



2025:DHC:7772-DB



\$~79

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 234/2025, CM APPLs. 52828/2025, 52829/2025 & 52830/2025**

**MADAN LAL PURUSHOTTAM DAS
FOODS PRIVATE LIMITED**

.....Appellant

Through: Ms. Shyel Trehan, Sr. Adv, Mr Aditya Gupta, Mr Pranav Sarthi, Ms Vidhi Jain, Mr Rohan Poddar, Ms Himani Thareja, Ms Yashi, Ms Monisha Mane, Ms Bijal Vora, Ms Tamanna Meghrajani, Mr Ashutosh Agrawal, Ms Apoorva Singh, Mr Ayush Raj, Ms Prachi Dhingra, Mr Utkarsh Vatsa, Advs.

versus

B. L. AGRO INDUSTRIES LIMITED

.....Respondent

Through: Mr. Rajesh Sharma and Mr. Shailender Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

%

28.08.2025

C. HARI SHANKAR, J.

1. This appeal assails order dated 4 August 2025 passed by the learned District Judge (Commercial Court-02), Shahdara, whereby the learned District Judge has allowed the applications filed by the respondent B.L. Agro Industries Ltd as the plaintiff in CS (Comm) 464/2025¹, under Order XXXIX Rules 1 and 2 and Order XXVI Rule

¹ B.L. Agro Industries Ltd v Madan Lal Purushottam Das Foods Pvt Ltd



9 of the Code of Civil Procedure, 1908², thereby granting an interlocutory injunction in favour of the respondent and against the appellant, and also appointing a local Commissioner to visit the premises of the appellant and to inventorise and seize the goods which are alleged to be infringing the registered trademarks of the respondent.

Facts

2. CS (Comm) 464/2025, instituted by the respondent against the appellant, alleges that the appellant is infringing the trademarks of the respondent and is seeking to pass off its products as the products of the respondent.

3. Towards this end, the respondent asserts that it adopted the trademark BAIL KOLHU, for edible oils, ghee, fats, etc on 1 January 1986 and, thereafter, extended the use of the said mark BAIL KOLHU for other products including pickles, cheese, butter, curd, soup, flavoured milk, dried and cooked fruits and vegetables, jellies, jams and the like. It claims to have been using the said mark BAIL KOLHU continuously and extensively since the time of its adoption.

4. Undisputedly, the respondent is the registered proprietor of the mark BAIL KOLHU, both as a word mark as well as in the form of various devices, in Class 29 for edible oils, ghee, fats, milk and dairy products, dry fruits, pulses, etc., and in Class 30 for rice, atta, tea, spices, etc. A list of its registrations has been provided in the plaint.

² “CPC” hereinafter



2025:DHC:7772-DB



For our purposes, we need refer only to the registration, in Class 29, of

- (i) the word mark BAIL KOLHU with effect from 1 June 2006 and 11 December 2016, and



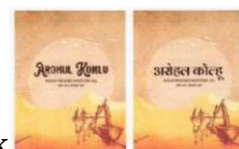
- (ii) the device mark with effect from 24 July 2001.

5. The respondent is also the registered proprietor of the mark BAIL KOLHU in Classes 30, 31, 32 and 35 for other products, but it is not necessary for us to refer to the said registrations.

6. The respondent further contends that it also held copyright registrations of the mark BAIL KOLHU and its device, from as far back as 2 February 1999.

7. The plaint further asserts that, over the years, the BAIL KOLHU mark of the respondent has garnered vast goodwill and reputation. Sales of products using the mark BAIL KOLHU are stated to have increased from ₹ 135.12 crores in 2010-11 to ₹ 1501.2 crores in 2024-25.

8. On 7 July 2022, the appellant applied with the Registrar of



Trademarks for registration of the device mark (AROHUL KOHLU). The application was filed on proposed to be



2025:DHC:7772-DB



used basis, thereby indicating that, till July 2022 at least, the appellant had not commenced use of the aforesaid device mark. The application ultimately came to be abandoned *vide* order dated 6 December 2023 passed by the Registrar of Trademarks.

9. The appellant again applied for registration of a similar



device mark on 13 June 2023 on proposed to be used basis. This application was also abandoned as recorded by order dated 1 July 2024 passed by the Registrar of Trademarks.

10. As a result, as on date, the appellant has no registered trademark for any class of goods. As against this, the respondent is the registered proprietor of the BAIL KOLHU word as well as device marks in the Classes already noted *supra*.

11. On 25 July 2025, the respondent claims to have come to learn of the sale of the appellant's goods under the mark AROHUL KOHLU with a logo and device which were deceptively similar to the device mark of the respondent, on online websites, for similar goods such as edible oil, dairy products, fats, ghee etc.

12. The rival marks of the appellant and the respondent, even as per the present appeal filed by the appellant, are as under:



2025:DHC:7772-DB



Respondent's Mark	Appellant's Mark

13. Asserting that the use of the mark AROHUL KOHLU, by the appellant, infringed the respondent's registered BAIL KOLHU word mark as well as device mark, and that, as the two marks were used for identical products, there was every chance of likelihood of confusion among consumers, the respondent, in its suit, sought a decree of permanent injunction, restraining the appellant from using the mark AROHUL KOHLU, either as a word or device, or any other word mark or logo/device mark which would be deceptively similar to the BAIL KOLHU word or mark of the respondent.

