



2025:DHC:11465



\$~6 and 2 (Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 04.12.2025*

+ **C.O.(COMM.IPD-CR) 5/2024 & I.A. 5130/2024**

SHRI SURINDER KUMAR

.....Petitioner

Through: Mr. Shailen Bhatia and Mr. Amit Jain,
Advocates.

versus

THE REGISTRAR OF COPYRIGHTS & ANR.Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Om Ram and Mr. Arnav Mittal,
Advocates for R1.
Ms. Archana Kumari, GP for UoI.
Mr. Ajay Amitabh Suman, Mr.
Shravan Kumar Bansal, Mr. Rishi
Bansal and Mr. Risabh Gupta,
Advocates for R2.

+ **TR.P.(C.) 146/2024 & C.M. APPL. 49172/2024**

SURINDER KUMAR SOLE PROPRIETOR M/S SHUBHAM
ENTERPRISES

.....Petitioner

Through: Mr. Shailen Bhatia and Mr. Amit Jain,
Advocates.

versus

RAHUL KHANNA

.....Respondent

Through: Mr. Ajay Amitabh Suman, Mr.
Shravan Kumar Bansal, Mr. Rishi
Bansal and Mr. Risabh Gupta,
Advocates.

CORAM:**HON'BLE MR. JUSTICE TEJAS KARIA****TEJAS KARIA, J (Oral)**

**TR.P.(C.) 146/2024****FACTUAL BACKGROUND:**

1. This Transfer Petition is filed by the Petitioner under Section 24 of the Code of Civil Procedure, 1908 (“**CPC**”) read with Rule 26 of the Intellectual Property Rights Division Rules, 2022 (“**IPD Rules**”) seeking transfer of Suit bearing TM No. 13765/16 titled as *Rahul Khanna v. Surinder Kumar* filed by the Respondent for passing off, infringement of copyright, delivery up of goods, rendition of accounts, etc against the Petitioner restraining the use of the Trade Mark ‘PRAKASH’ by the Petitioner for goods namely PVC Self-Adhesive Electrical Insulation Tape (“**Suit**”) and Counter Claim No. 19 of 2022 filed by the Petitioner seeking permanent injunction against the Respondent for passing off the goods of the Respondent as the goods of the Petitioner allegedly under an identical Trade Mark ‘PRAKASH’ and the



Label ‘



copyright contained in the Artistic Work ‘
of the Petitioner (“**Counter Claim**”), pending before the Additional District Judge-03, Patiala House Courts, New Delhi District (“**District Court**”) to be



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transferred to this Court and be heard along with the Rectification Petition bearing C.O. (COMM.IPD-CR) 5/2024 titled as *Shri Surinder Kumar v. The Registrar of Copyright and Anr.* filed by the Petitioner for expunging / removing the copyright registration bearing No. A-115513/2016 for Artistic



Work ‘*Tulsi*’ in favour of the Respondent pending before the Intellectual Property Rights Division (“IPD”) of this Court (“Rectification Petition”).

SUBMISSIONS ON BEHALF OF THE PETITIONER:

2. The learned Counsel for the Petitioner made the following submissions:
 - 2.1. The Suit is pending before the learned District Court since 2016 and listed for final arguments on 17.12.2025. The evidence in the Suit is complete, and the completed evidence in the Suit is also relied upon in the Rectification Petition to challenge the impugned registration. There is a commonality of issues between the Suit, the Counter Claim and the Rectification Petition and if the Suit and the Counter Claim is decided first, it will have a bearing on the Rectification Petition, and *vice versa*, therefore, it is necessary that proceedings in the Suit and the Counter Claim and the Rectification Petition are consolidated and heard together by this Court.
 - 2.2. Rule 26 of the IPD Rules provides that if there are multiple proceedings relating to the same or related Intellectual Property Rights (“IPR”), this Court shall have the power to direct



consolidation of such multiple proceedings relating to the same or related IPR subject matter. Therefore, Rule 26 of the IPD Rules is not limited to the suits pending before the Commercial Court. In ***Patola Industries v. Mahesh Namkeen Pvt. Ltd and Anr. C.O. (COMM.IPD-TM) 187/2021***, this Court transferred a suit pending before the learned District Court to this Court observing that:

“9. In view of the submission by the parties that there are multiple suits pending before the parties in relation to the same subject matter, in exercise of power under Rule 26 of the IPD Rules, the suit before the Additional District Judge-04, Patiala House Courts, New Delhi being TM 27/2018 titled Mahesh Namkeen Private Limited v. Patola Industries and Anr. is transferred to this Court to be heard and tagged along with the present rectifications C.O. (COMM.IPD-TM) 187/2021 and C.O. (COMM.IPD- TM) 198/2021.”

