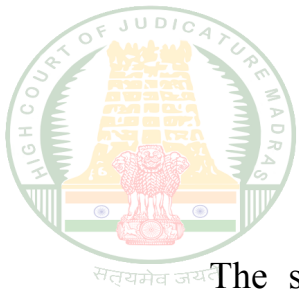
Prayer in A.No.743 of 2025: Application filed under Order XIV, Rule 8 of O.S.Rules Read with Order XXXIX Rule 4 & Section 151 of C.P.C., 1908, praying to vacate the *ex parte* injunction order dated 03.01.2025 granted in O.A.No.1 of 2025.

For Applicants : Mr.P.S.Raman, Senior Counsel
for Mr.Gautam S.Raman

For Respondents: Mr.M.S.Bharath
for Mr.Ashok Kumar J Daga

COMMON ORDER

The plaintiffs are engaged in the business of manufacturing and marketing cables and wires under the trade marks ORBIT and ADL ORBIT. The 1st plaintiff is admittedly the registered proprietor of these trade marks.



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The suit was triggered upon the plaintiffs' noticing the filing of three applications by the 1st defendant for registration of device marks containing the word ORBIT. The said applications were filed in August 2024. In the power of attorney filed in support of those applications, the 1st defendant described himself as a partner of the 2nd defendant. In these circumstances, after issuing cease and desist notice to each defendant separately, the suit was instituted. Along with the suit, two applications (O.A.Nos.1 & 2 of 2025) for interim injunction to restrain infringement and passing off were filed. By order dated 03.01.2025, *ex parte* orders of ad interim injunction were granted in both these applications. Upon receipt of notice, the respondents filed A.No.743 of 2025 to vacate the orders of interim injunction.

2. Learned counsel for the plaintiffs, Mr.M.S.Bharath, placed strong reliance on the settlement recorded in earlier proceedings between the plaintiffs and the 2nd defendant. By referring to the application filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (the CPC) to

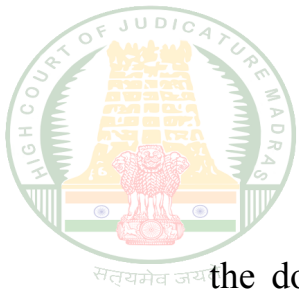


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record such settlement, he pointed out that the 2nd defendant acknowledged that the 1st plaintiff is the sole proprietor of M/s.Seetu Electricals and the legal owner and lawful proprietor of the trade marks/trade name ADL ORBIT, ORBIT and SEETU. He pointed out that each partner of the 2nd defendant firm acknowledged the proprietorship of the 1st plaintiff over the word and device marks listed therein. In particular, he pointed out that the 2nd defendant confirmed that the partners would cease to manufacture, market, sell or advertise goods/services bearing the trade mark/trade name ORBIT or any other trade mark/trade name, which is deceptively similar thereto. Therefore, learned counsel contends that the filing of trade mark applications by the 1st defendant for deceptively similar trade marks is tantamount to circumventing the settlement recorded in proceedings before the Additional District Judge, Delhi.

3. As regards the defences raised by the defendants, learned counsel submitted that the principal defence is acquiescence. By referring to the documents filed by the defendants, learned counsel submitted that the invoices issued by the 2nd defendant to Seetu Electricals (pages 130 to 137 of



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the documents filed by the defendants) were issued pursuant to purchase orders placed on the 2nd defendant prior to the settlement in October 2019. Consequently, he submits that these documents cannot be construed as indicative of acquiescence. As regards the invoices issued by Orbit Wire and Cables India Private Limited between June 2020 and July 2020, he submits that the issuer of invoices is a separate legal entity and, therefore, neither knowledge nor acquiescence can be attributed to the plaintiffs on that basis.

4. With regard to the second ground of challenge by the defendants, suppression of material facts, learned counsel submits that C.S.(Comm.)No.504 of 2024 was filed by the 1st plaintiff against M/s.OCI Cables India, which is a different partnership firm. Similarly, as regards C.S.(Comm.)No.1002 of 2024, he submits that the said suit was filed by Lokesh Tayal, an individual trading as M/s.Durga Plastics. He also submits that the suit pertains to different trade marks, which do not form the subject of the present suit. Hence, he contends that the plaintiffs were not required to refer to these suits and that it cannot be said that material facts were suppressed.



