HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.5183 OF 2025

C/W

MISCELLANEOUS FIRST APPEAL NO.5220 OF 2025

BETWEEN:

M/s. JALLAN ENTERPRISES,
A SOLE PROPRIETORSHIP,
HAVING ITS OFFICE AT 1102
KRISHNA TOWER, SECTOR 35 E /
PLOT NO.4, KHARGHAR,
NAVI MUMBAI, RAIGAD,
MAHARASHTRA-410 210.
REP. BY ITS PROPRIETOR
SHIVAM JALLAN.

…APPELLANT (COMMON)

[BY SRI SIVARAMAKRISHNAN M. SIVSANKARAN, ADV]

AND:

M/s. SARATHI INTERNATIONAL INC.,
A PARTNERSHIP FIRM, INCORPORATED BY
PARTNERSHIP DEED DATED 29 DECEMBER
2008, HAVING ITS REGISTERED OFFICE AT
NO.459/30, 30TH CROSS, 4TH BLOCK,
JAYANAGAR, BANGALORE-560 011
AND AT 13, 3-D MAIN, 1ST PHASE,
J.P. NAGAR, BANGALORE-560 078.
REP. BY PARTNER
SRI SAPTHAGIRI S. BOGGARAM.

…RESPONDENT (COMMON)

[BY SMT.PRIYA V., ADVOCATE]

THIS MFA NO.5183/2025 IS FILED U/O 43 RULE 1(r) OF CPC 1908, AGAINST THE ORDER DATED 11.04.2025 PASSED ON I.A.NO.2 IN O.S.NO.3911/2024 ON THE FILE OF THE XVIII ADDITIONAL CITY

CIVIL JUDGE AND SESSIONS JUEDGE, BENGALURU (CCH-10), ALLOWING THE I.A.NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC & ETC.

THIS MFA NO.5220/2025 IS FILED U/O 43 RULE 1(R) OF CPC., AGAINST THE ORDER DATED 11.04.2025 PASSED ON I.A.NO.1 IN O.S.NO.3911/2024 ON THE FILE OF THE XVIII ADDITIONAL CITY CIVIL JUDGE AND SESSIONS JUEDGE, BENGALURU SCCH-10, ALLOWING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC, 1908 & ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.09.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THROUGH VC FROM DHARWAD BENCH, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging common order dated 11.04.2025 passed by XVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-10), on IAs.no.1 and 2 in OS no.3911/2024, this appeal is filed.

2. Sri Shivaramakrishnan M. Sivsankaran, learned counsel for appellant submitted, appellant was defendant in OS.no.3911/2024 filed by respondent - plaintiff seeking for decree of permanent injunction restraining defendant from infringement and passing off of its registered trademark

'TULASI', for rendition of accounts and recovery of profits, delivery-up and destruction of infringing materials etc.

3. In plaint, it was stated plaintiff was a partnership firm engaged in manufacture and sale of incense sticks, cones, burners and fragrance oils since 1945, formally constituted under partnership deed dated 07.08.1992 and reconstituted under partnership deed dated 20.12.2008. It was stated, plaintiff was amongst largest incense manufacturers in Country, operating 75,000-set integrated manufacturing unit at Bangalore and exporting its products to more than 45 countries worldwide. It was stated, plaintiff earned considerable goodwill and reputation in domestic and international markets by adhering to high quality standards and it held ISO 9001:2015, ISO 14001:2015 and WHO-GMP certifications and also undertook various social and charitable initiatives.

4. It was stated, plaintiff adopted trademark **'TULASI'** in year 1950 and using it continuously, extensively and exclusively in respect of incense sticks and allied goods. It was stated, mark was inherently distinctive and acquired secondary meaning due to decades of uninterrupted use, extensive sales,

advertisement expenditure and wide promotion. And for protection of goodwill, plaintiff had multiple registrations, including 'device mark' (granted registration dated 15.11.1962) and 'word mark' (granted registration dated 19.10.2005) and Trademark registration on 21.07.1952, which were periodically renewed, valid and subsisting. It was stated, plaintiff holds registrations for various variants of mark and obtained international registrations in several jurisdictions worldwide, in addition to operating domain name "*<https://tulasi.com/>*" for marketing and sale of its goods.

5. It was stated, by virtue of prior adoption, long and continuous use, extensive promotion and multiple trademark registrations, plaintiff had acquired exclusive proprietary rights over mark 'TULASI', and same was exclusively associated with plaintiff in trade and among consumers. It was further stated plaintiff had taken action against earlier infringers by filing OS.no.5927/2015, where Civil Court had recognized plaintiff as registered proprietor of mark and restrained unauthorized use thereof.

6. It was stated, cause of action for present suit arose on account of defendant's adoption and use of mark **'TULSI'** in respect of identical goods, namely incense sticks under Class-3. It was stated, impugned mark was phonetically identical and deceptively similar to plaintiff's registered mark, differing only by omission of letter "**a**", and same was adopted with malafide intention to ride on goodwill and reputation of plaintiff. It was stated, defendant's goods bearing impugned mark were discovered in market in December 2023, leading to confusion among consumers, some of whom allegedly enquired whether defendant's products were associated with plaintiff. It was stated, defendant was marketing impugned goods through its website "<*https://jallan.in/?s=tulsi&post type=product*>".