14. The suit was accompanied by an application under Order XXXIX Rules 1 and 2 of the CPC, seeking interlocutory injunction, restraining the appellant, pending disposal of the suit, from using the mark AROHUL KOHLU or any other word or device mark which was confusingly or deceptively similar to the BAIL KOLHU registered word and device marks of the respondent. The respondent also filed an application under Order XXVI Rule 9 of the CPC seeking appointment of the local commissioner to seize the allegedly infringing products of the appellant.



The Impugned Order

15. By order dated 4 August 2025, the learned Commercial Court has granted *ad interim* injunction as sought by the respondent, even while issuing notice on the applications under Order XXXIX Rules 1 and 2, returnable on 20 September 2025. The learned Commercial Court has also acceded to the respondent's prayer for appointment of a local commissioner and has directed the local commissioner to visit the premises of the appellant and to inventorise the allegedly infringing goods. In arriving at its finding, the learned Commercial Court has referred to the judgment of the Supreme Court in ***Morgan Stanley Mutual Fund v Kartick Das***³ as well as orders passed by this Court in ***Munish Kumar Singla Trading v Jollibee Foods Corporation***⁴ and ***Devagiri Farms Pvt Ltd v Sanjay Kapur***⁵.

16. Thereafter, the learned Commercial Court has proceeded to reason thus:

"15. Prima facie, the plaintiff has been able to show that the defendant is infringing the plaintiff registered trademark:/ trade name/ device/label "BAIL KOLHU". The plaintiff has prima facie made out a case of grant of ex-parte ad interim injunction qua defendant. The balance of convenience also lies in favour of the plaintiff and it has been able to show that it shall suffer irreparable loss and injury in case ad-interim injunction is not granted against the defendant.

16. It is further averred that the act of defendant is a great financial loss to the plaintiff and the reputation of the plaintiff is at stake as the low quality product of the defendant is damaging the goodwill of the plaintiff.

³ (1994) 4 SCC 225

⁴ (2017) 72 PTC 608

⁵ (2016) 65 PTC 349



17. It appears from the documents annexed with the plaint that the products of the defendant is deceptively similar to the products of the plaintiff. The similarity is very striking and an ordinary person may not be able to identify any dissimilarity and would thereby be deceived, if he sees the products of the defendant. The trademark/label on the products of the defendant is also phonetically similar to the trademark/label of the plaintiff, due to which any ordinary person would be deceived and apparently the defendant are trying to pass off its goods as those of the plaintiff. Apparently, the defendant is manufacturing and trading the counterfeit products.

18. It is clear from the averments made in the plaint, documents of the plaintiff and the submissions made that the plaintiff is prima facie, the prior user of trademark/label "BAIL KOLHU". It is further averred that the defendant's dishonest adoption of plaintiff registered trademark "BAIL KOLHU" dishonest and motivated by a desire to usurp the vast reputation and goodwill which is enjoyed by the plaintiff not only in India but also overseas. The defendant's unlawful adoption of a deceptively similar/identical logo is calculated to cause loss and injury to the plaintiff's reputation and business and dilute the distinctiveness of its trademark BAIL KOLHU branded products. The loss and injury to the plaintiff's reputation being caused /likely to be caused by such dilution is not capable of being calculated in monetary terms. Hence, an immediate order of injunction restraining the defendant is imperative.

19. Thus, on the basis of the averments of the plaint and the documents annexed therewith, the plaintiff has proved that it would suffer irreparable injury if the plaintiff is not awarded an ex-parte ad-interim injunction. Moreover, balance of convenience also lies in favour of the plaintiff.

20. In view of the foregoing reasons, the plaintiff has been able to show that it is entitled to ex-parte order in its favour and against the defendant.

21. Accordingly, ex-parte ad-interim injunction is hereby granted in favour of the plaintiff and against the defendant up till next date of hearing i.e. 22.09.2025 and the defendant as well as others acting on his behalf shall stand restrained from using, manufacturing and trading, in any manner, the trademark/trade name BAIL KOLHU."

17. Aggrieved by the aforesaid order, the appellant has instituted



the present appeal before this Court.

Submissions of the appellant

18. At the very outset, we suggested to Ms. Trehan that, instead of our returning any observation in this order, on the merits of the matter, it might be appropriate for us to direct the learned Commercial Court to finally decide the Order XXXIX application of the respondent on the date fixed, uninfluenced by any observation contained in the impugned order.

19. Ms. Trehan sought time to obtain instructions in this regard, but has submitted that the appellant is not agreeable to this suggestion.

20. We, therefore, have heard Ms. Shyel Trehan, learned Senior Counsel for the appellant and Mr. Rajesh Sharma, learned Counsel for the respondent at length on the appeal.

21. Ms. Trehan advances the following submissions, to assail the impugned order:

- (i) “Kolhu” refers to an age-old process for extracting mustard oil through wood pressing. In this process, traditionally, a bull, or ox, is tethered by a rope to the wooden churner. The ox or bull moves in circles, thereby resulting in the crushing of the mustard seeds and extraction of oil. No one can be permitted to claim exclusivity over the use of the word “Kolhu”, which refers to this process, as it is *publici juris*.