- 2.3. The IPD Rules are subordinate to Section 24 of the CPC, which is the statutory provision and confers the general power of withdrawal and transfer on the High Court. As the Suit and Counter Claim pending before the learned District Court concerns IPR, this Court is empowered to transfer the same to this Court in accordance with Section 24 of the CPC.
- 2.4. The Petitioner had filed the Rectification Petition in 2016 before the Copyright Board, which was abolished thereafter and all the matters pending before the Copyright Board were shifted to the Intellectual Property Appellate Board (“**IPAB**”). After the abolition of the IPAB, the Petitioner filed the Rectification Petition before this Court.
- 2.5. The orders dated 18.11.2023, 22.03.2024, and 28.08.2024 passed in the Suit by the learned District Court show that the Respondent is



taking inconsistent stands. The Respondent sought adjournment of the Suit on the ground that the Rectification Petition is pending before this Court. Whereas the Respondent has been seeking stay of the Rectification Petition on the ground that the Suit is pending before the District Court.

- 2.6. Reliance was placed on an order dated 25.07.2023 passed by this Court in *M/s Loreal India Private Limited and Anr. v. M/s Pornsricharoenpun Co. Ltd and Anr.* bearing CS (COMM) 496/2023, wherein considering the overlapping issues between the suit and rectification petition therein, proceedings before the IPAB were transferred to this Court by invoking the powers under Rule 26 of the IPD Rules. This Court in *M/s Loreal India Private Limited (supra)* observed that:

“4. Issues have been framed. In view of the fact that the Tribunal Reforms Act, 2021 has abolished the IPAB and the jurisdiction vests in the High Court now for cancellation or rectification of trademark, it is deemed appropriate not to stay the suit as the issues which would be arising for determination would be overlapping and common between the suit and the rectification petition.

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6. Exercising powers under Rule 26 of the IPD Rules, the trial in the suit and the rectification petition is consolidated and common issues have been framed as set out above.”

- 2.7. Therefore, as there is an overlap between the subject matter of the Suit and the Rectification Petition, the Suit pending before the District Court may be transferred to this Court and heard along with the Rectification Petition pending before this Court.



SUBMISSIONS ON BEHALF OF THE RESPONDENT:

3. The learned Counsel for the Respondent made the following submissions:

- 3.1. The Suit and the Counter Claim pending before the District Court cannot be transferred to this Court by exercise of powers under Rule 26 of the IPD Rules as Rule 26 of the IPD Rules provides for consolidation of matters pending before the Commercial Court and as the Suit whose consolidation is being sought through this Transfer Petition is pending before a non-commercial Court having been valued below the threshold of Rs. 3 lakhs, the Suit and the Counter Claim pending before the learned District Court cannot be transferred to this Court by exercise of powers under Rule 26 of the IPD Rules.
- 3.2. Under the IPD Rules, the powers conferred by Section 24 of the CPC are circumscribed by Rule 26 of the IPD Rules, and any transfer thereunder is required to be considered by reading Rule 26 of the IPD Rules in conjunction with Section 24 of the CPC. This scheme is specifically intended for suits pending before the Commercial Courts and does not apply to suits pending before non-commercial courts.
- 3.3. Reliance was placed on ***Fox & Mandal v. Somabrata Mandal***, 2025 SCC OnLine Cal 8007 to submit that while exercising the transfer and consolidation of proceedings, the stage of proceedings is of importance. The Calcutta High Court in ***Fox & Mandal*** (*supra*) has observed that:

“6. Ordinarily, the power to direct consolidation may be



exercised by the Court of its own initiative or on an application being made to it. In order to direct consolidation, it is necessary not only to ascertain the subject matter of the proceedings proposed to be consolidated, but the stage at which the proceedings are. In this suit (IP-COM 6 of 2025), the Writ of Summons has been duly served. The time to file the Written Statement has also expired. No Written Statement has been filed by any of the defendants. The interlocutory application being GA/1/2024 seeking interim reliefs has been disposed of by this Court. The plaintiffs have now filed an application under Order XIII A for summary judgment and the matter has been heard on diverse dates. The plaintiff has concluded its opening arguments and the defendant no. 1 is still being heard.