7. It was stated, plaintiff issued a cease-and-desist notice dated 04.01.2024, which defendant refused in reply dated 15.01.2024 and admitted continued use of impugned mark, which act constituted infringement of plaintiff's registered trademark under Sections 27, 28 and 29 of Trade Marks Act, 1999 ('**TMA**', for short) and also amounts to passing off. It was stated defendant's acts had caused confusion and

deception in market, diluted plaintiff's brand value, tarnished its reputation and resulted in irreparable loss and injury.

8. It was stated, plaintiff was prior user and registered proprietor of mark, whereas defendant's adoption was recent and dishonest. Therefore, plaintiff had strong *prima facie* case, balance of convenience lie in its favour and irreparable harm would be caused, if relief was not granted. It was stated, cause of action first arose from adoption and registration of plaintiff's mark and subsequently in December 2023, on discovery of defendant's infringing goods and continued day-to-day. It was stated, trial Court had territorial jurisdiction under Section 134 of TMA and Section 20 of Code of Civil Procedure, 1908 (**'CPC'**, for short), as plaintiff carries on business within jurisdiction and infringing goods are sold therein. Therefore, plaintiff filed suit.

9. Along with plaint, plaintiff had filed IAs.no.1 and 2 under Order XXXIX Rules 1 and 2 of CPC for temporary injunction restraining defendant, assigns, agents etc. from manufacturing, selling, marketing, offering for sale or in any manner infringing and passing off plaintiff's trademark 'TULASI' or any other mark that may be identical or deceptively similar

to registered trademark of plaintiff and adopting assertions in plaint sought for grant in temporary injunction.

10. In affidavit filed in support of applications, plaintiff stated about its usage and registration of trademark/word mark, about its business spreading across 45 countries around world, about plaintiff having applied for or trademark registrations in various countries, about investing time, effort and money in earning trust as well as adopting certified manufacturing processes. There is also assertion about having huge turnover based on brand value and plaintiff's products receiving awards.

11. There is also assertion about plaintiff having been granted an order of injunction against infringement and passing of against some other party in OS.no.5927/2015. There is specific assertion about defendant resorting to exploit plaintiff's goodwill by seeking to manufacture, distribute and sell incense sticks under name and style of 'TULSI', which came to its knowledge in December, 2023 and that same was also reflected from defendant's website. Plaintiff further stated that it had caused issuance of a cease-and-desist notice to defendant on

04.01.2024, which defendant refused in its reply dated 15.01.2024. There is further assertion that defendant's product being deceptively similar was likely to cause confusion in minds of consumers and erode its profits and dilution of its brand value alleging that it has a strong *prima facie* case, that balance of convenience lie in its favour and plaintiff would suffer irreparable loss and injury in case of denial of injunction, it prayed for grant of temporary injunction.

12. On appearance, defendant filed written statement and adopting same as its objections against applications for temporary injunction denying plaint averments in *toto* and stating that plaintiff's suit was not maintainable either in law or on facts and plaintiff has not approached Court with clean hands and by suppressing and misrepresenting material facts. It was stated, defendant obtained GST registration on 12.08.2022 and thereafter commenced manufacturing and marketing of agarbattis from 01.03.2023 and also secured MSME registration on 11.05.2023. It was stated, defendant adopted his surname as trademark **'JALLAN'**, which was registered under no.5974549 dated 11.06.2023, and that said

mark was only trademark used by defendant in relation to his products.

13. Defendant specifically denied that word 'TULSI' was not used as trademark or brand name but only to describe smell or flavor of agarbatties, that it contains tulsi essence and bonafide/descriptive use was protected under Sections 30 and 35 of TMA. It was contented words TULSI, CAMPHOR, LOBAN, LEMONGRARASS, LAVENDER and BOSEWELLIA appearing on packaging only describe character and quality of products and were not trademarks. Defendant asserted any manufacturer of agarbatties with tulsi fragrance was entitled to use word 'TULSI' to describe scent and plaintiff cannot claim exclusive rights over such descriptive usage, even assuming its alleged long standing registration and usage of word 'TULASI', which was otherwise denied.

14. Further, defendant had conducted business openly and transparently, without copying or infringing any trademark of plaintiff and sales invoices demonstrate continuous and bonafide commercial activity. Defendant further denied infringing or passing off plaintiff’s mark and asserted a

statutory and common law right to use words to bonafide describes character or quality of goods. Therefore, plaintiff's claim was untenable and sought dismissal of suit.

15. It was submitted defendant was proprietorship, engaged in business of manufacture and sale of incense sticks under registered trademark 'JALLAN' dated 11.06.2023, in regular course of trade and commerce. It was submitted, plaintiff had issued cease-and-desist notice to defendant on 04.01.2024, alleging that it was infringing plaintiff's trademark by marketing incense sticks under name 'TULSI'. Defendant replied on 15.01.2024 denying infringement and asserting that 'TULSI' was a descriptive expression referring to natural fragrance of basil and was not used as a trademark. Despite same, plaintiff filed suit for permanent injunction against defendant, alleging infringement and passing off by use of word 'TULASI'. Plaintiff also filed I.As.no.1 and 2 under Order XXXIX Rules 1 and 2 of CPC seeking ad-interim injunction.

