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OSA(CAD) Nos.58 & 59 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16-12-2025

PRONOUNCED ON: 06-01-2026

CORAM

THE HONOURABLE Mr.JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

OSA(CAD) Nos.58 & 59 of 2025

AND

CMP NOS.12229, 12232, 20524 & 20536 OF 2025

1. Shiv Kumar Gupta
A-40, Third Floor, Vivek Vihar Phase 2,
Jhimil, Delhi 110 095

2.M/s Adl Orbit Cable (India)
Plot No.46-48, SIDCUL, Section 8A,
Integrated Industrial Estate, Haridwar,
Uttarakhand 249403

Appellant(s) in both OSAs

Vs

1. Amit Agarwal
Sole Proprietor of M/s Seetu Electricals
No.136/1, Govindappa Naicken Street,
Chennai 600 001

2.M/s Seetu Orbit Cable India Private Ltd
Represented by its Director
Mr.Amit Agarwal,
3rd Floor, No.36, Govindappa Naicken St,
Parrys, Sowcarpet, Chennai 600 001

Respondent(s) in OSAs



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PRAYER

Original Side Appeals are filed under Section 13(1A) of the Commercial Courts Act, praying to set aside the order dated 24.02.2025 made in OA.Nos.1& 2 of 2025 respectively in C.S.(Comm.Div) No.2 of 2025 and allow the above appeals.

For Appellant(s): Mr.P.V.Balasubramanian
Senior Counsel
for Mr.Gautam S Raman

For Respondent(s): Mr.M.S. Bharath
For Mr.Ashok Kumar J.Daga

COMMON JUDGMENT

(Order of the Court was made by ***C.Kumarappan J.***)

The present OSAs are arising against the common order dated 24.02.2025 passed in OA.Nos.1 & 2 of 2025 in C.S.(Comm.Div).No.2 of 2025. The prayer sought for in OA.No.1 of 2025 is for temporary injunction restraining the respondent from infringing the Trade Mark “ORBIT”. Similarly, OA.No.2 of 2025 is also for temporary injunction in respect of another Trade Mark “ORBIT/ADL ORBIT”. The learned Single Judge, after hearing either side, was of the view that there is a *prima facie* case, balance of convenience in favour of the applicants and was also of the view that, if no interim injunction is granted the same would cause irreparable loss to the petitioner, and ultimately granted interim injunction restraining the use of the subject Trade Mark. Felt aggrieved



with the above order, the present OSAs are filed. The appellants of the present OSAs are the respondents in OAs. Likewise, the respondents in the present OSAs were arrayed as the applicants before the learned Single Judge.

2.For the sake of convenience, the parties will be referred to according to their litigative status before the learned Single Judge.

3.The applicants are engaged in the business of manufacturing and marketing cables and wires under the Trade Mark ORBIT/ADL ORBIT. They are the registered proprietor of the above Trade Marks. After the applicants came to know about attempt of the respondents to register the applicant's Trade Mark, they filed the present suit and got interim injunction. While granting temporary injunction, the learned Single Judge found that the continued use of a deceptively similar trade name would likely to cause confusion and deception to the consumers. Eventually, in the public interest, the learned Single Judge has granted an interim injunction. Aggrieved with the same, the respondents preferred the present OSAs.



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4. Heard Mr.P.Balasubramanian, the learned Senior Counsel for the appellants and Mr.M.S.Bharath, the learned counsel for the respondents.

