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A Nos. 4722 & 5024 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.10.2025	Pronounced on .202516.12.2025
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CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A Nos.4722 of 2025 & 5024 of 2025

in

C.S(COMM DIV) No.122 of 2025

Mohammed Usman Sait
Son of Haji Ebrahim Oosman Sait
Proprietor of Joonus Sait & Sons
Having its registered office
at No.36, Rattan Bazaar Road,
George Town, Chennai - 600003

... Applicant in A.No.4722 of 2025
... Respondent in A.No.5024 of 2025

Vs

Mohammed Saleem Sait
S/o.Haji Ebrahim Oosman Sait,
having its registered office at
F - 37, 38, Dee Cee Tower,
2nd Avenue, Chinhamani,
Anna Nagar East, Chennai-6000102.
Alternatively at
Ground Floor, Alsa Mall,
Main Entrance, Complex,
Red Cross Rd, near Alsa Mall,
Egmore, Chennai-600008

... Respondent in A.No.4722 of 2025
... Applicant in A.No.5024 of 2025



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A No.4722 of 2025

PRAYER

Application filed under Order 14 Rule 8 of O.S.Rules and Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 r/w. Sections 236, 237 & 246 of the Bharatiya Nyaya Sanhita 2023 to record a finding and make a complaint under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 r/w. Sections 236, 237 & 246 of the Bharatiya Nyaya Sanhita 2023 and to order an inquiry into the perjury committed by the Respondent/Defendant to be conducted by the Court of Judicial Magistrate having jurisdiction and to take appropriate actions in accordance with the laws.

A No.5024 of 2025

PRAYER

Application filed under Order XIV and Rule 8 of O.S. r/w. Order VIII Rule 1 of Civil Procedure Code, 1908 as amended by the Commercial Courts Act, 2015, to condone the delay of 71 days in filing Written Statement by the Applicant/Defendant in C.S.No.122 of 2025.

For Applicant in A.No.5024 of 2025 &
Respondent in A.No.4722 of 2025 : Ms.Suba Shiny

For Applicant in A.No.4722 of 2025 & Mr.Amit Sharma
Respondent in A.No.5024 of 2025 :
Ms.Pallavi Barua



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ORDER

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Application No.4722 of 2025 has been filed to record a finding and make a complaint under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 r/w. Sections 236, 237 & 246 of the Bharatiya Nyaya Sanhita 2023 and to order an inquiry into the perjury committed by the Respondent/Defendant to be conducted by the Court of Judicial Magistrate having jurisdiction and to take appropriate actions in accordance with the laws.

2.Application No.5024 of 2025 has been filed under Order XIV and Rule 8 of Original Side r/w.Order VIII Rule 1 of Civil Procedure Code, 1908 as amended by the Commercial Courts Act, 2015, to condone the delay of 71 days in filing Written Statement by the Applicant/Defendant in C.S.No.122 of 2025.

Application No.4722 of 2025

3.The case of the Applicant is as follows:

3.1.The Applicant, who is the Plaintiff is a registered proprietor of Joonus Sait & Sons. He has filed this application seeking initiation of proceedings against the Respondent/Defendant for committing perjury under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Sections 236, 237 and



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246 of the Bharatiya Nyaya Sanhita, 2023. It is the case of the Applicant that the Respondent has made false statements on oath in the Common Counter Affidavit filed on 25.06.2025 in O.A.Nos.481 & 482 of 2025. The Applicant filed Commercial Suit CS (Comm. Div.) No.122 of 2025 for trademark infringement, passing off and other issues.

3.2. According to the Applicant, the Respondent/Defendant's has made some false averments in para 2(k) and clause 2(l) of the common counter which are extracted hereunder:

“2(k). It is further submitted that, in view of internal disturbances caused at the behest of the Applicant/Plaintiff and his family members, the Respondent/Defendant herein decided to part ways and bifurcate their businesses in the year 2000 and the same was followed by the younger most brother, Irfan Sait, in the year 2001. It is submitted that, vide a family settlement being M.O.U dated 01.04.2000, Late Ebrahim Sait, the father of the Applicant/Plaintiff and Respondent/Defendant, gave the Respondent/Defendant the unequivocal right to use the mark Joonus Sait, which even otherwise he is entitled to by virtue of his inheritance as the said mark being the mark of his forefather and him being a prominent member in the family. Even though, the late Ebrahim Sait was not happy with Respondent/Defendant's decision to move the away from the family business, in order to buy peace of mind in the



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family, did not want the Respondent/Defendant to go bare-handed and made a family arrangement whereby the Respondent/Defendant was given the right to carry on business under the name Joonus Sait.

