IN THE COURT OF MS. KIRAN BANSAL DISTRICT JUDGE
COMMERCIAL COURT-02, SHAHDARA, KARKARDOOMA COURTS, DELHI

CS (Comm) No. 488/2024

INDEX

S. NO.	PARTICULARS/ DESCRIPTION	PAGE NOS.
1.	MEMO OF PARTIES	2
2.	THE PLAINT	3 – 11
3.	WRITTEN STATEMENT	11 - 12
4.	REPLICATION	12 - 15
5.	ADMISSION/DENIAL OF DOCUMENTS	15 - 16
6.	ISSUES FRAMED	16 - 17
7.	PLAINTIFF'S EVIDENCE	17 - 19
8.	DEFENDANT'S EVIDENCE	19 - 20
9.	ISSUE WISE FINDINGS AND ANALYSIS	20 - 51
10.	RELIEF	51 - 53

KIRAN BANSAL
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In the matter of

Apollo Pipes Limited,
Through Authorized Representative Mr.
Gourab Kumar Nayak,
Office at 37, Hargobind Enclave,
Vikas Marg, Delhi-110092
Mob: 81309 11398
Email: compliance@apollopipes.com

.....Plaintiff

Versus

Ved Prakash Srivastava
Trading as: Maa Vaishno Enterprises
F-33, Industrial Area, Ramnagar,
District Chandauli, Uttar Pradesh-221110
GSTIN: 09DFMPS7028G1ZW
Email: vedansipa@gmail.com

…...Defendant No.1

M/s. Vedansi Enterprises
Vill-Katariya, Post Basant Nagar,
District Chandauli, Uttar Pradesh-221110
GSTIN: 09AARFV3524B1Z3

…...Defendant No.2

Date of institution of the case	:	17.09.2024
Date of final arguments	:	01.08.2026
Date of judgment	:	01.09.2026

JUDGMENT

1. The plaintiff has filed the present suit for permanent injunction restraining infringement of trademark, passing off, unfair trade competition, rendition of accounts, damages, delivery up against the defendant.

THE PLAINT

2. It is submitted that the present suit has been instituted in order to protect plaintiff's right in their well-known trademark "APOLLO", "APL APOLLO" & 

that is affixed on the products manufactured inter alia, CPVC/ UPVC Pipes and fittings thereof; Agriculture systems; Borewell systems and other products and that the defendant uses the deceptively similar/ identical word marks "APOLLO", "अपोलो" for identical and similar products viz. PVC Garden Pipes, PVC Conduit, Pipes fitting and etc., thereby, infringing the rights of the plaintiff.

3. It is stated that the plaintiff (established in 1985) is flagship company of the Sudesh Group and is among top 10 leading piping solution providing company in India. Moreover, it is averred that the plaintiff company is engaged in business of manufacturing and marketing a wide range of building material products and the plaintiff has created a name for itself over long time.

4. Furthermore, it is submitted that plaintiff have five manufacturing plants in India having production capacity of 1,56,000 MTPA where the plaintiff caters to the smallest personal needs of the individuals as well as the retail and distribution needs of the retailers, traders, exporters, distributors etc. and is stated to have widest range of products available in Indian market.

5. It is stated that the plaintiff company has launched extensive advertising and promotional campaigns incurring huge expenses and has extensively advertised trademark "Apollo", "APL Apollo" &  through various print media and electronic media including newspapers, magazines, trade journals, television, leaflets etc and on account of long and continuous use, extensive marketing and sales campaign throughout India distribution network, enormous sales and painstaking quality control, trademark "APOLLO", "APL APOLLO" and  has acquired a high level of distinctiveness, enviable goodwill and reputation amongst the member of trade and public at large as a "well known" brand.

6. The plaintiff has set out the details of the registered trademark for 'APOLLO' in India which is not repeated here for sake of brevity. It is submitted that the marks "APOLLO", "APL APOLLO" &  is being used extensively by them and their affiliates in respect of all its products since past several decades and is thus identified and distinguished with goods of plaintiff and no one else. It is further stated that the plaintiff has built up an unparalleled reputation and goodwill in its trademarks "APOLLO", "APL APOLLO" &  having used the same openly, continuously and extensively in relation to high quality products in India. It is further stated that the popularity and fame of plaintiff trademarks have also transcended the physical boundaries and have acquired trans-border reputation and the marks APL APOLLO and



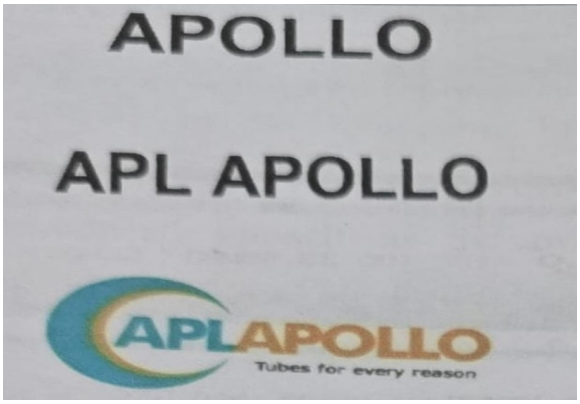
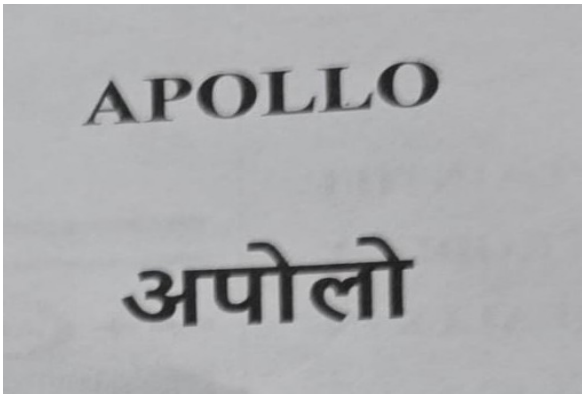
have emerged to be well-known marks amongst the public just as envisaged under Section 2(1)(zg) and Section 11 of Trademarks Act and thus, the marks are entitled to protection against any misappropriation by third parties.

7. As far as the defendants are concerned, it is stated that in June 2024, it has come to notice of the plaintiff company that defendants are engaged in marketing and selling of goods under impugned marks "APOLLO" and "अपोलो" which is identical/ deceptively similar to the well-known and registered trademarks of the plaintiff. Moreso, it is submitted that on 20.06.2024, plaintiff's investigation team discovered "APOLLO" and "अपोलो" PVC garden pipes at a shop named 'RIDDHI ENTERPRISES' located at Anand Nagar, Badohi- 221401 (UP) and upon examining the said PVC pipes, a trademark no. 3588519 was found on the impugned products and after the trademark search, it was revealed that application for said mark was filed by Defendant no. 1, but the current status of the application was found to be as 'Refused'.

8. It is averred that the plaintiff's team located the defendant's manufacturing unit on 21.06.2024 and during a site visit to this unit, it was found out that Defendant no. 1 was operating under name of Defendants No. 2 and it was found out that a loading vehicle where pipes under the impugned marks were being loaded for transportation, which confirmed the manufacturing and trading activities of PVC pipes bearing impugned marks "APOLLO" and "अपोलो". It is stated that the plaintiff's investigating team met Defendant no. 1 who introduced himself as owner of the plant and upon enquiry by the plaintiff's team, defendant no. 1 presented few garden pipes and PVC Conduit pipes having marks "APOLLO" and

"अपोलो". The photographs of the plaintiff's, mark and defendant's mark are re-produced as follows:

Plaintiff's products	
Defendant's products	

Plaintiff's registered mark	Defendant's impugned mark
	

9. It is stated that the plaintiff's investigation team has further noticed Defendants No. 1 and 2's availability on google and third-party websites having URL as https://www.google.com/maps/place/25%C2%B014'59.9%22N+83%C2%B004'00.3%22E/@25.249981,83.0641686,17z/data=!3m1!4b1!4m43m3!8m213d25.249981!4d83.0667435?entry=ttu&g_ep=EgoyMDIOMDgyMy4wIKXMDSoASAFQAw%3D%3D, other third party e-commerce websites link IndiaMart under the Maa Vaishno Enterprises, Varanasi - Wholesale Supplier of PVC Conduit Pipes and PVC TUBING PIPE (indiamart.com), PVC Conduit Pipe and 4mm PVC Electrical Conduit Pipe Manufacturer | Vedansi Enterprises, Chandauli (indiamart.com). Furthermore, it is averred that the defendant no. 1 filed an application for registration of mark अपोलो सर्वोत्तम (APOLLO SARVOTTAM) vide application no. 3588518 in class 17 for "Flexible Pipe, Rubber Pipe" on 10 July 2017. However, an opposition to this application was preferred by the plaintiff and later in the final order dated November 12, 2018, it was stated that since the applicant had not filed a counter statement within prescribed time period, consequently, the application

was deemed abandoned.