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5. By relying on Section 2(2)(c) of the Trade Marks Act, 1999 (the TM Act) read with sub-section (5) of Section 29 thereof, learned counsel contended that the use of a trade name in relation to the sale of goods qualifies as both use and infringing use. Consequently, he submits that the interim prayers of the plaintiffs would embrace the use of an infringing trade name. In support of these contentions, learned counsel referred to and relied upon the following judgments:

(i) *Ramdev Food Products Pvt. Ltd. v. Arvinbhai Rambhai Patel and others*, AIR 2006 SC 3304, particularly paragraphs 43, 57 & 58 thereof with regard to waiver and acquiescence.

(ii) *Ilaiyaraja v. B.Narsimhan and others*, 2015 (3) CTC 622, with regard to what constitutes material facts.

(iii) *Make My Trip (India) Private Limited v. Make My Trip Travel (India) Private Limited*, 2019:DHC:5353 for the proposition that a large organisation cannot be attributed with knowledge and that an inference of acquiescence to acts of infringement cannot be drawn solely on the basis of stray correspondence.

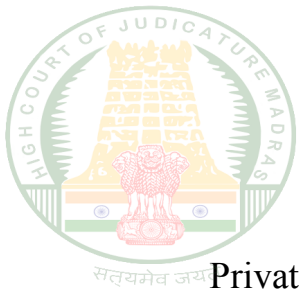


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6. In response to these contentions, Mr.P.S.Raman, learned senior counsel, opened his submissions by stating that the 2nd defendant uses the trade mark OCI in relation to the sale of cables and wires and does not use the trade marks ORBIT or ADL ORBIT. As regards the 1st defendant, by referring to the trade mark applications, he submitted that the said applications were filed in his individual capacity and not as a partner of the 2nd defendant. He also submitted that Section 12A of the Commercial Courts Act, 2015, was not complied with by the plaintiffs.

7. His principal contention on the merits was that the plaintiffs had knowledge of and acquiesced in the use of the trade name ADL Orbit cable (India) by the 2nd defendant. By referring to paragraph 30 of the plaint in C.S.(Comm.)No.504 of 2024, learned senior counsel submitted that the 1st plaintiff herein, who filed the plaint therein, admitted that he and his son, Govinda Agarwal, incorporated Orbit Wire and Cables India Private Limited on 29.08.2020. In view thereof, he submits that the plaintiffs cannot assert lack of knowledge of transactions between Orbit Wire and Cables India

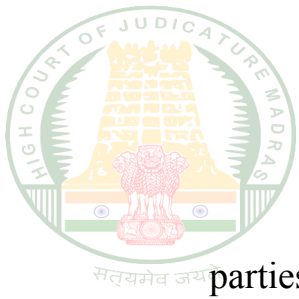


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Private Limited and the 2nd defendant. As a corollary, he submits that it is completely false for the plaintiffs to state that they were unaware that the 2nd defendant continued using the same trading name and style long after the settlement was recorded by the District Court in Delhi. By comparing and contrasting the relief claimed in the plaint in C.S(Comm.)No.504 of 2024 and the present suit, learned senior counsel submitted that there is no reference to trading name in the present suit, whereas the 1st plaintiff expressly sought relief in respect of the trading name before the Delhi High Court. He also pointed out that the present suit was filed after the request for interim relief was declined by the Delhi High Court, which referred the parties for mediation. He concluded his submissions by referring to the Division Bench judgment of this Court in *Anugraha Castings v. Anugraha Valve Castings Limited*, order dated 28.01.2025 in C.M.P.No.1969 of 2025 in C.M.A.No.264 of 2025, wherein this Court held that *ex parte* orders cause grave prejudice to the defendants and should not be granted except in rare cases where the grant of such relief is necessary.

8. In view of the rival contentions, the first aspect to be noticed is the



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parties to the suit. The 1st plaintiff is the registered proprietor of the relevant trade marks and the 2nd plaintiff is a private limited company that uses the trade marks, and of which the 1st plaintiff is a Director. The 1st defendant, Shiv Kumar Gupta, is the person who filed three applications for registration of trade marks in August 2024. In the power of attorney filed along with those applications, he described himself as a partner of ADL Orbit Cable (India), which is the 2nd defendant.

9. Against this backdrop, the contention that Section 12A was not complied with warrants a brief discussion. The 1st defendant filed three applications on 21.08.2024 in class 9 for the registration of trade marks prominently containing the word ORBIT. At the hearing today, learned senior counsel submitted, on instructions, that the said trade mark applications were withdrawn today. Nonetheless, the said trade mark applications are on record, and it is recorded therein that the trade mark applicant has used the marks in respect of which the applications were filed from 1997. An assertion to such effect is also set out in the user affidavits at paragraph 5 thereof.



