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

% Judgment Reserved on*: 20.03.2026*
Judgment delivered on*: 30.03.2026*
Judgment uploaded on*: 30.03.2026*

\+ **FAO (COMM) 69/2026 & CM APPL. 14636/2026, CM APPL. 14639- 14642/2026**

K.S. OILS LIMITED .....Appellant

versus

SHIVANG EDIBLES OILS LIMITED
AND ANR. .....Respondents

Advocates who appeared in this case

For the Appellant : Mr. Sandeep Sethi, Mr. J. Sai Deepak, Sr. Advs. with Mr. Yatin Chadha, Mr. Mayank Chadha, Mr. Kunal Khanna, Mr. Gurvinder Singh, Ms. Shreya Sethi, Mr. Krisna Gambhir, Mr. Kaulik Mitra, Ms. Dolly Luthra, Ms. Aashna Singh, Ms. Sanskriti Rastogi, Ms. Gaurika Chawla and Mr. R. Abhishek, Advs.

For the Respondents : Mr. Rajiv Nayyar, Mr. Rajshekhar Rao, Sr. Advs. with Mr. Neeraj Grover, Mr. Arjun Mahajan, Mr. Sumit R. Sharma, Mr. Shreyas Maheshwari, Mr. Ajay Sabharwal, Mr. Raghvendra N. Budholia, Mr. Sagar Agarwal, Mr. Piyush Gautam, Mr. Harshit Kapoor, Mr. Manav Singh, Mr. Siddhant Bajaj, Mr. Aryan Verma and Ms. Bhavya Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. The present appeal challenges the ex-parte ad-interim injunction order dated 04.02.2026 [‘impugned order’], whereby the Trial Court while holding that a case of passing off has been made out, has restrained the Appellant/defendant from using the word mark ‘KALASH’, and the labels ‘



and 

’ [‘impugned marks’] while dealing with edible oils or alike goods, and from representing itself as the proprietor thereof.

2. In the plaint and the impugned order, ‘

’ is referred to as the FIRST KALASH LABEL, ‘

’ as the SECOND KALASH LABEL and ‘

’ as the THIRD KALASH LABEL.

3. At its core, the dispute between the parties concerns statutory rights,

proprietorship, prior use, and subsisting goodwill in the trademark 'KALASH' and the labels, in relation to edible oils. The Respondent asserts exclusive rights to use the impugned marks on the strength of an assignment deed dated 01.01.2026 executed by its erstwhile Director Sh. Gopal Das Garg. The Respondent contends that the said Sh. Gopal Das Garg adopted the impugned mark 'KALASH' by using the First Label '

' in 1974 and has thereafter, used the said mark in different labels with the last label being 

. The Respondent contends that Sh. Gopal Das Garg has used the impugned marks continuously and uninterruptedly since, 1974 until 2026 through his several business concerns. The Respondent concedes that the rights in the First KALASH Label were assigned by Sh. Gopal Das Garg in favour of the Appellant in 1996 and the impugned marks were used by the Appellant between 1996 to 2012, however, it contends that the Appellant discontinued the use of the marks in 2012 and also, that the assignment of 1996 made in appellant's favour is void. It, therefore, contends that the Respondent has the exclusive right to use the impugned marks and it has been using the said marks since 2017 under the express authority and permission of Sh. Gopal Das Garg. The Respondent concedes that it is not the registered proprietor of the impugned marks and has, therefore, filed this suit on the plea of passing off.

In contrast, the Appellant claims exclusive proprietary rights in the

impugned marks. The Appellant relies upon a deed of assignment dated 26.07.1996 executed in its favour, whereby the registered trademark application no. 305567 

