

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
COMMERCIAL DIVISION
ORIGINAL SIDE**

**APO-IPD/1/2026
IA NO: GA-COM/1/2025**

**PARUL RUPARELLA AND ANR
VS
CAMME WANG AND ANR**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Ranjan Bachawat, Sr. Adv.
Mr. Rudraman Bhattacharya, Sr. Adv.
Mr. Sourajit Dasgupta, Adv.
Mr. Dhruv Chaddha, Adv.
Mr. Victor Dutta, Adv.
Mr. Sagnik Bose, Adv.

For the Respondents : Mr. Suvasish Sengupta, Adv.
Mr. Syed E. Huda, Adv.
Ms. Pratiksha Shama, Adv.
Ms. Anwesha Guha Ray, Adv.
Ms. Nabeela Akbar, Adv.
Mr. Sahadat Ali, Adv.
Mr. Himadri Roy, Adv.
Mr. Deepesh Sharma, Adv.
Ms. Amrin Khatoon, Adv.

HEARD ON : 04.02.2026
DELIVERED ON : 04.02.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated December 5, 2025 passed by the learned Single Judge in GA-COM/1/2025 and GA-COM/3/2025.
2. By the impugned judgment and order, the learned Single Judge dismissed both the applications filed at the behest of the appellants as the plaintiffs.
3. Learned Senior Advocate appearing for the appellants submits that, the appellants filed a suit for infringement and passing off. In such suit, the appellants applied for interim protection by way of GA-COM/1/2025. Initially, an interim order of injunction was granted. On contested hearing, the same was vacated by the impugned judgment and order.
4. Learned Senior Advocate appearing for the appellants refers to the conduct of the respondents herein. He submits that, the respondents were the manufacturer of components and torch lights with regard to orders placed by the appellants from time to time. He points out that, the respondents are Chinese entities. The trademark in the name and style of “PL SUPREME” was registered in favour of the appellants, in India. He refers to the registration certificate issued in this regard. He submits that, the respondents

started infringing the registered trademark of the appellants. Upon coming to know of the same, the appellants filed the instant suit.

- 5.** Learned Senior Advocate appearing for the appellants refers to the transactions that took place between the parties prior to the suit being filed. He submits that, the respondents were supplying the appellants from time to time with the components and torch lights. The respondents after a given point of time, applied for registration in India. Such registration was objected to by the authorities. The respondents claimed prior user before the authorities. He refers to the documents submitted before the authorities on the claim of prior user. He submits that, such documents were fabricated and interpolated and at least, does not establish prior user. Documents to establish prior user were not fruitful. The respondents withdrew from the claim of prior user before the authorities.
- 6.** Learned Senior Advocate appearing for the appellants submits that, since, there is a registered trademark existing in favour of the appellants, in the suit for infringement and passing off, the appellants are entitled to an order of injunction unless, the respondents are able to establish continuous uninterrupted prior user. In the facts and circumstances of the present case, he submits that, such fact is not established. The so called claim of sale to third parties outside India is of no consequence. In any event, the same is not a continuous uninterrupted prior user sought to be claimed.

7. Referring to the documents relied upon by the respondents before the learned Single Judge, learned Senior Advocate appearing for the appellants submits that, the affidavits were not properly affirmed. He points out that, the deponent of the affidavit did not pledge his oath to the portion which are true to his knowledge and the portion which are submissions. He relies upon **(1969) 3 Supreme Court Cases 864 (A.K.K. Nambiar Vs. Union of India and Anr.)** on the issue of non-verification of the affidavit. He points out that, there was no material placed on affidavit to suggest that there was continuous uninterrupted user by the respondents.
8. Learned Senior Advocate appearing for the appellants submits that, the claim of the respondents that, they were prior user is wholly unreliable. He submits that, the sale by the respondents was to the appellants in India. No document of agency is put forward. In fact, the claim of the respondents, if taken at the highest, is a claim of sale of goods through the appellants. Therefore, the same cannot constitute as a continuous uninterrupted prior user independent of the appellants.
9. The learned Senior Advocate appearing for the appellants relied upon **2007 SCC Online Mad 1650 (Amaravathi Enterprises Vs. Karaikudi Chettinadu)** for the proposition that, where, the documents of continuous uninterrupted prior user is suspect, then, the appellants are entitled to an order of injunction as

prayed for. He submits that, the learned Trial Judge, erred in vacating the subsisting order of injunction.

