IN THE HIGH COURT AT CALCUTTA

(Ordinary Original Civil Jurisdiction)

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS-COM 224 of 2024

(Old No. CS 165 of 2020)

SRMB Srijan Private Limited

Versus

Uma Shankar Jaiswal

Mr. Debnath Ghosh
Mr. Sudhakar Prasad
Mr. A. Debnath
Mr. Pradipta Basu

... for the plaintiff.

Hearing Concluded On : 14.06.2024

Judgment on : 25.06.2024

Krishna Rao, J.:

1. The present suit is filed by the plaintiff praying for the following reliefs against the defendant:

> *(a) A decree for perpetual injunction restraining the Defendant, his assigns, directors, partners,*

employees, agents, dealers, distributors and others acting on his behalf from manufacturing, marketing, selling, attempting to sell and advertising Torkari/TMT bars and rods with X ribs mark/pattern/get up/trade dress as depicted in Annexure "A" or Annexure "I" to the plaint or any other Torkari/ TMT bar containing deceptively similar pattern on the Torkari/TMT bars as depicted in Annexure "A" to the plaint in any manner whatsoever;

(b) A decree for perpetual injunction restraining the Defendant, his assigns, directors, partners, employees, agents, dealers, distributors and others acting on his behalf from infringing the Plaintiff's registered X ribs mark by manufacturing, marketing, selling products, advertising and/or otherwise dealing with Torkari/TMT bars and rods with X ribs mark/pattern/get up/trade dress as depicted in Annexure "A" or Annexure "I" to the plaint or any other Torkari/TMT bar bearing deceptively similar pattern thereon as depicted in Annexure "A" to the plaint in any manner whatsoever;

(c) A decree of perpetual injunction restraining the Defendant, his assigns, directors, partners, employees, agents, dealers, distributors and others acting on his behalf from passing off Torkari/TMT bars and rods by manufacturing, marketing, selling products, advertising and/or otherwise dealing with Torkari/TMT bars and rods with X ribs mark/pattern/get up/trade dress as depicted in Annexure "A" or Annexure "I" to the plaint or any other TMT bar bearing deceptively similar pattern as depicted in Annexure "A" to the plaint in any manner whatsoever;

(d) A decree for obliteration and destruction of all offending goods, dies, packaging, hoardings, placards, promotional material, advertisement, stationery, signs, signage of the Defendant bearing the X ribs mark/pattern contained in Annexure "I".

(e) The Defendant be directed to render true and faithful account of all the profits earned by him from use or sale of the impugned Torkari/TMT bars and rods bearing the X- ribs trademark and the

Defendant be further ordered and decreed to pay to the Plaintiff such amount as may be found due on such account being taken;

(f) Enquiry into the loss and damage suffered by the Plaintiff for the wrongful and illegal act of the Defendant in manufacturing, marketing, selling, offering to sell, advertising or otherwise dealing in Torkari/TMT bars and rods bearing the X-ribs trademark and upon loss being ascertained a decree be passed in favour of the Plaintiff upon such enquiry being made;

(g) Injunction;

(h) Receiver;

(i) Attachment;

(j) Costs;

(k) Further or other relief as Your Lordship may think fit and proper.

2. At the time of filing of the suit, the Plaintiff has also moved an application for grant of ad-interim order and by an order dated 23rd December, 2020, this court passed the following order:

> *"In the facts of the present case, since the plaintiff appears to be a prior user of the surface patter/trade dress and since their exist orders of two High Courts in favour of the plaintff on similar issues, it would be appropriate to grant an order in terms of prayer (a) of the petition at this stage. Such interim order will continue till March 31, 2021 or until further orders whichever is earlier."*

3. Even after receipt of the notices, the defendant did not entered appearance and this Court confirmed the order of Injunction by an order dated 16th August, 2022, which reads as follows:

> *"The repeated failure of the respondent in appearing before this Court demonstrates their unequivocal unwillingness to oppose the contentions of the petitioner."*