, was transferred in its favour and the said transfer was recorded in the register of Trade Marks. It relies upon wordmark registration for KALASH vide TM No. 1773375 on 13.01.2009 and Copyright registration of 



label in 2009. The Appellant relies upon assignment deed(s) dated 13.08.1986 and 26.07.1996 executed by Sh. Gopal Das Garg in respect of the first KALASH label to assert that the proprietorship of the impugned mark stood transferred in favour of the Appellant and, therefore, no valid assignment could have been made by Sh. Gopal Das Garg in favour of the Respondent on 01.01.2026. It contends that it used the marks till 2017 and thereafter, was undergoing Corporate Insolvency Resolution Process [‘CIRP’]. It states that Appellant herein was under liquidation process from 2017-2025 and Sh. Gopal Das Garg, who was the erstwhile Director in the Appellant company, unauthorisedly used the impugned marks through its company, the Respondent herein from 2017. It is stated that in the CIRP, the Appellant company was auctioned by the CIRP and the sale was allowed by the National Company Law Tribunal [‘NCLT’] on 03.02.2025. The Appellant’s ownership of the brand KALASH is duly documented in CIRP and recorded in the order of the NCLT. The Appellant, therefore, contends that Sh. Gopal

Das Garg had no proprietary rights in the impugned marks and could not have transferred any rights in favour of the Respondent vide assignment deed dated 01.01.2026.

SUBMISSIONS BY THE PARTIES

4. Mr. Sandeep Sethi, learned senior counsel for the Appellant contends that the impugned order is legally flawed as the Trial Court has applied an incorrect trinity test for passing off and has placed incorrect reliance on judicial precedents. He states that the Trial Court failed to record any prima facie satisfaction of the existence of the essential ingredients of passing off. He states that in the absence of such findings, the grant of an ex-parte ad-interim injunction is unsustainable.

4.1 On merits, he submits that the Respondent is a proxy entity set up by the ousted management of the Appellant to usurp the trademark 'KALASH', which is evident from multiple applications filed immediately after the Appellant's e-auction in NCLT. He submits that the Respondent's challenge to the validity of assignment deeds of 1986 and 1996 is false and contrary to extensive documentary and statutory records demonstrating the Appellant's continuous use and goodwill in the mark for over three decades, which has also been recorded in judgment dated 26.11.2012, in **C.S. (OS) 1299/2011**, passed by the coordinate Bench of this Court in **M/S K.S. OIL LTD. v. M/S EKTA DAIRY PVT. LTD**. He further contends that the Respondent has suppressed material facts, including the Appellant's existing trademark registrations, and that the Trial Court ought to have afforded the Appellant an opportunity of hearing before passing the impugned ex-parte order.

4.2 He relies upon the Annual Reports of the Appellant since 1996 till 2025, which record the trademark KALASH as an asset of the company. He

also relies upon the Trademark Registration of the wordmark KALASH in Class 31, recorded in the favour of the Appellant.

5. Mr. Rajeev Nayar, Sr. Advocate and Mr. Neeraj Grover, Advocate for the Respondents submits that the present appeal is not maintainable at this stage and that the Appellant ought to seek vacation of the impugned ex-parte order before the Trial Court under Order XXXIX Rule 1 and 2. They contend that the impugned order is well-reasoned and duly records findings on the trinity test for passing off. They assert that Respondents have placed on record, chartered accountant certificates evidencing sales and advertisement expenditure, thereby establishing their exclusive and continuous use of the impugned mark since 2017.

5.1 On facts, they argue that the Appellant had discontinued use of the mark after 2012, thereafter merely undertaking job work for third parties until 2017 and eventually ceasing operations during the CIRP. They submit that in such circumstances, no subsisting goodwill remains with the Appellant, and it cannot claim rights over goodwill generated by the Respondent between 2017 and 2025. They further contend that the Appellant, particularly its new management, was aware of the Respondent's use since 2017, especially as the Respondent's manufacturing unit operates from the same premises, a fact that would have been apparent during due diligence prior to the e-auction. They also dispute the genuineness of the alleged license agreement dated 15.05.2013.

5.2 They further submit that the Appellant's trademark rights stand weakened due to non-renewal of Trademark Application No. 305567 in Class 29, which expired in May 2023, indicating deliberate abandonment, particularly when another Trademark Application No. 1773375 in Class 31

was renewed. They contend that the 1986 assignment deed is void, while the 1996 deed constituted only a limited assignment of the label without transfer of business goodwill. They submit that the Copyright registration of 2009 is immaterial and is under challenge by the Respondent.