5.The main contention put forth by the learned Senior Counsel appearing for the appellants/respondents is that, though the applicants are the registered owner of the Trade Mark, they have acquiesced the continuous usage of such mark by the respondents. It is their further contention that the learned Single Judge has not considered such acquiescence in its right perspective. It is the further contention of the learned Senior Counsel that though the applicant is the registered owner of the Trade Mark, the respondent is not using the name ORBIT as the product name, on the contrary they have been using the same only as a trading name. Therefore, the product of the respondent cannot be construed as deceptively similar to that of the product of the applicant. The learned Senior Counsel would further submit that the applicants in the earlier round of litigation before the Delhi High Court has not sought for the prayer to restrain the respondents from using the trade name. Therefore, having failed to seek such relief before the Delhi Court, they cannot now file a suit before this Court to seek a relief of interim injunction, which is nothing but a forum shopping and therefore, such attempt of the applicant is to be curtailed by



allowing the present OSAs. The learned Senior Counsel would further submit that if any injunction is granted, the same would cause great hardship and irreparable loss to the respondent. Therefore, would pray to allow the present OSAs.

6.Per contra, the said contention was stoutly objected by the learned counsel for the applicants and would contend that there was a compromise between the applicant and the respondent before the Delhi High Court, in which the respondent has agreed not to challenge the ownership of the applicant's trade mark. The learned counsel would further submit that as per the above settlement, the respondent has also agreed not to use the applicant's Trade Mark in any form including as a trade name. It is the further submission of the applicant that the contention of the respondent that the usage of the applicant's trade mark as a trade name will make no hindrance to the applicant's consumers, is contrary to Section 29(5) of the Trade Marks Act. It is the further submission of the learned counsel for the applicant that, though they have filed a suit before the Delhi High Court, the defendant in the Delhi High Court suit, qua OCI Cables India pleaded ignorance about the agreement. Therefore, the contention that the applicant is forum shopping is contrary to the respondent's



pleadings. The learned counsel would further submit that if no injunction is granted, the same would cause great loss to the applicant and that the balance of convenience is also in their favour. They would further submit that, the learned Single Judge have considered all those aspects and rightly granted relief. Therefore, there are no grounds to interfere with the present appeals. Hence, prayed to dismiss the same.

7.We have given our anxious consideration to either side submissions.

8.The main defence put forth by the learned counsel for the Appellant/respondent is “acquiescence”. It is the specific submission of the learned Senior Counsel that in spite of the agreement reached between the parties in TM.No.48 of 2019, the applicant has allowed the respondents to use their registered Trade Mark as a trade name. Therefore, by their conduct, they have encouraged the respondent to use the trade mark and that, if such usage is abruptly denied, then the same would cause great hardship to the respondent.



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9. Before we delve into the merits of the matter, it is appropriate to discuss the contours regarding the defence of “acquiescence”. Section 33 of the Trade Marks Act, 1999 deals about the effect of acquiescence. In order to invoke Section 33, the applicants' Trade Mark must also be a registered one. But, in the case in hand, the respondents' trade name is not registered one. As a matter of fact, immediately after the respondent filed the application for registration of the Trade Mark, the present suit was instituted. Therefore, the question of acquiescence, as defined under Section 33 will have no operation in the present case. Therefore, the acquiescence raised by the defendant is on the common law perspective.

10. Coming to the common law defence of acquiescence, the main ground urged by the respondent is that, the applicant who has been having business dealing with the respondent have received goods from them on the very same trade name of ORBIT even after the 2019 agreement. The learned Single Judge has discussed this aspect and ultimately found that mere invoices of the respondent in the absence of purchase orders are not sufficient to invoke the defence of acquiescence. It is relevant to refer that, since because some materials were supplied with the invoice contains trade name of ORBIT, that



does not give any advantage for the respondent so as to establish the case of acquiescence unless they demonstrate that the applicant by their conduct encourage the respondent to supply the material in the disputed trade name. Such factor could only be established through the purchase order of the applicant. But in the case in hand, admittedly no purchase order was submitted for consideration either before this Court or before the learned Single Judge.

11. At this juncture, it is relevant to discuss the grounds which are mandatory to invoke the defence of acquiescence. In order to make out the case under acquiescence, it is the duty on the part of the defendant to prove the plaintiff's knowledge, their encouragement to perform the objectionable act, and based upon such encouragement, the defendant must have made some investment or expansion of the business. But here, except the submission of two invoices, the respondent did not establish other factors.

