



2026:DHC:351-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (COMM) 260/2025 & CM APPL. 56954/2025**

RAJU KUMAR

.....Appellant

Through: Mr. J. Sai Deepak, Sr. Adv.
with Mr. Anil Kumar Sahu, Mr. Roshan
Kumar, Mr. Suva Batabyal and Mr. Sourav
Kumar, Advs.

versus

VINOD SAH

.....Respondent

Through: Mr. Tashriq Ahmad, Ms.
Farzeen Iqbal and Mohd. Abeer, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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13.01.2026

C. HARI SHANKAR, J.

1. This appeal, under Section 13 of the Commercial Courts Act 2015, read with Order XLIII Rule 1 of the Code of Civil Procedure Code 1908¹, assails order dated 26 August 2025 passed by the learned Commercial Court-02, North-West District, Rohini Courts², in interlocutory applications filed by the appellants, as the plaintiff, in CS(Comm) 38/2024 and CS(Comm) 756/2024.

2. The learned Commercial Court has held that it has, *prima facie*,

¹ "CPC" hereinafter

² "the learned Commercial Court" hereinafter



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no territorial jurisdiction to adjudicate on the *lis* before it and has, nonetheless, in paras 29 to 31 of the order, proceeded to hold that the principles of *prima facie* case, balance of convenience and irreparable loss did not justify grant of any interim injunction.

3. We are not entering into the aspect of whether the learned Commercial Court ought to have proceeded to pass an order on merits in the applications filed by the appellant under Order XXXIX of the CPC, having held that it had *prima facie* no territorial jurisdiction to deal with the matter, because, in our view, the learned Commercial Court *had* the territorial jurisdiction to adjudicate the *lis* before it.

4. The appellant claims to be the proprietor of the registered word mark “AMRAPALI” in Class 30 w.e.f. 7 January 2020. The appellant claims user of the mark since 15 October 1997, and claims to be using the mark for spices.

5. The plaint instituted by the appellant further avers that the appellant was using the “AMRAPALI” mark with the trade dress



6. The plaint alleged that the respondent was using the mark



“QUEEN AAMRAPALI”/ for spices.

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The use of the said mark by the respondents was alleged to infringe the registered trademark of the appellant.

7. A comparison of the packages of the appellant and respondents was also provided thus, as reproduced in para 5(ii) of the impugned order:

Appellant's Trademark/label/logo	Respondent's impugned Trademark/ label/logo
 	 

8. The appellant, therefore, prayed, in the suit, that the respondents be permanently enjoined from using any mark identical or



deceptively similar to “AMRAPALI/” for spices or any other allied or cognate products or services.



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9. The appellant justified invocation of the jurisdiction of the learned Commercial Court on the basis of the following averments contained in the plaint:

“12. That the plaintiff has been planning geographical expansion of its business with wider market coverage all over India. The demand for Plaintiff's goods and products is one of the fastest growing. The Plaintiff has already built-up handsome sales under their said trade mark/label/trade name and has achieved sales running into crores of rupees. The year wise sales figure/Revenue from Operation of Plaintiff business is annexed herewith.

13. That the said business & goods being carried on by the plaintiff under said trade mark/label/ trademark AMRAPALI is very extensive one and the said goods and business there under have been practically sold and distributed in major parts of the country, including within the territorial jurisdiction of this Hon'ble Court and are highly demanded in the markets on account of their standard quality and precision. The said business & goods under the said trade mark said trade mark/trade name of the plaintiff is identified as exclusively originating from the plaintiff's source and is identified with the plaintiff. The said trade mark said trade mark/trade name have already become distinctive and associated with the plaintiff and the plaintiff's said goods and business on account of its long, continuous, extensive and exclusive user thereof since the year 1997.

ADVERTISEMENT BY THE PLAINTIFF

14. That the plaintiff has been continuously promoting the said business and goods under the said trademark/label along with its



trademark "AMRAPALI/  " through different means and modes including visual, audio, print and social media viz. along with advertisement in leading newspapers, magazines, advertisement in trade literatures, trade hoardings and boards etc. The plaintiff has already spent enormous amounts of money on its publicity thereof. Plaintiff is advertising and promoting its business under the said trademark through social media pages, www.facebook.com, www.instagram.com and other social media pages along with e commerce websites such as www.indiamart.com etc. By reason of extensive advertisement and promotional activities coupled with excellent quality and the high standards of the plaintiff's product the trade level of the plaintiff

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enjoys solid, enduring and first-class reputation in the markets. The said label of the plaintiff has an indispensable identity of the plaintiff well known product AMRAPALI Masala. Long and continuous use, quality of services bundled with extensive advertisement and promotional activities, has made the plaintiffs trade mark/trade name extremely popular among the customers and is accounted as one of the top brands in this category.”