16. Based on same, trial Court framed following :

POINTS

1) *Whether the plaintiff has made out prima facie case under I.A.No.1 and 2?*

2) *Whether balance of convenience leans in favour of the plaintiff under I.A.no.1 and 2?*

3) *Whether plaintiff will be put to more hardship if temporary injunction is not granted under I.A.no.1 and 2?*

4) *What order?*

17. On consideration, trial Court answered points no.1 to 3 in affirmative and point no.4 by allowing IAs.no.1 and 2 and granting injunction as prayed, disrupting defendant's business. Aggrieved thereby, defendant filed this appeal.

18. It was submitted, impugned order was *ex facie* erroneous, contrary to settled principles of trademark law and suffered from serious non-application of mind. It was submitted, learned trial Judge, while professing to avoid a mini-trial in effect conducted one by rendering findings on disputed questions of fact and law, which could only be adjudicated after trial. It was submitted, trial Court erred in clubbing IAs.no.1 and 2, notwithstanding fact that issues of infringement and

passing off were distinct and governed by different legal standards. Hence, same vitiated exercise of discretion.

19. It was contended, plaintiff does not enjoy exclusivity over word 'TULASI' and plaintiff's case pivoted on device mark containing word 'TULASI'. It was submitted, as per Section 17 of TMA, registration of a composite mark does not *ipso facto* confer exclusive rights over individual components thereof, particularly when such components are descriptive or common in trade. It was submitted, plaintiff's trademark registration certificate contains a disclaimer expressly stating that registration shall give no right to exclusive use of word 'TULASI' and other descriptive matter. It was submitted, trial Court failed to consider legal effect of said disclaimer, despite its attention drawn to same under memo dated 22.02.2025 and placing on record Trademark Registration Certificate of plaintiff.

20. It was submitted, use of word 'TULSI' by defendant was purely descriptive, intended only to indicate fragrance and characteristics of incense sticks, and not as a trademark or source identifier. Especially so as defendant's trademark 'JALLAN' was prominently displayed on packaging and 'TULSI'

was used in same manner as other fragrance descriptors such as *Camphor, Lavender, Lemongrass* and *Loban* and descriptive use protected under Section 30 (2) (a) of TMA ruled out infringement.

21. It was submitted, impugned order proceeded on a fundamentally erroneous legal framework. It was submitted, trademark protection was not absolute but depended on nature of goods and context of use. While word 'TULASI' may be an arbitrary or distinctive mark in relation to incense sticks, but, position materially changes when goods in question are tulsi-scented incense sticks. It was submitted, display of picture of Tulsi Pot along with Tulsi leaves and people praying before it were sufficient to distinguish defendant’s product from that of plaintiff. In such context, word 'TULSI' clearly indicated fragrance/ingredient assuming descriptive character.

22. Relying on decision in case of **Lotus Herbals Pvt. Ltd. v. DPKA Universal Consumer Ventures Pvt. Ltd**., reported in **2024 SCC OnLine Del 498**, it was submitted, when registered mark corresponds to an ingredient or characteristic of goods, competitors are entitled to invoke

statutory defence under Section 30 (2) (a) of TMA. It was submitted, trial Court erred in adopting "***prominence test***," by focusing on size and display of word 'TULSI' on defendant's packaging. It was contended, Section 30 (2) (a) of TMA protects use that indicates kind, quality or other characteristics of goods and does not prescribe font size, prominence, or display. Referring to decision in case of **Marico Limited v. Agro Tech Foods Limited**, reported in **2010 SCC Online Del 3806,** it was submitted, defence under Section 30 of TMA was objective in nature and did not depend on intention, bonafides, or alleged malafides of defendant. According to defendant, once use indicates fragrance characteristic of goods, statutory protection would be attracted and same cannot be defeated by subjective considerations.

23. It was submitted, trial Court failed to correctly apply settled principles governing grant of temporary injunction, namely, *prima facie* case, balance of convenience, irreparable injury etc. It was submitted, impugned order virtually restrained defendant from marketing and selling its product variant, resulting in serious commercial prejudice and

disruption of business even when plaintiff could be adequately compensated if it ultimately succeeds in suit. In view of same, balance of convenience lie in favour of permitting descriptive use pending trial and sought for allowing appeal.

24. On other hand, Smt.Priya V., learned counsel for plaintiff supported impugned order and contended, plaintiff was prior adopter and registered proprietor of trademark 'TULASI', having used same continuously for over seven decades i.e. since 1950 as against rather recent trademark registration of defendant i.e. since 2023. It was submitted, plaintiff's trademark had acquired enormous goodwill and reputation and registration under TMA carried presumption of its validity under Section 31 of TMA. Relying upon decision in case of **Lupin Ltd. v. Johnson and Johnson**, reported in **2014 SCC OnLine Bom 4596**, it was submitted, High Court of Bombay had held, registration certificate was *prime facie* proof of trademark ownership as per Section 31 of TMA and Court should not lightly interfere with statutory rights of registered proprietor at interlocutory stage. It was held, even while challenge of registration was permissible, same could not be a ground to

deny protection, which set exceptionally high threshold requiring defendant to prove registration was ex-facie illegal or fraudulent, which in any case, requires trial. She submitted, at interlocutory stage, trial Court was not to examine validity or strength of registration in detail and therefore, impugned order could not be faulted.