5.3 They have also raised the allegations of collusion between the Appellant's current and erstwhile management to question the validity of the e-auction under the Insolvency and Bankruptcy Code, 2016 ['IBC'], though they have simultaneously asserted that Sh. Gopal Das Garg had severed ties with the Appellant in 2002, negating any such collusion.

5.4 The Respondent also seeks to rely upon additional documents which were not filed before the Trial Court.

COURT FINDING'S

6. This Court has heard the learned counsel for the parties and perused the record.

7. We shall first examine the rights asserted by the parties in respect of the impugned marks as placed before the Trial Court and as canvassed in the present appeal, in order to determine whether the Trial Court had duly considered the proprietary rights of the Appellant/defendant emanating from the documents placed before it prior to granting ex-parte ad-interim injunction in favour of the Respondent/plaintiff.

Rights of the Appellant in the impugned marks asserted in the present appeal

8. The Appellant asserts statutory and proprietary rights in the trademark 'KALASH', tracing a continuous and legally documented chain of title from 1975 till date. It relies primarily on Trademark Registration No. 305567 (Class 29) (originally filed in 1975 by Sh. Gopal Das Garg, registered in 1978), subsequent renewals, and additional registrations including the word

mark ‘KALASH’ in Class 31 vide Trademark Registration No. 1773375.

9. The Appellant also places reliance on pending and associated trademark applications filed in 2008 and Copyright registration of 2009 for artistic label ‘

’ ‘

, to assert statutory exclusivity over both the mark and its artistic label. It also places reliance on the trademark applications filed in January 2025, which are pending.

10. The Appellant’s proprietary claim is founded on a complete and unbroken chain of assignment with goodwill, supported by assignment deeds dated 13.08.1986 and 26.07.1996, evidencing transfer without any restrictions or limitations from M/s Gopal Industries *to* K.S. Enterprises *to* K.S. Oils Ltd. (Appellant herein). The Appellant emphasizes that these assignments were duly recorded by the Trade Marks Registry for Trademark [‘TM’] No. 305567

, thereby vesting exclusive proprietary rights in it, since 1996. It also relies on the License Agreement dated 15.05.2013 executed with S. L. Consumer Products Ltd. to show controlled and permissive use of the impugned mark between 2013 to 2017, reinforcing continuity of use in law under Section 48 of the Trade Marks Act 1999 [‘Act of 1999’]. Additionally, it relies upon its Annual Reports from the year 1996 onwards till 2025, which continuously record the ownership of the trademark ‘KALASH’ as a corporate asset and the large-scale business conducted under the said trademark.

Sh. Gopal Das Garg on his own showing was a director in the Appellant company till 2002 and was, therefore, responsible for the Annual Reports published by the company.

11. The Appellant also asserts commercial goodwill and prior user rights, supported by extensive documentary evidence including Agmark, FSSAI and other certifications**,** press releases and media coverage showing turnover and reputation**,** and advertisements demonstrating market recognition of 'KALASH' exclusively with the Appellant from 1996 onwards. It further relies on invoices (post-October 2025), to show resumed commercial use post-acquisition in the CIRP process, along with public notices and cease-and-desist notice dated 26.08.2025 asserting its rights against the Respondent. Collectively, these documents are relied upon to establish prior adoption, continuous use, goodwill, and likelihood of confusion.

12. The Appellant emphatically placed reliance upon the judgment dated 26.11.2012, in **C.S. (OS) 1299/2011**, passed by the Coordinate Bench of this Court in **M/S K.S. OIL LTD. v. M/S EKTA DAIRY PVT. LTD.** wherein the Court, at paragraph 18 of the judgment held that the Appellant's trademark 'KALASH' has acquired the status of a well-known trademark under Section 2(1)(z)(g) of the Act of 1999. The said conclusion was drawn by the Court in perusal of the sales figures and advertisement expenses placed before it, as also the fact that the mark had been in use for over two decades.