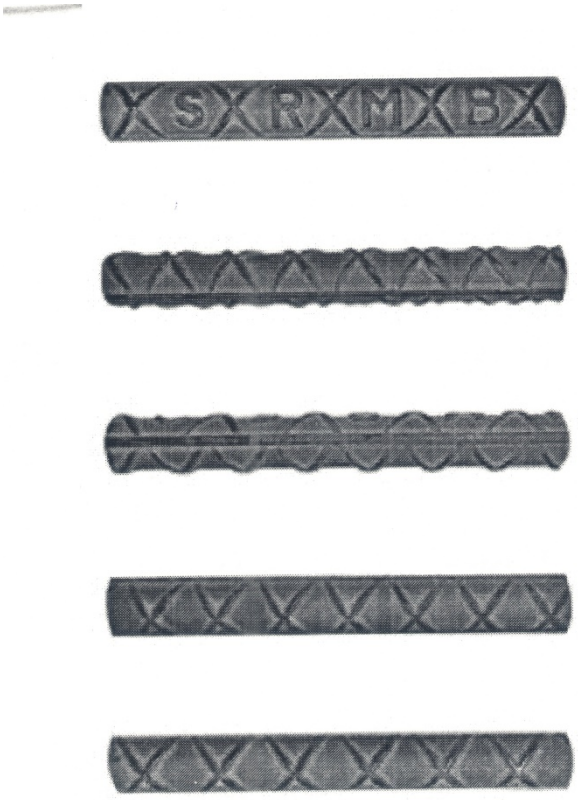
4. It appears from the report of the Deputy Registrar (Ct. & J.), dated 19th September, 2022, that the defendant has not entered appearance either in person or through its Advocate. Therefore by an order dated 11th April, 2023, this Court recorded that despite service of the writ of summons, the defendant has failed to enter appearance in the suit and this matter was listed as an "Undefended Suit".

5. The plaintiff is a well-known and reputed company, carrying on business for manufacturing, selling and distribution of construction material including TMT bars (Thermo-Mechanically Treated bars), Torkari Bars, wires, grills, etc. and the predecessors of the plaintiff was incorporate in the year 1951.

6. The plaintiff started manufacturing, distributing and selling these Thermo-Mechanically Treated bars (TMT bars) with distinctive "X-ribs" surface pattern since the year 2001. These TMT bars are used as a tension device in reinforced concrete and reinforced masonry structures to strengthen the concrete under tension.

7. The present suit concerns with the trade dress rights in the unique and distinctive patters formed by way of artistic linings subsisting on the concrete reinforcing bar (TMT Bar) – IS:1786 grade steel bars manufactured by the Plaintiff, under the trademark/brand name "X-

RIBS". The "X-RBIS" TMT bars of the Plaintiff have a distinct surface pattern with the letter 'X' embossed at regular intervals over the entire surface and length of the TMT bars. Each bar has two series of 'X' patterns, embossed diametrically, opposite to each other. On one side of the series the brand name "SRMB' is embossed in a regular style at the 'X' intervals and tensile strength and grade of Fe 415, Fe 500, Fe 550 or Fe 415D, Fee 500D, Fe 550D or Fe 600D is embossed, and the other 'X' series embossed on the opposite side of the bar is a running 'X' series.



8. The plaintiff is the owner and registered proprietor of an assortment of wordmarks, i.e. "X-RIBS", which has a registration dated 20th August, 2004, bearing the registration No. 1304153; SRMB 3-D Device bearing the "X-ribs" marks, which has a registration dated 20th September,

2020, bearing the registration no. 3406258 and “SRMB 500+ X-Ribs”, which has a registration of 17th June, 2019, bearing the registration no. 1835790.

