



2025:DHC:11759-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28 August 2025

Pronounced on: 23 December 2025

+ **FAO (COMM) 66/2024, CM APPLs. 150/2022, 31/2024, 49265/2024, 49267/2024 & 53680/2025**

GANRAJ ENTERPRISES & ORS.Appellants
Through: Mr. Sanjeev Sindhwani Sr. Adv.,
Mr. Rajat Bhardwaj, Mr. Sandeep Khatri,
Mr. Ujjwal Bhardwaj, Advs.

versus

LAND MARK CRAFTS PVT. LTD & ANR.Respondents
Through: Mr. J Sai Deepak, Sr Adv, Ms.
Stuti Wason, Mr. Vipin Wason, Mr. Avinash
Sharma, Mr. Raunaq Dalal, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT
23.12.2025

C. HARI SHANKAR, J.

1. An application, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure 1908¹, filed by Landmark Crafts Pvt Ltd², seeking interlocutory injunction against Ganraj Enterprises³ and others in CS

¹ "CPC" hereinafter

² "LC" hereinafter

³ "GE" hereinafter



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(Comm) 664/2022⁴, stands allowed by the learned District Judge (Commercial Court-04), Shahdara⁵.

2. Aggrieved thereby, GE has preferred the present appeal under Section 13 of the Commercial Courts Act 2015.

3. We have heard Mr. Sanjeev Sindhwani, learned Senior Counsel for the appellants and Mr. J Sai Deepak, learned Senior Counsel for the respondents, at length.

Pleadings before the learned Commercial Court

4. The plaint

4.1 LC, in its plaint, before the learned Commercial Court, asserted as under:

(i) The mark **HP** was coined by Mr. Pankaj Lidoo in 1995. Pankaj Lidoo was operating a sole proprietorship in the name of Landmark Engineers. Under the mark **HP**, Landmark Engineers was dealing in the business of manufacturing, marketing and trading of self-drilling screws, blind rivets and allied products.

(ii) On 8 July 2002, Landmark Fasteners Pvt Ltd⁶ was incorporated by Mr. Pankaj Lidoo. Application No. 1566805 dated 8 June 2007, filed under Section 23 of the Trade Marks

⁴ **Landmark Crafts Pvt Ltd v. Ganraj Enterprises**

⁵ “the learned Commercial Court” hereinafter

⁶ “LF” hereinafter



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Act, 1999 was allowed by the Trade Marks Registry, whereupon LF obtained the registration of the word Mark **HP** in Class 6 for “all kinds of self-drilling screws” with effect from the said date. However, the registration was restricted for sale of goods in UP. Subsequently, LF submitted Application No. 2848372 on 24 November 2014, in Class 6 for registration of the **HP** word mark for all kinds of self-drilling screws, which was also granted with no territorial caveat. For the sake of convenience, we would refer, hereinafter, to the registrations asserted by LC by their Applications Numbers, as Registrations No. 1566805 and 2848372.

(iii) The respondent LC was incorporated by Mr. Pankaj Lidoo and some of the directors of LF on 11 May 2007.

(iv) *Vide* Assignment Deeds dated 5 August 2013 and 29 April 2019, the aforementioned **HP** marks were assigned by LF to LC. Since then, there has been uninterrupted use of the **HP** mark by LC. Thus, LC was the owner of the registered word mark **HP** in Class 6 for all kinds of self-drilling screws, on pan-India basis.

(v) LC was also the registered proprietor of the device mark



with effect from 11 July 2018 in Class 6 for “self-drilling screws, blind rivets and drywall screws”. The said mark was being used by LC on pan-India basis since then.



(vi) By dint of continuous use, LC had amassed enviable reputation and goodwill in the aforesaid marks for self-drilling screws, blind rivets and other similar goods. To buttress this submission, the plaintiff referred to various awards earned by LC as well as its sales turnover and advertisement and promotional expenses.

(vii) Appellant 1 GE was the sole proprietorship of Appellant 2 Shubhangi S Jachak. Appellant 2, in collusion with Appellant 3, Santosh Jachak, was, through GE, engaging in manufacturing, marketing and selling and otherwise dealing in goods which were identical with or similar to the goods in which LC dealt under its registered mark **HP**. The appellants were using the mark **HP⁺** and **HP^{®+}** for manufacturing, assembling and trading of self-drilling screw, similar to those manufactured and sold by LC. This fact came to the knowledge of LC in the second week of June 2022.

