



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [MCA] No.52 of 2026

in

Appeal Against Order No.19 of 2025 (D)

*Ifra Sheikh Trading as Rocket Bidi Works, Nagpur through Power of Attorney
 Mohammad Yaqub s/o Mohammad Ishaque, Nagpur*

vs.

M/s. Mobile Bidi Traders

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S. Zia Quazi, Advocate for the Applicant/Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 10th FEBRUARY, 2026.

Heard.

02. The appellant has filed this application seeking review of the judgment and order dated 04/11/2025 passed in Appeal Against Order No. 19/2025. By the said order, this Court has dismissed the appeal filed by the appellant challenging the order of temporary injunction passed by the learned District Judge-12, Nagpur, on the application at Exh. 20 in Trademark Suit No. 5/2024. The present applicant/appellant would hereinafter be referred to as the defendant and the non-applicant/respondent would be referred to as the plaintiff.

03. The learned trial Court has passed an order of temporary injunction restraining the defendant from using the trade mark of the plaintiff (Online BIDI) till the final disposal of the suit. While dealing with the appeal, this Court has held that the trade dress of the two products is deceptively similar and that the order passed by the learned trial Court does not warrant any interference.

04. Mr. Quazi, learned Advocate for the defendant, contends that bidis are offered for sale in bundles. These bundles are packed in packets. He contends that although the outer packet of bidi bundles with the design in question was being used by the plaintiff prior in point of time, the defendant was selling its products with the design/trade dress of the bidi bundles prior to the said design being adopted by the plaintiff. He contends that although the trademark of the plaintiff is registered, the defendant is the prior user of the trade dress/design of the bidi bundles. He, therefore, contends that the defendant is entitled to continue to use the said trade mark in view of Section 34 of the Trade Marks Act, 1999. Mr. Quazi contends that although this contention was raised during the course of the hearing, the judgment does not deal with the same. The contention of Mr. Quazi cannot be accepted.

05. Perusal of the impugned order passed by the learned trial Court will indicate that such contention was not raised by the appellant even before the learned trial Court. The learned trial Court has recorded the arguments of both sides. If any argument was canvassed before the learned trial Court and it was not considered, it was necessary for the defendant to make an appropriate motion to the learned trial Court to get the contention recorded. The record of a Court is sacrosanct. In the absence of any appropriate motion being made to the learned trial Court contending that all the contentions argued were not recorded, it will be difficult for this Court to accept the said contention.

06. As regards the argument that the contention was reiterated before this Court and not recorded, the said contention is liable to be rejected for more than one reason. First of all, even if it is assumed that this contention was raised before this Court and not recorded, the same could not have been entertained since the same was not canvassed before the learned trial Court. It needs to be stated that this Court was hearing an appeal against the order of interim injunction, which appeal is not an

appeal on facts but only a conceptual appeal. Secondly, the appeal was decided vide judgment dated 04/11/2025. The present application for review was filed on 29/11/2025. The application for review is coming up before the Court for the first time today after a period of over three months.

07. As stated above, it does not appear from a perusal of the judgment dated 04/11/2025 that such argument was canvassed before this Court. It will also be pertinent to state that the defendant had also filed an application for temporary injunction against the plaintiff vide Exh. 26. The said application was rejected by the learned trial Court by a separate order. The orders allowing the application for grant of temporary injunction filed by the plaintiff and rejecting the application for grant of temporary injunction by the defendant were passed on the same date. Despite this, the defendant preferred only one appeal challenging the order of temporary injunction passed in favour of the plaintiff. It also needs to be stated that the defendant has now filed a separate appeal challenging the order rejecting its application for grant of temporary injunction on 12/11/2025, i.e., after the decision of the appeal arising out of order of temporary injunction granted in favour of the plaintiff. Ideally, the defendant ought to have filed both the appeals together and should have got adjudication of both the appeals simultaneously. The reason for filing the appeal against the order rejecting its application for grant of temporary injunction after dismissal of the appeal arising out of the order of temporary injunction granted in favour of the plaintiff is difficult to comprehend.

08. In view of the aforesaid, in the considered opinion of this Court, no case for review is made out. The application is, therefore, rejected with no order as to costs.

JUDGE

**sandesh*