13. Lastly, the Appellant asserts rights arising from CIRP and continuation of corporate identity, contending that trademark 'KALASH' remained part of the assets and were never divested. It relies on NCLAT order dated 16.03.2021, e-auction notice and process documents, Letter of

Intent, Sale Certificate dated 22.03.2024 and NCLT order dated 03.02.2025 to establish that the company was sold as a going concern with all intellectual property, including 'KALASH'.

14. The Appellant also relied upon the findings in the orders of the Trademark Registry dated 05.07.2024 and 07.11.2025 refusing the trademark application no. 6212110 for word mark 'KALASH' in Class 29 filed by Sh. Gopal Das Garg. The Registrar declined registration while citing the registrations and pending applications of the Appellant herein, as well as rejecting the claim of user since 1974.

15. On this basis, the Appellant claims exclusive ownership, prior user status, subsisting goodwill, and uninterrupted legal entitlement to the mark 'KALASH' w.e.f. 1975 till date.

Rights claimed by the Respondent in the impugned marks

16. The Respondent primarily asserts common law proprietary rights based on continuous and exclusive use of the mark 'KALASH', since 2017 claiming that it has independently built substantial goodwill and reputation in the market. It relies on documentary evidence such as website records, social media presence, Chartered Accountant-certified sales figures, advertisement invoices, and extensive commercial records (invoices) to establish that it has been using the mark at least since 2017. These documents are relied upon to show market presence, trade recognition, and consumer association, thereby grounding a passing off action independent of statutory registration.

17. The Respondent further claims that any existing goodwill in the impugned marks presently vests with it, contending that the Appellant had ceased use and business operations for a prolonged period (allegedly since

2012). On this basis, it asserts that the Appellant's rights, even if once existing, stood extinguished due to non-use and abandonment, particularly evidenced by non-renewal of Trademark No. 305567 

in Class 29 and lack of commercial activity until 2025. The Respondent relies on the Appellant's own Annual Reports of 2014 - 15 to argue absence of business activity since 2013, and contends that goodwill cannot survive long after non-use, thereby positioning itself as the de facto and current source of goodwill in the market.

18. A key ground of the Respondent's case is a challenge to the Appellant's proprietary claim itself, asserting that the Appellant never acquired valid proprietary rights in the mark. It disputes the validity of the assignment deed(s) of 1986 and 1996, arguing that: (i) the 1986 assignment was limited (label only, without goodwill); (ii) it was in the nature of a family arrangement without exclusivity; and (iii) in any event, the 1986 assignment is void ab initio due to alleged defects (including execution in the name of a deceased partner). Consequently, it contends that the Appellant cannot claim valid title, and any subsequent assignment (deed of 1996) conveys no rights.

The Respondent also relies on an alleged assignment deed dated 01.01.2026 in its favour (executed through Gopal Das Garg) to assert derivative rights, while simultaneously maintaining that earlier assignments are invalid.

19. The Respondent also asserts independent and bona fide adoption of the mark 'KALASH' and its use since 2017, emphasizing that its

manufacturing operations have been open, continuous, and within the knowledge of the Appellant, particularly due to the shared factory premises and electricity connection, supported by electricity bills and audit records. It further alleges that the Appellant is attempting to disrupt its established market by undercutting prices and flooding the market. It relies upon WhatsApp communications with distributors, thereby reinforcing its claim of an existing and protectable trade presence.

20. Lastly, the Respondent seeks to negate the Appellant's statutory and ancillary rights by contending that trademarks were not part of the insolvency sale in the CIRP, relying on IRP valuation documents and auction records. It contends that the Appellant's Copyright and licensing claims are either irrelevant, invalid, or fabricated. It challenges the Copyright registration of 2009 as fraudulent and under cancellation and disputes the license agreement dated 15.05.2013 as forged.

21. On this basis, the Respondent asserts a superior right founded on actual market use, subsisting goodwill, and absence of valid competing title, thereby justifying the grant of injunction in its favour.

Rights dealt by the Trial Court in the impugned order

22. The Trial Court has primarily accepted and protected the following rights of the Respondent/plaintiff:

22.1 The Trial Court took note of the assignment deed dated 01.01.2026 executed by Sh. Gopal Das Garg, whereby the Respondent/plaintiff claims to have acquired the word mark 'KALASH'; First, Second, and Third KALASH labels; trade dress, artistic work, and goodwill.