25. It was further submitted, mark 'TULASI' was in continuous use by plaintiff since 1950 and subject matter of valid registration in Class-3. It was submitted, said 'mark' was arbitrary in relation to incense sticks and therefore, adoption of word 'TULSI' by defendant, in relation to same class of goods i.e. incense sticks since 2023 was clear case of infringement under Section 29 (2) (c) of TMA as mark was phonetically similar and in respect of identical goods/product. She relied on decision in case of **Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.**, reported in **(2001) 5 SCC 73** to emphasize that phonetic similarity and likelihood of confusion were sufficient to constitute infringement.

26. It was submitted, defendant's mark 'TULSI' was phonetically identical to plaintiff's registered mark 'TULASI' and

used in respect of identical goods, namely incense sticks, which would squarely attract provisions of Sections 29 (2) (c) and 29 (3) of TMA and which mandate a presumption of likelihood of confusion. She further contended, omission of letter 'a' from plaintiff's word mark would not avoid infringement.

27. It was contended, defendant's use of word 'TULSI' was not descriptive but as trademark. Drawing attention to packaging, it was submitted, word 'TULSI' was displayed in a prominent and eye-catching manner, in larger font than defendant's trademark 'JALLAN', and therefore, an average consumer with imperfect recollection would perceive 'TULSI' as a brand identifier rather than mere description of fragrance, increasing likelihood of confusion. She pointed, defendant used english descriptors for other fragrances such as *Camphor* and *Lavender*, but deliberately chose word "*TULSI*" instead of "*BASIL*" to ride on goodwill of plaintiff's trademark. In support of said proposition, she relied on decisions in **Hem Corporation Pvt. Ltd. v. ITC Limited**, reported in **2012 SCC Online Bom 551** and **Piruz Khambatta and Anr. v. Soex India Pvt. Ltd.**, reported in **2011 SCC OnLine Del 5598** to

contend that even if a word has a descriptive meaning, its use can amount to infringement if presented in a manner that consumers are likely to perceive it as a trademark. Further, trial Court exercised its discretion judiciously and in view of law laid down in **Wander Ltd. and Anr. v. Antox India (P) Ltd.**, reported in **1990 SCC Online SC 490,** first appellate Court ought not to interfere merely because another view is possible.

28. It was further contended scope of interference by first appellate Court against interlocutory order was limited, relying on decision in **Wander Ltd.**'s case (*supra*). Learned counsel further relied on decision in case of **Anand Prasad Agarwalla v. Tarkeshwar Prasad**, reported in **(2001) 5 SCC 568**, to contend that at interlocutory stage, trial Court should not conduct mini-trial or finally adjudicate disputed questions. Learned counsel argued that trial Court duly considered *prima facie* case, balance of convenience and risk of irreparable harm likely to be suffered and arriving at conclusion that same favoured plaintiff given its longstanding registration and goodwill built up, granted orders of temporary injunction as prayed. Therefore, same did not call for interference.

29. Learned counsel for plaintiff also relied on following decisions:

i. **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories**, reported in **1964 SCC OnLine SC 14**;

ii. **Wander Ltd. and Anr. v. Antox India (P) Ltd.**, reported in **1990 SCC Online SC 490**;

iii. **Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.**, reported in **(2001) 5 SCC 73**;

iv. **Anand Prasad Agarwalla v. Tarkeshwar Prasad**, reported in **(2001) 5 SCC 568**;

v. **Syed Mohideen v. P Sulochana Bai**, reported in **(2016) 2 SCC 683**;

vi. **Ellora Industries v. Banarasi Das Goela**, reported in **1979 SCC OnLine Del 198**;

vii. **Adiga's Abhiruchi and Ors. v. Adiga's Fast Food**, reported in **2007 SCC OnLine Kar 756**;

viii. **Piruz Khambatta and Anr. v. Soex India Pvt. Ltd.**, reported in **2011 SCC OnLine Del 5598**;

ix. **Hem Corporation Pvt. Ltd. v. ITC Limited**, reported in **2012 SCC Online Bom 551**;

x. **Lupin Ltd. v. Johnson and Johnson**, reported in **2014 SCC OnLine Bom 4596;**

xi. **Gufic (P) Ltd. v. Vasu Healthcare (P) Ltd.**, reported in **2016 SCC OnLine Bom 1814**;

xii. **Bata India Ltd. v. Chawla Boot House**, reported in **2019 SCC OnLine Del 8147**;

xiii. **Anil Verma v. RK Jewellers SK Group**, reported in **2019 SCC OnLine Del 8252**;

xiv. **Free Elective Network (P) Ltd. v. Matrimony.com. Ltd.**, reported in **2022 SCC OnLine Mad 3811**; and

xv. **Sun Pharmaceutical Industries Ltd. v. Protrition Products LLP**, reported in **2023 SCC OnLine Del 7467**.

30. Heard learned counsel, perused impugned order and material available on record.

31. These appeals are by defendant against discretionary order passed by trial Court on IAs.no.1 and 2 filed under Order XXXIX Rules 1 and 2 of CPC in a suit for permanent and mandatory injunction restraining defendant from infringing and passing of in violation of plaintiff's trademark. Main grounds urged are that impugned order was passed without proper consideration of facts/material of case and contentions urged and therefore perverse. Hence, common point arising for consideration is:

> *"Whether impugned order passed by trial Court on I.As.no.1 and 2 calls for interference on ground of being contrary to law and perversity?"*