2(l).Such arrangement was further carried out later when the third brother, i.e., Irfan Sait also moved out of the family business because of the misdoings and misdeeds of the Applicant/Plaintiff the late Ebrahim Sait, being a very caring father, gave one set of family run business namely J,S & S Enterprises to Irfan Sait, thus it was the intention of Ebrahim Sait to give all his three sons equal opportunity in business and to use the family mark Joonus Sait, Joonus Sait & Sons and J.S & S Enterprises in all its possible permutations and combinations”.

3.3.The learned counsel for the Applicant contended that the documentary evidence clarifies the following aspects:

- (a) The Respondent/Defendant’s retirement and settlement extinguished his claims in both M/s Joonus Sait & Sons and M/s J.S. & S. Enterprises;
- (b) As part of the said settlement, the property at No. 23, Old No. W-16, North Main Road, Anna Nagar Western Extension, Chennai - 600 101, was transferred to his name in full and final satisfaction of his account, leaving him with no further claim in the family businesses or properties



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(c) He was not given the business of M/s Joonus Sait, which had in fact been shut down in 1998 with all its assets and liabilities closed and settled against the firm, and therefore, the Respondent/Defendant's statement that it was "given" to him is a false statement; and

(d) No such arrangement as falsely alleged regarding "equal opportunity" or continued entitlement to use the family mark in any permutation or combination ever existed.

4.The case of the Respondent is as follows:

4.1.The present application has been filed only with a malafide intention to harass the Respondent and to create mental agony to him. The Respondent denied the allegations made by the applicant. All the arrangements made at the time of his retirement from the Applicant's firm viz., the settlement, the transfer of properties, the "no objection" for him to use the mark "Joonus Sait" were done under the instructions of their father, who was managing the family businesses at that time. It was under their father's guidance, the Respondent started his own business in the year 2000. Every transfer made as part of the settlement was carried out strictly as per his father's instructions.

4.2.The learned counsel for the Respondent contended that the Counter



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Affidavit filed on 25.06.2025 merely reflects the truth and the Applicant is intentionally twisting facts to mislead the Court. He further contended that the Respondent/Defendant has never made any false statements, knowingly or otherwise. The present application is nothing but an attempt to restrain him from using the mark “Joonus Sait”, pending disposal of the Suit.

5. Heard the learned counsel for the Applicant and the learned counsel for the Respondent and perused the available records.

6. The learned counsel for the Applicant submitted the judgment of the Hon'ble Apex Court in ***K.T.M.S.Mohd. and another Vs. Union of India***, reported in ***(1992) 3 Supreme Court Cases 178***, wherein it was held as under:

“37. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the ‘judicial proceeding’ or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice.”

By referring to the above judgment, the learned counsel for the Applicant



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contended that in the case on hand, the Respondent has intentionally given false statements in the common counter which is evidently clear from the MoUs dated 01.04.2000 and 18.09.2002. Therefore, the Respondent/Defendant is liable to be punished.

7.The point for consideration is, *Whether the Respondent has committed perjury?* As rightly pointed out by the learned counsel for the Applicant, the Respondent filed his Common Counter Affidavit on 25.06.2025 in Original Applications filed in the above Suit, wherein at Paragraph 2(k) of the same, the Respondent claimed that, due to internal disturbances caused by the Applicant and his family, the Respondent retired from the firm and their father, Late Ebrahim Sait, granted him an unequivocal right to use the mark “Joonus Sait” under a family settlement viz., MoU dated 01.04.2000.