10. It is submitted that the defendants have dishonestly copied the most essential element of the plaintiff's repute, prior and registered trademark 'APOLLO', 'APL APOLLO' and 

i.e. the adoption of the word "APOLLO" and "अपोलो" are visually, structurally and phonetically similar to plaintiff's trademark and the adoption of the impugned marks by the defendant is mala fide and is not merely a matter of coincidence and is aimed at causing misrepresentation and making illegal profits by associating itself with the plaintiff.

11. It is stated that such deceptive adoption of the marks of the plaintiff is not authorised and legitimate and amounts to infringement and passing off within the meaning of Trademarks Act due to which the plaintiff has suffered irreparable loss and injury.

12. As far as the cause of action is considered, it is stated to have arisen on 20.06.2024 when the plaintiff came across the availability of defendant impugned products, being promoted, marketed, stocked and sold by the Defendants under the word/ device marks "APOLLO" and "अपोलो". It further arose on 05.07.2024 when the plaintiff, following the investigation report came to know that defendant were also promoting, inviting enquiries, offering for sale and selling same/ similar goods as those of the plaintiff through third party interactive websites such as www.indiamart.com and www.justdial.com and physically as well as directly through wholesalers, retailers etc. across cities and states including Delhi and the cause of action is stated to be continuous and arises on a day to day basis each time the defendant misuses the trade mark of the plaintiff and that the plaintiff has come before the court at the earliest possible and there has been no delay in filing the present suit.

13. As far as the territorial jurisdiction is concerned, it is stated that present court has territorial jurisdiction to try the present suit as plaintiff is carrying on business and has its registered office within the jurisdiction of the present court and plaintiff sells its products through a number of authorised stockist/ dealers within the territorial jurisdiction of the present court, therefore, it is stated that the present court has territorial jurisdiction as per Section 134(2) of Trademarks Act, 1999. It is moreover submitted that plaintiff also sells and advertises its products all over Delhi through magazines, bill boards, TV, internet etc and is selling its products online on various e-commerce websites and the defendants are promoting their products through social media and e-commerce platforms by which the defendant is doing business all over India, including the territorial jurisdiction of the present court. Thus, it is stated that the present court has territorial jurisdiction to try the present suit.

14. It is stated that the present suit involves a commercial dispute within meaning of The Commercial Courts Act and the specified value is fixed at Rs. 15,01,360/- for which appropriate court fees is affixed. Prayer has been made to pass a decree for permanent injunction restraining the Defendants, its servants, agents, stockist from manufacturing, trading, selling, marketing, printing, offering for sale or dealing in any other way, any goods including PVC garden pipes, Pipes fittings, water tanks, building material products and accessories etc. and/or any other goods under the mark "APOLLO" and "अपोलो" and any other mark containing the word "APOLLO" which may amount to infringement and passing of registered mark of the plaintiff.

It is further prayed to pass an order for delivery up of all finished and unfinished goods, dies, blocks, labels, and any other printed matter bearing the impugned marks "APOLLO" and "अपोलो" for the purpose of destruction as well as

decree of damages and rendition of accounts against the defendants for the accounts of profits earned by the defendants by their impugned illegal trade activities.

The plaint is accompanied by the affidavit and statement of truth of Gourab Nayak, AR of the plaintiff.

PROCEEDINGS SO FAR

15. The present suit was instituted on 17.09.2024. Summons of the suit were directed to be issued vide order dated 04.10.2024. Vide same order, ex-parte ad-interim injunction under Order XXXIX Rule 1 and 2 CPC was passed in favour of plaintiff and other applications were also disposed off. Defendant no. 1 appeared for himself and defendant no. 2 on 04.11.2024 and sought time to file the WS. WS was filed alongwith application for condonation of delay.

16. Vide order dated 05.12.2024, the application under Order XXXIX Rule 1 and 2 CPC was allowed in favour of the plaintiff with the direction that the defendants, their partners, agents, representatives, distributors, assigns, heirs, successors, stockist and all other acting for and on their behalf were restrained from manufacturing, marketing, printing, using, selling, soliciting, importing, exporting, displaying, distributing, advertising or in any manner dealing in or soliciting or selling/ soliciting through online platforms, any word/ mark/ logo shape which may be identical and/or similar to plaintiff marks "APOLLO", "APL APOLLO" and 

till the disposal of the suit in relation to their impugned goods and business including PVC Garden Pipes, and other PVC pipes, pipes fittings, plastic products under impugned marks "APOLLO" either in market or over the internet and from doing any other acts or deeds amounting to or likely to infringe

plaintiff's registered mark "APOLLO" and "APL APOLLO".

17. Vide order dated 21.01.2025, the application for condonation of delay in filing the WS was allowed subject to cost and the WS was taken on record.

WRITTEN STATEMENT

18. At the outset, it is pertinent to mention here that the WS has been filed by Defendant no. 1 in his individual capacity and on behalf of defendant no. 2 as his SPA holder.

19. It is stated by the defendants that defendants never intended to use the trade mark of the plaintiff company, and it had happened just because no communication was made by the Trademark Attorney of the defendants. It is admitted by the defendants that they had applied for alleged trademark and same was denied by the authority and this fact was never communicated by their Trademark Attorney because of which defendants inadvertently used the plaintiff's trademark and it was never the intention of the defendants to infringe the rights or cause any kind of loss to the plaintiff company.

20. It is averred that on 21.06.2024, one Ashish Raj approached the defendant no.1 to furnish 10,000 bundles of conduit pipe and in response defendant no. 1 stated that he does not have the capacity to supply from his manufacturing capacity and it will take 5-10 years for supply. However, it is submitted that if aforementioned person had told the defendant that they were infringing the plaintiff company's trademark, the defendants would have stopped using it immediately. It is stated that Defendants have applied the said trademark through their Trademark Attorney but it was never informed by their Trademark Attorney that the said application was refused by the Authority.

21. It is submitted that the defendants have used the trademark of the plaintiff company inadvertently and due to mis-communication from the trademark attorney

of the defendants however, it is submitted that there is no similarity in the words used and thus, there is no deception.

22. It is submitted that the defendants undertake not to use the trademarks belonging to the plaintiff company and to get their fresh trademark registered for their products.

Rest of the contents of the plaint have been denied and the same are not repeated here for sake of brevity.

REPLICATION

23. It is stated that the defendants have expressly admitted the use of impugned trademark "APOLLO" and "अपोलो" which is identical and deceptively similar with the plaintiff's registered, prior adopted and well known trademark "APOLLO", "APL APOLLO" & 

with an excuse that the defendants were not informed about status of their trademark application by their trademark attorney and thus, it being false, deceptive and vexatious, misleading, legally unsustainable. Accordingly, it is stated the suit of the plaintiff is entitled to be decreed in favour of the plaintiff and against defendant.

24. It is submitted that the defendants have failed to raise any legally sustainable ground for dismissal of the present suit and such use by the defendant of the deceptively similar marks "APOLLO" and "अपोलो" in similar trade dress and stylised fonts amounts to infringement under Section 29 of the Act and also constitutes the tort of passing off.

25. It is further submitted that vide order dated 04.10.2024, the court appointed a local commissioner to conduct the inspection which was conducted on 08.10.2024. Further, it is averred that report of LC clearly establish the involvement of

Defendants in the manufacturing of PVC garden and conduit pipes bearing impugned marks "APOLLO" and "अपोलो" and a large number of goods were seized which shows that the defendants were engaged in large scale commercial use rather than innocent use or small-scale business.

26. It is contended by the plaintiff that the Written Statement filed by the Defendant also suffers from serious procedural defects and is non-compliant with amended CPC as applicable to commercial courts in as much as the WS is vague, evasive and consists largely of general denial without specific traverse to the averments in the plaint as per Order VIII Rule 3 and 5 CPC and therefore, the same may be deemed to have been admitted.