32. At outset, it is seen, trial Court considered rival pleadings, contentions, decisions relied and after framing proper points for consideration arrived at its conclusions. It noted Annexure-L Certificate no.144477 showed registration of ***device mark*** 'TULASI' in respect of goods and description in Class-3 – Agarbatties, granted to BK Annapoornamma – a partner of M/s.Sarathi International (Partnership Firm), with renewal on 18.07.2017 and valid till 18.07.2027. Likewise, Annexure-M Certificate no.188079 indicated registration of ***device mark*** 'Tulasi Agarbathi' in respect of goods and description in Class-3 – Agarbatties, granted to same person/firm, renewed and valid upto 13.12.2027. And Annexure-P Certificate no.780870 showed registration of ***word mark*** 'TULASI' issued to same person/firm in respect of incense sticks in Class-3, renewed and valid upto 04.12.2027. It also noted, Annexures – Q to AK depicted registration of trademark 'TULASI' in various other countries by plaintiff. On said basis it

concluded, there was no dispute about plaintiff being registered trademark holder of 'TULASI' as *device mark* as well as *word mark* in respect of goods in Class-3 and using it since 1950.

33. It noted, documents produced by defendant at Sl.nos.1 and 2 were Registration Certificates of defendant under GST and as Industry. And document at Sl.no.3 was Trademark Certificate no.5974549 dated 11.06.2023 for registration of 'JALLAN' in respect of goods and description in Class-3 – namely Essential Oils, Air Freshners, Agarbatti, Dhoop, Diffuser and Aroma Oils. And document at Sl.no.4 indicated usage of trade mark 'JALLAN' by defendant and one of its products used word 'TULSI' on its package. Thus, there was no dispute about defendant being registered trademark holder of 'JALLAN' and using it since 2023. It noted, both plaintiff and defendant were in same business namely manufacture and sale of incense sticks. And defendant was not disputing usage of word 'TULSI' on package of one of it's products and claimed it to be bonafide *descriptive* to show it contained *tulsi* fragrance or flavour protected under Sections 30 and 35 of TMA.

34. Therefore, whether usage of word 'TULSI' on package of one of defendant's products was in descriptive manner or prominent manner and infringes on plaintiff's trademark and amounts to passing off would establish triable case.

35. On perusal of package, trial Court arrived at conclusion that usage of word TULSI by defendant was not descriptive, but prominent being in larger font style attracting attention of customers and likely to confuse as if it was a product of plaintiff, as defendant's trademark JALLAN was depicted in smaller size font than word TULSI. It concluded same was with intention to attract customers of plaintiff and therefore, defendant's claim of protection under Sections 30 and 35 of TMA was unacceptable.

36. It clarified, confusion arose only in respect of defendant's product with word 'TULSI' on its package. It observed, if defendant intended to use 'TULSI' in descriptive manner, said word would have been in smaller font style than its trademark. It concluded ratio laid down in **Hem Corporation**'s case *(supra)* would apply, that usage of mark to

describe aroma of product would make no difference if it was likely to be understood as a trademark and '*intention of usage'* was not sole factor. It also referred to ratio in **Piruz Khambatta's** case *(supra)*, wherein High Court of Delhi held usage of RASNA prominently in PAN RASNA could not be held to be in descriptive manner.

37. It also considered defense that use of word 'TULSI' was in descriptive manner and registration granted to plaintiff over device mark 'TULASI' was conditional and did not exclusive right to use said word and excepted descriptive usage. It held, decisions relied upon by defendant in **Cadila Health Care Ltd.**; **Lotus Herbals Pvt. Ltd.**; **Marico Ltd.** cases *(supra)* and **Stokely Van Camp Inc. and Anr. v. Heinz India Pvt. Ltd.**, reported in **2010 SCC OnLine Del 2153**, were not helpful as defendant was not using word 'TULSI', in descriptive manner. It discounted decision in case of **Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities Pvt. Ltd.**, reported in **2011 SCC OnLine Del 4422** on ground that plaintiff herein had registration not only of device mark but also word mark.

38. Likewise, on reasoning that in case defendant intended to use word TULSI in descriptive manner, it would have used it in smaller font than its trademark and therefore protection under Section 30 of TMA was not available to defendant, it held decision in case of **Om Prakash Gupta v. Praveen Kumar**, reported in **ILR 2000 Del. 124** was not available. On said reasoning, it held plaintiff had established *prima facie* case and observing that in case of refusal of injunction, plaintiff would suffer more, it answered points for consideration in favour of plaintiff and granted injunctions as sought for.

39. It is seen, trial Court noted plaintiff's long prior use and valid registrations as well as phonetic similarity between plaintiff's trademark ***'TULASI'*** and word ***'TULSI'***, mentioned on defendant's packaging and by examining packaging of rival products rejected defendant's contention that defendant contends that word TULSI was used on descriptive manner in context of tulsi-scented incense. It observed, whether defendant succeeds in establishing its usage was purely

descriptive within meaning of Section 30 (2) (a) of TMA would require trial.

40. Various decisions are relied upon. In **Marico Limited**'s case *(supra)*, it was held descriptive words/expressions or their phonetic variations cannot be monopolized as trademarks and bonafide descriptive use was protected. Since "LOW ABSORB" merely described a product characteristic, injunction was refused.

41. In **Cadila Health Care Ltd.**'s case *(supra)*, it was held "Sugar Free" was a descriptive expression indicating a product characteristic, and such terms cannot be monopolized and defendant's use of "Sugar Free" along with its own brand "Amul" was held to be bonafide descriptive use and injunction was refused.