(viii) The use of the marks **HP⁺** and **HP^{®+}** by GE infringed the registered **HP** trade mark of LC and also amounted to passing off, by GE, of its products as the products of LC. GE had also resorted to using packaging, for its product, which was similar to the packaging used by LC. The motif of a *shikara*⁷, which figured on the packing of LC was also copied by GE on its packaging. The possibility of confusion was exacerbated by GE

⁷ boat



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by its use of the superscript [®], despite its mark not being registered. The consumer public would, because of the use of the said [®], with **HP**, be misled into believing the goods to be LC's.

(ix) GE was also dealing in its goods over its website www.hphardwares.com as well as on e-commerce platforms. The infringing goods of GE were available worldwide over the said website.

4.2 LC, in these circumstances, addressed a notice to GE on 15 July 2022, calling on the appellant to cease and desist from continuing to use the marks **HP⁺** and **HP^{®+}**. As the appellants did not desist from continuing to use the allegedly infringing marks, the respondents instituted CS (Comm) 664/2022, before the learned Commercial Court, seeking a decree of permanent injunction, restraining the appellants and all others acting on their behalf from dealing in any manner with the products bearing the marks **HP**, **HP⁺**, **HP^{®+}** or any other similar mark, for their products.

5. Along with the suit, the respondent filed an interlocutory application under Order XXXIX Rules 1 and 2 of the CPC, seeking interim injunction, in terms of the prayers in the suit, pending its disposal.

6. The written statement, by way of response to the plaint, was filed only after the impugned order was passed. In fact, the concluding



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paragraph of the impugned order grants time to the appellants to file the written statement.

7. Response of GE to Order XXXIX application

7.1 GE, however, filed a reply to the application under Order XXXIX Rules 1 and 2, filed by LC, in which it contended as under:

(i) The plea of use, by LC, of the mark **HP** since 1995 was based on fabricated documents. The documents on which LC relied for this purpose were the audit report, income tax returns and brochure of Landmark Engineers. These documents were false and fabricated. A careful perusal of the audit report and the income tax returns did not disclose that LC was doing the business under the mark **HP**. The brochure was undated. As such, there was no evidence to indicate that LC was doing business under the **HP** mark, either itself or through its predecessors-in-interest, since 1995.

(ii) Application No. 1566805, which culminated in the grant of registration to LF for the mark **HP**, restricted to the state of UP, was accompanied by a user affidavit which did not state, at any point, that the **HP** mark was earlier used by Landmark Engineers. LF was established only in 2002. Thus, if Landmark Engineers had been using the **HP** mark since 1995, that fact would surely have found mentioned in the user affidavit filed by LF along with Application No. 1566805.



(iii) The Assignment Deed dated 5 August 2013, whereby LF had assigned the mark **HP** to LC, stated that LF was using the mark **HP** since 1995. This, again, was a false statement, as LF had come into existence only in 2002. Further, under the Assignment Deed, LF assigned its rights in the **HP** mark, flowing from Registration No. 1566805, to LC. This registration was restricted to sale of goods in UP. LF again applied for registration of the trademark **HP** *vide* Application No. 2848372 in Class 6 on 24 November 2014. The registration granted to LF consequent on the said application was wrongly associated with the earlier Application No. 1566805. While allowing such association, the Trade Marks Registry did not include, in Registration No. 2848372, the restriction of sale in UP as was contained in Registration No. 1566805. The two applications could not have been associated, as in 2014, the **HP** mark registered *vide* Registration No. 1566805 had already been assigned to LC, whereas Application No. 2848372 was filed by LF. Associating these two marks, therefore, was not permissible in view of Section 16⁸ of the Trade Marks Act, 1999.

⁸ 16. **Registration of trade marks as associated trade marks.—**

(1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods or services is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may, at any time, require that the trade marks shall be entered on the register as associated trade marks.

(2) Where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration in the name of the same proprietor, in respect of goods and in respect of services which are associated with those goods or goods of that description and with those services or services of that description, sub-section (1) shall apply as it applies as where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services.



