GAHC010225522026

undefined

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : CRP/197/2026**

M/S ARPAN BIRI FACTORY
A SOLE PROPRIETORSHIP FIRM, REPRESENTED BY ITS SOLE PROPRIETOR, SHRI AMIT KARMARKAR, SON OF SHRI DULAL KARMARKAR, RESIDENT OF VILLAGE- DAFHAT, P.O.- DAFHAT, P.S.- SUTI DAFHAT, DISTRICT- MURSHIDABAD, WEST BENGAL, PIN CODE- 742224

VERSUS

M/S MOMIN BIRI FACTORY
A PROPRIETARY CONCERN, REPRESENTED BY ITS SOLE PROPRIETOR, SHRI ASHIKUL MOMIN KHANDAKAR, SON OF LATE NURAL ISLAM KHANDAKAR, RESIDENT OF VILLAGE- TUMNI, P.O.- TUMNI, P.S.- SOUTH SALMARA, DISTRICT- SOUTH SALMARA MANKACHAR, ASSAM, PIN CODE- 783127

**Advocate for the Petitioner** : MR. R DUBEY, MR. M A I HUSSAIN,S Z YASMIN,MR. S H ZAMAN,MR. S. ALOM,MS. A B KAYASTHA

**Advocate for the Respondent** : ,

Linked Case : I.A.(Civil)/3639/2026

M/S ARPAN BIRI FACTORY
A SOLE PROPRIETORSHIP FIRM
REPRESENTED BY ITS SOLE PROPRIETOR
SHRI AMIT KARMARKAR
SON OF SHRI DULAL KARMARKAR
RESIDENT OF VILLAGE- DAFHAT
P.O.- DAFHAT
P.S.- SUTI DAFHAT
DISTRICT- MURSHIDABAD
WEST BENGAL
PIN CODE- 742224

VERSUS

M/S MOMIN BIRI FACTORY
A PROPRIETARY CONCERN
REPRESENTED BY ITS SOLE PROPRIETOR
SHRI ASHIKUL MOMIN KHANDAKAR
SON OF LATE NURAL ISLAM KHANDAKAR
RESIDENT OF VILLAGE- TUMNI
P.O.- TUMNI
P.S.- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN CODE- 783127

---

Advocate for : MR. R DUBEY
Advocate for : appearing for M/S MOMIN BIRI FACTORY

**BEFORE**
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**09.10.2026**

**1.** Heard Mr. R. Dubey, the learned counsel for the petitioner

**2.** This application under Article 227 of the Constitution of India has been filed by the petitioner, M/s Arpan Biri Factory, impugning the order dated 18.09.2026 passed by the Court of learned District Judge, South Salmara, Mankachar in Misc.(J) Case No. 10/2026 arising out of Misc. Appeal No. 03/2026, whereby the Court of learned District Judge, South Salmara dismissed the Misc.(J) Case No. 10/2026, wherein the present petitioner had sought a relief of temporary injunction under Order 39 Rule 1 & 2 read with Section 107(2) of the Code of Civil Procedure, 1908, merely on the ground that the connected appeal filed by the present petitioner was against

an order of rejection of prayer for temporary injunction by the Commercial Court in Misc.(J) Case No. 14/2025 arising out of Commercial Suit No. 1/2024.

**3.** The learned counsel for the petitioner submits that the present respondent had filed a commercial suit before the Court of learned Civil Judge (Senior Division), South Salmara, which was registered as Commercial Suit No. 01/2024, against the present petitioner seeking a decree of permanent injunction against the present petitioner for prohibiting him from passing off upon plaintiff's artistic work "MOMIN (artistic work)", by using identical or deceptively similar artistic work to the plaintiff's prior adopted artistic work, and other consequential reliefs.

**4.** The learned counsel for the petitioner submits that in the said commercial suit, the present respondents had also preferred an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking relief of temporary injunction against the present petitioner. However, said application was dismissed by the Commercial Court and no appeal was preferred by the present respondent against the said dismissal.