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9. As a general rule, when claims by or against different parties involve common questions of fact bearing sufficient importance in proportion to the rest of the action it is desirable that all these matters be disposed of at the same time, the Court may then allow consolidation and further pass directions as to how the action should be tried. The power to make an order for consolidation is purely discretionary and the Court has to consider whether it is desirable in the facts and circumstances of the case that common questions of law and fact arise for consideration or the right to reliefs claimed in several cases or matters be disposed of at the same time. In passing an order for consolidation, the Court has a wide discretion to allow joinder as to common questions of fact. The fact that those causes of action which arise may raise direct or indirect issues is not the solitary ground for allowing consolidation. The timing of the instant application is also essential. Though the suit being IP-COM 31 of 2025 (Old Suit 86 of 2023) was filed two years ago, the instant application has been filed after a lapse of two years. [Payne v. British Time Recorder Co. Ltd. And WW Curtis Ltd. [1921] 2 K.B. 1; Harwood v. Statesman Publishing Co. Ltd., (1929) 98 L.J.K.B 450].

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11. The stage of the suit is also extremely important for consolidation of the suit. The suit filed by the petitioner is stillborn since no Writ of Summons has even been lodged. A diligent party cannot be punished for the acts of an indolent



opponent....

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14. In such view of the matter, there is no merit in this application. The prayer for consolidation is ill-motivated, misconceived and stands rejected.”

- 3.4. Therefore, the stage of the Suit, conduct of the party are important consideration while deciding the issue of transfer of proceedings. The Suit has already progressed before the District Court, wherein the evidence of the Respondent was closed on 13.08.2018, the evidence before the Local Commissioner was also concluded on 05.03.2021 and, thereafter, on 27.09.2021, the matter was fixed for final arguments. The Respondent has commenced the final arguments on the last date of hearing and the next date of hearing before the District Court is on 17.12.2025 for final hearing.
- 3.5. Reliance was placed on an order dated 04.11.2024 passed by this Court in ***Sonani Industries Pvt. Ltd. v. Mr. Sanjay Jayantbhai Patel and Anr.*** C.O. (COMM. IPD-CR) 880/2022, to submit that even when the submission of overlapping issues was made, this Court did not consolidate the proceedings and, in fact, stayed the proceedings in the rectification petition pending before this Court, awaiting the decision in the suit and observed that:

“1. The present are rectification petitions filed for cancelling the copyright existing in favour of the respondent no. 1 herein.

2. This Court notes that a suit for copyright infringement has also been filed on behalf of the petitioner herein against the respondent no. 1, which is pending in the District Court, Surat.

3. It is to be noted that vide order dated 09th September, 2024, Hon’ble Supreme Court in Special Leave to Appeal (C)



20025/2014, titled as *Sonani Industries Pvt. Ltd. Vs. Prime Diamond Tech and Ors.*, has given directions to the learned District Court Judge, Surat, before whom the suit of the petitioner herein is pending, to make an endeavour to decide the suit within one year.

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6. *Per contra*, learned Senior Counsel appearing for the respondent no. 1 submits that the issues raised in the present petitions, overlap the contentions as raised in the suit for copyright infringement filed by the petitioner herein, which is pending before the District Court, Surat.

7. He further submits that there is due compliance of Rule 70 (9) of the Copyright Rules, 2013. He further submits that the copyright in favour of the respondent no. 1 is not a public document, therefore, it cannot be presumed that there has been infringement by the respondent no. 1 of the copyright of the petitioner, or that the petitioner disputes the copyright of the respondent no. 1.

8. Learned Senior Counsel appearing for the respondent no. 1 further submits that no *prima facie* case in favour of the petitioner herein was found by the District Court, Surat. He submits that the matter went right up to the Supreme Court and no injunction for restraining the respondent no. 1 from doing his business, was granted in favour of the petitioner herein. He submits that only a partial injunction in the form of direction to the respondent no. 1 to maintain accounts of sale, and not to divulge the copyright information to any third party, has been granted in favour of the petitioner herein.

9. Considering the submissions made before this Court, it is deemed appropriate to await the decision in the suit filed by the petitioner against the respondents, pending in District Court, Surat.”

3.6. The reliance placed by the Petitioner on the decision in ***Patola Industries*** (*supra*) is misplaced as the parties therein agreed for the transfer and this Court did not consider the issue of transfer of suit pending before the Commercial Court under Rule 26 of the IPD Rules.