(iv) As Application Nos 1566805 and 2848372 had been filed by same applicants for the same mark for the same set of goods, for the same class, the restrictions and limitations which applied to Registration No. 1566805 would also apply to Registration No. 2848372 in view of Sections 40(1)⁹ and 41¹⁰ of the Trade

(3) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of Section 15, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks registered in accordance with the provisions of sub-section (3) of Section 15 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods or services or both in respect of which it is registered, and may amend the register accordingly.

⁹40. Restriction on assignment or transmission where multiple exclusive rights would be created.—

(1) Notwithstanding anything in Sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to—

- (a) same goods or services;
- (b) same description of goods or services;
- (c) goods or services or description of goods or services which are associated with each other,

of trade marks nearly resembling each other or of identical trade mark, if having regard to the similarity of the goods and services and to the similarity of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within India otherwise than for export therefrom, or in relation to goods to be exported to the same market outside India or in relation to services for use at any place in India or any place outside India in relation to services available for acceptance in India.

¹⁰41. Restriction on assignment or transmission when exclusive rights would be created in different parts of India.— Notwithstanding anything in Sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law—

- (a) an exclusive right in one of the persons concerned, to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in, in any place in India, or in relation to services for use, or services available for acceptance in any place in India; and
- (b) an exclusive right in another of these persons concerned, to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to—
 - (i) the same goods or services; or
 - (ii) the same description of goods or services; or
 - (iii) services which are associated with those goods or goods of that description or goods which are associated with those services or services of that description,

limited to use in relation to goods to be sold or otherwise traded in, or services for use, or available for acceptance, in any other place in India:



Marks Act. The restriction of use of the mark for sale of the goods in UP would also, therefore, apply to the registration granted to LF on the basis of Application No. 2848372.

(v) GE had been selling their products in their packaging since 2014. Application Nos. 4299506, 4304712 and 4304713 had been filed by LF for registration of the box in which it was selling its products as a trade mark in 2019 on “proposed to be used” basis. Thus, LF/LC was copying the artistic work and mark of GE, and not *vice versa*.

(vi) GE is a proprietorship which was well known and reputed in the business of manufacturing and selling of self drilling screws, blind rivets and cut off wheels for metals and grinding wheels, etc. These goods were covered in Class 6 and manufactured and sold under the mark **HP⁺**. The appellants had been *bona fide* using the mark **HP⁺** since 2014.

The impugned judgment

8. The learned Commercial Court has, by the impugned judgment, allowed the application of LC under Order XXXIX Rules 1 and 2 of

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or Section 40 if application for the registration under Section 45 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.



the CPC. The learned Commercial Court has not returned any finding on the aspect of goodwill or reputation of LC, thereby indicating that the impugned order has been passed solely on the finding of infringement.

9. Unfortunately, the impugned order though it records the submissions of both sides, does not deal with all the submissions in their totality. The reasoning of the learned Commercial Court is contained entirely in para 12 of the impugned order, which reads as under:

“12. Considering that the plaintiff is the registered trade mark holder and prior user of the mark **HP** and the material on record prima facie shows that the defendant is selling/marketing/distributing its product under the trademarks HP, HP+ and HP R+ which are similar/ deceptively similar to the plaintiffs trademark with likelihood to cause confusion to the public. Balance of convenience also lies in favour of plaintiff and if the defendants are allowed to continue to infringe the trademark of the plaintiff, same shall cause irreparable loss and injury to the plaintiff and the reputation of the plaintiff is likely to be damaged if the injunction is not granted in its favour.”

10. Prior to returning the above findings, the learned Commercial Court has noted the submissions of both sides. While GE contended that the restriction of sale of goods using the **HP** mark within the State of UP, as incorporated in Registration No. 1566805, applies equally to the subsequent Registration No. 2848372 of the **HP** mark, LC contended, *per contra*, that the restriction on sale of goods in UP was not contained in the Registration No. 2848372. LC contended that Registration No. 2848372, of the **HP** mark, applied on pan-India basis and, therefore, that the manufacture and sale by the appellants of self-



drilling screws and rivets using the **HP**⁺ and **HP**^{®+} marks anywhere in India would infringe the said registration. The marks themselves were *ex facie* deceptively similar to each other. LC further contended that the plea of the appellants regarding Registration No. 1566805 having been obtained on the basis of fabricated documents could not be decided at this stage and that, in any case, the order passed by the Registrar of Trade Marks, rejecting the rectification application filed by the appellants for rectifying the said trade mark, had not been challenged.