42. In **Stokely Van Camp Inc.**'s case *(supra),* it is held common descriptive words such as "Rehydrate, Replenish, Refuel," which describe function or effect of a product, cannot be monopolized as trademarks if such words are used in a bonafide descriptive manner along with defendant's own brand

and such use did amount to infringement. Based on these decisions, defendant contends, word 'TULSI' is descriptive of ingredient or characteristic of product, and when used along with defendant's own brand, it constitutes bonafide descriptive use and would not amount to infringement.

43. In **Bhole Baba Milk Food Industries Ltd**'s case *(supra)* it is held, a trader cannot monopolize common name of deity like *'Krishna*,' when culturally associated with product. Court ruled, protection applies only to specific label or stylized mark, not word itself, and defendant's qualified mark avoided confusion. Based on same, it is contended that 'TULSI', being a culturally and religiously significant term, cannot be exclusively monopolized by plaintiff, and defendant's use of word along with its distinct trademark / branding does not amount to infringement or passing off.

44. In **Om Prakash Gupta**'s case *(supra)*, it is held phonetic similarity and imitation of overall label/get-up can create consumer confusion, especially where goods are common consumer products and applying "average consumer with imperfect recollection" test, Court granted injunction due

to defendant's slavish imitation of plaintiff's mark and packaging.

45. In **Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra**, reported in **2025 SCC OnLine SC 1701**, it was held, 'London Pride' was not deceptively similar to 'Blenders Pride', emphasizing that trademarks must be assessed as a whole and common words like 'Pride' cannot be monopolized and distinct prefixes create different commercial impressions. Based on same, defendant contends presence of a common word like 'TULASI' does not automatically give rise to infringement if overall mark, prefix/suffix, and branding create a distinct commercial impression, reducing likelihood of consumer confusion.

46. In **Reliance Industries Ltd. v. Reliance Polycrete Ltd.**, reported in **1997 SCC OnLine Bom 786**, it was held, word "Reliance" had not acquired exclusive secondary meaning for plaintiff across all industries and as parties operated in different fields, Court found little likelihood of consumer confusion and refused to grant an injunction. Therefore, defendant contends that commonly used word like

'TULASI' cannot be monopolized by one trader unless said word had acquired exclusive secondary meaning, and if defendant used it with its own branding, likelihood of consumer confusion was minimal.

47. Defendant also relies on decision in **Lotus Herbals Private Limited**'s case *(supra),* wherein it was held word 'Lotus' was common descriptive term in cosmetic industry to indicate ingredient and it's usage was not as a trademark, and prominent display of defendant's trademark **'82°E**' removed likelihood of confusion and on said basis, no infringement was found and interim injunction was refused.

48. Distillate of above decisions is, where **monopoly over descriptive or common words** is limited, even in face of trademark registration, decisions in **Marico Ltd.; Cadila Health Care Ltd.** and **Stokely Van Camp Inc. cases** *(supra)* shield traders who use terms that describe a product's characteristics or ingredients (like "Low Absorb" or "Sugar Free") in a **bonafide** manner, asserting such words must remain available for public use, while **Bhole Baba Milk Food Industries Ltd.** and **Pernod Ricard cases** *(supra),* reinforce

culturally significant or common terms (like "Krishna" or "Pride") cannot be exclusively claimed when distinct prefixes or house marks are present to prevent confusion. **Om Prakash Gupta** and **Reliance Industries cases** *(supra)* focus on need to apply **overall visual impression** and necessity of proving acquisition of **secondary meaning test**.

49. Even plaintiff relies on various decisions.

50. In **Bata India Ltd**.'s case *(supra)*, it was held, **strength of a mark** depends on its position on spectrum of distinctiveness, with suggestive and arbitrary marks receiving higher protection. Though defendant contends that word TULASI is of common usage and cannot attract high degree of protection as sought, long usage of registered mark coupled with time and money spent on earning goodwill through promotional activities, indicated word TULASI had attained distinctiveness entitled for protection.

51. In **Anil Verma**'s case *(supra)*, High Court of Delhi held descriptiveness must be assessed by applying Degree of Imagination Test and Competitors Need Test. If a term directly

conveys quality or characteristic of goods without requiring mental effort, it is descriptive; however if some imagination is required and competitors have alternative means to describe their goods, mark leans towards suggestiveness.

52. In **Free Elective Network**'s case *(supra)*, while examining whether sub-element "Jodi" in mark "Jodi365" was descriptive or inherently distinctive, High Court of Madras noted that trademarks fall along a spectrum from generic (with no protection), descriptive (protection only if secondary meaning is acquired) and suggestive to arbitrary/fanciful (attracting strong protection). It was submitted, tests applied to determine descriptiveness i.e. (i) dictionary meaning of term; (ii) degree of imagination required to connect term with goods/services; (iii) competitors' need to use term; and (iv) extent of use by others, would favour plaintiff as continuous long and registered usage by plaintiff established secondary meaning.

53. In **Hem Corporation** and **Piruz Khambatta**'s cases *(supra)*, it was held, trademark infringement and passing off are distinct causes of action with different evidentiary requirements. It was held actual confusion requires to be

proved in case of passing off; while likelihood of confusion is sufficient in case of infringement. Court ruled that even innocent adoption of similar mark can be restrained if it creates confusion and mark that has acquired distinctiveness through long use cannot be defeated by claim of descriptive use.