27. That upon further inspection it was discovered that the defendant has further extended it impugned business under the impugned trademark on social media and e-commerce websites. With the help of these interactive websites' defendant is displaying, advertising, soliciting and displaying all impugned goods under the impugned trademark "QUEEN AAMRAPALI”.



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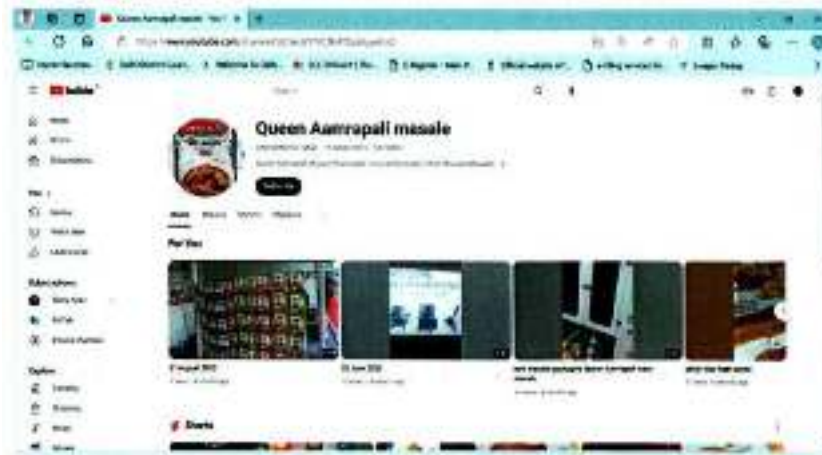
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www.anar.biz/product/queen-aamrapali-meat-masala-616120d5



www.youtube.com/channel/UC5euV1fYC3b4YSzdAjuoKnQ



www.facebook.com/ecbkfood?mibextid=ZbWKwL

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40. That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The defendant is making clandestine and surreptitious sales and is supplying its impugned trade mark/labels/trade dress/packaging/ artistic work to the dealers and distributors in the markets of Delhi including North-west District areas i.e., Aman Vihar, Mangol Puri, Keshav Puram, Rohini, Rithala, Sultan Puri, etc. besides other parts of the country. The Defendant is soliciting its impugned goods and business under the impugned trademark/label in the market of Delhi including North-West District i.e., Aman Vihar, Mangol Puri, Keshav Puram, Rohini, Rithala, Sultan Puri, etc. which is well within the jurisdiction of this Hon'ble Court. The Defendant is committing the impugned acts of infringement and passing off through online social media i.e., www.facebook.com, www.youtube.com etc. and e-commerce websites namely www.indiamart.com and www.anar.biz, in the markets of Delhi including North-West district areas within the jurisdiction of this Hon'ble Court by soliciting, displaying and marketing networks in relation to the impugned business and services under the impugned trade mark/label/trade dress. The Plaintiffs said proprietary rights are being prejudicially affected or likely to be so affected in North-West district areas due to the Defendant's impugned activities."

10. At the time of issuance of summons in the suit, an *ex-parte ad interim* injunction was granted by the learned Commercial Court on 24 January 2024, in favour of the appellant and against the respondents, restraining the respondents from using the mark



"QUEEN AAMRAPALI"/ for spices or any allied or cognate goods or services.

11. The respondent moved an application under Order XXXIX Rule 4 of the CPC for vacation of the *ad interim* injunction order dated 24 January 2024.



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12. Among other objections, the respondent also advanced an objection with respect to the territorial jurisdiction of the learned Commercial Court to adjudicate on the *lis* between the appellant and respondent.

13. The impugned order dated 26 August 2025 disposes off the appellant's application under Order XXXIX Rules 1 and 2 and the respondent's application under Order XXXIX Rule 4 CPC.

14. The learned Commercial Court has held that it did not, *prima facie*, possess territorial jurisdiction to deal with the matter but has, nonetheless, proceeded to reject the application under Order XXXIX Rules 1 and 2 of the CPC on merits as well.

15. On the aspect of territorial jurisdiction, para 25 of the impugned order notes the reliance, by the respondents, on the judgment of a learned Single Judge of this Court in ***Kohinoor Seed Fields India Pvt Ltd v. Veda Seed Sciences Pvt Ltd***³. The learned Commercial Court notes that, though an appeal had been preferred against the said decision, and this Bench had stayed the order of the learned Single Judge, the stay was limited to the extent of return of the plaint, and not the operation or reasoning of the learned Single Judge.