11. Having recorded the aforesaid submissions of both sides, the learned Commercial Court proceeded, as already noted, to allow the respondent's application under Order XXXIX Rules 1 and 2 of the CPC.

Rival contentions

12. Submissions of Mr. Sanjeev Sindhvani, learned Senior Counsel for the appellants

12.1 Mr. Sindhvani submits that Registration No. 2848372, of the mark **HP**, is completely illegal and invalid. According to Mr. Sindhvani, the registration violates Section 16 of the Trade Marks Act. Section 16 mandatorily requires the proprietor of the two associated trade marks to be the same. The earlier trade mark **HP**, covered by Registration No. 1566805, was assigned by LF to LC on 5 August 2013. Once the mark stood thus assigned, LF lost all proprietorial rights over the mark. LF could not, therefore, have again



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applied on 24 November 2014 for registration of the same HP mark for the same goods. In the application, LF concealed the fact that it had assigned the registered trade mark **HP** to LC. Thus, having not been informed of the fact that the earlier registered **HP** trade mark already stood assigned by LF to LC on 5 August 2013, the Registrar was misled into granting a fresh registration to LF for the **HP** mark, against Application No. 2848372, and associating the registration with the earlier Registration No. 1566805. Registration No. 2848372 of the mark **HP**, in favour of LF, was, therefore, invalid, and no intellectual property rights could flow from such a registration.

12.2 The Assignment Deed dated 5 August 2013, whereby Pankaj Lidoo assigned the **HP** trade mark, owned by LF, to LC, also concealed the fact that Registration No. 1566805 was subject to exclusive UP user.

12.3 Besides these submissions, Mr. Sindhwani has reiterated the contention, advanced before the learned Commercial Court, to the effect that the documents on which the respondent was claiming 1995 user were forged and fabricated. In any event, the said user documents, he submits, are of no relevance, as, at that time, the user of the mark **HP** was restricted to the state of UP, following the user-based restriction attaching to Registration No. 1566805.

12.4 Mr. Sindhwani further submits that, in the absence of any finding regarding goodwill or reputation, the impugned injunction cannot be sustained on the principles of passing off. Once the plea of



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1995 user was found to be without substance, the earliest claim of user of the **HP** mark by LC, or of LF, was of 24 November 2014, whereas GE was using the **HP** mark since December 2014. The commencement of user of the rival marks by LF/LC and GE were, therefore, neck-to-neck.

12.5 Mr. Sindhwani further submits that, by operation of Sections 16 and 40 of the Trade Marks Act, even if it were to be presumed that Registration No. 2848372 of the **HP** mark in favour of LF, was valid, the restriction of use of the mark to the State of UP, which had been incorporated in the Registration No. 1566805, would also apply to the later registration following Application No. 2848372.

13. Submissions of Mr. J. Sai Deepak, by way of response

13.1 Arguing *per contra* on behalf of LC, Mr Sai Deepak submits that, while LC, through its predecessor-in-interest LF, was the proprietor of the registered trademark **HP**, the application of GE, for registration of the **HP⁺** mark was refused by the Registry on 13 August 2025. He submits that LC is, by itself as well as through its predecessors-in-interest, users of the **HP** mark since 15 December 1995, whereas GE is merely a subsequent dishonest adopter of the mark **HP⁺**, claiming user since 10 December 2014. The duplicity in GE's actions was apparent from the fact that it was using the [®] superscript alongside its **HP⁺** mark, thereby deceiving consumers into believing that its mark is registered, so that there would be an immediate connection with LC's registered trademark **HP**. This



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duplicity, he submits, is further apparent from the fact that, in its packing, GE has not only replicated the colour scheme of LC's packing, but has gone to the extent of copying the *shikara* logo, with "LE" thereon, which was clearly dishonest. This element of LC's



packing, as replicated by GE, appeared as on GE's packing.