22.2 The Trial Court took note of the documents filed by the Respondent/plaintiff to aver continuous use, advertising (website, e-

commerce platforms), and market presence of the Respondent/plaintiff since 2017.

22.3 Even in the absence of registration of the marks, the Trial Court recognised a common law right of the Respondent/plaintiff to restrain identical/deceptively similar marks and to protect trade dress, labels, packaging, and overall get-up, by applying the test of passing off.

22.4 The Trial Court took note of certain asserted or possible rights of the Appellant/defendant. It noted that Appellant/defendant had earlier registration (TM No. 305567) 

, which had now lapsed and that the Appellant/defendant has pending trademark applications (2025). The Trial Court also took note of the Respondent/plaintiff's plea that Appellant/defendant had stopped business in 2012 and that the TM No. 305567 was not renewed. However, the Trial Court held that lapsed registration is treated as non-operative and pending applications (2025) confer no enforceable rights at this stage.

ANALYSIS

23. The limited issue arising for consideration in the present appeal is whether, in the facts of this case, an ex-parte ad-interim injunction ought to have been granted by the Trial Court, without issuing notice to the Appellant/defendant herein.

24. In the present case, the Appellant and the Respondent are not strangers, inasmuch as both entities claim derivative proprietary rights in the impugned marks on the basis of documents executed by Sh. Gopal Das Garg. The competing claims arise from rival documents executed by Sh.

Gopal Das Garg himself; however, the documents executed in favour of the Appellant are prior in point of time, and the execution of the documents is admitted fact by both the parties.

25. The undisputed facts establish that the Appellant holds proprietary rights in the FIRST KALASH LABEL 

by virtue of assignment deed(s) dated 13.08.1986 and 26.07.1996. The assignment deed dated 26.07.1996, executed in favour of the Appellant, has been duly recorded with the Trademarks Registry in respect of Trademark Application No. 305567. It is admitted that Sh. Gopal Das Garg executed the said assignment deed, and the affidavit dated 26.07.1996 filed before the Trademarks Registry affirms the said assignment.

In these circumstances, even assuming, arguendo, that there existed any defect in the earlier assignment deed dated 13.08.1986 (as alleged by the Respondent), the same stood rectified upon execution of the subsequent assignment deed and affidavit, which are binding upon Sh. Gopal Das Garg in view of his admitted execution thereof. However, the impugned order, in its operative portion, fails to advert to the said assignment deed(s) and affidavit dated 26.07.1996 or consider the legal effect of their recordal with the Trademarks Registry in favour of the Appellant.

26. The Respondent has relied on the fact that registration of Trademark Application No. 305567 lapsed on 19.05.2023. It is submitted that, although the Appellant has filed a writ petition before the High Court of Judicature at Bombay in December 2025 for seeking renewal/revival of the said registration, the same has not been listed till date. On this basis, it is

contended that the Appellant has abandoned the mark and, therefore, permitted the registration to lapse. Conversely, the Appellant submits that the Appellant was admittedly undergoing CIRP during the period 2017-2025, which constitutes judicially recognised 'special circumstances' within the meaning of Section 47(3) of the Act of 1999 and would similarly form the basis for seeking revival/renewal of the registration. It is thus contended that the non-renewal of the registration occurred due to inadvertence during the CIRP and was not on account of any intention to abandon the mark. The Appellant has relied upon the proceedings before the IRP, CoC and NCLT to contend that the impugned marks were consistently considered as the asset of the Appellant company.

Pertinently, the impugned order notes that the registration of Trademark Application No. 305567 lapsed during the CIRP period. However, the impugned order does not reflect if the Trial Court made any inquiry from the Respondent with respect to legal steps taken by the Appellant for revival of the said registration, as such an inquiry would have made the Trial Court aware of the filing of the writ petition for renewal.