27. On merits, it is stated that the plea of the defendant that they were unaware of the plaintiff's rights or of legal consequences in untenable in law as ignorance of law is no defence. It is further stated that the defendants have consciously and wilfully manufactured and sold infringing goods under the impugned mark to ride upon the goodwill and reputation of the plaintiff and the plea of innocence is merely an afterthought raised with the sole intent of escaping liability for damages and injury caused to the plaintiff's reputation.

28. It is further contended that the plea of the defendant qua the capacity of the manufacturing unit to supply 10,000 bundles of conduit pipes is false, misleading and self-contradictory as approximately 4950 PVC conduit pipes, 6480 PVC Conduit bend and 11 garden pipes were discovered and seized which shows that the defendant deals in bulk qualities.

29. Rest of the contents of the WS has been denied by the plaintiff and the same is not repeated here for sake of brevity.

PROCEEDINGS BEFORE LD. LOCAL COMMISSIONER AND REPORT OF THE LD. LOCAL COMMISSIONER

30. The application under Order 26 Rule 9 and Order 39 Rule 7 CPC r/w Section 151 CPC for appointment of local commissioner was allowed vide order dated 04.10.2024 and ld. Local commissioner was appointed to visit premises of Defendants i.e. MAA VAISHNO ENTERPRISES and VEDANSI ENTERPRISES at address Aaraji No. 316, Basant Nagar, Katariya Ramnagar, Industrial Area, Chandauli, Uttar Pradesh- 232104.

31. The report of the ld. Local commissioner comprised of the following documents:

- Copy of police assistance dated 08.10.2024
- On Spot notice
- On Spot proceedings
- Inventory of Seized Goods
- Superdarinama
- Attendance Sheet dated 08.10.2024
- Photographs and Video

32. Perusal of the inventory of the seized goods reveals that following quantity of the goods were seized:

S. No	Description of Goods	No. of goods seized
1.	PVC Conduit Pipe	4416 (P)= 25x184 [approx..]
2.	PVC Conduit pipe	350 (P) [50x7]
3.	PVC Bend	8560 (approx)(Piece)

4.	Apollo Tape	145 (Approx)
5.	Metal Dye Apollo	10 (piece)
6.	Apollo Raper	1 Big Roll
7.	Apollo Raper	1 Big Roll

33. As per the report of the ld. Local commissioner, these goods were handed over to the Defendants on Superdari for which superdarinama was also executed by the Mr. Ved Prakash Srivastava (Defendant no. 1). The report is accompanied by the photographs and video of the impugned goods and proceedings respectively.

ADMISSION/ DENIAL

34. The defendant in his affidavit of admission/denial of documents has admitted the following documents of the plaintiff:

- Online presence of products of defendant no.1 on e-commerce platform www.indiamart.com is Ex. P1;
- Online presence of products of defendant no.2 on e-commerce platform www.indiamart.com is Ex. P2;
- GST details of defendant no.1 extracted from GST official website is Ex. P3;
- GST details of defendant no.2 extracted from GST official website is Ex. P4;
- Online current status of impugned trademark of defendant no.1 under application no. 3588518 is Ex. P5;
- Online current status of impugned trademark of defendant no.1 under application no. 3588519 is Ex. P6.

The defendant in his affidavit of admission/denial of some of the additional documents of plaintiff has also admitted the following documents of the plaintiff i.e.

- Correctness, Existence, Execution of Original Irrevocable undertaking dated 08.10.2024 of defendant no. 1 is admitted as Ex. P7 (however, the contents are denied);
- Correctness, Existence, Execution of Original Irrevocable undertaking dated 08.10.2024 of defendant no. 2 is admitted as Ex. P8 (however, the contents are denied).

As the defendant has not filed affidavit of admission/denial of additional documents of the plaintiff, therefore, the same are deemed admitted as follows:

- Invoice dated 21.06.2024 issued by defendant no.2 is Ex. P9;
- Invoice dated 21.06.2024 issued by defendant no.1 is Ex. P10;
- Hand written quotation issued by defendant no.1 dated 21.06.2024 is Ex. P11.

35. On the other hand, the plaintiff in his affidavit of admission/denial of additional documents of defendant has admitted the following documents i.e.

- GST numbers of the plaintiff is Ex. D1;
- Details of GST No.07AAACA1199D1Z0 of the plaintiff is Ex. D2;
- Details of GST No.09AAACA1199D2ZV of the plaintiff is Ex. D3;
- Details of GST No.09AAACA1199D1ZW of the plaintiff is Ex. D4.

ISSUES FRAMED

36. Vide order dated 15.01.2026, following issues were framed:

> ***Issue no. 1: Whether the present court does not have the territorial jurisdiction to try and decide the present suit? OPD.***

Issue no. 2: Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP

Issue no. 3: Whether the plaintiff is entitled for delivery of all finished and unfinished goods bearing the impugned trade mark? OPP.

Issue no. 4: Whether the plaintiff is entitled to damages as prayed for? If so to what amount? OPP.

Issue no. 5: Whether the plaintiff is entitled for rendition of accounts of profit earned by the defendants through impugned trademark? OPP

Issue no. 6: Relief

PLAINTIFF'S EVIDENCE

37. In support of its case, the plaintiff examined Sh. Gourab Nayak, AR of the plaintiff who tendered his evidence by way of affidavit Ex. PW1/A and relied upon following documents:

- Copy of board resolution dated 25.08.2025 as Ex.PW1/1;
- Copy of incorporation certificate of the plaintiff as Ex.PW1/2 was de-exhibited and marked as Mark X;
- Printout of plaintiff's official website as Ex.PW1/3;
- Printout of the products brochure for the range of product of the plaintiff as Ex.PW1/4(Colly);
- Printout of the pamphlets of the plaintiff products as Ex.PW1/5(Colly);
- Printout of the plaintiff presence on e-commerce website i.e. IndiaMart and Justdial as Ex.PW1/6(Colly);

- Printout of the plaintiff presence on social media presence i.e. Facebook, Instagram, Linkedin, Twitter, YouTube as Ex.PW1/7(Colly);
- Printout of the current status of abovementioned trademarks as Ex.PW1/8(Colly);
- The original legal proceedings certificate for the application nos.3202384, 1265259, 4373889, 6224563 and 1671502 as Ex.PW1/9(Colly);
- Photographs of the events and exhibitions attended by the plaintiff company as Ex.PW1/10(Colly);
- Photographs of the CSR activities conducted by the plaintiff as Ex.PW1/11(Colly);
- Printout of the online e-commerce i.e. IndiaMart presence of defendant no.1 as Ex.PW1/12 (also Ex.P1);
- Printout of the online e-commerce i.e. IndiaMart presence of defendant no.2 as Ex.PW1/13 (also Ex.P2);
- Copy of detailed investigation report issued by the plaintiff's investigators as Ex.PW1/14, was de-exhibited and marked as MarkY;
- Printout of GST extracts of the defendant no.1 as Ex.PW1/15 (also Ex.P3);
- Printout of GST extracts of the defendant no.2 as Ex.PW1/16 (also Ex.P4);
- Current status of the application is admitted by the defendant no.1 as Ex.P5;
- Current status of the aforesaid application is admitted by the defendant no.1 as Ex.P6;
- Original irrevocable undertaking dt. 08.10.2024 executed by defendant no.1 as admitted by defendant no.1 as Ex.P7;
- Document executed by defendant no.2 and signed by defendant no.1 as admitted by defendant no.1 as Ex.P8;
- Original invoice dt. 21.06.2024 issued by defendant no.2 as Ex.P9;

- Hand written quotation dated 21.06.2024 issued by defendant no.1 as Ex.P11.
- Photographs of the plaintiff's product is Ex.PW1/17;
- Photographs of the defendant's product is Ex. PW1/18;
- Print out of documents uploaded in the Trademark application no. 3588518 along with final order is Ex.PW1/19;
- Print out of documents uploaded in the Trademark application no. 3588519 along with final order is Ex.PW1/20;
- Certificate under Section 63 of BSA is Ex.PW1/21.

PW-1 was duly cross examined by ld. Counsel for the Defendant. Thereafter, PE was closed at the statement of plaintiff.

DEFENDANT'S EVIDENCE

38. In support of its case defendant examined Sh. Ved Prakash Srivastava proprietor of M/s Maa Vaishno Devi Enterprises and SPA holder of Defendant no. 2 who tendered his evidence by way of affidavit Ex. DW1/A and relied upon following documents:

- GST numbers of plaintiff as Ex. D1.
- Details of GST no. 07AAACA1199D1Z0 of the plaintiff as Ex. D2.
- Details of GST no. 09AAACA1199D2ZV of the plaintiff as Ex. D3.
- Details of GST no. 09AAACA1199D1ZW of the plaintiff as Ex. D4.