13.2 In support of LC's claim of user of the **HP** mark since 15 December 1995, Mr. Sai Deepak referred to the Rent Agreement, Dealer Agreement, Transport Receipts, Income Tax Return and Brochure of Landmark Engineers which were all part of the record of the learned Commercial Court. He also drew attention, in this context, to invoices raised by LF of sales of **HP** branded self-drilling screws within the state of Maharashtra dating back to 2010, and commercial import invoices, reflecting LF as the consignee, dating back to 28 September 2006. User of the **HP**⁺ mark by GE, he submits, was nearly two decades anterior, in point of time, after commencement of user of the **HP** mark by Landmark Engineers.

13.3 Mr. Sai Deepak submits that GE filed Applications No. 2867961, 2939701, 3004252 and 3142368, for registration of the mark **HP**⁺, claiming user of 2014, in Class 6 and that, consequent on oppositions filed by LC/LF, all four applications were abandoned by GE, with the dates of abandonment being 13 August 2025 for Application No. 2867961, 13 March 2020 for Application No. 2939701, 19 May 2020 for Application No. 3004252 and 13 March 2020 for Application No. 3142368.



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13.4 Mr. Sai Deepak refutes Mr. Sindhwani's contention that Registration No. 2848372 of the **HP** trademark, in favour of LF, was subject to UP user. This restriction, which applied to the earlier Registration No. 1566805 of the **HP** mark, he submits, did not apply to the later registration.

13.5 Application No. 2867961, filed by GE for registration of the **HP+** mark, submits Mr. Sai Deepak, stood refused by the Assistant Registrar of Trade Marks, Mumbai by a detailed and speaking order dated 13 August 2025. However, as this order has been passed nearly three years after the passing of the impugned order by the learned Commercial Court, we are not inclined to make reference thereto.

13.6 Apropos Mr. Sindhwani's submission that Registration No. 2848372, of the trademark **HP**, had been obtained by LF by concealing, from the Registry, the fact that the earlier registered trade mark **HP** stood assigned by LF to LC, Mr. Sai Deepak points out that, on 24 November 2014, when Application No. 2848372 was filed before the Registry, the Assignment was not reflected in the record of the Registry of Trade Marks and that, therefore, LF had not committed any illegality in seeking association with the earlier registered trade mark.

13.7 Finally, Mr. Sai Deepak submits that Mr. Sindhwani has not, in his entire submissions, controverted the aspect of infringement, by



GE, of LC's registered **HP** trade mark. Ergo, he submits, the appeal is completely bereft of merit and deserves to be dismissed.

Analysis

14. Extent of Inquiry

14.1 Many of the submissions which were advanced by learned Counsel for both sides raise issues which, at best, may be regarded as arguable, and cannot really constitute legitimate considerations at the stage of deciding an application under Order XXXIX Rules 1 and 2 of the CPC. The Supreme Court has, in *Brihan Karan Sugar Syndicate Private Limited v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*¹¹, held that Courts, which are dealing with applications for interlocutory injunction in intellectual property right matters, are not expected to enter into detailed analysis of the facts and evidence, and are only required to undertake a *prima facie* analysis of the merits of the case. Aspects which are arguable have, therefore, to be relegated to trial.

14.2 In *Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia*¹², the Supreme Court has held, in no uncertain terms, that where infringement is found *prima facie* to exist, injunction must follow, thus:

“5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an

¹¹ (2024) 2 SCC 577 (para 11)

¹² (2004) 3 SCC 90



injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it *prima facie* appears that the adoption of the mark was itself dishonest.”

At the Order XXXIX stage, therefore, the remit of the Court is only to examine *prima facie* whether a case of infringement is made out. If it is, ordinarily, injunction has to follow.

14.3 In *Laxmikant V. Patel v. Chetanbhai Shah*¹³, the Supreme Court held that, if the case was one of passing off, the Court had, at the very first instance, not only to grant interim injunction but had also to appoint a Local Commissioner to seize the offending goods of the defendant. Though the issue before the Supreme Court in that case was of passing off, we are of the view that this principle would apply equally, if not with greater force, in a case of infringement.

14.4 We have, therefore, to examine whether a *prima facie* case of infringement was made out, on the facts which were before the learned Commercial Court. If so, the decision of the learned Commercial Court must be regarded as impervious to interference.

15. The aspect of infringement

15.1 Infringement is defined in Section 29 of the Trade Marks Act. The rival marks, in the present case, are **HP** of LC and **HP⁺** and **HP^{®+}** of GE. The marks are practically identical.