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10. In spite of being represented through counsel, the 1st defendant has failed to place on record any evidence of use of the said trade marks from 01.01.1997 or even from a later date. On the contrary, the plaintiffs have placed on record evidence of use of the trade marks ORBIT and ADL ORBIT and evidence of registration thereof in the name of the 1st plaintiff. After noticing these applications, the 1st plaintiff issued cease and desist notices to both the defendants before filing the suit. The cease and desist notices did not elicit a reply. These facts and circumstances justify seeking interim relief without initiating pre-institution mediation. As regards the 1st defendant, a strong *prima facie* case is made out, the balance of convenience is in favour of the plaintiffs and irreparable hardship would be caused to the plaintiffs unless the order of interim injunction is extended until disposal of the suit.

11. Before proceeding further, the allegation regarding suppression needs to be dealt with briefly. On examining the complaints and written statements in C.S.(Comm.)No.504 of 2024 and C.S.(Comm.)No.1002 of 2024, it is clear that C.S.(Comm.)No.504 of 2024 is against a different partnership firm called M/s.OCI Cables India. C.S.(Comm.)No.1002 of 2024



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has been filed by Lokesh Tayal against the 1st plaintiff and others seeking relief in respect of the trade marks OCI and associated marks. It may have been appropriate for the plaintiffs to refer to the suits, but it cannot be said, at this juncture, that material facts were suppressed and that interference with the orders of injunction is called for for that reason.

12. As regards the 2nd defendant, while the plaint indicates that the exact constitution of the 2nd defendant is not known to the plaintiffs, it is stated by learned counsel for the defendants that the 2nd defendant is a partnership firm. It is also admitted that the 1st defendant is currently a partner of the 2nd defendant. The settlement recorded before the District Court, Delhi was admittedly between the 2nd defendant herein, represented by its then four partners, Lokesh Tayal, Daulat Jain, Rupesh Garg and Neelam Bansal, who were the plaintiffs therein; Orbit Wires and Cables, the first defendant therein, a partnership firm of which Rupesh Kumar Garg and Govinda Agarwal were partners; and Govind Cable Company, a proprietary concern of Govinda Agarwal, son of Amit Agarwal. Each of these parties signed the application under Order XXIII Rule 3 of the CPC to record the



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settlement. In the application, it is expressly acknowledged by the 2nd defendant that the 1st plaintiff is the sole proprietor of several trade marks containing the word ORBIT prominently, including several device marks. After agreeing to withdraw or surrender applications and registrations, respectively, containing the trade marks ORBIT and ADL ORBIT, the partners of the 2nd defendant herein categorically agreed that they have ceased to manufacture, market, advertise or offer for sale of goods/services under the trade marks/trade name ORBIT or any trade mark/trade name deceptively similar thereto. The following two clauses are particularly relevant:

“ix. That Shri Lokesh Tayal and Shri Daulat Jain, partners of the Plaintiff firm confirm that they have already ceased to manufacture, market, offer for sale, advertise, directly or indirectly through the Plaintiff firm, themselves, their stockiest, agents, distributors, wholesalers and retailers, etc. all goods mentioned in Paras 2 of the plaint or any other goods/services under the trade mark/trade name ORBIT or any other trade mark/trade name which contains the mark ORBIT as a part thereof or any other deceptively similar mark/name thereof which is identical with or deceptively similar to



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the Defendants' trademark/name ORBIT and that the said Shri Lokesh Tayal and Shri Daulat Jain have no intention of ever resuming the manufacture and/or marketing, etc. of any goods/services by the mark/name ORBIT or any other mark deceptively similar thereto. As regards Ms.Neelam Bansal and Shri.Rupesh Garg, partners of the Plaintiff firm, the said persons may use the trademark/tradename ORBIT/SEETU only in respect of their separate respective businesses and that too after obtaining a written permission from Shri.Amit Agarwal, sole proprietor of M/s.Seetu Electricals, which written permission is liable to be revoked by Shri.Amit Agarwal, sole proprietor of M/s.Seetu Electricals at his sole discretion and at any time without assigning any reason whatsoever. All unused packaging/goods bearing the trademark/tradename ORBIT or any other trademark/tradename similar thereto, shall be handed over by the partners of the plaintiff firm against receipt to Shri.Amit Agarwal, sole proprietor M/s.Seetu Electricals, licensor of the Defendant No.1, within one week from the date of passing of the orders on this application by this Hon'ble Court.