(ii) The respondent also conceded, in the plaint, that it had no option to the use, by the appellant, of the words “AROHUL KOHLU” *per se*.

(iii) Insofar as the logo of the ox/bull tethered to the churner is concerned, there are several registered device marks which incorporate the same motif, of which one dates back to 1973, prior to the first use of the mark by the respondent in 1986. The written submissions of the appellant provide a screenshot of several such marks:





The motif of the ox/bull tethered to the grinder was, therefore, not distinctive, and was *publici juris*. There was no evidence that it had acquired any secondary meaning favouring the respondent, over time.

(iv) The respondent did not possess any trade mark registration for the motif of the ox/bull tethered to the churner *per se*. The registered device mark of the respondent was a composite mark, with the said device along with the words “BAIL KOLHU” (in Devanagari). The respondent could not claim exclusivity over the pictorial part of the mark alone, as it would infract the anti-dissection rule contained in Section 17⁶ of the Trade Marks Act. Reliance is placed, in this context, on paras 31.4 and 32 to 32.3 of the judgment of the Supreme Court in ***Pernod Ricard v Karanveer Singh Chhabra***⁷, which read thus:

“31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks - such as Kodak or Solio - are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks - such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI - are not inherently

⁶ **17. Effect of registration of parts of a mark: -**

- (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.
- (2) Notwithstanding anything contained in sub-section (1), when a trade mark—
 - (a) contains any part—
 - (i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or
 - (ii) which is not separately registered by the proprietor as a trade mark; or
 - (b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

⁷ **2025 SCC OnLine SC 1701**



distinctive and must acquire secondary meaning in the minds of the public to qualify for protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark - whether inherently or through acquired reputation - the stronger its position in infringement or passing off actions.

(B) RULE OF ANTI-DISSECTION

32. A foundational principle in trademark law is that marks must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which consumers perceive trademarks - based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In ***Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceuticals Laboratories***, this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.

32.1. While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non-distinctive components *per se*, courts may still identify dominant or essential features within a composite mark to assess the likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.

32.2. This approach finds further support in the observations of scholars such as McCarthy in Trademarks and Unfair Competition, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.



32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element - particularly if it is descriptive or laudatory - will not by itself amount to infringement.”

(v) There was no assertion, in the plaint, that the motif of the ox/bull tethered to the churner was the dominant/prominent feature of the respondent’s registered device mark. In fact, the “ox/bull with churner” motif was not the dominant feature of the respondent’s device mark, as it was not the element which was most distinct, memorable and likely to influence consumer perception.

(vi) Moreover, the device of the ox/bull tethered to the grinder is descriptive of the product sold under the mark within the meaning of Section 9(1)(b)⁸ read with Section 30(2)(a)⁹ of the Trade Marks Act, as it depicts the process whereby the oil is extracted. No exclusivity can, therefore, be claimed for such a mark, and no injunctive orders, restraining others from using

⁸ 9. Absolute grounds for refusal of registration.—

(1) The trade marks—

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

shall not be registered:

⁹ (2) A registered trade mark is not infringed where—

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services;



such a mark, can be issued.

(vii) When compared as whole marks, there was no similarity between the appellant's and respondent's marks. The stark distinction between 'BAIL KOLHU' and 'AROHUL KOHLU' is by itself sufficient to belie any chance of confusion. For this purpose, Ms. Trehan draws attention to the comparison between the marks, as reproduced in para 11 *supra*.

(viii) The principle of idea infringement could not be applied to marks which were descriptive in nature.

Analysis

22. The respondent/plaintiff is the registered proprietor of the mark



, which is registered in its favour w.e.f. 24 July 2001, whereas the appellant has no registration in its favour.

23. Viewing the marks as wholes – character of the consumer – Initial interest confusion – Even presumption of likelihood of association sufficient

23.1 Ms. Trehan submits that the rival marks have to be seen as wholes, and, to that extent, she is correct. Her submissions, however, overlook two fundamental legal propositions, endemic to trade mark infringement jurisprudence.



23.2 The first fallacy in Ms. Trehan’s submission is that it ignores the legal requirement of the aspect of likelihood of confusion being required to be assessed from the perspective of a consumer of average intelligence and imperfect recollection.¹⁰ The use of the word “imperfect” is, in this test, pregnant with meaning. The recollection of the consumer must be *imperfect*. This necessarily implies that the consumer must not be one who is overly familiar with the rival marks, or with either of them. The likelihood of confusion, equally, is not to be assessed by keeping the marks side by side. ***Pernod Ricard***, on which Ms. Trehan herself placed reliance, pithily expositis this principle by holding that “courts are not expected to adopt a mechanical, side-by-side comparison of the marks”. Other decisions to the same effect are ***Khoday Distilleries Ltd v The Scotch Whisky Association***¹¹ and ***Parle Products (P) Ltd v J.P. & Co.***¹². The classical test that applies is whether such an average consumer, of imperfect recollection, comes across one mark at one point of time, and the other later, he is likely to be placed in a state of confusion.