DW-1 was duly cross examined by ld. Counsel for the plaintiff.

Thereafter, DE was closed on the statement of Defendant.

39. The court has gone through the testimony of the witnesses and perused the

record. The court has heard both the ld. Counsel for the plaintiff and defendant and has perused the written submission filed. The ld. Counsel for the defendant has also relied upon following judgements:

- *Indian Performing Rights Society Ltd vs Sanjay Dalia & Anr Civil Appeal Nos. 10643-10644 of 2010 decided by Hon'ble SC on 01.07.2015*
- *Impresario Entertainment & Hospitality Pvt Ltd vs S & D Hospitality CS (Comm) 111/2017 decided by Hon'ble Delhi HC on 31.05.2023.*
- *M/s Kohinoor Seed Fields India Pvt Ltd vs M/s Veda Seed Science Pvt Ltd CS(Comm) 828/2022 decided by Hon'ble Delhi HC on 24.02.2025.*
- *Escorts Limited vs Sai Auto and Ors 42 (1990) DLT 446 1990 decided by Hon'ble Delhi HC on 20.07.1990.*
- *Dale Carrington Invt. Pvt Ltd and Anr vs P. K. Prathapan and Ors SCC 212 (2004) decided by Hon'ble SC on 13.09.2004*

Issue wise findings of the court are as follows:

Issue no. 1: Whether the present court does not have the territorial jurisdiction to try and decide the present suit? OPD.

40. The onus to prove this issue was upon the defendant. The main contention of the defendant is that the present court does not have territorial jurisdiction to try the present suit in as much as the plaintiff has nowhere averred that plaintiff company is having any manufacturing unit or sales outlet at Delhi or is working for gain in Delhi and no document is filed by them to substantiate the same and it is also argued that during the course of cross examination, PW-1 has admitted the fact that address of the defendant is of UP. Thus, it is contended that plaintiff as well as defendants are neither manufacturing nor selling pipes, fittings, tanks etc in Delhi

and the plaintiff is exclusively doing the business of pipes, fittings etc at Dadri, Gautam Budh Nagar, UP and present suit filed by the plaintiff for infringement of trademark is based on false and fabricated facts as the cause of action to file the present suit never arose in Delhi and thus, the suit cannot be tried only on the ground that registered office of plaintiff is situated at Delhi.

41. At the outset, it is pertinent to mention here that the defendants in their WS have not challenged the jurisdiction of the present court and has only stated that contents of said para of plaint need not be replied. Para 34 of the WS filed by the defendant concerning jurisdiction is re-produced as under:

> *"34. That the contents of para 34 of the plaint under reply need not to be replied herein for the contents of said para be proved by the plaintiff company."*

42. Even if the said contention was never raised in the WS and has been raised at the time of framing of issues, then also it is the bounden duty of the court to adjudicate whether the court has jurisdiction to try the present suit or not.

43. The counsel for the defendant has relied upon judgement of Hon'ble SC in **Indian Performing Rights Society Ltd vs Sanjay Dalia** (supra) wherein the appellant/plaintiff had filed a suit praying for relief against defendant no. 1 so as to prevent infringement of the rights of the plaintiff without obtaining the licence. The defendant owns cinema halls in Maharashtra and Mumbai where infringement took place. However, the plaintiff/ appellant filed suit before Hon'ble Delhi HC on the basis that Branch Office of plaintiff is located at Delhi whereas the plaintiff's head office was situated at Mumbai. The ld. Single judge and Division Bench of Hon'ble Delhi HC held that suit should have been filed before the courts at Bombay in facts

and circumstances of case. The Hon'ble SC in such facts and circumstances had held that as per Section 134 of Trade Marks Act, plaintiff can file a suit at the place where cause of action has arisen and at a place where the plaintiff is residing and that would oust jurisdiction of other place where the cause of action has not arisen though the plaintiff has a subordinate office. However, this case can not be said to squarely apply in the present case as the plaintiff has filed the suit as per their registered office and not on basis of any subordinate office. Thus, the present case is not applicable to the facts of present case.

44. The ld. Counsel for the defendant has further relied upon the judgement of Hon'ble Delhi HC in **Impresario Entertainment & Hospitality Pvt Ltd. vs S & D Hospitality** (supra) to contend that the present court does not have jurisdiction to try the present suit. In Impresario Entertainment (Supra) the plaintiff had contended that it has principal place of business in Delhi. However, the case of defendant was that the present court did not have jurisdiction to try the suit as the defendant neither has its registered office within territorial jurisdiction of the court nor carries on any business within the jurisdiction of this court and that the registered office of the plaintiff is in Mumbai. Moreover, it was contended that no cause of action has arisen in territorial jurisdiction of the present court.

It was observed by Hon'ble HC that admittedly the defendant is running its business at Hyderabad and defendant works for gain at Hyderabad, secondly the registered office of plaintiff is at Mumbai and thirdly that cause of action arising in Delhi as pleaded in plaint is because of website Zomato.com and DineOut, as the customers can book the defendant's restaurant from Delhi and the plaintiff's supporting/ branch office being in Delhi, the present court would have territorial jurisdiction to try the suit.

The Hon'ble HC held that the even if the defendant has been able to attract customers by way of Zomato and Dine-Out, the services of defendant can not be availed unless customers go to Hyderabad and thus, commercial transaction would have taken place only at Hyderabad and merely booking at Delhi for availing services of Defendant would not give rise to cause of action at Delhi resulting in jurisdiction of the present court. Moreover, since the Hon'ble HC was dealing with plea for return of plaint, it had observed that plaintiff has never averred in the plaint that its registered office is in Delhi. Thus, the Hon'ble Delhi HC after relying upon the judgements of ***World Wrestling Federation Inc vs Reshma Collection and Ors (2014) Indlaw DEL 2917 and Ultra Homes Construction Pvt Ltd vs Purushottam Kumar Chaubey and Ors (227) DLT 320 DB*** has returned the plaint for want of jurisdiction.

However, it is pertinent to mention here that in the said case, the court was dealing with application for return of plaint which was to be decided on basis of averment of the plaint only and thus, it can not be squarely applied in the present case as in the present case, the issue is to be decided on the basis of the appreciation of evidence. Moreover, the Hon'ble HC has observed that plaintiff in the said case has not pleaded in the plaint that it has registered office in Delhi. However, in the present case, the plaintiff has averred that it has registered office in Delhi. Thus, the said case can not be said to be applicable in the present case being distinguishable on facts.

45. The defendant has also relied upon judgement of single bench of Hon'ble Delhi HC in case of ***M/s Kohinoor Seed Fields India Pvt Ltd vs M/s Veda Seed Sciences Pvt Ltd CS*** (Comm) 828/2022 decided on 16.04.2025 whereby the application filed by the defendant under Order VII Rule 10 CPC for return of plaint was allowed and plaint was ordered to be returned. However, it is pertinent to

mention here that said order no longer holds ground as the same was quashed and set aside the Division Bench of the Hon'ble Delhi HC in the case of Kohinoor Seed Fields India Pvt Ltd vs Veda Seed Sciences Pvt Ltd. FAO (OS)(Comm) 66/2025 decided on 03.12.2025. Thus, the reliance of the ld. Counsel for the defendant is misplaced.