The impugned order also does not reflect if the Trial Court made any inquiry from the Respondent, with respect to the status of the ownership of the impugned marks KALASH in the CIRP, which led to the e-auction of the Appellant company. If such an inquiry would have been made, Respondent would have informed the Trial Court that the impugned marks are reflected in the valuation report and the order passed by the NCLT.

The above facts show that this was a fit case where the Trial Court would have been benefitted with the appearance of the Appellant/defendant, prior to deciding the interim injunction application.

27. Prima facie, the lapse of the registration of Trademark Application No. 305567, however, would not have impacted/affected the assignment of the mark under the deed dated 26.07.1996, which was absolute and unconditional, and the same would continue to bind the executants i.e., Sh. Gopal Das Garg and the Appellant. However, the impugned order contains no express consideration or determination of this fact and its effect on the proprietary rights of the Appellant.

28. The Trial Court, in the impugned order, at paragraph 16(i), has referred to the three (3) trademark applications applied for by the Appellant in January 2025 and has noted that the same are presently pending.

However, the impugned order fails to take into account the earlier trademark applications filed by the Appellant in 2008 in Class 29 for the label 

and 

(as associate marks), as well as the subsisting registration held by the Appellant for the word mark 'KALASH' in Class 31 since 13.01.2009. Likewise, the Copyright registrations obtained by the Appellant in respect of the artistic label 

and 

since 2009 have not been adverted to in the impugned order. These registrations and applications evidence the statutory as well as proprietary rights of the Appellant in the 'KALASH' label mark dating back to 2008. The Appellant has also placed on record its Annual Reports for the years

2009-2010 and 2010-11, demonstrating its extensive use of the said artistic label and reflecting substantial sales under the mark. It has placed on record Annual Reports till 2024-25, which consistently record the brand 'KALASH' as the asset of the Appellant. In the same timeline, the judgment of the Coordinate Bench of this Court dated 26.11.2012 in **M/s K.S. Oil Ltd. v. M/s Ekta Dairy Pvt. Ltd.** (supra) further evidences that the impugned label mark was recognised by this Court as a well-known trademark, with the Appellant acknowledged as its proprietor. The said judgment takes note of the substantial sales figures and advertisement expenditure of the Appellant while according such recognition to the mark. These pending trademark applications of 2008 and the Copyright registrations for the artistic label 

and 

of the year 2009 were material facts, which ought to have been considered by the Trial Court before forming an ex-parte prima facie opinion in favour of the Respondent/plaintiff, as these documents indisputably show prior use, by the Appellant, of the said mark. However, the impugned order fails to even record or consider these material aspects, despite the Respondent having placed on record documents relating to Appellant's trademark registrations (2008) at paragraph no. 30 and having specifically pleaded Appellant's copyright registrations (2009) in paragraph 42 of the plaint.

29. The Respondent was incorporated in the year 2012 and claims use of the very same impugned marks and relies upon sales figures for the period

2017-2025 to assert its goodwill in the said artistic label/mark 

and 

. The plaint makes no reference to the use of this artistic label by the Appellant/defendant from 2008 onwards and, therefore, the impugned order also does not deal with this fact. Even during arguments, the Respondent was unable to dispute the use of this artistic label by the Appellant from 2008 onwards. The Annual Reports, pending trademark applications (2008) and Copyright registration (2009) prima facie shows that the said artistic label was extensively used by the Appellant from 2008 onwards and the Appellant built goodwill in the artistic label as recognized by the Coordinate Bench of this Court dated 26.11.2012 in **M/s K.S. Oil Ltd. v. M/s Ekta Dairy Pvt. Ltd.** (supra). It is, in fact, the Appellant's case that the Respondent has sought to unauthorizedly and illegally ride upon this pre-existing goodwill from 2017 onwards, coinciding with the period during which the Appellant was undergoing CIRP before the NCLT and, therefore, unable to protect its rights.

The competing claims of goodwill necessarily require adjudication by the Trial Court upon a proper appreciation of these facts and the evidence on record.