16. We may note, at this juncture, that this reasoning of the learned Commercial Court is inherently flawed. A stay is always of the operative portion of a judgment, and not of its reasoning. When this

³ (2025) 103 PTC 143, referred to, hereinafter, as "**Kohinoor-I**"



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Court stayed the return of the plaint, therefore, the learned Commercial Court could not have sought to distinguish the directions of the learned Single Judge to return the plaint and the reasoning, in the judgment of the learned Single Judge, justifying the said directions. The observation of the learned Commercial Court that the Division Bench had only stayed the direction to return the plaint, and not the reasoning of the learned Single Judge in ***Kohinoor-I*** is, therefore, fundamentally flawed.

17. The aspect of whether a stay of a judgment erodes it of its precedential value is, however, vexed. There is a line of decisions which rely, prominently, on the judgment of the Supreme Court in ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn***⁴, which hold that a stay of operation of a judgment does not erode the judgment of its precedential value as a stay is always *inter partes* and is only of the operative portion of the judgment.

18. We are, however, spared the exercise of entering into this aspect as, after the passing of the impugned order, by the learned Commercial Court, this Bench has reversed the decision in ***Kohinoor-I*** in its judgment in ***Kohinoor Seed Fields India Pvt Ltd v. Veda Seed Sciences Pvt Ltd***⁵. This Bench has examined the aspect of territorial jurisdiction, in a case where the defendants have an interactive website, in detail, in its judgments in ***Diamond Modular Pvt Ltd v. Vikas Kumar***⁶ as well as in ***Kohinoor-II***. In para 6.11 of ***Diamond Modular***, we have, following the earlier decision of the Division

⁴ (1992) 3 SCC 1

⁵ 2025 SCC OnLine Del 8727, referred to, hereinafter, as “***Kohinoor-II***”

⁶ 2025 SCC OnLine Del 3755



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Bench in *World Wrestling Entertainment v. Reshma Collection*⁷, held that as the website of the appellant, in that case, was interactive, and could be accessed within the territorial jurisdiction of the Commercial Court at Saket, that Court had jurisdiction to adjudicate on the trade mark infringement suit instituted by Diamond Modular on the basis of the said mark. In *Kohinoor-II*, this Court held thus:

“14.2 It is elementary that if the suit would lie within the jurisdiction of this Court on any one ground, the suit would be maintainable before this Court.

19. Re. availability of the respondent's products on e-commerce websites

19.1 One of the grounds on which the appellant asserted that this Court has territorial jurisdiction in the matter, was that the respondent's products are available on e-commerce websites, which can be accessed in Delhi. The learned Single Judge has observed that there are only two e-commerce websites to which specific allusion is to be found in the plaint, which are IndiaMart and Kalgudi.

19.2 The impugned judgment holds that availability of the respondent's marks on the IndiaMart and Kalgudi websites could not confer jurisdiction on this Court, as the listings of the products on the IndiaMart and Kalgudi websites was not at the instance of the respondent, but at the instance of some third parties.

19.3 The learned Single Judge has also relied on the judgment of the Division Bench of this Court in *Banyan Tree Holding*⁸ to hold that as there was no evidence of any orders having been placed on IndiaMart or Kalgudi for purchasing the allegedly infringing products of the respondent, the listing of the said products on the said platforms could not constitute a basis for this Court to exercise jurisdiction.

19.4.6 The learned Single Judge is, therefore, correct in his view

⁷ 2014 SCC OnLine Del 2031

⁸ *Banyan Tree Holding (P) Ltd v. A. Murali Krishna Reddy*, 2009 SCC OnLine Del 3780



that, as per the law declared in ***Banyan Tree Holding***, the mere existence of an interactive website of the defendant, accessible within the territorial jurisdiction of this Court, would not be sufficient for the suit to be maintainable here. It would additionally have to be shown that some commercial transaction was concluded within the jurisdiction of this Court.

19.5.1 ***Banyan Tree Holding*** was, however, subsequently diluted to an extent by the judgment of the Division Bench of this Court in ***World Wrestling Entertainment***⁹.

19.5.4 The ***existence*** of a website of the plaintiff, over which a commercial transaction *could be concluded* was, therefore, regarded by the Division Bench in ***World Wrestling Entertainment*** as sufficient to amount to “carrying on a business” by WWE within the jurisdiction of this Court. The ***actual conclusion*** of a transaction was, therefore, no longer indispensable, after ***World Wrestling Entertainment***.