23.3 The “likelihood of confusion”, moreover, has to be assessed from an “initial interest” standpoint. In other words, it is the *initial impression* that the defendant’s mark conveys to the average consumer of *imperfect recollection*, which is relevant. Further, all that is required is *likelihood* of confusion, not actual confusion. In other words, if an average consumer of imperfect recollection comes across the

¹⁰ ***Amritdhara Pharmacy v Satya Deo Gupta***, AIR 1963 SC 449; ***Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd***, (2001) 5 SCC 73; ***Satyam Infoway Ltd v Siffynet Solutions (P) Ltd***, (2004) 6 SCC 145

¹¹ (2008) 10 SCC 723

¹² (1972) 1 SCC 618



plaintiff's mark at one point of time, and the defendant's mark at another, later, point, it has to be assessed whether such a consumer would, on *initially viewing the respondent's mark*, be placed in a state of confusion as to whether the defendant's mark was the same as that of the plaintiff which he had seen earlier – *or was associated with it* (to which aspect we would allude immediately).

23.4 Further, “confusion” does not require the consumer to be completely befuddled. All that is required is that he is placed in a state of “wonderment”. This is best expressed in the following passage from *Shree Nath Heritage Liquor Pvt Ltd v Allied Blender & Distillers Pvt Ltd*¹³, by a Division Bench of this Court:

“6. When a person knows that the mark in question does not originate from the senior user but the senior user is called to mind, then it's a step before confusion. *If on the other hand, the consumer is in a state of wonderment if there's a connection*, this is confusion. Further, if this consumer then purchases the junior users product, this is then deception.”

Thus, if the consumer, of average intelligence and imperfect recollection, on coming across the defendant's mark, is *placed in a state of wonderment if there is a connection between the said mark and the mark of the plaintiff*, it amounts to “likelihood of confusion”.

23.5 This exordium underscores the second principal fallacy in Ms. Trehan's submissions, which is that they ignore the position, which emerges from Section 29(2)(b)¹⁴ of the Trade Marks Act, that

¹³ 221 (2015) DLT 359

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—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
(b) its similarity to the registered trade mark and the identity or similarity of the goods or



infringement would stand committed not only if, owing to the similarity between the marks and the goods/services in respect of which the marks are used, the average consumer wonders, at an initial interest stage, *whether there is any association between the marks*. It is not necessary, therefore, for infringement to be found to exist, that the consumer must consume one mark for the other. Even if the marks are so similar that the consumer of average intelligence and imperfect recollection, when he sees the defendant's mark after having come across the plaintiff's mark earlier, *even instantaneously*, wonders whether there is any association between the marks, it would constitute infringement.

23.6 In the present case, when viewed overall as whole marks, we are of the opinion that such an average consumer of imperfect recollection would, if he has first seen the respondent's mark and, *sometime later*, comes across the appellant's mark, at the least wonder whether the two marks are not associated, *inter alia* because of the common ox tethered to the grinder motif and the similarity between the marks बैल कोल्हू ("BAIL KOLHU") and आरोहल कोल्हू ("AAROHAL KOLHU").

23.7 Amritdhara Pharmacy

23.7.1 In this context, it is also worthwhile to refer to the judgment of the Supreme Court in *Amritdhara Pharmacy*. In that case, the rival

services covered by such registered trade mark; or
(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



marks before the Supreme Court were “Amritdhara” and “Lakshmandhara”. Both were used for ayurvedic medicaments. The respondent applied for registration of the mark “Lakshmandhara” as a trademark. The application was opposed by the appellant Amritdhara Pharmacy. The appellant contended that the word “Amritdhara” was already registered as a trade name for ayurvedic medicaments and the similarity between the marks “Amritdhara” and “Lakshmandhara” was likely to result in confusion.

23.7.2 One of the arguments before the Supreme Court was that the words “Amritdhara” and “Lakshmandhara” had different meanings and that, therefore, an average consumer was not likely to confuse one for the other. The Supreme Court dealt with this argument, thus:

7. Let us apply these tests to the facts of the case under our consideration. It is not disputed before us that the two names “Amritdhara” and “Lakshman-dhara” are in use in respect of the same description of goods, namely a medicinal preparation for the alleviation of various ailments. Such medicinal preparation will be purchased mostly by people who instead of going to a doctor wish to purchase a medicine for the quick alleviation of their suffering, both villagers and townsfolk, literate as well as illiterate. As we said in *Corn Products Refining Co. v Shangrila Food Products Ltd.*¹⁵ the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity-of the two names “Amritdhara” and “Lakshmandhara” is, in our opinion, likely to deceive or cause confusion. We must consider the overall similarity of the two composite words “Amritdhara” and “Lakshmandhara”. We do not think that the learned Judges of the High Court were right in saying that no Indian would mistake one for the other. An unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the composite

the registered trade mark.

¹⁵ AIR 1960 SC 142



words as “current of nectar” or “current of Lakshman”. He would go more by the overall structural and phonetic similarity and the nature of the medicine he has previously purchased, or has been told about, or about which has otherwise learnt and which he wants to purchase. Where the trade relates to goods largely sold to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and see the difference between “current of nectar” and “current of Lakshman”. “Current of Lakshman” in a literal sense has no meaning; to give it meaning one must further make the inference that the “current or stream” is as pure and strong as Lakshman of the Ramayana. An ordinary Indian villager or townsman will perhaps know Lakshman, the story of the Ramayana being familiar to him; but we doubt if he would etymologise to the extent of seeing the so-called ideological difference between “Amritdhara” and “Lakshmandhara”. He would go more by the similarity of the two names in the context of the widely known medicinal preparation which he wants for his ailments.

