In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/1/2026
In CS-COM/178/2026

RAMJI LAL AGARWAL
Vs
SOURAV AGARWAL

For the petitioner: **Mr. Rajarshi Dutta, Adv.**
Mr. V.V.V. Sastry, Adv.

For the respondent: **Mr. Sourojit Dasgupta, Adv.**
Mr. Varun Kothari, Adv.
Mr. Shayak Mitra, Adv.
Ms. Rupal Singh, Adv.
Mr. Ashok Kumar Singh, Adv.

Heard on : October 14, 2026

Judgment on : October 14, 2026
[In Court]

ANIRUDDHA ROY, J :

1. Mr. Rajarshi Dutta, learned advocate appears for the petitioner.

2. Mr. Sourojit Dasgupta, learned advocate appears for the respondent.

3. This is an injunction application filed by the plaintiff in connection with a plaint **Annexure-A at page 24** to the application, where the

plaintiff has alleged that the defendant has been acting in breach of a family settlement dated **January 13, 2027** (hereinafter, the **Family Settlement**) under which the father of the defendant, namely, Mohan Kumar Agarwal, being the predecessor in interest of the defendant, had agreed that no business shall be started with the trade name ***Sindharam Sanwarmal*** or with some **suffix or prefix, within one kilometer** of the existing shop room at **43/44 Cotton Street, Kolkata** (hereinafter, **shop room**), however, admittedly the defendant has been carrying its business under the name and style ***Sindharam Sanwarmal Mewawala*** (hereinafter, **defendant's business**) at and from the said shop room.

4. The plaint case *inter alia* is that ***Sindharam Sanwarmal*** is a trade name under which since 50 years ago, one Mangilal Agarwal had set up and carried on business for selling dry fruits, spices, dry vegetables and other products. In 2017, the said family agreement was entered into, at **page 53** to the injunction application, where under the family members being the legal heirs of Mangilal Agarwal had decided the manner and mode under which they shall use the trade name and carry on their business. **Clause 3** of the family settlement at **page 58,** had specifically provided that none of the parties to the said family settlement, including the deceased father of the defendant, would carry out their business **within 1 km** radius of the shop room with the trade name ***Sindharam Sanwarmal*** with some prefix or suffix.

5. However, since the defendant admittedly is carrying out its business under the name and style ***Sindharam Sanwarmal Mewawala*** from the same shop room, the plaintiff alleges breach as against the defendant and had filed the instant suit with the instant injunction application.

6. Mr. Sourojit Dasgupta, learned advocate appearing for the defendant, at the threshold, has raised a preliminary objection on maintainability of the suit before the Commercial Division of this Court and submits that the suit should have been instituted before the Intellectual Property Rights Division (hereinafter, **IPR Division**). Referring to **Section 134** from the **Trade Marks Act**, Mr. Dasgupta submits that no suit relating to any right in a registered trademark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit. Referring to this provision, he submits that on a reading of the plaint, it will be demonstrated that the instant suit has been filed claiming a right on a registered trademark namely ***Sindharam Sanwarmal & Co***. In support, he has referred to the registration of trademark at **page 80** to the injunction application.

7. Mr. Dasgupta then refers to the relevant IPR Rules framed by this Court and submits that any substantive provision governing intellectual property subject matter *inter alia* contained in Copyrights Act or Trade Mark Act shall be decided before the IPR Division of this Court, even if the suit is otherwise a Commercial

Suit. Mr. Dasgupta then refers to Section 2(k) and Section 2(o) from the said IPR Rules and submits that any dispute regarding trademark in a proceeding relating to intellectual property right shall be maintained only before the IPR Division of this Court, even if the suit is otherwise commercial in nature.

8. Referring to the plaint averments made by the plaintiff, Mr. Dasgupta submits that the plaintiff's substantive claim is relating to the trade name ***Sindharam Sanwarmal*** and its usage. Therefore, the suit is not maintainable in the Commercial Division of this Court.

9. On the merit of the injunction prayer, Mr. Dasgupta submits that the defendant is required to file affidavit to deal with the allegations made in the injunction application.

10. However, Mr. Dasgupta, after receiving instruction from his client, further submits that on identical cause of action, previous proceeding was instituted by the plaintiff as a non-commercial suit where the Courts, both the Single Bench and the Hon'ble Division Bench, had directed the defendant to maintain the business accounts and to set apart the profit of it. It was also observed by the Court that from the profit set apart, **30 per cent** of the profit was allowed to be utilized and the monthly statement of such profit and its utilization was to be submitted before the plaintiff.

11. After considering the rival contentions of the parties and on perusal of the materials on record, this Court first proceeds to deal with the point of maintainability.

12. On a meaningful reading of the plaint and the connected injunction application including the reliefs sought for, this Court *prima facie* finds that the plaintiff has not claimed infringement or the plaintiff has not alleged any breach against the defendant for any wrongful user of the trade name ***Sindharam Sanwarmal*** with its prefix and suffix but the only contention is that such trade name cannot and should not be used from the said shop room and **within 1 k.m.** from the said shop room in terms of the family settlement. On a meaningful reading of the plaint, this Court further *prima facie* finds that there is no allegation of any breach insofar as the user of the trade name is concerned *per se* but the allegation is only with regard to its user from the said shop room or within **a radius of 1 k.m.** therefrom. It is also not the plaint case that the plaintiff would have objection if the defendant uses the said trade name beyond 1 k.m. from the shop room, as agreed under the said family settlement.

13. Therefore, this Court is of the considered view that no right *per se* relating to the trade name or any intellectual property, has been alleged to have been infringed. The allegation of the plaintiff is an alleged breach of the family settlement. Therefore, this Court is of the firm and considered view that the instant suit is maintainable before this Commercial Division.

14. Now comes the question of passing interim order. After reading the plaint and the injunction application carefully, this Court is also of the view that if the injunction on user is passed, this would in effect amount to granting final relief in the suit, which is not permitted in law at this interim stage. Similarly, at the interim stage this Court cannot hold a mini-trial. The final order of this injunction application, as claimed therein, would also depend on some basic fact finding enquiry which is not possible without calling for affidavits.

15. However, equity also demands that the defendant shall maintain complete account of profits while running the business from the said shop room under the name and style ***Sindharam Sanwarmal Mewawala*** and to set apart the profit in its business bank account and **30 per cent** of such profit can be utilized by the defendant in usual course of business.

16. The defendant in compliance of the above direction and following the same, shall provide a monthly statement of accounts to the learned advocate on record for the plaintiff month by month and such account shall be furnished positively on **the 7th day of the succeeding month** as per the English calendar year.

17. It is also made clear that in the event of any assignment or transfer of the trade name ***Sindharam Sanwarmal*** by the defendant, a **one**

month prior notice shall be served upon all the parties to the said family settlement and/or their respective legal heirs.

18. Affidavit in opposition shall be filed on or before **December 15, 2026**.

19. Affidavit in reply, if any thereto, shall be filed by **January 15, 2027**.

20. The matter shall appear under the heading **"New Motions"** in the monthly list of **February, 2027**.

(ANIRUDDHA ROY, J.)

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