3.7. In view of the above submissions, this Transfer Petition deserves to be dismissed.

ANALYSIS AND FINDINGS:

4. The learned Counsel for the Respondent has opposed the transfer of the Suit and the Counter Claim to this Court and its consolidation with the Rectification Petition mainly on two grounds:

- (i) The Suit and the Counter Claim is not pending before the Commercial Court within the meaning of the Commercial Courts Act, 2015 (“CC Act”), therefore, this Court under Section 24 of the CPC read with Rule 26 of the IPD Rules does not have power to direct the transfer of the Suit and the Counter Claim or its consolidation with the Rectification Petition pending before this Court.
- (ii) Considering that the Suit and the Counter Claim being at the final hearing stage and timing for approaching this Court by the Petitioner, the Transfer Petition ought to be dismissed.

5. Rule 26 of the IPD Rules provides that:

“26. Consolidation of IPR subject matters or cases or proceedings or disputes

Where there are multiple proceedings relating to the same or related IPR subject matter, irrespective of whether the said proceedings are between the same parties or not, the Court shall have the power and the discretion, wherever appropriate, to direct consolidation of proceedings, hearings, and also to direct consolidated recording of evidence/common trial and consolidated adjudication. If the Court is of the opinion that any matter pending before a Commercial Court is to be consolidated with a matter pending before the IPD, it may exercise powers of transfer under Section 24, Code of Civil Procedure, 1908 for transfer and consolidation of such matter to itself.”



6. Section 24 of the CPC provides that:

“24. General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

7. Rule 26 of the IPD Rules confers power and discretion upon this Court to consolidate multiple proceedings relating to the same or related IPR subject matter. In cases where such proceedings are pending before the IPD and another Commercial Court and IPD of this Court, first the matter(s) before the Commercial Court shall be transferred by exercising powers under Section 24 of the CPC and then consolidated with the matter(s) pending before the IPD.



8. Rule 26 of IPD Rules contemplates two situations for matters involving the same or related IPR subject matter:

- (i) Consolidation of matters matter pending before this Court; and
- (ii) Transfer of the matter(s) pending before the Commercial Court to this Court under Section 24 of the CPC and consolidation of the same with matter(s) pending before this Court.

9. Accordingly, Rule 26 of IPD Rules confers powers to transfer under Section 24 of the CPC in cases pending before the Commercial Court. However, Section 24 of the CPC confers a general power to transfer proceedings pending before subordinate courts of this Court independent of the powers conferred under Rule 26 of the IPD Rules.

10. Rule 26 of the IPD Rules refers to the power under Section 24 of the CPC, which is general power of transfer available to this Court irrespective of the provision under Rule 26 of the IPD Rules. A harmonious reading of Rule 26 of the IPD Rules and Section 24 of the CPC makes it clear that Rule 26 of the IPD Rules does not curtail the power of this Court to transfer available under Section 24 of the CPC in any case including matters involving same or related IPR subject matter.

11. Although Rule 26 of the IPD Rules does not contemplate transfer of non-commercial matter to IPD of this Court, the power under Section 24 of the CPC to transfer a non-commercial matter to this Court is not circumscribed by Rule 26 of IPD Rules. The reference to Section 24 of the CPC in Rule 26 of IDP Rules is only to provide clarity regarding provision of the CPC otherwise available for transfer and does not limit the powers available to this Court for transfer under Section 24 of the CPC in any manner.

12. The aim of Section 24 of the CPC and Rule 26 of IPD Rules is the same



to avoid multiplicity of proceeding and conflicting decision involving the same subject matter. In IPR matters, where the parties have multiple legal remedies before various forums, it would be expedient to ensure that rights flowing from the same or related IPR subject matters are decided at once by single Court.

13. Rule 26 of the IPD Rules does not contemplate transfer of non-commercial matters to IPD of this Court on assumption that all matters involving IPR subject matter would be before the Commercial Court in any event. However, Section 24 of the CPC does not make any such distinction between commercial and non-commercial matters and permits transfer 'at any stage' and even on its own motion by this Court. The power to transfer is very wide under Section 24 of the CPC and mere reference under Rule 26 of the IPD Rules does not take away the generality of the said provision.

14. In view of the above, this Court has powers of transfer the matters under Section 24 of the CPC involving IPR subject matter irrespective of whether the same are categorised as commercial or non-commercial, without any reference to Rule 26 of IPD Rules.