8. We agree that the use of the word “dhara” which literally means “current or stream” is not by itself decisive of the matter. What we have to consider here is the overall similarity of the composite words, having regard to the circumstance that the goods bearing the two names are medicinal preparations of the same description. We are aware that the admission of a mark is not to be refused, because unusually stupid people, “fools or idiots”, may be deceived. A critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague recollection that he had purchased a similar medicine on a previous occasion with a similar name. The trade mark is the whole thing-the whole word has to be considered. In the case of the application to register “Erectiks” (opposed by the proprietors of the trade mark “Erector”) Farwell, J., said in **William Bailey (Birmingham) Ltd.**¹⁶:

“I do not think it is right to take a part of the word and compare it with a part of the other word; one word must be considered as a whole and compared with the other word as a whole.... I think it is a dangerous method to adopt to divide the word up and seek to distinguish a portion of it from a portion of the other word.”

¹⁶ (1935) 52 RPC 137



23.7.3 Having thus held that a consumer would not bisect the marks into “Amrit” and “Dhara” in one case and “Lakshman” and “Dhara” in the other case, and ascribe, to them, the meanings “stream of nectar” and “current of Lakshman”, the Supreme Court nonetheless held that, owing to the overall phonetic similarity between the marks, there was a likelihood of confusion.

23.7.4 This decision is, in our view, squarely applicable to the facts at hand. We are conscious that the respondent has, in its plaint, specifically stated that it did not object to the use, by the appellant, of the mark “**AROHUL KOHLU**” *per se*. We are citing ***Amrit Dhara Pharmacy*** only to point out that, when viewed as whole marks, there is every likelihood of the average consumer, at the very least, presuming an association between the marks, given the fact that both the marks employ the ox tethered to the grinder logo accompanied by words which are similar, i.e. BAIL KOLHU and AROHUL KOHLU. The average consumer is, therefore, likely to presume that the appellant’s AROHUL KOHLU product is either from the same stable as the respondent’s BAIL KOLHU product, especially as both marks use the common ox-grinder motif, or that there is an association between the marks.

23.8 We, therefore, reject Ms. Trehan’s contention that, when the rival marks are viewed as wholes, there is no likelihood of confusion.

24. The “anti-dissection” argument - Applying the “dominant feature” test



24.1 Ms. Trehan pressed into service Section 17(2)(a) of the Trade Marks Act, to contend that the respondent's registered device mark was a composite mark incorporating the ox-with-grinder logo as well as the words "BAIL KOLHU", and that the respondent could not claim exclusivity over one, or the other, part of the mark. Any such claim, she submits, would fall foul of Section 17(2)(a), as the respondent does not possess any independent registration, under the Trade Marks Act of the ox-with-grinder device.

24.2 At the same time, Ms. Trehan fairly acknowledges that, if either part of the composite mark were to be treated as dominant, the respondent was entitled to claim exclusivity over that part even if were not separately registered as a trade mark, in view of the enunciation of law in *South India Beverages Pvt Ltd. v General Mills Marketing Inc.*¹⁷ Her contention is, however, that the ox-with-grinder device cannot be treated as a dominant part of the registered device mark of the respondent.

24.3 We cannot agree with Ms. Trehan in her submission that the motif of the ox and bull dragging the grinding stone is not the dominant feature of the mark. To our mind, it is quite clear that the dominant feature of the respondent's mark is the motif of the ox dragging the grinding stone. Between the said motif, and the words "BAIL KOLHU", the image that would impress itself immediately on the psyche of the consumer of average intelligence and imperfect recollection would, in our view, not be the words "BAIL KOLHU"

¹⁷ (2015) 61 PTC 231



but the pictorial motif of the ox tethered to the grinder.

24.4 We cannot, in any event, countenance the submission that the dominant feature of the registered device mark of the respondent are the words “BAIL KOLHU” especially if, as Ms. Trehan would seek to contend, “Kolhu” is the generic expression used to describe the process by which mustard oil is obtained by grinding mustard seeds using an ox tethered to the grinder. At the very least, it may be presumed that the pictorial device of the ox tethered to the grinder and the words “BAIL KOLHU” are equally prominent.

24.5 The position which results where a composite mark consists of more than one equally dominant parts has also been addressed in ***South India Beverages***. Where both elements of a composite mark are dominant, or equally prominent, both are entitled to protection. In such circumstances, one has to consider the mark as a whole, ensuring that the proprietor of the registered mark does not sacrifice his claim to exclusivity over either part of the mark. Paras 35 to 37 of ***South India Beverages*** may be reproduced, in this context:

“35. The appellant - defendant has strenuously urged that the element ‘HAAGEN’ alone forms the dominant/essential part of the respondent-plaintiff’s registered trademark ‘HAAGEN DAZS’ and not ‘DAZS’. We may however note that the attention of this Court was not drawn to any material that would lend credence to the said submission advanced at the bar. There is nothing on record to support the conclusion that the word ‘HAAGEN’ has enjoyed greater prominence or primacy vis-à-vis the other elements of the mark in the eyes of the consumers at large or the manufacturer himself and can thus be treated as the dominant element of the respondent-plaintiff’s registered trademark. Prima facie, it appears that both the elements constituting the mark of the respondent-plaintiff [‘HAAGEN’ and ‘DAZS’] are equally dominant and are liable to be accorded sufficient protection under the legal



framework. The submission is thus liable to be rejected.