8.However, a bare perusal of the said MoU dated 01.04.2000 would clarify that the permission to use the mark “Joonus Suit” was granted by the Applicant/Plaintiff and another brother of Applicant and the Respondent in favour of the Respondent and not by their father. The said permission was given conditionally by the Applicant and their brother Irfan Sait, as per the MoU dated 01.04.2000.



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9. In Paragraph 2(1) of the common counter, the Respondent claimed that their younger brother Irfan also left the business due to the Applicant's misdeeds and that their father gave Irfan the business running under the name and style of J.S & S. Enterprises, intending to give all the three sons, an equal opportunity and equal rights to use the marks of their business namely, "Joonus Sait," "Joonus Sait & Sons," and "J.S & S Enterprises". That is also a false statement.

10. In the MoU dated 18.09.2002, Clause 2 clearly records that the Respondent retired from the family businesses viz., M/s Joonus Sait & Sons and M/s J.S & S Enterprises with effect from 31.03.2000. His accounts were fully settled and the property at No.23, Old No.W-16, North Main Road, Anna Nagar West Extension, Chennai – 600101, was transferred to his name as part of the settlement of his account, leaving him with no claim whatsoever in the businesses. As per clause 3, in the business under the name and style of M/s. Joonus Sait & Sons, the father of the Applicant has 51% share and Mohamed Usman Sait, the Applicant herein has 49% share.

11. At this juncture, before proceeding further this Court has to satisfy itself of the following:



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- (i) Whether the said MoUs has been disputed by the Respondent?
- (ii) Whether the MoUs has been challenged by the Respondent? and
- (iii) Whether the MoUs has been acted upon?

12. With regard to the first question, it is to be noted that even in the counter filed in the present application, the Respondent has not disputed the existence of MoUs dated 01.04.2000 & 18.09.2002. With regard to the second question, as per the materials available on record, both the MoUs are not under challenge before this Court or before any other court. While determining the third question, it is necessary to look into the second MoU dated 18.09.2002, which makes it clear that the Applicant and one Mohamed Irfan Sait, the 3rd brother had to pay a sum of Rs.9,00,000/- each to their three sisters. It is evident that the Respondent was also settled with a property.

13. These documents make it clear that the Respondent voluntarily retired from both the businesses and he was not given any right in the business and the trade name “M/s Joonus Sait”, as he was only conditionally permitted to use the said trade name for his individual businesses. In view of the same, this Court is satisfied that the Respondent has knowingly made these false statements and it appears to be made with an intention to mislead the Court.



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14.As the Applicant/Plaintiff has made out a case that the Respondent/Defendant had consciously averred a false statement before this Court by swearing an affidavit, it is now relevant to look into the provisions of BNS. Sections 236, 237 & 246 of the Bharatiya Nyaya Sanhita 2023 are extracted hereunder:

Section 236

False statement made in declaration which is by law receivable as evidence.

Whoever, in any declaration made or subscribed by him, which declaration any Court or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Section 237

Using as true such declaration knowing it to be false.

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Section 246

Dishonestly making false claim in Court :

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.



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15.As per the above provisions, once perjury is established before this Court, Section 227 of BNS, will come into play and a complaint has to be given, before the jurisdictional Magistrate for institution of proceedings in accordance with law.

16.In view of the above, this Application is ordered as prayed for. The jurisdictional Magistrate is directed to inquire into the perjury committed by the Respondent/Defendant and initiate appropriate action against the Respondent in accordance with law.

Application No.5024 of 2025

17.The case of the Applicant is as follows:

17.1.The present application has been filed to condone the delay in filing the Written Statement in C.S.(Comm. Div.) No.122 of 2025. The Respondent/Plaintiff has filed the suit for infringement and passing off of the trademark “Joonus Sait,” seeking damages and other reliefs. The suit summons were served on him on 10.06.2025 under Order IV Rule 7(3) of the OS Rules, and therefore, the Written Statement ought to have been filed within 30 days ie., on or before 09.07.2025.



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17.2. According to the Applicant, he has been suffering from medical issues, which made him unavailable to verify the Written Statement within the prescribed time. The matter was referred to mediation on two occasions and as the parties are relatives, the applicant believed that the dispute would be settled amicably and the Applicant waited until the mediation process is concluded.