¹³ (2002) 3 SCC 65 (para 14)



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15.2 We are in agreement with Mr. Sai Deepak that the use of the [®] superscript by GE, which is to be employed only where the mark is a registered trademark, is completely illegal and lacking in *bona fides*. The **HP⁺** mark of GE is not a registered trademark. In fact, GE has no registration of any trade mark under Section 23 of the Trade Marks Act. GE had, therefore, no authority whatsoever to use the “[®]” superscript. By using the [®] along with **HP⁺**, it is apparent that GE was not merely misleading the consumers into believing that it had a registered trade mark but also was creating a situation in which, as LC is the only proprietor of the registered trade mark **HP**, the average consumer would believe the goods of GE to be those of LC. GE, therefore, clearly exaggerating and enhancing the likelihood of confusion by illegally displaying its **HP⁺** mark as registered by depicting it as **HP^{®+}**.

15.3 The complete absence of *bona fides* in GE is manifested, even more tellingly, by the design of the GE’s packing, in which, apart from using the same red and black colour combination as was used by



LC, GE, in the  feature on the packing, not only replicated the *shikara* motif from LC’s packing, but, with manifest impunity, also used the “LE” logo.

15.4 Mr. Sindhvani has, quite rightly, not advanced any submission on the aspect of infringement. Indeed, there can be no defence for GE on this aspect at all, as the rival marks are to all intents and purpose, identical, except for the “⁺” employed by GE. A clear case of



infringement, within the meaning of Section 29(2)(b)¹⁴ – and in fact even Section 29(2)(c)¹⁵ read with Section 29(3)¹⁶, of the Trade Marks Act, therefore, exists.

15.5 The finding of the learned Commercial Court that the **HP⁺** marks of the GE infringed the registered **HP** mark of LC is, therefore, entirely in order and has to be upheld.

16. The aspect of registration

16.1 Section 28(1)¹⁷ of the Trade Marks Act entitles the proprietor of every validly registered trade mark not only to exclusive use of the said mark in respect of the goods or services for which it is registered but also to relief against infringement. Section 135(1)¹⁸ of the Trade Marks Act sets out the relief available against infringement, and sub-section (1) thereof includes, among such reliefs, the relief of

¹⁴ (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

¹⁵ (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

¹⁶ (3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

¹⁷ **28. Rights conferred by registration. –**

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

¹⁸ **135. Relief in suits for infringement or for passing off. –**

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the



injunction. For this, however, the registration of the plaintiff's trade mark has necessarily to be a valid registration.

16.2 Section 31(1) and its effect

16.2.1 At the Order XXXIX stage, the Court examines the validity of the registration of the plaintiff's registered trade mark only *prima facie*. A plaintiff is only required to show *prima facie* that the registration of its trade mark is valid. Section 31(1)¹⁹ of the Trade Marks Act ordains that the very fact of registration of a trademark is *prima facie* evidence of its validity. *By virtue of Section 31(1), therefore, the onus on a plaintiff to show that it has a valid registration stands statutorily satisfied even by the very fact of such registration. Expressed otherwise, once the plaintiff has a registered trade mark, Section 31(1) of the Trade Marks Act creates a presumption that the registration is valid, which would ordinarily suffice at the Order XXXIX stage.*

16.2.2 Of course, if there is overwhelming evidence to indicate that the registration is invalid, it may still be open to the defendant to raise this contention at the Order XXXIX stage. This Bench had, before it, recently one such case in which, though the application for registration

option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

¹⁹ 31. **Registration to be prima facie evidence of validity.** –

(1) In all legal proceedings relating to a trade mark registered under this Act (including applications under Section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof.



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was for one mark, the registration was granted for another²⁰. In such a case, it is obvious that the registration is invalid and therefore, the presumption of validity under Section 31(1) may not be available to the plaintiff. That however, would be an extreme situation. Ordinarily, at the Order XXXIX stage, the Court is entitled to presume, from the very fact that the plaintiff's trade mark is registered, that the registration is valid.

16.3 Once there is a *prima facie* finding of infringement, and a *prima facie* validly registered trade mark of the plaintiff, Section 28(1) entitles the plaintiff to immediate relief against such infringement, which would include grant of interlocutory injunction under Section 135(1) of the Trade Marks Act, given the law laid down in para 5 of *Midas Hygiene Industries*.