46. The issue regarding the territorial jurisdiction in suits involving infringement/ passing off of registered trademark is no more res integra. The Hon'ble Delhi HC in the case of ***Ultra Homes Construction Pvt. Ltd. vs Purshottam Kumar Chaubey & Ors FAO (OS) 494/2015 decided on 20.01.2016*** has elaboratively dealt with the issue of jurisdiction u/s 134(2) of Trade Marks Act. In the said case, the appellant had filed a suit for infringement of Trademark "AMRAPALI" against the defendant. It was averred that the appellant/ plaintiff is engaged in construction business and is running one hotel at Deogarh, Jharkhand in collaboration with Clark-Inn under the name of Amrapali Clark- Inn. On the other hand, the defendant/ respondent is stated to have launched a residential project at Deogarh, Jharkhand under deceptively similar name 'AMBAPALI GREEN'. In the said case, the plaintiff/ appellant had filed a suit against the defendant/ respondent on the basis of its principal office which is located in Delhi. However, the ld. Single judge of Hon'ble Delhi HC dismissed the suit on the ground of lack of jurisdiction and hold that the cause of action has arisen at Deogarh, where the plaintiff has its subordinate office, therefore, it was held that suit could be filed only there. Being aggrieved by the said order, the plaintiff challenged the order before Division bench of Hon'ble HC which held as follows:

> *"13. It is evident from the above observations that the interpretation given to the expression "carries on business" in the context of a*

defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in pari materia. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2)) at the place of the principal office. ***The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff***

would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:

S.No.	Place of Plaintiff's Principal Office (Sole office in s.no.1)	Place of Plaintiff's Subordinate /Branch Office	Place where cause of action arose	Place where Plaintiff can additionally sue under section 134(2) and section 62(2)
1	A	--	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A

47. Moreover, the Hon'ble Delhi HC in the case of **World Wrestling Entertainment Inc. vs M/s Reshma Collection & Ors. FAO(OS) 506/2013 decided on 15.10.2014** has decided a similar issue pertaining to the infringement/ passing off of the registered trademark where the website of the plaintiff selling its products is accessible within the jurisdiction of the court. In the said case, the plaintiff/ appellant was a company incorporated in USA and the defendant resided/ work for gain in Mumbai and did not carry on business within Delhi. The Hon'ble HC held that the plaintiff's website offering to sell was accessible to customers in Delhi. Once the invitation by customer in Delhi was accepted it would amount to offer and when the payment is done through internet, the plaintiff will be said to

accept the offer of the customer at Delhi. Thus, the Hon'ble HC held that a part of cause of action has arisen in Delhi. The relevant observation of Hon'ble Delhi HC is as follows:

> *"17. The main issue before us is one of considering as to whether on the basis of the averments made in the plaint, the appellant/ plaintiff carries on business in Delhi. It is nowhere pleaded in the plaint that the appellant/ plaintiff, has an agent or a manager or a servant, through whom the appellant/ plaintiff carries on business in Delhi. As pointed out above, it is also not the appellant/ plaintiff's case that it has an office in Delhi. The question then arises as to whether the third condition specified in Dhodha House (supra) is satisfied or not. If we recall, in Dhodha House (supra), the Supreme Court had observed that the expression "carries on business", as appearing in the above two provisions, is much wider than what the expression in normal parlance connotes because of the ambit of a civil action within the meaning of Section 9 of the CPC. The Supreme Court, however, cautioned that although the expression has a very wide meaning, it is necessary that the three conditions specified in the said decision should be satisfied.*
>
> *18. Insofar as the first two conditions are concerned, they relate to agents. Inasmuch as it is an admitted position that the appellant/ plaintiff has no agent in Delhi, those two conditions are clearly not fulfilled. However, it is the appellant/ plaintiff's case that it carries on business in Delhi directly inasmuch as its goods and services are sold to consumers in Delhi through its website which is accessed in Delhi. It is on this basis that the learned counsel for the appellant/ plaintiff submitted that the decision in Dhodha House (supra) as also in Archie*

Comic (supra) would really not be applicable in the present case as in those decisions web-based business models, which have been referred to as the 'new media', were not considered. The question which then arises is whether the introduction and spread of e-commerce and business over the internet impacts the meaning of the expression 'carries on business' at a certain place. The learned Single Judge, as we have pointed out above, felt that the introduction of the new business models of doing business over the internet was not any different from the old model of doing business over the telephone or fax. He had placed reliance on the Supreme Court decision in the case of Bhagwan Goverdhandas Kedia (supra).

19. Considering the fact that in Dhodha House (supra), the third condition stipulated that to constitute "carrying on business" at a certain place, the essential part of the business must take place there, it would be necessary to examine this aspect in the backdrop of business over the internet. When a transaction takes place over the internet, where is the contract concluded? This is the question which needs to be answered. In other words, at which place does the essential part of the business transaction take place? The example of the Bombay firm having a branch

office at Amritsar, where orders were received, subject to confirmation by the head office at Bombay and where money was paid and disbursed, needs to be examined in the context of internet transactions. In that example, it was noted that the Bombay firm could be said to be carrying on business at Amritsar and was liable to be sued at Amritsar. In the present case, the plaintiff/ appellant is incorporated in USA. It

has a website. We do not know as to where that website is hosted. The server would, in all likelihood, be in USA. It has not been pleaded that the website of the appellant/ plaintiff is hosted on a server in Delhi. Therefore, it can be safely presumed that the web server is not located in Delhi. However, if a customer in Delhi wishes to purchase an article, which is available on the website of the appellant/ plaintiff, the purchaser in Delhi accesses the said website on his or her computer in Delhi. The said purchaser places the order for the said article from his computer in Delhi. The payment is made either through a credit/ debit card or through a cash card from Delhi and ultimately the goods are delivered to the customer in Delhi. In the nature of such transactions, the question arises as to which is the place where the essential part of the business occurs?

…..

22. It is interesting to note that the Supreme Court had observed that the draftsman of the Indian Contract Act could not have envisaged use of the telephone as a means of personal conversation between parties separated in space and could not have intended to make any rule in that behalf. This applies with greater vigour insofar as commerce and business over the internet is concerned. Just as in the case of telephone conversation, there is instantaneous communication, so, too, in the case of business over the internet. Therefore, the rule that applies to contracts concluded over the telephone would apply with equal vigour to contracts concluded over the internet. In other words, contracts would be completed at the place where the acceptance is communicated. In the case before the Supreme Court, the offer had

emanated from the plaintiff, who was situated in Ahmedabad. The acceptance of the offer was by the defendants, who were to make the supply of cotton seed cakes to the plaintiff therein. The acceptance, since it was over the telephone, was instantaneously communicated via that technology to the plaintiff at Ahmedabad. The Supreme Court held that the cause of action would arise within the jurisdiction of the City Civil Court at Ahmedabad, where the acceptance was communicated by telephone to the plaintiff.

23. Let us now apply these principles to the type of transaction over the internet, which we have explained above. The website of the appellant/ plaintiff refers to various goods and services. It is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods "advertised" on the website of the appellant/ plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the appellant/ plaintiff through its website, the appellant / plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/ plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

21. But, we are not concerned with the question of cause of action between the appellant/ plaintiff and its customers in Delhi because the defendants are not such customers and they are, in any event, all residents of Mumbai. What we are examining is whether the third

condition specified in Dhodha House (supra) is satisfied or not. In other words, if the contracts and/ or transactions entered into between the appellant/ plaintiff on the one hand and its customers are being concluded in Delhi, can it not be said that the essential part of the business of the appellant/ plaintiff, insofar as its transactions with customers in Delhi are concerned, takes place in Delhi? The offers are made by customers at Delhi. The offers are subject to confirmation/ acceptance of the appellant/ plaintiff through its website. The money would emanate or be paid from Delhi. Can it not then be considered that the appellant/ plaintiff is, to a certain extent, carrying on business at Delhi? In our view, it would be so. Because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/ plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/ plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the 'physical sense' is replaced by the 'virtual' shop because of the advancement of technology, in our view, it cannot be said that the appellant/ plaintiff would not carry on business in Delhi.

22. Therefore, in our view, although the learned Single Judge had

made a correct reference to the decision of the Supreme Court in the case of Bhagwan Goverdhandas Kedia (supra), the full ramifications of that decision were not perceived by him. When the two decisions of the Supreme Court in Bhagwan Goverdhandas Kedia (supra) and Dhodha House (supra) are considered in the manner indicated above, it would appear that, on the averments made by the appellant/ plaintiff in the plaint, the Delhi High court would, on a demurrer, have jurisdiction to entertain the suit inasmuch as the appellant/ plaintiff would be regarded as carrying on business in Delhi within the meaning of the expression under Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957……"

48. The main contention of the defendant is that the cause of action has arisen outside the territorial limits of the present court in as much as the goods of the defendant were being sold outside the territorial limits of present court and that the plaintiff has its manufacturing units outside the Delhi. Thus, no cause of action can be stated to have been arisen at Delhi. It is also argued that the PW-1 in his cross examination has admitted that the plaintiff has five plants situated at (1) Dadri, UP; (2) Sikandrabad UP; (3) Ahmadabad, Gujarat; (4) Tunkur, Karnataka and (5) Raipur, Chattisgarh and that the address of the defendant is of UP. It is further argued by the ld. Counsel for the defendant that the neither the plaintiff nor the defendant manufactures or sells pipes, fittings, tanks etc in Delhi and the plaintiff is exclusively doing business in Dadri, Gautam Buddh Nagar, UP and cause of action to file the suit does not arise arise in Delhi but in Bhadohi, UP.