17.3. The learned counsel for the Applicant contended that the delay in filing the Written Statement was caused solely due to these circumstances. There has been a delay of 71 days in filing the Written Statement and the delay was neither intentional nor deliberate. The Written Statement is being filed within the outer limit of 120 days as permitted under the Commercial Courts Act. The Applicant/Defendant would suffer irreparable loss and hardship if the delay is not condoned, while no prejudice would be caused to the Respondent/Plaintiff if the application is allowed and the Written Statement is taken on record.

18. The case of the respondent is as follows:

18.1. The Respondent raises preliminary objections and refers to Order VIII Rule 1 of the CPC, as amended by the Commercial Courts Act, which requires the Written Statement to be filed within a period of 30 days from



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service of summons, with limited extension up to 120 days, with the Court's permission. According to the Respondent, the Applicant has failed to follow the mandatory procedure. The Applicant received the Plaint on 22.05.2025 and the Affidavit of Service was filed on 09.06.2025. Therefore, the Written Statement should have been filed by 08.07.2025, instead the Applicant filed it only on 19.09.2025. The Applicant's submission about his medical issue is not supported by any proof and appears to be an afterthought.

18.2.The learned counsel for the Respondent contended that the mediation process cannot be used as an excuse for delay, as the second round of mediation occurred even before service of summons and the Applicant personally attended the mediation sessions on 03.06.2025 & 04.06.2025, without any health issues. The Applicant also filed a Common Counter Affidavit on 25.06.2025 in two other application filed in the above suit, which shows that he was capable of verifying the documents. The Applicant actively attended the mediation sessions and even participated in family wedding events between 14th and 17th August 2025. The Applicant has tried to distort the timeline, mislead the Court and justify his negligence with false explanations. On the above grounds, he prayed for dismissal of this Application.



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19. Heard the learned counsel for the Applicant and the learned counsel for the Respondent and perused the available records.

20. As per Order VIII Rule 1 of CPC as amended by the Commercial Courts Act, 30 days time limit is given for filing a Written Statement which starts from the date of service of summons. The said 30 days time limit is extendable by the Court for valid reasons up to a maximum of 120 days.

21. In the present case, the affidavit of service shows that the summons have been served on the respondent/defendant on 22.05.2025. Thereafter, the respondent had not filed written statement as contemplated under Order VIII Rule 1 of CPC, within 30 days and the written statement has been filed only on 19.09.2025, which is 120th day from 22.05.2025.

22. The age of the Applicant is 71 years and the delay is 71 days. The court need not emphasise the failure to furnish medical records or details of treatment underwent by the Applicant for a simple reason that the age of the Applicant is 71 years. It is needless to say that, a person at the age of 71 years might have multiple health issues and often required to take treatment. Therefore, non-disclosure of such medical reports itself is not a valid ground to



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reject this application.

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23. Though the Respondent/Plaintiff contended that the Applicant/Defendant had participated in the mediation even prior to the service of summons, considering the age of the Applicant/Defendant, this Court is accepting the reasons given by the Applicant/Defendant as sufficient cause for the delay. In view of the same, the delay of 71 days in filing the written statement is condoned. Accordingly, this Application is allowed and the written statement is taken on record.

24. In fine, A.No.4722 of 2025 is allowed with a direction to the jurisdictional Magistrate to inquire into the perjury committed by the Respondent/Defendant and initiate appropriate action against the Respondent in accordance with law and A.No.5024 of 2025 is also allowed. No costs.

16.12.2025
(¹/₂)

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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To

1. Mohammed Usman Sait
Son of Haji Ebrahim Oosman Sait
Proprietor of Joonus Sait & Sons
Having its registered office
at No.36, Rattan Bazaar Road,
George Town, Chennai - 600003

2. Mohammed Saleem Sait
S/o.Haji Ebrahim Oosman Sait,
having its registered office at
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N.SENTHILKUMAR J.
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**Pre-delivery order made in
A Nos.4722 of 2025 & 5024 of 2025
in
C.S(COMM DIV) No.122 of 2025**

16.12.2025
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