30. The Appellant has contended that the artistic label was used by it until 2012 and thereafter through its licensee, S.L. Consumer Products Limited,

during the period 2013-2017, and has placed on record a licence agreement dated 15.05.2013 in this regard. It is further stated that the Appellant subsequently underwent CIRP during 2017-2025, culminating in an auction sale of the Appellant company. Notably, the trademark 'KALASH' is expressly reflected as an asset of the Appellant in the CIRP. This fact is not disputed by the Respondent; however, it is contended that the brand was assigned only a nominal value of ₹1 lakh in the valuation report. Such nominal valuation, in our view, has no bearing on the subsistence or enforceability of the Appellant's proprietary rights in the impugned mark(s). No material has been placed on record to indicate that either Sh. Gopal Das Garg or the Respondent objected to the inclusion of the trademark 'KALASH' in the list of assets of the Appellant during the CIRP. The Respondent was fully aware of both the CIRP and the inclusion of the said trademark 'KALASH' as an asset of the Appellant company. However, these material facts have not been disclosed in the plaint, nor were the relevant CIRP documents, culminating in the sale, were placed before the Trial Court. The impugned order, consequently, does not reflect any consideration or deliberation on these aspects.

The Respondent has disputed the execution of the license agreement dated 15.05.2013 in favour of S.L. Consumer Products Ltd., however, since the Respondent is not an executant to the said document, it is not apparent that on what basis it is denying the said document. The said issue would be considered by the Trial Court.

31. The Appellant has contended that the new management, upon acquiring the company through an e-auction conducted under the aegis of the NCLT, commenced production on 29.10.2025, a fact which is not

disputed by the Respondent. However, the suit came to be instituted in February 2026, after a lapse of nearly three (3) months.

In these circumstances, where the Appellant had already re-commenced production in October 2025 and was asserting proprietary rights in the impugned mark(s) and the artistic label on the basis of statutorily recorded proprietary rights in the marks, as well as assignment deed through a common person, namely Sh. Gopal Das Garg, it was a fit case where the Trial Court ought to have issued short notice and afforded the Appellant an opportunity of appearance and hearing, before passing any ad-interim order on the interlocutory application.

32. The Respondent in its plaint has contended that Sh. Gopal Das Garg adopted the impugned wordmark 'KALASH' and the first 'KALASH' label in 1974 and has continuously used the same till 2025 through family-owned business concerns. On this basis, the Respondent relies upon an assignment deed dated 01.01.2026 executed by Sh. Gopal Das Garg to assert proprietary rights in the impugned marks, while acknowledging that the marks are unregistered and that Sh. Gopal Das Garg does not hold any statutory rights by way of trademark registration.

The Appellant, however, has drawn our attention to the order dated 05.07.2024 passed by the Registrar of Trade Marks, whereby the proprietary claim to the mark KALASH and user claim since 1974 made by Sh. Gopal Das Garg was expressly rejected by the Registrar, and even the subsequent review petition against the said order was also dismissed vide order dated 07.11.2025. These orders were passed in the course of rejecting Sh. Gopal Das Garg's Trademark Application No. 6212110 dated 08.12.2023 in Class 29 for the word mark 'KALASH'. In the said orders, the Registrar also

declined the claim of proprietorship advanced by Sh. Gopal Das Garg, inter alia, in view of the Appellant's registered Trademark No. 305567 

and pending Trademark Application No. 6813811 for the wordmark 'KALASH' in Class 29. In our considered view, these orders were material and germane to the issue at hand and ought to have been duly considered by the Trial Court while evaluating the Respondent's prima facie claim of proprietary rights founded on the assignment deed dated 01.01.2026. However, the impugned order fails to even advert to these facts, despite the relevant documents having been placed on record.

33. We are of the considered opinion that the finding of a prima facie case returned by the Trial Court in the impugned order cannot be sustained, as it fails to consider the effect of the assignment deed(s) of 1986 and 1996, pending trademark applications (2008), subsisting trademark registrations (2009), and Copyright registrations 2009 in favour of the Appellant, which collectively evidence the exercise of proprietary rights in the impugned marks, admittedly from 1996 onwards. Likewise, while recording a finding on the balance of convenience, the Trial Court has failed to take into account the material circumstance that the Appellant had already commenced production in October 2025, whereas the Respondent approached the Court only in February 2026; in such circumstances, issuance of shorter date notice would have been the more appropriate course.