49. The relevant cross of PW-1 in this regard is as follows:

"I know everything and am having entire knowledge regarding the work of plaintiff company. The plaintiff company is having only one

business of manufacturing and trading in PVC products and fittings. The plaintiff company had five plants situated at (1) Dadri, UP; (2) Sikandarabad, UP, (3) Ahmadabad, Gujarat, (4) Tumkur, Karnataka (5) Raipur, Chattisgarh. I can not tell the complete addresses of the said plants. The plaintiff company sells goods directly through its plants as mentioned above or through authorised distributors…..

I cannot say whether all above mentioned plants are manufacturing PVC pipes, or not……

At this stage, witness is being shown Ex.P9, Ex.P10 and Ex. P11. It is correct that Ex.P9, Ex.P10 and Ex. P11 are of 21.06.2021. It is correct that Ex. P9, Ex.P10 and Ex. P11 were handed over by the defendants to the plaintiff's person at Chandauli, UP against the purchase made by them from the defendant and Ex.P11 is the quotation which was also handed over by the defendant to plaintiff's person at Chandauli, UP. It is correct that Ex. P11 was issued by the defendants only on asking the plaintff's person at District Chandauli, UP.

At this stage, witness is being shown Ex.P1 (Ex. PW1/12) and Ex. P2 (Ex. PW1/13). It is correct that there is no online purchase option in Ex. P1 (Ex.PW1/12) and Ex. P2 (PW1/13). Vol. Order can be placed through the contact number mentioned in Ex. PW1/12 and Ex. P2 (Ex. PW1/13).

It is correct that Ex. P1 (Ex. PW1/12) and Ex. P2 (PW1/13) are not reflecting that defendant will deliver the goods at door-steps…..

It is correct that Ex. P1 (Ex. PW1/12) and Ex. P2 (PW1/13) mention the address of defendants of UP."

50. If the contention of the defendant that the plaintiff is carrying on business outside the jurisdiction of the present court and no cause of action has arisen within the territorial jurisdiction of the present court as the manufacturing unit of the plaintiff is situated outside is accepted for sake of the arguments, then also the registered address of the plaintiff company will be 37, Hargobind Enclave, Vikas Marg, Delhi, East Delhi, Delhi, India, 110092 and offices outside Delhi can only, at best, be said to be subordinate offices. Moreover, as per defendant, the cause of action arose at Bhadohi, UP. Thus, as per Ultra Homes (Supra), the present case is covered under fourth type of case as referred to in para 46 of the present judgement i.e. where the principal place of business is at 'A', subordinate office is at 'B' and cause of action has arisen at 'C', thus, the suit can be filed at 'A' as per Section 134(2) Trademarks Act. In the present case, 'A' is at 37, Hargobind Enclave, Vikas Marg, Delhi, East Delhi, Delhi, India, 110092, 'B' is at various locations outside Delhi where the manufacturing unit is located and 'C' where cause of action has arisen, as per defendant himself, is Bhadohi. Thus, the plaintiff can file a suit for infringement of its registered Trademark on basis of his registered place of business.

51. Moreover, the plaintiff has filed screenshot of its own websites **(Ex. PW1/13)** as well as his products being available on the third party e-commerce websites **(Ex. PW1/16)**. The goods of the plaintiff are available on these websites which can be accessed from anywhere in the world, including the territorial jurisdiction of the present court. Thus, on the basis of the judgement of Hon'ble Delhi HC in World Wrestling Entertainment Inc vs M/s Reshma Collection (Supra), the present court would have territorial jurisdiction to try and adjudicate the present suit.

52. Moreover, the plaintiff has filed the screenshots of the online websites

displaying the alleged infringing goods of the defendants i.e. **Ex.P1 and Ex.P2**. Though it nowhere shows that any option to place order, however, on overall perusal of the **Ex.P1 and Ex.P2** reveals that it mentions the address and complete details of the defendant on which any person can contact him through the details provided on the website. In this regard, reference can be made to judgement of Hon'ble Delhi HC in case ***Rukhmani Keshwani vs Raju Agarbatti Works & Ors FAO(Comm) 99/2024 decided on 01.07.2026*** wherein it was observed as follows:

> *"53. Equally significant is the evidence concerning the defendants' India Mart listings. During cross-examination, the defendants admitted awareness of the impugned online listings and confirmed that the GST particulars and business address reflected therein corresponded to their commercial establishment. They further took no steps to dispute or remove such listings. The inevitable conclusion is that the defendants knowingly projected and offered their goods on an interactive commercial platform accessible to consumers beyond Rajasthan, thereby bringing a part of the cause of action within the territorial jurisdiction of this Court.*
>
> *54. The jurisprudence governing internet-based territorial jurisdiction has evolved progressively, beginning with the principles enunciated in Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy12, where the Court differentiated between a passive website and an interactive commercial platform designed to target consumers within a particular jurisdiction.*
>
> *55. This principle, however, did not remain confined to the narrow*

passive versus interactive website dichotomy. The doctrine was subsequently expanded and contextualized in WWE(supra), wherein the Court recognized that the true test is whether the defendant has purposefully availed itself of the forum by commercially targeting customers therein through electronic means.

56. The aforesaid principles were further elaborated by one of us (C. Hari Shankar J.) in Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd., where this Court, while noting the transformation of commercial activity in the digital era, observed that modern ecommerce platforms are designed to transcend territorial barriers and facilitate commercial engagement across jurisdictions. This Court emphasized that once a defendant consciously projects its goods or services through interactive online interfaces enabling commercial solicitation, inquiry, negotiation, or purchase by consumers situated within a forum State, such activity constitutes a material part of the cause of action

57. The judgment further clarified that insistence upon proof of an actual concluded sale within the jurisdiction would amount to an unduly restrictive application of traditional jurisdictional principles to contemporary digital commerce.

58. The ratio emerging from Kohinoor Seed Fields India Pvt. Ltd (supra) is that the Court must examine the substance of the commercial targeting and the purposeful availment of the forum, rather than mechanically confining itself to the existence or absence of completed transactions. Thus, where online listings are intended to solicit business, display commercial contact details, facilitate customer

interaction, and expand market reach into multiple jurisdictions, the territorial nexus is sufficiently established."

53. Thus, the availability of the alleged infringing goods of the defendant on third party e-commerce platforms intending to solicit business, display commercial contact details to facilitate customer interaction and expand market reach would amount to cause of action within territorial jurisdiction of the present court. Also, as the registered office of the plaintiff is within the jurisdiction of the present court, the present court has jurisdiction to try and decide the present suit.

54. Thus, on basis of the above discussion, the present court has territorial jurisdiction to try and decide the present suit.

Accordingly, the issue no. (i) is decided in favour of the plaintiff and against the defendant.

Issue no. (ii): Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP

AND

Issue no. (iii): Whether the plaintiff is entitled for delivery of all finished and unfinished goods bearing the impugned trade mark? OPP

AND

Issue no. (iv): Whether the plaintiff is entitled to damages as prayed for? If so to what amount? OPP

AND

Issue no. (v): Whether plaintiff is entitled for rendition of accounts of profit earned by the defendants through impugned trademark? OPP.

Since issue no. (ii), (iii), (iv) and (v) are inter connected, thus, they are being

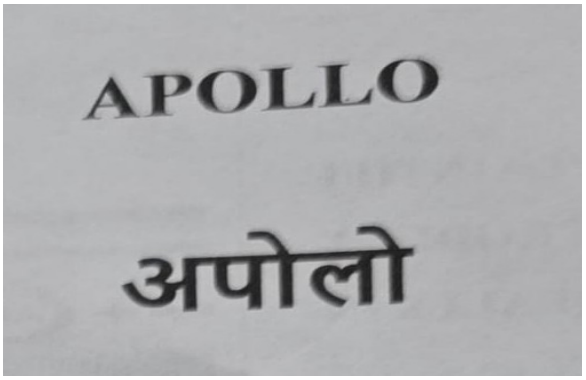
decided together.

53. The present suit is a commercial suit as it involves a commercial dispute under Section 2(1)(c)(xvii) of The Commercial Disputes Act as the present suit pertains to the infringement of the trademark of the plaintiff. Since at the time of the institution of the suit, the plaintiff contemplated urgent interim relief and therefore, had filed one application under Section 12A of the Commercial Courts Act seeking exemption from Pre-Institution Mediation. The same was allowed vide order dated 04.10.2024 and thus, there is no non-starter report in the present suit.