.. ..

xii. That the partners of the plaintiff firm undertake



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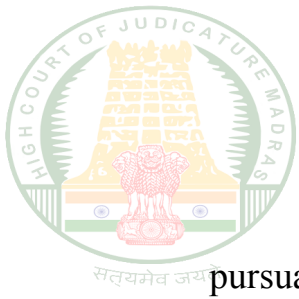


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to this Hon'ble Court that neither they nor the Plaintiff firm shall represent themselves to be in any manner connected to or representing Shri.Amit Agarwal sole proprietor M/s.Seetu Electricals, licensor of the Defendant No.1 in any manner whatsoever to show any connection, either past or present, with the said mark/name ADL ORBIT/ORBIT/SEETU."

13. As noticed above, it was submitted on behalf of the defendants that the 2nd defendant is not using the trade marks ORBIT or ADL ORBIT or any trade mark which is deceptively similar to that of the plaintiffs. Therefore, the interim injunction with regard to the use of the above trade marks is liable to be extended until disposal of the suit. The only issue that is hotly contested by the defendants is the right to use the trade name.

14. As regards the trade name, the defendants have placed on record invoices. The first set of invoices were issued by the 2nd defendant to the proprietary concern of the 1st plaintiff. These invoices are dated 21.11.2019, which is subsequent to the settlement before the District Court, Delhi. Learned counsel for the plaintiffs submitted that these supplies were



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pursuant to purchase orders issued prior to the settlement. In the absence of the purchase orders, it is not possible to record any clear finding on this issue. However, it is clear that the invoices were issued barely a month after the settlement was recorded. The second set of invoices were issued by an entity called Orbit Wire and Cable India Private Limited in June and July 2020 to the 2nd defendant. Paragraph 30 of the plaint in C.S.(Comm.)No.504 of 2024 contains averments by the 1st plaintiff that this entity was incorporated by the 1st plaintiff and his son. While no conclusions with regard to acquiescence can be drawn on this basis, these documents are, nonetheless, *prima facie* indicative of knowledge of the continued use of the trading name ADL ORBIT Cable (India) in June 2020. The suit before the Delhi High Court (C.S.(Comm.)No.504 of 2024) was filed in May 2024. The present suit has been filed in November 2024. Thus, it appears *prima facie* that the plaintiffs were aware that the 2nd defendant continued using the trading name and style even after the settlement was recorded.

15. Learned counsel for the plaintiffs relied on Section 2(2)(c) and sub-Section (5) of Section 29 of the TM Act to contend that even the use of



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a trading name in relation to the sale of goods qualifies as use and infringing use. On examining the prayers in the interlocutory applications, any express reference to trading name is conspicuous by its absence. However, his contention that use of the trading name in relation to the sale of goods also constitutes use and infringing use is not devoid of merit and cannot be brushed aside. This would embrace use on invoices, packaging and advertising the sale of products.

16. Ordinarily, considering the tentative finding on knowledge, I would have declined to grant relief in respect of trading name at the interlocutory stage. In this case, however, as is evident from the clauses set out above, the 2nd defendant expressly and categorically agreed before the District Court, Delhi to refrain from using the trade name. This agreement was recorded in October 2019. This suit was preceded by a cease and desist notice, which was not replied to. The continued use of a deceptively similar trading name by rival entities engaged in the same line of business is likely to cause confusion and deception to consumers and persons purchasing these goods. Therefore, it is in public interest to restrain use of the trade name,



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albeit by recognising that any restraint on the use of the trading name, without adequate lead time, would cause grave hardship. The equities are required to be balanced in such regard. For such purpose, the order of interim injunction, as regards the trading name, shall not operate for a period of 60 days from the date of receipt of a copy of this order. If, in spite of exercising best endeavours, the 2nd defendant requires further time to obtain regulatory approval from Governmental authorities to give effect to the change in trade name, the said defendant is at liberty to apply for extension.

17. For reasons set out above, O.A.Nos.1 & 2 of 2025 & A.No.743 of 2025 are disposed of on the following terms:

(i) The orders of interim injunction restraining use of the trade marks ORBIT/ADL ORBIT in relation to the goods of the defendants shall continue until disposal of the suit.

(ii) The above is, however, subject to the qualification that the injunction in respect of the use of the trading name ADL Orbit Cable (India) in relation to the sale of goods shall come into effect only after the lapse of 60 days from the date of receipt of a copy of this order. If an extension of



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time is required to give effect to the name change in spite of the exercise of best endeavours, the 2nd defendant is granted leave to apply for extension.

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