36. We may highlight that even on earlier occasions judicial forums seisin of such disputes have held both the elements occurring in a composite trademark to be dominant. At this juncture, it would be apposite to refer to the judgment dated November 23, 2010 passed by the Court of Justice of the European Union (8th Chamber) in Case NoC-204/10P ***Enercon v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)***.

37. The factual contours of the said case may be succinctly noted in order to appreciate the findings arrived at by the Court. The respondent board had denied the registration of appellant's mark 'ENERCON' on the opposition made by the proprietor of the registered trademark 'TRANSFORMERS ENERGON'. The appellant challenged the said rejection on the ground that word 'ENERGON' was not a dominant part of the registered trademark and therefore negated any likelihood of confusion. The Court rejected the plea of the appellant and observed that *both the elements of the opposer's registered trademark i.e. 'transformers' and 'energon' were equally distinctive and dominant*. The Court added that assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; on the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be *dominated by one or more of its components*."

(Italics in original; underscoring supplied)

24.6 In that view of the matter, applying the principles laid down by the Division Bench of this Court in, the Court is well within its rights to decide the aspect of infringement by examining whether the motif of ox dragging the grinding stone is replicated by others. Any such replication would result in the mark becoming infringing in nature, as it amounts to copying the dominant feature of the mark of the respondent.

24.7 Viewed as whole marks, too, therefore, apart from the fact that



the rival marks are confusingly similar to a consumer of average intelligence and imperfect recollection, the respondent would be entitled to protection of the ox-with-grinder logo, as, at the very least, it is as dominant a part of the registered device mark as the words “BAIL KOLHU”.

24.8 Our reasoning and conclusion are, we may note, entirely in sync with the law declared in the paragraphs from *Pernod Ricard* on which Ms Trehan places reliance.

25. Idea infringement

Besides, we are of the opinion that this is also a case of idea infringement. It is a settled proposition that, if the dominant idea in the registered mark of the plaintiff is replicated by the defendant, it would constitute infringement within the meaning of Section 29 of the Trade Marks Act. The concept of “similarity” between the rival marks, envisaged by Section 29(2)(b), would also include a case of similarity in the idea conveyed by the rival marks. There can be no manner of doubt that the idea of using a mark which shows the ox tethered to the grinding machine, which was the dominant feature of the respondent’s mark, registered as far back as since 2001, has also been adopted by the appellant. This would, therefore, also constitute idea infringement.

26. Re. submissions predicated on Section 17(2)(b)

26.1 Ms. Trehan further sought to contend that the motif of the ox tethered to the grinder is common to the trade (*publici juris*) and is,



even otherwise, non-distinctive. She has placed, on record, a screenshot of a number of marks which, according to her, support her submission, which we have reproduced in para 20(iii) *supra*.

26.2 Though the proscription against claiming exclusivity in respect of a part of a composite mark which is common to the trade, and which lacks distinctiveness, are contained in the same provision [Section 17(2)(b)] of the Trade Marks Act, there is a perceptible qualitative distinction between these aspects. We, therefore, deal with them separately.

26.3 Re. plea that the mark is common to the trade

26.3.1 The attempt of Ms. Trehan to contend that the ox-with-grinder logo is common to the trade, by placing on record a plenitude of marks having similar features is legally unsound, for more than one reason.

26.3.2 In the first place, the proscription envisaged in Section 17(2)(b) is to any matter, forming part of a mark, which is common to *the* trade. The use of the article “the” is often overlooked. In order to successfully invoke the defence based on this proscription, therefore, the defendant would have to show that the mark asserted by the plaintiff, or the feature of the mark over which the plaintiff claims exclusivity, is common to the trade in which the rival marks are used. In other words, the defendant cannot successfully invoke this clause by merely citing a plenitude of marks. The defendant would also have to establish that the marks are used in the same trade in which the



plaintiff and defendant are engaged, and with which the dispute is concerned.

26.3.3 In the present case, the usage to which the marks reflected in the screenshot provided by Ms. Trehan, and extracted in para 20(iii) *supra*, is put, is unknown. It is not known, therefore, whether these marks are common to the trade of mustard oil extraction, with which the dispute is concerned. Even for this reason, therefore, the screenshot provided by Ms. Trehan would not suffice to make out a defence to the allocation of infringement, predicated on Section 17(2)(b) of the Trade Marks Act.