9. The rights of the plaintiff conferred by registration of the "X Ribs" mark are as follows:

- The registration of a trade mark grants the registered proprietor the exclusive right to the use of the trade mark in relation to the goods in respect of which the trade mark is registered and the right to obtain relief in respect of infringement of such trademark. Section 28(1) and 29(1) of the Trade Marks Act, 1999. The Section nos. 28(1) and 29(1) are reads as follows:

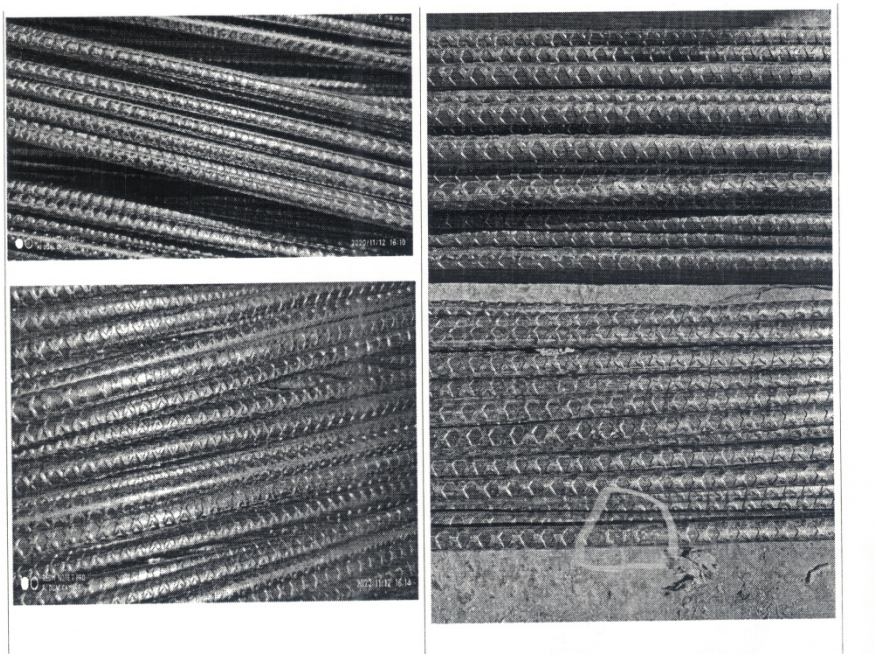
> *“**Section 28(1),** Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.*
>
> ***Section 29(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.”*

- A registered trade mark (TM) is infringed by a person who is not the registered proprietor, by use of a mark which,

because of its identity with a registered TM and identity of the goods covered by the registered TM, is likely to cause confusion on the part of the public or likely to have an association with the registered TM and the Court shall presume that such confusion is likely to occur, as in the present case. Section 29 (2)(c). Section 29(2)(c) reads as follows:

> *"**Section 29(2)(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."*

10. In January, 2020, the Plaintiff had come across the TMT bars of the defendant bearing the identical and deceptively similar X-Ribs mark as that of the Plaintiff and they were being manufactured, sold and advertised by the defendant. The mark of the defendant is as follows:



11. The plaintiff immediately after such knowledge had and sent a cease and desist notice dated 16th January, 2020, informing the defendant of the plaintiff's ownership of the X-ribs mark and its prior and superior rights in the mark on account of first adopter and user since April, 2001 but no response was received by the plaintiff, hence, another notice dated 4th February, 2020, was sent by the plaintiff to defendant addressing the same issue.

12. On 12th February, 2020, the plaintiff's attorney received a reply from the Defendant's firm, wherein the defendant had asked for 15 days' time to "solve the problem", to which the plaintiff had replied and sent a letter dated 13th February, 2020, requesting the Defendant to provide a full and proper reply before 27th February, 2020.

13. Thereafter, the defendant though his attorney's letter on 25th February, 2020, replied to the plaintiff's letter dated 13th February, 2020, and alleged that the Defendant's TMT bar is sold under the mark Laxmi Trading Company (LTC) and has obtained registration of the same and also mentioned that the X-ribs marks appearing on the TMT bars manufactured by the plaintiff and those manufactured by the defendant were entirely different.

14. On receipt of the reply sent by the defendant on 25th February, 2020, the plaintiff thereafter sent another letter on 17th March, 2020, reiterating its stand taken by the plaintiff through the letter dated 16th January, 2020 and called upon the defendant to cease and desist from

using and applying the X-ribs marking surface pattern on the T.M.T. manufactured by the defendant. By a letter dated 25th March, 2020, the defendant stated that he would not.