17. Whether GE has managed to set up a sufficient challenge to the validity of LC's asserted trade marks.

17.1 LC asserted, before the learned Commercial Court and before us, Registrations No. 1566805 dated 8 June 2007 and No. 2848372 dated 24 November 2014. Both the registrations were for the mark **HP**. Both were granted to LF.

17.2 Both the aforesaid registered trade marks were subsequently assigned by LF to LC. The **HP** Mark registered *vide* Registration No. 1566805 was assigned *vide* Assignment Deed dated 5 August 2013

²⁰ Quantum Hi Tech Merchandising Pvt Ltd v. L.G. Electronic India Pvt Ltd, 2025 SCC OnLine Del 8238



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and the **HP** mark registered *vide* Registration No. 2848372 was assigned *vide* Assignment Deed dated 29 April 2019.

17.3 At the Order XXXIX stage, the Court cannot enter into a detailed analysis of the validity of the said Assignment Deeds.

17.4 We are in agreement with Mr. Sindhwani that no case of infringement can be pleaded by LC against GE on the basis of the **HP** mark registered *vide* Registration No. 1566805, as the registration was subject to a disclaimer that the mark would only be used in the State of UP. A plaintiff can assert a trademark, for the purposes of infringement, only subject to the conditions which govern the grant of registration. A case of infringement could be alleged, on the basis of Registration No. 1566805, of the **HP** mark, only if GE was selling the goods in UP. Sale of goods by GE outside UP could not, therefore, constitute a legitimate basis to allege infringement of the **HP** mark registered *vide* Registration No. 1566805.

17.5 No such caveat, restricting user of the registered trademark was, however, applicable in the case of the second registered **HP** mark of LC, registered *vide* Registration No. 2848372. Mr. Sindhwani has sought to contend that, as the registration was associated with the earlier Registration No. 1566805, the disclaimer in the earlier registration, restricting use of the mark to the State of UP, would also apply to the later registration. He has, however, not been able to support this submission by any statutory or precedential foundation. There is no provision in the Trade Marks Act which makes any



limitation with respect to user, contained in one registration, equally applicable to all registrations, which are associated with it. We have had an occasion to observe, on this aspect, thus, in our judgment in ***Wow Momo Foods Pvt. Ltd v. Wow Burger***²¹ :

“M. Disclaimers

52. The learned Single Judge has also referred to the fact that some of the marks registered in favour of the appellant carried a disclaimer that the appellant would not seek any exclusivity in respect of the individual words used in the mark. The finding is, with respect, tangential to the issue at hand. The disclaimer cannot affect the issue of whether, seen as whole marks, the respondent's WOW BURGER mark does, or does not, infringe the appellant's registered trade marks.

53. Besides, a disclaimer can affect the right of exclusivity only in respect of the mark to which it applies. Out of the 25 marks, registered in favour of the appellant and tabulated in para 6 *supra*, the disclaimer applies only in the cases of the marks at S. Nos 2, 3, 11, 16 and 18. There is no principle of law by which the disclaimer can attach to any of the other marks. The disclaimer subject to which registration has been granted to the appellant for the marks at S. Nos 2, 3, 11, 16 and 18 cannot, therefore, affect the appellant's right to injunction, under Section 28(1) read with Section 135(1) of the Act, on the basis of the registrations held by it in respect of all the other marks.”

17.6 We, therefore, agree with Mr. Sai Deepak that there is no UP user-based limitation on the user of the mark **HP** following the second Registration No. 2848372.

18. The Sequitur

That being so, to our mind, nothing really remains to be examined in the matter. LC had a *prima facie* valid registration of the **HP** mark,

²¹ 2025 SCC Online Del 6545



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with effect from 24 November 2014, in Class 6, for self-drilling screws. GE was using an identical **HP⁺** mark, for self-drilling screws. GE has no registration. The user of the mark by LC is, in any event, prior to the user of the mark by GE, irrespective of whether it dates back to 1995 or any later date. There was no user-based limitation applicable to Registration No. 2848372. As such, the use of the **HP⁺** mark by the GE, anywhere in India, would tantamount to infringement of LC's registered **HP** mark and entitle LC, resultantly, to an injunction against GE.