54. And though in **Adiga's Abhiruchi**'s case *(supra)*, defendant contended word "Adiga" being a common community name, its use in business could not be restrained in view of Section 35 of TMA, it was rejected relying on decisions in **Dr.Reddy's Laboratories Ltd v. Reddy Pharmaceuticals Ltd.,** reported in **2004 SCC OnLine Del.** and **Bajaj Electricals Ltd. v. Metals & Allied Products**, reported in **1987 SCC OnLine Bom 225**, holding mere fact that a name was a surname or community name did not confer a right to use it in a manner that infringes registered trademark and usage by defendant was not bonafide.

55. In **Syed Mohideen**'s case *(supra)*, it said that rights in a trademark arise primarily from "prior use" and not merely from registration and rights of registered proprietor under TMA are subject to rights of a prior user. It also

reiterated that a passing off action protects goodwill and its essential elements are goodwill, misrepresentation and damages. In present case, plaintiff is admittedly, prior and continuous user of 'TULASI', hence its rights prevail.

56. In **Ellora Industries**'s case *(supra)*, it is held that tort of passing off protects commercial goodwill and reputation of trader as a form of property. It held plaintiff must establish that its mark acquired reputation and goodwill in market and that law of passing off aims to prevent unfair competition where a trader uses deceptive devices or marks to misappropriate reputation of another trader.

57. In **Gufic**'s case *(supra)*, it was held, crucial question was whether defendant was using word "as a trademark or in descriptive sense". It observed, when a word is used prominently on packaging and product labels to identify source of goods, it amounts to trademark use and not descriptive use. It further held, claim of defendant that a word is generic or common to trade must place clear evidence of extensive market usage and mere assertions or references from websites are insufficient.

58. In **Kaviraj Pandit**'s case *(supra)*, it was held passing off and infringement are distinct causes of action. While passing off depends on deceptively similarity in overall getup and presentation, in case of infringement, where once essential features of registered mark are adopted and similarity is close, visually or phonetically, differences in packaging or addition of defendant's name are held immaterial.

59. In **Sun Pharmaceutical**'s case *(supra)*, High Court of Delhi held trademark infringement must be assessed by comparing marks themselves and examining whether they are likely to cause confusion to an average consumer with imperfect recollection. It was held that even if packaging or label differ, phonetic similarity between marks can still lead to deceptive similarity, and such visual differences or '*added matter'* cannot defeat claim of infringement.

60. It is significant to note that one of main grounds of challenge was based on finding of High Court of Delhi in **Lotus Herbals (Pvt.) Ltd.**'s case *(supra)* on ground that it was under similar facts and circumstances and considering similar contentions. However, it is recently reversed by Division Bench

of Delhi High Court in **Lotus Herbals (P) Ltd. v. DPKA Universal Consumer Ventures (P) Ltd.**, reported in **2026 SCC OnLine Del 540**, wherein Division Bench was considering use of mark "Lotus Splash" in respect of identical cosmetic products, where plaintiff was registered proprietor of word as well as device mark "Lotus" and defendants had raised defence under Section 30 (2) (a) of TMA, claiming expression as descriptive. Said contention was examined in light of principles laid down in **Cadila Health Care Ltd.** and **Marico Ltd**'s cases *(supra)* and applying settled tests of anti-dissection, dominant feature, overall similarity and likelihood of confusion from perspective of an average consumer, Court came to *prima facie* conclusion that expression "Lotus Splash" was being used as a trademark/sub-mark and not merely in a descriptive sense. It observed, Degree of Imagination and Competitors' Need tests, as propounded in McCarthy on Trademarks were of persuasive value and as use of word 'Lotus' clearly indicated trademark usage, than descriptive, defence under Section 30 (2) (a) of TMA was unavailable and *prima facie* case of infringement was held established, entitling protective injunction.

61. While adjudicating applications for interim injunction in trademark cases, findings required to be given by trial Courts as evolved in **American Cyanamid Co. v. Ethican Ltd.** [**1975 (1) All ER 504**] would be:

(i) Serious question to be tried/triable issue, i.e. plaintiff must show genuine and substantial question fit for trial, which is not frivolous, vexatious or speculative.

(ii) Likelihood of confusion/deception, without requiring detailed analysis of merits, assessed on prima facie strength of case and probability of consumer confusion or deception.

(iii) Balance of convenience, requiring Courts to weigh inconvenience or harm that may result to either party from grant or refusal of injunction.

(iv) Irreparable harm: Where use of impugned mark by defendant may lead to dilution of plaintiff's brand identity, loss of consumer goodwill, or deception or public-harm which are inherently difficult to quantify - remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether public interest warrants injunctive relief to prevent confusion or deception in marketplace.

62. As noted above, trial Court noted rival pleadings, contentions and material relied on by parties. It noted, admitted usage by plaintiff of registered trademark 'TULASI' not only as *device mark* but also as *word mark* in respect of incense sticks, since 1950 was for nearly seventy years; as against usage by defendant of word 'TULSI' on one of its products was since 2023, by claiming such usage was descriptive. On comparison of package of rival products, trial Court noted usage of word 'TULSI' by defendant was not descriptive, but prominent being in larger font style attracting attention of customers and likely to confuse even prudent man, especially as defendant's trademark 'JALLAN' was depicted in smaller size font than word 'TULSI'.