15. The plaintiff by an e-mail dated 4th April, 2020, made it clear to the defendant that the plaintiff had requested the defendant to cease and desist from using the X-ribs surface pattern on the TMT bars and by reasons whereof the assurance as contained in the letter dated 25th March, 2020, was inadequate for concluding the dispute between the parties and in response to the said e-mail, the defendant by a letter dated 11th April, 2020, contended that the mark X-ribs is not a distinctive expression, it is common to the trade and does not give any exclusive right to the plaintiff to restrain others from using the said mark.

16. Mr. Debnath Ghosh, Learned Advocate, representing the plaintiff submits that the common law rights acquired by the plaintiff to use the X RIBS pattern /trademark/trade dress on its TMT bars also gives it exclusive right to use the said trademark/trade dress. He submits that the mark/shape on the defendant's goods on the defendant's goods is a fraudulent and deceptive imitation of the surface pattern of X RIBS Torkari/TMT bar of the plaintiff which constitute shape trademark of the plaintiff in which the plaintiff has prior rights under common law.

17. Mr. Ghosh submits that defendant has wrongfully and illegally used and applied the X RIBS shape mark/pattern on their Torkari/TMT bars

in an attempt to pass of their Torkari/TMT bars as that of the plaintiff and / or to seek association with the plaintiff and / or its business. He submits that the defendant has adopted the X ribs pattern in relation to Torakari/TMT bars in relation to attempt to appropriate the goodwill owned by the plaintiff in relation to the said mark/shape/trade dress, and have been misrepresenting in the course of trade and to the general public that their business and/ or the Torkari/TMT bars are connected with the plaintiff and /or is another variant of the goods manufactured by the plaintiff. He submits that the X ribs pattern/ shape being used by the defendant is causing immense damage to the goodwill and reputation of the plaintiff and the said ingredients are classic trinity under the law of passing off.

18. Even after service of notice upon the defendant, the defendant has neither appeared during the hearing of the interlocutory application nor in the suit and this Court has proceeded the suit as "Undefended".

19. Order 8 Rule 10 had been inserted by the legislature to expedite the process of justice. The Courts can invoke its provisions to curb dilatory tactics, often resorted to by defendants by not filling the written statements by pronouncing judgments against it. At the same time, the Courts must be cautious and judged the contents of the plaint and the documents on records as being of an unimpeachable character, not requiring any evidence to be left to prove its contents. The Supreme Court in ***C.N. Ramappa Gowda v. C.C. Chandregowda*** reported in ***(2012) 5 SCC 265*** at held as under:—

*"**25.** We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed : It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise thedefendant] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.*

***26.** It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.*

***27.** However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic*

> *to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit."*

20. On 8th November, 2016, the plaintiff has made an application being No. 3406258 under Class-6 before the Trade Mark Registry for registration of X-ribs pattern TMT bars, claiming use since 4th January, 2001 and the said X ribs 3D device (label) was duly registered. The plaintiff is also the registered proprietor of the mark SRMB 500+ X-ribs (Label) and X-ribs (Word) in relation to HSD bars, TMT bars of mould steel and building materials made from steel and wrought iron.

21. In the month of January, 2020 when then plaintiff came to know that TMT bars bearing the identical X-ribs mark as that of the plaintiff being manufactured, advertised and sold by the defendant, immediately, the plaintiff has sent cease and desist notice to the defendant on 16th January, 2020, calling upon the defendant that the use of the mark X-ribs by the defendant on his TMT bars was wrongful and illegal and had infringed the intellectual property rights of the plaintiff and directed the defendant forthwith cease and desist from using the mark X-ribs on his TMT bars and to stop production of the bars having the similar mark of the plaintiff. In reply to the said notice, the defendant by a letter dated 12th February, 2020, sought for 15 days' time to solve the problem. The plaintiff requested the defendant to provide full and proper reply of the notice on or before 27th February, 2020. The defendant by a reply dated