15. In the present case, there is no cavil that the subject matter of the Suit and the Counter Claim pending before the learned District Court and the Rectification Petition before this Court involve the same IPR subject matter. Only objections taken by the Respondent are: (i) non-availability of power to transfer the Suit to this Court as the same is not pending before the Commercial Court and Rule 26 of the IPD Rules only provide for transfer under Section 24 of the CPC of the matters pending before the Commercial Court; and (ii) considering the stage of the Suit being listed for final hearing and delay in filing this Petition, it would not be appropriate to transfer the Suit



to this Court under Section 24 of the CPC.

16. As regards the first objection, it is clear from the above discussion that only because Rule 26 of IPD Rules only mentions matters pending before the Commercial Court, it does not prohibit this Court from exercising the powers under Section 24 of the CPC. Reference to Rule 26 of the IPD in the present Petition does not take away the generality of powers available under Section 24 of the CPC, as this Petition is filed under both the said provisions read with each other. If one provision is not applicable in facts of this case, the other can always be applied, if applicable.

17. Clearly, Section 24 of the CPC is applicable in the facts of present case, and it is a fit case for transfer of the Suit under Section 24 of the CPC to avoid multiplicity of the proceedings, parallel adjudication and conflicting decisions as the subject matter of the Suit and the Rectification Petition is identical and relates to same IPR subject matter. In the present case, there is a clear overlap of issues between the Suit and the Counter Claim pending before the learned District Court and the Rectification Petition pending before IPD of this Court.

18. This Court has exercised the power of transfer in similar cases of non-commercial matters to the IPD of this Court in **Loreal India** (*supra*) and **Patola Industries** (*supra*), *albeit* with consent of the parties and without considering interplay between Rule 26 of the IPD Rules and Section 24 of the CPC. However, these cases show that the power to transfer a non-commercial matter to this Court including to IPD available under the general provision of Section 24 of the CPC is not restricted by mention of only the transfer from the Commercial Court in Rule 26 of the IPD Rules. Hence, this Court has power to transfer the Suit pending before the learned District Court to IPD of this Court under Section 24 of the CPC in the facts of the present case.



19. As regards the stage of the proceedings, the Suit and the Counterclaim are at the stage of final hearing. The evidence stage was concluded in March, 2021, and the final hearing did not commence for nearly three years. In these circumstances, no real or tangible prejudice, whether in terms of cost, delay or otherwise, has been shown to outweigh the larger interest in favour of transfer and consolidation of the Suit and the Counter Claim with the Rectification Petitions for hearing together.

20. The transfer of the Suit and the Counter Claim to this Court will not entail reopening of evidence already concluded before the learned District Court or undo any procedural stage. In fact, the evidence led by the Parties in the Suit before the learned District Court is being referred into the Rectification Petition. Hence, the reasoning of *Fox & Mandal (supra)* is not applicable in the facts of the present case. Allegations of delay in approaching this Court, cannot outweigh the necessity to avoid conflicting decisions on the same subject matter. Hence, no prejudice will be caused to the Respondent, if the Suit and the Counter Claim are transferred to this Court and consolidated with the Rectification Petition.

21. In *Sonani Industries (supra)*, this Court did not transfer and consolidate the suit proceedings and, in fact, stayed the proceedings in the rectification petition pending before this Court, awaiting the decision in the suit as there was direction from the Supreme Court to and observed that to make an endeavour to decide the suit within one year. Hence, the facts were different in the said case and, in any case, it is the discretion of this Court whether to transfer the proceedings to itself considering the overall facts, submissions made and the stages of the proceedings sought to be transferred and consolidated. Hence, the decision involving different facts and



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circumstances are not binding in cases of transfer.

22. Accordingly, it is directed that the Suit bearing TM No. 13765/16 titled as *Rahul Khanna v. Surinder Kumar* and Counter Claim No. 19 of 2022 titled as *Shri Surinder Kumar v. Mr. Rahul Khanna* be transferred to this Court and consolidated with the Rectification Petition being C.O. (COMM.IPD-CR) 5/2024.

23. Upon transfer, the Registry shall renumber the Suit and the Counter Claim and list them along with the Rectification Petition being C.O. (COMM.IPD-CR) 5/2024.

24. This Transfer Petition is disposed of with the above directions. Pending Application also stands disposed of.

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25. In view of the order passed in TR.P.(C.) 146/2024, list along with the re-numbered Suit and Counter Claim, on 16.03.2026.

TEJAS KARIA, J

DECEMBER 4, 2025/sms