12. The Hon'ble Supreme Court in ***Power Control Appliances and others Vs. Sumeet Machines Pvt. Ltd., and Others*** reported in (1994) 2 SCC 448 has held that in order to invoke the defence of acquiescence, there is a duty cast upon the defendant to prove the positive acts of the plaintiff. A mere silence or



inaction of the Trade Mark owner cannot be construed as the acquiescence.

Similarly, in ***Ramdev Food Products Pvt. Ltd., Vs. Arivindbhai Rambhai Patel and others*** reported in ***(2006) 8 SCC 726*** the Hon'ble Supreme Court has held that the principles of acquiescence would apply when the Trade Mark owner allowing the other person to infringe their rights and spending money on it, and further, they must also demonstrate that the conduct of the Trade Mark owner should be inconsistent with a claim for exclusive right for Trade Mark and trade name.

13. At this juncture, it is also relevant to refer the judgment of the Hon'ble Supreme Court in ***Midas Hygiene Industries (P) Ltd., and another Vs. Sudhir Bhatia and others*** reported in ***(2004) 3 SCC 90***, which deals about the grant of injunction. In the above judgement, the Hon'ble Supreme Court has held that in the case of infringement, either Trade Mark, or copy right, normally an injunction must follow. It further held that mere delay in bringing action is not sufficient to deny injunction. The Hon'ble Supreme Court has further held that the grant of injunction becomes necessary if it *prima facie* appears that the adoption of the mark itself is dishonest.



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14. In the case in hand, the respondent has agreed not to use the trade mark of the applicant as per the compromise reached in TM No.44 of 2019. It is also an admitted case of the respondent the trade name which they are using is the registered trade mark of the applicant. Apart from that, they have also agreed that each of the partners of the respondent-firm not to manufacture, sell, offer for sale, advertise, directly or indirectly deal in any goods bearing the Trade Mark(s)/trade name(s) ORBIT/ADL ORBIT and/or SEETU. Therefore, having entered into a compromise and using the same unabated would definitely demonstrate the dishonest intention of the respondent. Here, though the respondent has raised the defence of acquiescence, as we have already discussed, the miserably false to demonstrate the same.

15. Yet another faint attempt was made by the learned Senior Counsel for the appellant/respondent by contending that they are not using the applicant's Trade Marks, but they use such mark only as their trade name. Therefore, such usage will in no way affect the applicant's Trade Mark.



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16. At this juncture, it is relevant to refer Section 29(5) of the Trade Marks Act, 1999.

“29. Infringement of registered trade marks.-(1)

(2)

(3)

(4)

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.”

17. According to Section 29(5), the trade mark includes trade name. Therefore, the use of trade name by the respondent also amounts to infringement under Section 29(5) of the Trade Marks Act, 1999. It is also relevant to mention that the defence of acquiescence does not erase infringement.

18. It is a well settled principle of law that whenever the relief of interim injunction is sought for, the primordial duty cast upon the Courts is to find out the *prima facie* case, balance of convenience and irreparable loss. In the case in hand, admittedly the trade mark is the registered trade mark of the applicant. Therefore, there is a *prima facie* case in favour of the applicant.



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19.Coming to the balance of convenience, having the respondent entered into an agreement not to use the trade mark, continuing such usage would definitely deceive the consumers those who purchase such products. Further, if the respondent is allowed to pursue the business with such trade mark, the same would cause great dent and loss in the business of the applicant.

20. Thus, this Court absolutely does not find any infirmity in the orders of the learned Single Judge. Accordingly, both the OSAs are dismissed. However, we make it clear that any observations made in the present OSAs will have no impact in the final disposal of the suit, and the learned Single Judge is requested to adjudicate the suit uninfluenced by any of the observations made in the present OSAs. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.M.SUBRAMANIAM J.)(C.KUMARAPPAN J.)
06-01- 2026

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Index:Yes

Speaking order

Internet:Yes

Neutral Citation:Yes



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