26.3.4 The second reason why this plea cannot sustain is relatable to the law declared by the Division Bench of this Court in ***Pankaj Goel v Dabur India Ltd***¹⁸. The rival marks before the Court, in that case, were HAJMOLA and RASMOLA. The defendant sought to urge that the common suffix 'MOLA' was *publici juris* and common to the trade and, inasmuch as the only similarity between the rival marks was this common MOLA suffix, no case of deceptive similarity could be said to exist. Addressing this submission, the Division Bench held thus:

“21. As far as the appellant's argument that the word MOLA is common to the trade and that variants of MOLA are available in the market, we find that the appellant has not been able to prima facie prove that the said 'infringers' had significant business turnover or they posed a threat to Plaintiff's distinctiveness. In fact, we are of the view that the respondent/Plaintiff is not expected to sue all small type infringers who may not be affecting Respondent/Plaintiff business. The Supreme Court in ***National Bell v Metal Goods***¹⁹, has held that a proprietor of a trademark

¹⁸ (2008) 38 PTC 49 (DB)

¹⁹ AIR 1972 SC 898



need not take action against infringement which do not cause prejudice to its distinctiveness. In **Express Bottlers Services Pvt. Ltd. v Pepsi Inc.**²⁰, it has been held as under:-

"....To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks.... The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence... Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point... The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers..."

22. In fact, in **Dr. Reddy Laboratories v Reddy Paharmaceuticals**²¹, a Single Judge of this Court has held as under:-

"...the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of "Taj Hotel", the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interest and starts misleading and confusing their customers.""

26.3.5 Two legal postulates emerge from these passages.

²⁰ (1989) 7 PTC 14

²¹ (2004) 29 PTC 435



26.3.6 The first is that the mere fact that the plaintiff's asserted mark may have been infringed by others as well is no ground to deny an injunction against the defendant, where the defendant is also found to be an infringer. This is for the simple reason that it is for the plaintiff to choose his defendant, and there is no legal obligation on a plaintiff to sue every infringer. The plaintiff is not answerable as to why it has not proceeded against another infringer. There may be several reasons. It is, for example, quite possible that the other infringer is too small a player as to pose any threat to the plaintiff or its trademark and that, therefore, it makes no commercial sense to proceed against it. Thus, a defendant cannot escape the consequences of infringement merely by pleading that there are other infringers in the market.

26.3.7 The second legal postulate which emerges from the decision in ***Pankaj Goel*** is that a mark or a part of a mark, cannot be pleaded to be common to the trade by merely providing examples of registrations existing on the Register of the Registrar of Trade Marks, which may be identical or similar to the plaintiff mark. The expression contained in Section 17(2)(b) is "common to the trade". The defendant, in order to seek sanctuary behind this clause, would have to establish that the mark being used by him, and which is alleged by the plaintiff to be infringing in nature, has become common to the trade in which that mark is used by the defendant. In other words, it would have to be shown, by the defendant, that the examples of usage of the same mark, by others, is because, in the trade - and not merely on the Register of Trade Marks - the user of that mark has become common. ***Pankaj Goel*** makes it clear that, *for this, the defendant would have to*



establish that the other infringers had significant business turnover or posed a threat to the distinctiveness of the plaintiff's asserted trade mark. Mere reference to registrations, present on the Register of the Registrar of Trade Marks, are entirely insufficient in this regard. These registrations do not even indicate actual user of the registered marks. The defendant would have to show not only that the registered marks are being used, but that the user is significant and poses a business threat to the plaintiff's asserted registered trademark. Empirical data in this regard has to be produced by the defendant, failing which the plea that the mark, or the part of the mark which, according to the defendant, has become common to the trade, must fail.

26.3.8 No such material has been cited or placed on record by Ms. Trehan. The submission, by her, that there are a number of registered trade marks reflecting an ox tethered to a grinding wheel cannot, therefore, advance her case.

26.4 Re. plea that the mark lacks distinctiveness

26.4.1 We are also unable to accept the submission of Ms. Trehan that the respondent cannot claim exclusivity over the aforesaid image as it lacks distinctiveness. Ms. Trehan has, in fact, not been able to advance any clear ground to support this submission. *The issue is not whether the extraction of mustard oil using an ox tethered to the grinder is, or is not, a common phenomenon, or well known. The issue is whether the adoption of such an image, as a mark under which mustard oil is sold, is distinctive.* We are not prepared to hold, in the absence of any



empirical data, that it is not.

26.4.2 To our mind, besides, this is a defence which, for its resolution, would require leading of evidence and a trial. Distinctiveness is inherently an issue of fact, based on public perception, and lack of distinctiveness can rarely, if ever, therefore, be cited as a defence to a possible interlocutory injunction in a case of alleged infringement.

27. Re. Section 30(2)(a) – Plea of descriptive nature of the mark

27.1 Ms. Trehan also sought to contend that the ox-with-grinder logo was descriptive of the nature of the product under which it was sold, viz. extracted mustard oil, and that, therefore, the use of the logo by the appellant could not be treated as infringing, in view of Section 30(2)(a) of the Trade Marks Act.

27.2 There are various reasons why this submission cannot sustain.

27.3 Section 30(2)(a) stipulates that a registered trademark is not infringed if the use of the registered trademark in relation to goods or services indicates

- (i) kind,
- (ii) quality,
- (iii) quantity,
- (iv) intended purpose,
- (v) value,
- (vi) geographical origin,
- (vii) time of production of the goods or



(viii) other characteristics of the goods.