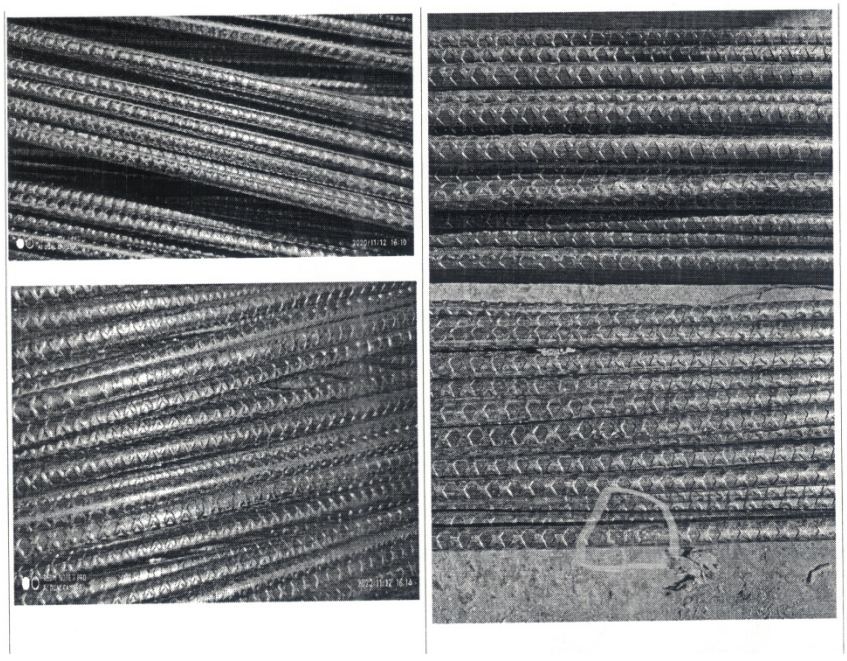
25th February, 2020, informed the plaintiff that the defendant sold the TMT bar under the mark LTC (Laxmi Trading Company) and the defendant has applied for registration of the said mark. The defendant further informed the plaintiff that the mark appearing in their TMT bar manufactured by the defendant is entirely different form that of the plaintiff's mark. The plaintiff was not satisfied with the reply of the defendant and again the plaintiff has sent cease and desist notice to the defendant and in reply to the said notice, the defendant by a reply dated 25th March, 2020, informed the plaintiff that it would not use expression X-ribs as trade mark in respect of the TMT bars manufactured by the defendant.

22. The plaintiff again by an e-mail dated 4th April, 2020, requested the defendant to cease and desist from using the X-ribs surface pattern on the TMT bars and further informed that the reasons mentioned in the reply dated 25th March, 2020, was inadequate for concluding the dispute between the plaintiff and the defendant. The defendant through an e-mail dated 11th April, 2020, informed the plaintiff that the mark X-ribs is not a distinctive expression, it is common to the trade and does not give any exclusive right to the plaintiff to restrained others from using the said mark.

23. Mark of the plaintiff is as follows:



Mark of the defendant is as follows:



24. In the reply dated 25th March, 2020, the defendant has mentioned as follows:

> *"Inspite of the forgone certifications and submissions, we state and submit that our Client is agreed to not to use the expression "XRIBS" as its Trade Mark in respect of the said products as those of your Client in any manner whatsoever."*

25. As per the details submitted by the plaintiff, the plaintiff has made the promotional expenses for the TMT bar of Rs. 507.17 lacs for the year 2018-2019 and sale figure of the TMT bar for the year 2018-2019 was Rs. 9066.40 lacs.

26. The plaintiff has acquired common law right to use X-RIBS pattern/ trademark/ trade dress on its Torkari/ TMT bars and also gives it exclusive right to use the said trademark /trade dress. The defendant has wrongfully and illegally used and applied XRIBS shape mark/pattern on their TMT bars to pass of their TMT bars as that of the plaintiff or to seek association with the plaintiff or its business. The defendant has adopted the X ribs pattern in relation to their TMT bars in an attempt to appropriate the goodwill owned by the plaintiff is relation to the X ribs mark/shape/trade dress and have been misrepresenting in the course trade and to the general public that their business of TMT bars are connected with the plaintiff or is another variant of the goods manufactured by the plaintiff.