- 10.** Learned Advocate appearing for the respondents relies upon **(2001) 5 Supreme Court Cases 95 (Uniply Industries Ltd. Vs. Unicorn Plywood Pvt. Ltd.)** and submits that, there are substantial materials on record to establish continuous uninterrupted user of the trademark by the respondents. In this regard, he draws the attention of the Court to the supplementary affidavit affirmed on behalf of the respondents on November 10, 2025 before the learned Single Judge. He submits that, such affidavit refers to the “Annexure-A” of the affidavit-in-opposition initially filed to GA-COM/1/2025. He submits that, the supplementary affidavit is appropriately verified. He also contends that, the supplementary affidavit, independent of any other affidavits filed on behalf of the respondents before the learned Single Judge contains all documents to establish that there was continuous uninterrupted prior user of the trademark by the respondents.
- 11.** In response, the learned Senior Advocate appearing for the appellants submits that, the appellants are required to establish continuous uninterrupted prior user failing which, the appellants are entitled to the relief as prayed for.
- 12.** As noted above, in a suit for infringement and passing off, the appellants as the plaintiffs applied for interim order of injunction

by way of GA-COM/1/2025. Initially, an *ex parte* ad interim order of injunction was granted by the learned Single Judge. Alleging violation of such order, the appellants filed another application by way of GA-COM/3/2025 by which the appellants sought appointment of a Receiver.

- 13.** By the impugned judgment and order, the learned Single Judge dismissed both these applications of the appellants. Learned Single Judge returned the findings that the appellants failed to establish a strong *prima facie* case in their favour and that balance of convenience and irreparable injury were not in favour of the appellants also. In addition thereto, the learned Single Judge found that there was suppression and bad faith on the part of the appellants which should not be ignored.
- 14.** There exist a registered trademark in favour of the appellants. The registration certificate is on record.
- 15.** Defence of the respondents is one of prior user. In support of such defence, various materials were relied upon by the learned Single Judge. A number of affidavits were filed on behalf of the respondents before the learned Single Judge in GA-COM/1/2025. One was the principal affidavit-in-opposition and two others were supplementary affidavits.
- 16.** The principal affidavit-in-opposition, although, it contains a jurat portion, however, in the essential portion thereof, the paragraphs which are true to knowledge of the deponent of such affidavit is

not stated. Therefore, the criticism on the part of the appellants that, such affidavit should not be looked into since, nobody pledge his/her oath with regard to the veracity of the statements made in such affidavit or to the documents annexed to such affidavit is with substance. In this regard, reference may be made to **A.K.K. Nambiar (supra)**.

17. However, in the facts and circumstances of the present case, one of the affidavits affirmed by the respondents being the supplementary affidavit affirmed on November 10, 2025 is both affirmed as well as contains a jurat portion. This supplementary affidavit is affirmed by the respondent no. 1. In such supplementary affidavit, the claim of continuous uninterrupted prior user is made. Documents in support thereof are relied upon. In addition thereto, in paragraph 4 of such supplementary affidavit, it is stated that, the documents as "Annexure-A" to the principal affidavit-in-opposition are also correct.
18. This supplementary affidavit was dealt with by the appellants by an affidavit where they did not deny the material portions as noted above.
19. Restricting the Court's enquiry purely to the contents of the supplementary affidavit affirmed on November 10, 2025, it can be said that, the respondents disclosed sufficient materials to demonstrate continuous uninterrupted prior user of the trademark concerned. The issue as to whether or not, all of such documents

are false, fabricated or interpolated or manufactured may be decided at the trial. At the prima facie level, however, the alleged forgery or interpolation are not so apparent as to hold that those documents are suspect and should not be relied upon.

20. In addition thereto, the respondents claimed that, the concerned trademark is registered in favour of the respondents in China and that too prior in point of time. Even if we are to overlook the claim of prior registration in a foreign country, nonetheless, the defence of prior user is available to the respondents in India. To such extent, as the materials on record exist, the respondents are able to demonstrate at least on the prima facie level that, there was continuous uninterrupted prior user by the respondents in India.

21. Amaravati Enterprises (supra) considered the documents produced by the respondents in such proceedings and was of the view that, even if the same were taken at face value, the same will not satisfy the test to determine the continuous user. The facts and circumstances of the present case are different.

22. Uniply Industries Ltd. (supra) is of the view, where, the defence set up is one of the continuous prior user, the fact as to the volume of sale, the degree of familiarity of the public with the mark and the extent of continuous prior user, may be decided at the trial. It is of the view that, at the stage of grant of temporary injunction, a strong prima facie case needs to be established. In the facts and circumstances of the present case, we are not in a

position to arrive at a finding that the appellants as plaintiffs made out a strong prima facie case or that, the balance of convenience and inconvenience or irreparable loss are in favour of the appellants in granting injunction as prayed for.

- 23.** Learned Single Judge proceeded to hold that the appellants were guilty of underinvoicing and tax evasion and therefore, proceeded to issue certain directions to the Chief Commissioner of Customs, Kolkata and Director General Revenue Intelligence, New Delhi.
- 24.** Since, issues are yet to be finally decided at the trial of suit, such directions in paragraph 18 are kept in abeyance. The same may be revived at the final hearing of the suit, if the learned Single Judge so deems it necessary.
- 25.** We find no reason to interfere with the discretion exercised by the learned Single Judge in this regard.
- 26.** APO-IPD/1/2026 along with connected applications are dismissed without any order as to costs.
- 27.** We clarify that the observations made by us are prima facie in nature and will not bind the parties at the final hearing of the suit.

(DEBANGSU BASAK, J.)

- 28.** I agree.

(MD. SHABBAR RASHIDI, J.)