The image of ox tethered to the grinder does not correspond to any of these indicia. At the highest, it can be said to be representative of the *process* by which the product, which is sold under the mark, is manufactured. Section 30(2)(a) does not save such a mark.

27.4 Besides, Section 30(2)(a) is *pari materia* with Section 9(1)(b)²² of the Trade Marks Act. A mark which designates the kind, quality, quantity, intended purpose, value, geographical origin or time of production of the goods or other characteristics of the goods cannot be registered. Since these are the very indicia, the presence of which is available as a defence under Section 30(2)(a), the sequitur is that, if the plaintiff's mark is entitled to registration under Section 9(1)(b), it implies that none of the indicia envisaged by Section 30(2)(a) apply. As these are the same indicia envisaged by Section 30(2)(a), that provision would also, consequently, be inapplicable. In other words, if the plaintiff's mark is entitled to registration, the defendant cannot, ordinarily, urge Section 30(2)(a) as a defence, if the marks are identical or comprising the same features.

27.5 The respondent's mark is undoubtedly registered. Section 31(1)

²² 9. Absolute grounds for refusal of registration.—

(1) The trade marks—

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark



confers on the mark, by virtue of such registration, *prima facie* evidence of validity. The disabilities envisaged by Section 9(1)(b) are, therefore, *prima facie* not applicable. The sequitur would be that Section 30(2)(a) of the act would also, *prima facie*, not be applicable.

27.6 The third reason why Ms. Trehan’s submission cannot be accepted is that it overlooks the distinction between descriptive and suggestive marks. A descriptive mark cannot be registered, and its use cannot be enjoined either. That, however, is not true of suggestive marks.

27.7 In this context, we may draw attention to the following passages from *T V Venugopal v Ushodaya Enterprises*²³, which underscore the distinction between descriptive and suggestive marks:

“30. The argument of the respondent Company is that “Eenadu” is not a generic or descriptive mark but a suggestive mark. The difference between categorisation as generic, descriptive or suggestive is as follows:

- A generic mark can never be a trade mark.
- A descriptive mark can become a trade mark if it acquires secondary meaning.
- A suggestive mark is inherently distinctive.

31. The line between suggestive marks and descriptive marks is very thin. Various commentaries including McCarthy have laid down the imagination test to determine as to whether a mark is descriptive or suggestive. When this test is applied to the mark “Eenadu” for a newspaper, it is clear that the same is descriptive in nature inasmuch as it means “today” i.e. news for today. It does not require any imagination at all. Thus in the imagination test, if the mark describes a characteristic of the product—in the case of “Eenadu” the newspaper, it refers to the characteristic of the newspaper i.e. today's news. “Eenadu” would therefore, be an expression which immediately describes a newspaper. In fact with respect to its agarbattis, “Eenadu” would be a completely arbitrary

²³ (2011) 4 SCC 85



term. However, with respect to newspapers, this is a descriptive term.”

27.8 There could be myriad ways of depicting the oil which is sold by the appellants or the respondents. The depiction of an ox tethered to the grinding machine cannot be treated as descriptive of the oil. At the highest, it can only be suggestive of the process by which the oil is manufactured. The defence under Section 30(2)(a) is available only to descriptive, and not to suggestive, marks.

27.9 We, therefore, reject Ms Trehan’s contention that the symbol of the ox tethered to the grinder is descriptive in nature and that it cannot, therefore, be injuncted.

28. Plea of visual distinction between the packings

28.1 Though Ms. Trehan sought to point out that there is a distinction between the manner in which the two products are packed and also sought to draw our attention to the photographs of the packing of the products, that aspect would be of no relevance while assessing an infringement claim. An infringement claim has to be assessed by comparing mark to mark. We may rely, in this context, on the following passages from *Kaviraj Durgadutt Sharma v Navratna Pharmaceutical Laboratories*²⁴ which specifically draw the distinction between infringement and passing off:

“28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits

²⁴ AIR 1965 SC 980



for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negating the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate



clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", *the question whether there has been an infringement is to be decided by comparison of the two marks.* Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff."

(Emphasis supplied)

28.2 As such, the difference in the packings of the two products can be of no significance while examining a claim of infringement.



29. We are presently dealing with an *ad interim* order passed by the learned Commercial Court. It does not even decide finally the application of the appellant under Order XXXIX Rules 1 and 2 of the CPC. It was for this reason that we had suggested to the appellant that we could direct the learned Commercial Court to decide the application under Order XXXIX Rules 1 and 2 finally, uninfluenced by the impugned order. Despite assiduous efforts on her part, Ms. Trehan has not apparently been able to obtain the consent of her client for such a course of action.

30. It is also settled that the scope of examination by this Court while sitting in appeal over an interim order passed by the learned Commercial Court on an application under Order XXXIX Rules 1 and 2 is limited by the following exordium contained in the judgment of the Supreme Court in *Wander Ltd. v Antox India Pvt Ltd.*²⁵ Within the said limited parameters, we are of the opinion that no case for interference with the impugned order passed by the learned Commercial Court is made out.

31. The appeal is accordingly dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 28, 2025

DSN/AR

²⁵ 1990 Supp SCC 727