27. The registered mark of the plaintiff X-ribs has been infringed by the defendant in course of the trade by use of an identical mark by the

defendant in respect of the identical goods covered by the registration obtained by the plaintiff and by reasons whereof is likely to cause confusion and deception in the mind of the general public. The defendant has wrongfully and illegally used and applied XRIBS shape mark/pattern on his TMT bars in an attempt to pass of his TMT bars as that of the plaintiff or in association with the plaintiff.

28. In respect of test of from adjudicating infringement, the Delhi High Court in ***Royal Bank of Scotland Group PLC vs. Sharekhan Ltd.*** reported in ***(2015) 216 DLT 197***, after taking into consideration numerous judicial pronouncement, held that:—

> *"5. The test of comparison of the marks side by side is not a sound one since a purchaser will seldom have the two marks actually before him when he makes his purchase. The eye is not an accurate recorder of visual detail and marks are remembered by general impression or by some significant detail rather than by any photographic recollection of the whole. While judging the question as to whether the defendants have infringed the trade mark by colourable imitation of the mark or not, the Court has to consider the overall impression of the mark in the minds of general public and not by merely comparing the dissimilarities in the two marks.*
>
> *36. In order to establish infringement, the main ingredients of Section 29 of the Act are that the plaintiff's mark must be registered under the Act; the defendant's mark is identical with or deceptively similar to the registered trade mark; and the defendant's use of the mark is in the course of trade in respect of the goods covered by the registered trade mark. The rival marks are to be compared as a whole. Where two rival marks are identical, it is not necessary for the plaintiff to prove further that the use of defendant's trademark is likely to deceive and cause confusion as the registration shows the title of the registered*

proprietor and the things speak for themselves. In an infringement action, once a mark is used as indicating commercial origin by the defendant, no amount of added matter intended to show the true origin of the goods can effect the question. If Court finds that the defendant's mark is closely, visually and phonetically similar, even then no further proof is necessary."

Test of comparison of rival marks:—

"37 (i) In ***Pianotist Co. Ltd.'s application, 1906 (23) R.P.C. 774****, it was observed as follows:*

> *"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as trade mark for the goods of the respective owners the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods-then you may refuse the registration, or rather you must refuse the registration in that case."*

(iii) In the case of Sandow Ltd.'s Application, 31 R.P.C. 205 it was clarified that among the surrounding circumstances to be taken into account, one of considerable importance is the imperfect recollection a person is likely to have of a mark with which he is only vaguely acquainted. While approving the above tests for comparison of the two word-marks, the Supreme Court held in F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manner & Co. Pvt. Ltd. (1969) 2 SCC 716 that:

> *"It is also important that the marks must be compared as whole. It is not right to take a portion of the word and say that because that*

portion of the word differs from the corresponding portion of the word in the other case there is no sufficient similarity to cause confusion. The true test is whether the totality of the proposed trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons accustomed to the existing trade mark."

(iv) In the case of Tokalon Ltd. v. Devidson and Co. 32 R.P.C. 133, it was observed that:

"…We are not bound to scan the words as we would in a question of compatriotic literarum. It is not a matter for microscopic inspection, but to be taken from the general and even casual point of view of a customer walking into a shop." …

(vii) In the decision reported in 1951 SCC OnLine Bom 33 : AIR 1951 Bom 147, James Chadwick & Bros. Ltd. v. National Sewing Thread Co. Ltd. Chagla C.J. and Bhagwati, J.; referring to the words "likely to deceive or cause confusion" in section 10 of the Act observed as follows:—

"Now in deciding whether a particular trade mark is likely to deceive or cause confusion, it is not sufficient merely to compare it with the trade mark which is already registered and whose proprietor is offering opposition to the registration of the former trade mark. What is important is to find out what is the distinguishing or essential feature of the trade mark already registered and what is the main feature or the main idea underlying that trade mark, and if it is found that the trade mark whose registration is sought contains the same distinguishing or essential feature or conveys the same idea, then ordinarily the Registrar would be right if he came to the conclusion that the trade mark should not be registered. The real question is as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would react to a particular trade mark, what association he would form by

> *looking at the trade mark, and in what respect he would connect the trade mark with the goods which he would be purchasing. It is impossible to accept that a man looking at a trade mark would take in every single feature of the trade mark. The question would be, what would he normally retain in his mind after looking at the trade mark? What would be the salient feature of the trade mark which in future would lead him to associate the particular goods with that trade mark?"*

29. In the present case, a comparative analysis of the marks as represented in paragraph above, clearly shows a similarity in the marks of the parties. The defendant have cleverly used the trademark "X-Ribs" in the TMT Bar of the defendant. It is settled law, that the mark should not be meticulously compared side by side as it is not possible for the consumer to have an opportunity to do the same.