19.5.5 ***World Wrestling Entertainment*** undoubtedly is not an authority for understanding the expression “cause of action” as contained in Section 20(c) of the CPC. However, it *is* an authority for the understanding of the expression “carries on business” in an era in which business is considerably carried on over e-commerce websites. The Division Bench has held, in ***World Wrestling Entertainment***, that, even if the website of the plaintiff was interactive and one over which a commercial transaction *could* be concluded, that would suffice to constitute “carrying on of business by the plaintiff”, as, in the e-commerce universe, every place where the website of an entity would be accessible for the purpose of concluding a commercial transaction would amount to a place where the entity has a market place. If, therefore, WWE had a website over which commercial transactions could be concluded at Delhi, it was equivalent to WWE having a brick and mortar store in Delhi, resulting in this Court having territorial jurisdiction in the matter. Thus, the requirement of actual concluding of a commercial transaction over the website stands diluted in ***World Wrestling Entertainment***.

19.6 Section 20(a) of the CPC permit a plaintiff to sue a defendant wherever the defendant *carries on business*. The law declared by this Court in ***World Wrestling Entertainment*** with



respect to the carrying on business by the plaintiff, in an e-commerce regime, for the purpose of Section 134(2) of the Trade Marks Act, would equally apply to carrying on a business by the defendant for the purpose of Section 20(a) of the CPC. Wherever, therefore, the defendant would have an interactive website, over which a commercial transaction could be concluded, any Court having jurisdiction over every place where this could be done would have jurisdiction to entertain the suit.

19.7 But then, submits Mr. Raj Shekhar Rao, there *is* no interactive website of the respondent, over or across which the allegedly infringing goods could be purchased at Delhi. At least, the plaint does not so aver. The placement of the goods for sale over e-commerce websites by third parties, without the concurrence or authorization of the respondent, tacit or express, could not create a cause of action for the appellant, for the purposes of territorial jurisdiction.

19.8 The submission is unquestionably weighty. After all, the tort of infringement is not infringer innocent. Section 29 of the Trade Marks Act envisages infringement only *vis-à-vis* an infringer, who must be using the infringing marks without proprietorial or permissive right to do so. The finding of the learned Single Judge that, if the respondent has nothing to do with the listing of the allegedly infringing products on the IndiaMart and Kalgudi websites, the respondent cannot be held to account therefor is, therefore, *prima facie* correct.

19.9 Where, however, the learned Single Judge, in our considered opinion, has erred on this issue is in the observation, in para 42 of the impugned judgment, that the listing of the products on the IndiaMart and Kalgudi websites was *not* at the instance of the respondent. In so observing, the learned Single Judge, in our considered opinion, failed to realize the fact that the issue before him was the *right of the appellant to sue*. Insofar as the appellant was concerned, the allegedly infringing goods were available, for sale and purchase, across e-commerce websites, over which a transaction could be concluded within the territorial limits of the jurisdiction of this Court. *There is no admission, in the plaint, that the listing of the products on the IndianMart or Kalgudi websites was not at the instance of the respondent.* It would be for the respondent to so aver, and that averment, which could emerge at the earliest in the respondent's written statement, could not be considered while examining the aspect of territorial jurisdiction under Order VII Rule 10, which has to be limited to the assertions in the plaint. At the highest, therefore, the issue of whether the respondent had anything to do with the listing of the allegedly infringing goods over the IndiaMart or Kalgudi websites would be



a matter of trial. Arguendo, if the appellant were able to establish, in trial, that the entities who placed the respondent's goods for sale and purchase on the IndiaMart and Kalgudi websites did so at the instance of the respondent, or with its knowledge, the respondent might still be answerable therefor.

19.10 That the goods were, in fact, available for purchase across the IndiaMart and Kalgudi websites, is not disputed. That the goods could be purchased across the said websites within the jurisdiction of this Court, is equally not disputed. Whether the respondent, directly or indirectly, was involved in the said listings, is, at best, a matter of trial. The learned Single Judge could not, therefore, have held that the appellant could not sue the respondent in this Court, even when the allegedly infringing goods could be purchased, across the IndiaMart and Kalgudi websites, within its jurisdiction, on the premise that the respondent was innocent of the listings.

19.11 For the purposes of an application under Order VII Rule 10 of the CPC, these assertions, in the absence of anything to the contrary either in the plaint or in the documents filed with the plaint, had to be treated as correct.

19.12 The assertion that the allegedly infringing goods of the respondent were available on the IndiaMart and Kalgudi websites, and that orders could be placed on these websites within the territorial jurisdiction of this Court were, therefore, sufficient to confer jurisdiction on this Court to adjudicate on the suit.