54. As far as the limitation is concerned, the claim of the plaintiff is that on 20.06.2024 the plaintiff got to know about the presence of defendants goods. During the course of proceedings, the plaintiff has filed the original invoice issued by the defendants i.e. Ex. P9 and P10 which are dated 21.06.2024. The present suit has been instituted on 17.09.2024, thus, it is filed within the period of limitation.

55. The aspect of territorial jurisdiction has already been dealt above and is thus, not repeated here for sake of brevity.

56. The pictures of the marks of the plaintiff and defendant is re-produced below for sake of reference:

Plaintiff's registered mark	Defendant's impugned mark
	

At the outset it is pertinent to mention here that both the defendants have filed one common Written Statement and defendant no. 1 has contended the case for himself as well for the Defendant no. 2 as his SPA holder. Moreover, the defendant no.1 only deposed as DW-1 as the sole defendant's witness and the defence of the both the defendants vide common WS also appears to be similar. The plaintiff also has not specifically laid down the role of defendant no.1 and 2 separately, neither has put any such specific questions in the cross examination of DW-1 which could point out the specific role of each of the defendant. Importantly, the defendant no. 1 is the proprietorship concern and defendant no. 2 is the partnership firm and even if the parties have not led any evidence to show the individual liabilities of the defendant(s), the court is duty bound the examine of the facts of the case to ascertain the liability of both the defendants separately.

<u>Liability of Defendant no. 1</u>

57. The main defence of the defendant is that he unintentionally used the trademark 'APOLLO' and he never intended to infringe the trademark of the plaintiff. It is contended that the defendants had applied for alleged trademark, however, it was denied by the concerned authority and this fact was not communicated by the attorney of the defendant and, thus, inadvertently the defendant used the plaintiff's trademark.

58. The relevant cross of the DW-1 in this regard is re-produced as follows:

> *"I am the proprietor of M/s Maa Vaishno Enterprises and M/s Vedhanshi Enterprises is the firm of my son. I have filed trademark application for trademark Apollo in the year 2019. I have multiple trademarks for PVC pipes. I only have one trademark with name Apollo. I do not have any registered trademark, but, I have trademark. My son has filed a trademark application for Apollo Sarvottam. I have*

the trademarks i.e. Ved Ganga, Sagar Gold, Ved Kashi, Vedyansh, Double Hourse, Bahabuli and Anant. None of these trademarks are registered. I do not have filed any turnover or sales figure for Apollo. Having Ved Kashi is the most sell able goods in Garden Pipes and Vedyansh is most sell able in Conduit Pipes. I only have one GST registered for M/s Maa Vaishno Enterprises.

I have a turnover of 2 – 2.5 crore in the financial year 2025-26. I do not filed any trademark application after 2017. The attorney, namely, Sh. Manoj Kumar Srivastava based in Ranchi, Jharkhand who filed trademark applications on my behalf has passed away. Great Trademark Bureau was the firm of Sh. Manoj Kumar Srivastava. Currently, I am using Ved Ganga, Sagar Gold, Ved Kashi, Vedyansh, Double Hourse, Bahabuli and Anant. I was known about APL Apollo as I am also in the same business.

I do not know about the meaning of Apollo. After 08.10.2024, as the goods were seized I never used the trademark Apollo. It is wrong to suggest that after knowing about the plaintiff I have started using mark Apollo. I do not know spent a single penny for the advertising or marketing for the mark Apollo. I know about the APL Apollo from the year 2020 to 2021, but, not about the Apollo. I do not find any similarity in the mark APL Apollo and Apollo. I do not know whether the plaintiff company is having both the trademarks APL Apollo and Apollo.

I do not know whether the plaintiff company filed objections on my application for registering trademark as Apollo. I have filed an application for registering trademark Ved Ganga and Vedansh after October, 2024 when the raid was conducted in my premises through the attorney based in Varanasi. Presently, I do not remember his name. My attorney told to me that I can use the trademark Ved Ganga and Vedansh, but, it will take 2 – 3 years to get registered and no objection has been filed by anyone against my application."

59. Thus, there is no other defence on the part of the defendant rather only contention is that he unintentionally used it on account of miscommunication by his attorney. It can not be said to be a valid defence in the eyes of law. Moreover, the defendant can not shift blame on his attorney as he himself is required by the law to be vigilant as it is the duty of the litigant to be aware about the progress of his application.

60. On the basis of the admission in the testimony of the DW-1 as well as his WS, it is proved that the defendant was in usage of the said mark 'APL Apollo' and 'Apollo'.

61. The usage of the said mark by the defendant on the basis of the miscommunication by his attorney does not qualify as a valid defence in case of infringement of the trademark. Moreover, whatever transpired between the defendant and his attorney is not privy to the plaintiff and plaintiff can not be said to suffer on account of any miscommunication between the defendant and his attorney.

62. The mark of the plaintiff is a registered trademark and, in this regard, the plaintiff has filed registration certificates (Ex. PW1/8 and Ex.PW1/9) perusal of

which reveals that the plaintiff is the registered proprietor of the word mark 'Apollo' and device 'APL APOLLO'.

63. Section 29 of the Trade Marks Act provides for the infringement of the registered trademark which is re-produced as follows:

> *"29. Infringement of registered trade marks: (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*
>
> *(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of*
> *(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or*
> *(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or*
> *(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.*
> *(3) In any case falling under clause (c) of sub-section (2), the court*

shall presume that it is likely to cause confusion on the part of the public.

…..

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he— (a) affixes it to goods or the packaging thereof; (b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark; (c) imports or exports goods under the mark; or (d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee."

64. The perusal of Ex. PW1/18 i.e. photographs of the infringing products of the defendant reveals that the defendant is using the mark 'Apollo' as well as 'अपोलो' on its goods. Moreover, the goods being sold by the defendant are similar to the goods being sold by the plaintiff i.e. PVC products. Also, as per details of the defendants products available online (Ex. P1 and Ex.P1/12) reveals that even on the online websites, the defendant is using the brand name as 'Apollo Pvc Conduit.'

65. Further, as per the photographs annexed with the report of Local Commissioner, it is clear that the defendant is using mark 'Apollo' in his packaging materials as well as on goods. In this regard, reference can be made to photograph

at page no. 15 and 16 of the report of Local Commissioner.

66. Thus, on the basis of the above said discussion and admission of the defendant, it is clear that the defendant is infringing the trademark of the plaintiff by using the mark 'Apollo' and 'अपोलो' on his goods as well as the packaging material. Moreover, the defendant is also advertising his brand name as 'Apollo Pvc Conduit' on the online websites.

67. The application of the said mark by the defendant is in all reasons likely to cause the confusion in the minds of the consumers at large and the defendant simply can not aver that there is no similarity in the marks of the plaintiff and defendant. The registered mark of the plaintiff and its adoption by the defendant, if seen from the perspective of consumer of imperfect recollection, will cause deception in the minds of the general public and thus, the defendant is liable for the infringement of the goods of the plaintiff.

68. Since the defendant is liable for the infringement of the goods, then what is required to be seen is that what all remedies can be availed by the plaintiff. The remedies available to the plaintiff in case of infringement of its trademark is enumerated under Section 135 of The Trade Marks Act which is reproduced as follows:

> *"135. **Relief in suits for infringement or for passing off:***
>
> *(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, **either damages or an account of profits**, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.*

(2) The order of injunction under sub-section (1) may include an ex-parte injunction or any interlocutory order for any of the following matters, namely:—(a)for discovery of documents;(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—(a)where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or

(b)where in a suit for infringement the defendant satisfies the court —(i)that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and ***(ii)that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or***

(c)where in a suit for passing off, the defendant satisfies the court— (i)that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for

believing that the trade mark of the plaintiff was in use; and(ii)that ***when he became aware of the existence and nature of the plaintiff's trademark he forthwith ceased to use the trade mark complained of."***

69. On basis of Section 135 of Trade Marks Act, the plaintiff in suit for infringement can claim (1) Injunction; (2) either damages or rendition of accounts and (3) delivery up of infringing labels and marks for destruction or erasure

Delivery Up of Infringing Labels and Marks

70. As far as the delivery up of labels and marks is concerned, it is pertinent to submit here that the ld. Local Commissioner was appointed vide order dated 04.10.2024 and the ld. Local commissioner visited the premises of the defendants on 08.10.2024. During the execution of the commission, the ld. Local commissioner inventorised the impugned goods and handed over the same to the defendant on superdari basis. The inventory has already been discussed in para 32 above and the same is not repeated here for sake of brevity. It is a settled law that the report of the local commissioner is an important piece of evidence in deciding such issues. In this regard, reference can be made to judgement of Hon'ble Delhi HC in **Levi Strauss & Co. vs Rajesh Aggarwal RFA 127/2007 decided on 03.01.2018**, it was observed as follows:

"9. The Local Commissioner is in fact a representative of the Court itself and it is for this reason that Order 26 Rule 10 (2) of CPC clearly provides that once the Commissioner has filed the evidence along

with his report the same shall be treated as evidence in the suit and shall form part of the record.