30. It is clear that X-Ribs marks of the plaintiff have been applied are being applied by the defendant in the TMT Bar of the defendant. In view of the forgoing, this Court is of the view that the defendant are infringing the registered trademark of the plaintiff under Section 29 (4) (a) (b) and (c).

Passing Off:—

31. Passing off action arises out of common law and is not preconditioned on registration. The term passing off was explained by James, L.J. in as under:—

> *"…I have often endeavoured to express what I am going to express now (and probably I have said it in the same words, because it is very difficult to find other words in which to express it) that*

> *is, that no man is entitled to represent his goods as being the goods of another man; and no man is permitted to use any mark, sign or symbol, device or other means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer."*

32. Lord Diplock in ***Erven Warnink Besloten Vennootschap v. J. Townend and Sons (Hull) Ltd., [1979] A.C. 731*** had in identified five essentials to establish an action of passing of the relevant excerpt is as under:—

> *"My Lords*, A.G Spalding and Brothers *v.* A.W. Gamage Ltd., *84 L.J.Ch 449, and the later cases make it possible to identify five characteristics which must be present in order to create a valid cause of action for passing off : (1) a misrepresentation, (2) made by a trader in the course of trade, (3) to propsective customers of his or ultimate consumers of goods or services supplied by him, (4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence) and (5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a quia timet action) will probably do so."*

33. The forgoing essentials have been accepted by the Hon'ble Supreme Court in ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. reported in (2001) 5 SCC 73*** and ***Heinz Italia v. Dabur India Ltd. reported in (2007) 6 SCC 1***. In *Cadila Health Care Ltd.* (supra), the Supreme Court had further laid down the following decisive tests for checking deceptive similarity:—

"5. Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:

(a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.

(b) The degree of resembleness between the marks, phonetically similar and hence similar in idea.

(c) The nature of the goods in respect of which they are used as trademarks.

(d) The similarity in the nature, character and performance of the goods of the rival traders.

(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.

(f) The mode of purchasing the goods or placing orders for the goods.

(g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

36. Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case."

34. In the present case, applying the aforesaid test, this Court is of the view that the defendant have tried to dupe the general public by using of an identical mark "X-Ribs" in respect of TMT Bar in violation of statutory rights as well as the common law rights of the plaintiff. Such usage would inevitably lead to loss of revenue as also that of goodwill.

Accordingly, the defendants have indulged into the offence of passing off. The defendant have infringed the registered trademark of the plaintiff as well as committed the torts of passing off.

35. The present suit is also a commercial suit within the definition of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing written statements, the courts should invoked the provisions of Order 8 Rule 10 to decree such cases.

36. Resultantly, having being satisfied with the averments made and duly supported by documents and affidavit and no written statement being on record, this Court deem it fit case for invoking the provisions of Order 8 Rule 10 of the Code of Civil Procedure.

37. Accordingly, the present suit is decree in favour of the plaintiff and against the defendant in terms of prayed (a), (b), (c) and (d) of the plaint. As regard loss and damages this Court did not find any pleadings either to ascertain loss or damages or to appoint any Special Referee for enquiry and thus no loss and damages is allowed. This court finds that due to the act of the defendant, the plaintiff is compelled to file the suit. Thus, the plaintiff is entitled to get cost of

Rs.1,50,000/-. The defendant is directed to pay cost of Rs.1,50,000/- within 30 days from date.

38. CS-COM 224 of 2024 (Old No. C.S. 165 of 2020) is thus **disposed of**. Decree to be drawn accordingly.

(Krishna Rao, J.)