19.13 We are in agreement with Mr. Agarwal that the issue of whether the listings on the IndiaMart and Kalgudi e-commerce platforms, of the allegedly infringing goods of the respondent, for sale, were at the instance of the respondent or of some other party, is extraneous to the aspect of territorial jurisdiction. Once the infringing goods were available for sale, the tort of infringement, which predicates use of the infringed mark, or a mark which is deceptively similar thereto, for trade, stood committed. The suit, seeking relief thereagainst, could be filed before every Court having territorial jurisdiction over the situs of sale of such goods. *World Wrestling Entertainment* extends, in a case of e-commerce, the situs to include every place where a commercial transaction could be concluded and the goods bought or sold. Every Court having jurisdiction over such place can, therefore, adjudicate on the aspect of infringement, or passing off. The decision of the learned Single Judge is clearly contrary to this principle.

19.14 There is no dispute about the fact that the allegedly



infringing products of the respondent were available on IndiaMart and Kalgudi. It was specifically asserted, in the plaint, that the IndiaMart and Kalgudi websites were accessible in Delhi. In paras 49 and 50 of the plaint, it was further specifically pleaded that, as orders could be placed across these websites, the dynamic effect of the availability of the respondent's goods on the said e-market platforms was felt within the jurisdiction of this Court.

19.15 The findings of the learned Single Judge with respect to the listing of the products on the IndiaMart and Kalgudi platforms is also, therefore, not sustainable in law.”

19. On the aspect of territorial jurisdiction in trademark matters, the Supreme Court has held, in *Dhodha House v. S.K. Maingi*¹⁰ as well as in *Indian Performing Rights Society v. Sanjay Dalia*¹¹ that territorial jurisdiction can be invoked either under Section 34 of the Trade Marks Act or under Section 20 of the CPC. It would be open to the plaintiff to invoke the jurisdiction of any court within whose jurisdiction the suit would lie under either of these provisions.

20. Section 20 of the CPC specifically empowers a plaintiff to sue a defendant before any court within which the defendant principally carries on its business or where the whole or part of the cause of action has arisen. As we have held in our decisions in *Diamond Modular* and *Kohinoor-II*, prominently following the earlier Division Bench in *World Wrestling Entertainment*, in the e-commerce age, every virtual platform over which the defendant's goods or services would be available operates as a brick and mortar store present in every location where that website is accessible. Though, in *Banyan Tree Holding*, the Court had held that it is necessary to show conclusion of a commercial transaction over the said website, that

¹⁰ (2006) 9 SCC 41

¹¹ (2015) 10 SCC 161



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position now does not survive after the decision in *World Wrestling Entertainment*, which postulates that even the possibility of concluding a commercial transaction would be sufficient. *Tata Sons* further dilutes the principle by holding that even the possibility of interacting over a website, without any commercial element involved, would also be sufficient to invoke territorial jurisdiction of a particular court within whose jurisdiction the website is accessible.

21. By applying these principles, it is clear that the decision of the learned Commercial Court, to the extent it holds that it was not possessed of territorial jurisdiction to entertain the suit, is not correct.

22. Insofar as the merits of the matter are concerned, the reasoning of the learned Commercial Court is restricted to para 29 of the impugned judgment, which does not consider any of the relevant aspects to deal with the infringement or passing off. Indeed, it appears that the learned Commercial Court has not concentrated on the merits of the matter, as it has proceeded on the *prima facie* belief that it has no territorial jurisdiction to adjudicate the dispute.

23. In view of the aforesaid discussion, we are of the view that the learned Commercial Court is in error in holding that the suit was not territorially maintainable before it. On the *prima facie* merits, there is no reasoning except para 29 of the impugned order.

24. Accordingly, we dispose of this appeal in the following terms:

(i) We hold that the suit was territorially maintainable before



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the learned Commercial Court. The impugned order, to the extent it holds that the learned Commercial Court did not have territorial jurisdiction to entertain the suit, is quashed and set aside.

(ii) We remand the appellant's application under Order XXXIX Rules 1 and 2 of the CPC to the learned Commercial Court for adjudication afresh.

(iii) In order to expedite matters, we direct the parties to appear before the learned Commercial Court on 5 February 2026. Learned Counsel for the parties undertake not to take any adjournment from the learned Commercial Court on that date.

(iv) We request the learned Commercial Court to take up the application and hear it finally on the said date and to pass orders thereon as expeditiously as possible.

25. The appeal is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JANUARY 13, 2026

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