**5.** He further submits that the present petitioner, on the other hand, filed a written statement-cum-counter-claim in the aforesaid Commercial Suit No. 01/2024, and in the said counter-claim, the present petitioner prayed for relief of permanent injunction restraining the present respondent from using, reproducing, publishing, displaying the artistic work proprietary to the defendant on its label/packaging material of Momin Biri.

**6.** He submits that while filing the counter-claim, the present petitioner also filed a Misc. Case under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908, seeking temporary injunction against the present respondent. The said Misc. Case was registered as Misc. (J) Case No. 14/2025. However, the Commercial Court of learned Civil Judge (Senior Division), South Salmara, by its order dated 19.08.2026, rejected the prayer for grant of temporary injunction and dismissed the aforesaid Misc. Case.

**7.** Being aggrieved by the dismissal of the Misc. (J) Case No. 14/2025, the present petitioner preferred an appeal under Section 13(1) of the Commercial Courts Act, 2015 read with Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 against the said order before the Commercial Appellate Court of the learned District Judge, South Salmara. The said appeal was registered as Misc. Appeal No. 03/2026 and notices were issued to the present respondent, and the records of Commercial Suit No. 01/2024 along with Misc.(J) Case. 14/2025 were also called for, and the next date was fixed on 03.11.2026.

**8.** The present petitioner, along with the aforesaid appeal, also filed an application under Order 39 Rule 1 & 2 read with Section 107(2) of the Code of Civil Procedure, 1908 in the aforesaid appeal seeking temporary injunction against the present respondent during the pendency of the appeal. The said Misc. Case was registered as Misc.(J) Case No. 10/2026.

**9.** The learned counsel for the petitioner submits that by the impugned order dated 18.09.2026, the Commercial Appellate Court had dismissed the aforesaid Misc. Case even without issuing notice to

the other side, merely on the ground that as the present petitioner has filed the Misc. Appeal No. 03/2026, wherein he had prayed for temporary injunction in connection with matter involving the Misc. Case, the relief sought for in Misc.(J) Case No. 10/2026 has become redundant.

**10.** The learned counsel for the petitioner submits that the Commercial Appellate Court had erred in dismissing the Misc.(J) Case No. 10/2026 without considering the fact that as per Section 107 of the Code of Civil Procedure, 1908 same powers and same duties as are conferred and imposed on the courts of original jurisdiction in respect of suit instituted therein are vested in the appellate courts. As such, he submits that during the pendency of the Misc. Appeal No. 03/2026, the present petitioner does have the right to pray for temporary injunction during the pendency of the said appeal, and the said fact has been ignored by the Appellate Commercial Court.

**11.** He further submits that in the meantime, the Registrars of Trademarks, by its order dated 30.04.2024, have issued trademark registration certificate in respect of artistic work Title "Momin Biri" in favor of the present petitioner and said fact is a relevant fact to be considered while considering the prayer for grant of temporary injunction sought for by the present petitioner. However, same was not considered by the Trial Court, and the Misc. (J) Case No. 10/2026 was summarily dismissed by the Trial Court without even issuing notice to the other side.

**12.** This Court is in agreement with the submissions made by the learned counsel for the petitioner that during the pendency of the Misc. Appeal No. 03/2026, the petitioner does have the right to pray

for grant of the temporary injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 during the pendency of the aforesaid Misc. Case, and said Misc. Case ought to have been dealt with by the Commercial Appellate Court in exercise of its powers under Section 107 of the Code of Civil Procedure, 1908. As such, this matter is remanded back to the Commercial Appellate Court of learned District Judge, South Salmara with a direction to give notice to the other side, i.e., the present respondent, in Misc. (J) Case No. 10/2026, and thereafter, after hearing both the sides, decide the application filed by the present petitioner under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 on merits.

**13.** The Misc. (J) Case No. 10/2026 is revived and shall be taken up by the Commercial Court of learned District Judge, South Salmara on the next date fixed in the Misc. Appeal No. 03/2026, i.e., 03.11.2026.

**14.** With the above observation, this Civil Revision Petition is accordingly disposed of.

**15.** Let a copy of this order be sent to the Commercial Court of learned District Judge, South Salmara for compliance.

**JUDGE**

**Comparing Assistant**