10. It is a settled proposition that the Local Commissioner need not be examined in every matter. If any party wishes to examine the Commissioner for whatsoever reason or if the Court wishes to seek any clarification in respect of the Commissioner's report, then the option to examine the Commissioner exists. In Misrilal Ramratan & Ors. Mansukhlal & Ors. v. A. S. Shaik Fathimal & Ors., 1995 Supp (4) SCC 600 the Supreme Court categorically holds that the Commissioner's report cannot be rejected on the specious plea of non-examination of the Commissioner. The relevant portion of the judgement reads as under:

"It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case."

11. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner along with the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner's report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report….."

71. Thus, in view of above, the defendants have neither disputed the report of the local commissioner nor have sought the examination of the Ld. LC qua her report. Thus, the report of the Ld. LC can be treated to be undisputed fact about the infringing goods.

72. Thus, in view of above discussions, the defendant no.1 is directed to handover the infringing labels and marks to the plaintiff for the purpose of destruction and erasure and it is directed that if the infringing labels and marks cannot be separately handed over to plaintiff, then the defendant no.1 shall not use the goods having infringing labels and marks for the purpose of selling the goods in the market and shall erase the infringing labels and marks on the goods. In case, it is not possible to erase the infringing labels and marks on the goods handed over on superdari to defendant no.1, then the defendant no.1 shall handover the goods having infringing labels and marks to the plaintiff for the purpose of destruction and it is further directed that the plaintiff shall not use the goods having infringing labels and marks for the purpose of selling the goods in the marks and shall only destroy the goods.

Rendition of Accounts & Damages

73. As far as relief of damages and renditions of account is concerned, as per Section 135 of Trade Marks Act, the plaintiff can only adopt either one and can not claim both the relief simultaneously. The ld. counsel for the plaintiff has not exercised his right to election between the remedies. Moreover, neither the plaintiff nor the LC has produced any documents which would enable the court for granting the relief of rendition of accounts. There are no books of accounts, stock registers or any other documents of the defendants available on the record as neither the defendant has filed those documents nor any such document was seized by the

local commissioner during the execution of the commissioner at the premise of the defendant. Thus, in the facts of the present case, the plaintiff is not entitled to relief of the rendition of accounts and is accordingly, awarded the relief of damages which is discussed hereunder.

74. As far as the relief of damages is concerned, the plaintiff has prayed that a decree for damages may be passed in favour of the plaintiff and against the defendant.

75. The law on the issue of award of damages in cases of infringement is well settled in the case of ***Koninlijke Phillips N.V. & Anr vs Amazestore & Ors CS (Comm) 737 of 2016 decided on 22.04.2019.*** It was observed as follows:

"40. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:-

#	*Degree of Mala Fide conduct*	*Proportionate Award*
(i)	*First Time innocent infringer*	*Injunction*
(ii)	*First Time knowing Infringer*	*Injunction+ Partial costs*
(iii)	*Repeated knowing infringer which causes minor impact to the Plaintiff*	*Injunction + Costs + Partial damages*
(iv)	*Repeated knowing infringer which causes major impact to the Plaintiff*	*Injunction + Costs + Compensatory damages.*
(v)	*Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.*	*Injunction + Costs + Aggravated damages (Compensatory + additional damages)*

76. Thus, as per the facts of the present case, the DW-1 in his testimony has deposed that he knew about the 'Apollo' since 2020 so he can not be considered to

be first time innocent infringer. However, the defendant, on basis of the evidence led by the parties, also does not seem to be a repeated offender as no pleading nor any evidence has been led in this respect and, therefore, the present case falls under (ii) category of First time Knowing infringer and thus, the plaintiff is entitled to injunction and partial costs.

77. On the basis of the above discussion and in facts of the present case, the plaintiff is entitled to Rs.2,00,000/- as partial costs from the defendant no. 1.

Liability of Defendant no. 2

78. The plaintiff in his plaint has not specifically averred in the plaint about the role of the defendant no. 2 in the infringement of its registered trademark. The specific averments regarding the role of the defendant no. 2 in such alleged infringement can be traced in para 21 of the amended plaint where the plaintiff avers about the online presence of the infringing goods under the name of defendant no. 2.

79. Even as per the documents produced with the plaint, there is no documents which could specifically point towards the role of the defendant no. 2 except for the screen shots of the online presence. Moreso, in the plaint as well the plaintiff has averred that it was the defendant no. 1 who has applied for the similar trademark registration before the trademark registry and it nowhere mentions of the role of the defendant no. 2. The documents pertaining to the registration, current status and examination report of the impugned trademark also pertains to the defendant no.1 and not to defendant no. 2. The invoice dated 21.06.2024 issued by defendant no.2 Ex.P9 does not mention the infringing words Apollo anywhere. The handwritten quotation Ex.P11 in which goods of Apollo are mentioned is issued by defendant

no.1 and not by defendant no.2. Moreover all the recovery of the impugned goods have taken place from the defendant no.1 and the goods were handed over on superdari to defendant no.1.

80. Thus, in light of the above discussion, when there is no incriminating substance highlighting the role of the defendant no. 2 in the infringement of the registered trademark of the plaint, except the online presence of the defendant no.2, and there being no previous history of any such infringement against the defendant no. 2 then as per the judgement of Hon'ble Delhi HC in *Koninlijke Phillips (Supra)*, the only award against the defendant no. 2 can be injunction. Thus, the defendant no. 2 is restrained from using the registered trademark of the plaintiff.

Accordingly, issue no. (ii), (iii), (iv) and (v) are decided in favour of the plaintiff and against the defendant.

Issue no. (vi): Relief

81. In the findings on above issues, the suit of the plaintiff is decreed in following terms:

- The Defendant no. 1 and 2, their servants, agents, stockist are permanently restrained from manufacturing, trading, selling, marketing, printing, offering for sale or dealing in any other way, any goods including PVC garden pipes, Pipes fittings, water tanks, building material products and accessories etc. and/or anu other goods under the mark "APOLLO", "अपोलो" and any other mark contain the word "APOLLO" which may amount to infringement and passing of registered mark of the plaintiff.
- The defendant no. 1 is directed to deliver up all the infringing labels and marks containing the marks "APOLLO" and "अपोलो" to the plaintiff for the purpose of destruction and erasure and it is directed that if the infringing

labels and marks cannot be separately handed over to plaintiff, then the defendant no.1 shall not use the goods having infringing labels and marks for the purpose of selling the goods in the market and shall erase the infringing labels and marks on the goods. In case, it is not possible to erase the infringing labels and marks on the goods handed over on superdari to defendant no.1, then the defendant no.1 shall handover the goods having infringing labels and marks to the plaintiff for the purpose of destruction and it is further directed that the plaintiff shall not use the goods having infringing labels and marks for the purpose of selling the goods in the marks and shall only destroy the goods.

- The plaintiff is entitled to Rs.2,00,000/- as partial costs from defendant no. 1 on account of infringement by the defendant no. 1.
- The plaintiff is also entitled to Rs.2,00,000/- as cost of litigation against the defendants and also the amount of court fees.

Decree sheet be prepared accordingly.

File be consigned to Record Room.

KIRAN BANSAL Digitally signed by KIRAN BANSAL Date: 2026.09.01 16:30:50 +05'30'

Announced in the open court
on 01.09.2026

(Kiran Bansal)
District Judge, Commercial Court-02,
Shahdara District, Karkardooma Courts,
Now as Presiding Officer Special Exclusive Court
- 05 (NIA Act, 2008, UAPA), RACC, Delhi

Note: **The undersigned has been transferred as Presiding Officer Special Exclusive Court-05 (NIA Act, 2008, UAPA), RACC pursuant to order No. 32/D-3/Gaz.-IA/DHC/2026 dated 01.08.2026 and therefore, the present case has been disposed off in compliance of directions issued in the said order.**