19. Re. contention that Registration No. 2848372 was invalid because the earlier **HP mark already stood assigned to LC**

19.1 The only submission which remains to be examined is Mr. Sindhvani's contention that Registration No. 2848372, of the mark **HP** in favour of LF, was invalid because LF could not have made the said application, as it had already assigned the earlier registered **HP** mark to LC *vide* Assignment Deed dated 5 August 2013.

19.2 We are not convinced with this submission, either. The Assignment Deed dated 5 August 2013, as Mr. Sai Deepak points out, was yet to be accepted on the record of the Registry of Trade Marks. Till that was accepted, none except LF could have submitted Application No. 2848372 for registration of the mark **HP**. There was, therefore, no illegality in LF applying for the registration of the said mark.



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19.3 Besides, the construction of the Assignment Deed is, at best, arguable. The following covenants of the Assignment Deed are, in this context, relevant:

“WHEREAS the Assignor is the owner and registered proprietor of the trademark HP under Trade Mark No. 1566805 in class 6 in relation to All Kinds of Self Driving Screw under the Trade Marks Act, 1999.

AND WHEREAS the said Assignor had made actual bona fide use of the said trade mark in relation to the said goods since 15/12/1995.

AND WHEREAS the said Assignor had agreed with the said Assignee to assign and transfer to it permanently and forever the exclusive rights, title, interests and all benefits and use of the trade mark alongwith the goodwill of the business concerned in which the said trade mark was used for a sum of ₹ 1000/- (Rs. One Thousand Only).

NOW THIS DEED OF ASSIGNMENT witnesses that in pursuance of this agreement and in consideration of the said sum of ₹ 1000/- (paid to the said Assignor by the said Assignee), the receipt where of the said assignor hereby acknowledges, the Assignor hereby assigns and transfers permanently and forever all rights, title, interest and benefits of the aforesaid trademark.”

It appears, to us, to be debatable as to whether, by this Deed of Assignment, all rights to use the **HP** mark *per se* were assigned, or the assignment was with respect to the right the benefits which flowed from Registration No. 1566805. This aspect would require detailed analysis keeping the intentions of the parties in mind, especially as the intellectual property rights in the second Registration No. 2848372 were later assigned by LF to LC by a separate Assignment Deed dated 29 April 2019.



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19.4 We do not, further, buying any *prima facie* illegality or irregularity in the association of the Registration 2848372 of the **HP** mark in favour of LF with the earlier Registration 1566805. Association of marks is essentially a decision of the Registrar. Section 16 provides for association of a later mark, with the earlier, where the earlier mark is identical to the later mark, and stands registered in the name of the same proprietor. In as much as, on the date when LF applied, vide Application 2848372, for registration of the **HP** mark, it was already registered as the proprietor for the earlier Registration, association of the two marks was inevitable.

19.5 Moreover, the **HP** mark which stood registered in the name of LF, was validly assigned to LC on 29 April 2019. At the *prima facie* Order XXXIX stage, therefore, we are of the opinion that LC was entitled to assert its right to relief against infringement of the said mark, conferred by Section 28(1) of the Trade Marks Act.

20. A closing observation

Before parting, we deem appropriate to reiterate that the present case is one in which the appellant GE is admittedly a rank infringer. Not a single submission, disputing the fact of infringement, was addressed at the Bar. The submissions of the appellants were, almost entirely, dedicated to questioning the validity of Registration No. 2848372. At the *prima facie* stage, the very registration operated as evidence of its validity, in view of Section 31(1) of the Trade Marks Act. *In a case of rank infringement, where, as we have found, the appellants were proceeding with complete lack of bona fides, going to the extent, not*



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only of replicating the shikara logo and the “LE” acronym on their package, which adopted the same colour combination as the package of LC, but had further, in a completely illegal manner, used the ® superscript with its mark to mislead consumers into believing the marks to be the mark of LC, we are of the opinion that the appellants are not entitled to any relief whatsoever.

Conclusion

21. Following the above discussion, we are of the opinion that no infirmity or illegality can be said to exist in the decision of the learned Commercial Court to injunct GE, pending disposal of the suit, in terms of para 13 of the impugned order.

22. The impugned order is, therefore, upheld.

23. The appeal stands dismissed with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 23, 2025/dsn/yg