63. In light of same, it held defendant's claim of protection under Sections 30 and 35 of TMA was unacceptable at that stage. While clarifying that confusion arose only in respect of one of defendant's products with word 'TULSI', it concluded ratio in **Hem Corporation**'s case *(supra)* would apply, that usage of mark to describe aroma of product would make no difference if it was likely to be understood as a

trademark and *intention of usage* was not sole factor. Referring to **Piruz Khambatta's** case *(supra)*, it held prominent usage could not be held to be in descriptive manner. It also referred to decisions relied by defendant in **Cadila Health Care Ltd.**; **Lotus Herbals Pvt. Ltd.**; **Marico Ltd.** and **Stokely Van Camp Inc.** cases *(supra)*, and concluded they would not be helpful to defendant as it was not using word 'TULSI', in descriptive manner. It discounted decision in case of **Bhole Baba Milk Food Industries**' case *(supra)* on ground that plaintiff herein had registration not only of device mark but also word mark. And on reasoning that if defendant intended to use word TULSI in descriptive, it would have used it in smaller font than its trademark, it held plaintiff established *prima facie* case and observing in case of refusal of injunction, plaintiff would suffer more harm, answered remaining points in favour of plaintiff and granted injunctions as sought for.

64. There cannot be any dispute about proposition that while applying strength of mark test, Courts are required to consider distinctiveness, with suggestive and arbitrary marks receiving higher protection. And descriptiveness has to be

assessed by applying dictionary meaning of term, degree of imagination required to connect term with goods/services, competitors' need to use term and extent of use by others.

65. It is seen, trial Court has by and large adhered to above principles while considering application for temporary injunctions. Its conclusion is based on its observation that plaintiff's mark 'TULASI' has been in long, continuous and exclusive use and registered. That plaintiff has earned goodwill not only based on long and continuous use as a registered holder of word mark as well as device mark in respect of 'TULASI', but also asserts to have spent time and money on promotional activities establishing 'TULASI' as a brand. Therefore, there was plain connection of word 'TULASI' with incense sticks manufactured and sold by plaintiff. It noted, there was no material to indicate word 'TULASI' was of common usage in relation to incense sticks. It also noted display of word 'TULSI' by defendant on its package was not only in large font style masking its trademark 'JALLAN', which was in significantly smaller font and therefore prominent, rather as trademark than as descriptor. Further, defendant is using equivalent English

words to describe contents/flavour of its products in all but 'Loban' and 'Tulsi', without establishing their common usage by others in trade. Even though defendant is displaying pictures of Tulsi pot and leaves on its package, its claim on need to use word Tulsi to describe contents/flavour would fail, apparently on account of prominent use of word 'TULSI'. Thus, there would be sufficient justification for conclusion by trial Court that 'TULASI' functions as a source identifier than ingredient and competitors are not dependent on this term alone for description. Moreso, when 'TULASI' and 'TULSI' are phonetic similar. Hence, conclusion that defendant's use of similar mark 'TULSI' *prima facie* constitutes infringement regardless of packaging differences, even if proof of goodwill for passing off is limited at interlocutory stage, also cannot be contended to be without any basis or contrary to material on record. Though protection under Section 30 (2) (a) of TMA is urged on ground that 'TULASI' denotes fragrance, underlying principle is that statutory protection is available only for bonafide and purely descriptive use. On analysis of various factors, trial Court held manner of usage of word 'TULSI' by defendant was not bonafide by comparing all features on packaging of rival

products. Hence, finding about plaintiff establishing prima facia case for protection of mark 'TULASI' until final adjudication, would be justified.

66. Even contention of defendant that there were sufficient added matters such as picture of praying before tulsi-pot and tulsi leaves depicted on its packaging, none of which were existing on plaintiff's package, as per **Kaviraj Pandit** and **Sun Pharmaceuticals**'s cases *(supra)*, such visual differences or 'added matter' cannot defeat claim of infringement. Defendant would also not be justified in relying on **Om Prakash Gupta**'s case *(supra)* to contend that only in case of slavish imitation of label, packaging and overall get-up leading to likelihood of confusion there would be scope for granting temporary injunction.

67. However, it requires to be clarified, though defendant cannot succeed at interlocutory stage, it may seek to establish its claims/contentions in trial and escape liability if it can show that added matter was sufficient to distinguish its goods from those of plaintiff and was sufficient to avoid confusion in mind of average consumer. It would also appear

appropriate to direct both parties to co-operate for early conclusion of suit.

68. Lastly, these appeals are against orders passed by trial Court on application for temporary injunctions filed under Order XXXIX Rules 1 and 2 of CPC, which are discretionary in nature and scope for interference against such orders as held by Hon'ble Supreme Court in **Mohd. Mehtab Ibrahim Khan v. Khushnuma Ibrahim Khan**, reported in **2013 (9) SCC 221**, would be limited to examining its untenability or perversity etc. It is clarified, even if view taken by trial Court on available material were to be one of possible views, there could be no interference. Even in **Wander Ltd.**'s case (*supra*), it is held Appellate Court will not interfere with trial Court's exercise of discretion unless it is shown to be arbitrary, capricious, perverse or in disregard of settled legal principles and that appellate Court was not entitled to substitute its own view simply because it might have reached a different conclusion. As noted above, there are no grounds to interfere. Wherefore, point for consideration is answered in negative. Consequently, following:

ORDER

Appeals are ***dismissed*** with observations as above.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
LIST NO.: 19 SL NO.: 1