The consequence of the ex-parte ad-interim order is that the Appellant, despite having statutory rights in the impugned marks, has been injuncted without being afforded an opportunity of hearing. While it is well

settled that ex-parte injunctions may be granted in trademark matters in cases involving, inter alia, counterfeiting or where the defendant lacks any semblance of proprietary right, the present case however did not fall within such categories so as to warrant the grant of an ex-parte ad interim injunction.

34. In view of the aforesaid findings, the impugned order is set aside, and the Trial Court is directed to consider and decide the injunction application afresh, after taking into account the stand of the Appellant/defendant.

35. Learned senior counsel for the Appellant has submitted that the Appellant shall complete the pleadings within a time-bound schedule as directed by the Court, which is also acceptable to the Respondent. Accordingly, the Appellant is directed to file its written statement as well as its reply to the application within a period of one (1) week, along with an affidavit of admission and denial of documents. Similarly, the Respondent shall file its replication and rejoinder to the application within a period of one (1) week thereafter, also accompanied by an affidavit of admission and denial of documents. The Respondent/plaintiff will be at liberty to file additional documents with its replication. The time for completion of pleadings has been granted as per the request of the parties and they shall ensure that the pleadings are completed.

36. In view of the findings recorded hereinabove, the directions issued by the Trial Court for seizure of the Appellant/defendant's goods and their release on *superdari* are hereby recalled. The Appellant/defendant is at liberty to de-seal and sell the said goods in the market. However, the Appellant/defendant shall maintain proper accounts of all sales effected by them and shall file, on a monthly basis, duly audited statements of sales of

the products bearing the impugned marks before the Trial Court, until final disposal of the injunction application.

37. Mr. Nayar, learned senior counsel for the Respondent stated that though the appeal is maintainable under Order 43 Rule 1 (r) Code of Civil Procedure, 1908 ['CPC'] read with Section 13 of the Commercial Courts Act, 2015, however, the Court ought not to entertain this appeal and relegate the Appellant to approach the Trial Court by filing an application under Order XXXIX Rule 4 CPC. He relied upon the judgment dated 16.03.2026 passed by the Division Bench of this Court in FAO(OS)(COMM) 31/2026 **Asian Hotels North Ltd. v. Exclusive Capital Limited & Ors.** and order dated 29.11.2024 passed by the Division Bench of this Court in FAO(OS) 169/2024 titled as **Slowform Media Pvt. Ltd. & Ors. v. Asish Mohapatra & Ors**.

38. We are unable to accept the aforesaid submission of the learned senior counsel for the Respondent. The reliance placed by the Appellant on the judgment dated 13.12.1996 of the Division Bench of this Court in **Rajesh Batra v. M/s Grandlay Electricals (India)**[1] authoritatively settles the issue regarding the maintainability of an appeal against an ex-parte ad-interim injunction. In the facts of the present case, as noted hereinabove, this was a fit case where notice ought to have been issued to the Appellant/defendant prior to grant of any interim relief, particularly in view of the competing claims of proprietorship and the Appellant's prior and extensive use of the impugned marks. It is also pertinent to note that the judgments in **Asian Hotels North Ltd.** (supra) and **Slowform Media Pvt. Ltd.** (supra) do not lay down that such an appeal is not maintainable; rather, in those cases, the

[1] 1996 SCC OnLine Del 873, at paragraph no. 9.

Division Bench declined to interfere with the interim orders on the facts therein.

39. The Trial Court shall decide the injunction application on its own merits, uninfluenced by any observations made in the present order. All the rights and contentions of the parties are left open. The Trial Court is requested to take up the injunction application, upon completion of pleadings for expeditious hearing, in accordance with its calendar and preferably decide the application within one (1) month from completion of the pleadings.

40. The impugned interim order dated 04.02.2026 is accordingly set aside, and the appeal stands disposed of in the aforesaid terms. All pending applications, if any, also stand disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

MARCH 30, 2026/IB/AM