UKHC010159552026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.332 of 2026

Deepanshu Bansal .....Appellant

Versus

Poonam Bhatt .....Respondents

Present:- Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Ajeet Kumar Yadav Advocate and Ms. Sneha Sethia, Advocate holding brief of Mr. Vikas Khera, Advocate for the appellant.
Mr. Soubhagya Ranjan Pati and Mr. Chandra Prakash, Advocate for the Caveator/respondent.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to order dated 18.07.2026, passed in Civil Suit No.01 of 2024, Deepanshu Bansal Vs. Poonam Bhatt, by the court of First Additional District Judge, Udham Singh Nagar ("the suit"), by which an application filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 ("the Code"), filed by the appellant has been dismissed.

2. Heard learned counsel for the parties and perused the record.

3. Facts necessary to appreciate the controversy, briefly stated, are as follows. The appellant filed the suit under Sections 134 and 135 read with Sections 27(2) and 29 of the Trade Marks Act, 1999 ("the Act") for permanent injunction restraining infringement and passing off of trademarks, rendition of accounts, etc. It is the case of the appellant that they are into the business of marketing and trading of gold, silver, diamond, platinum and other

jewelleries. On 09.09.2022, they applied for registration of the trade mark “SUNAREKA”, which was finally granted to them on 28.07.2023 and in view of Section 23 of the Act, it relates back to the date when the application was made for registration of trademarks. The appellant provides 100% hallmark jewelleries and precious metals to their customers. The trademark granted to the appellant has already become distinct and associated with the appellant.

4. It is the case of the appellant that the respondent substantially copied the registered and well known trademarks/label of the appellant. The respondent is also engaged in the business of marketing and trading of gold, silver and its jewelleries. She started using the trademark “SWARNIKA” and thereby they are confusing consumers in each and every respect including visually, structurally, in its basic ideas and essential features. The respondent has substantially copied the registered and well known trade mark/label of the appellant. According to the appellant, the imitation is in exactitude of copying in such manner that not only ordinary purchaser but also the big retailers/dealers/distributors are bound to be confused/deceived. With these and other averments, appellant seeks permanent injunction restraining the respondent from using the trade mark/label or any other trade mark respectably similar to the appellant’s trademark “SUNAREKA”.

5. The respondent did file her Written Statement and according to her , the trade mark/label/brand name “SWARNIKA Gems and Jewels”, is derived from the word, “Swarn” which in itself

is a meaning of gold. The respondent stated that she had also filed an application for registration of the trade mark on 05.06.2023, which is yet to be processed. According to the respondent, the trade mark, “Swarnika Gems and Jewels” is totally distinct and different from any other trade marks/brand name. The main element of respondent trademark is “SWARNIKA”, which is coined and inspired from the word “Swarn”. With these and other averments, the respondent claims that the suit filed by the appellant be dismissed.

6. In the suit, an application under Order 39 Rules 1 and 2 and 151 of the Code was filed by the appellant, which has been rejected by the impugned order. It is impugned herein.

7. Learned Senior Counsel appearing for the appellant submits that the appellant has a registered trade mark in the name of “SUNAREKA” and it is being infringed by the respondent by running her business in the name of “SWARNIKA” which is deceptively similar. It is argued that the articles that are being sold by both the appellant and the respondent are similar and identical. They are dealing with jewelleries.

8. Learned Senior Counsel would also submit that in the impugned order, the court has discussed the two words “SUNAREKA” and “SWARNIKA” and considered that the spellings are different. It is argued that there cannot be a dissection. The words as a whole and in totality are to be seen. In support of his arguments, learned Senior Counsel placed reliance on the principle of law as laid down in the case of Under Armour Inc Vs. Anish

Agarwal and another, 2025 SCC OnLine Del 3784. In the case of Under Armour Inc (*Supra*), the Hon'ble Delhi High Court has discussed the concept of anti-dissection rule and in para 43 observed as follows:-

> "**43.** It is well settled that the question whether competing trademarks are similar cannot be decided by dissecting them and then comparing their parts for similarities. In *South India Beverages India Private Limited* v. *General Mills Marketing Inc.; 2014 SCC OnLine Del 1953*: a Division Bench of this court had observed "*conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up to their components parts for comparison*"."

9. Further in the case of Under Armour Inc (*Supra*), Hon'ble Delhi High Court also referred the text from McCarthy on Trademarks and Unfair Competition, and in para 47 observed as follows:-

> "**47.** We consider it apposite to refer to the following text from *McCarthy on Trademarks and Unfair Competition*, which explains the said principle as under:—
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> "23.15 Comparing Marks : *Differences* v. *Similarities*
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> [1] <u>The Anti-Dissection Rule</u>
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> [a] Compare composites as a Whole : Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the "anti dissection" rule. The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. <u>However, it is not a violation of the anti-dissection rule to view the component parts of conflicting composite marks</u>

as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, conflicting marks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed:“The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” The anti-dissection rule is based upon a common sense observation of customer behavior : the typical shopper does not retain all of the individual details of a composite mark in his or her mind, but retains only an overall, general impression created by the composite as a whole. It is the overall impression created by the mark from the ordinary shopper's cursory observation in the marketplace that will or will not lead to a likelihood of confusion, not the impression created from a meticulous comparison as expressed in carefully weighed analysis in legal briefs. In litigation over the alleged similarity of marks, the owner will emphasize the similarities and the alleged infringer will emphasize the differences. The point is that the two marks should not be examined with a microscope to find the differences, for this is not the way the average purchaser views the marks. To the average buyer, the points of similarity are more important that minor points of difference. A court should not engage in “technical gymnastics” in an attempt to find some minor differences between conflicting marks.

However, where there are both similarities and differences in the marks, there must be weighed against one another to see which predominate.

The rationale of the anti-dissection rule is based upon this assumption:“An average purchaser

> does not retain all the details of a mark, but rather the mental impression of the mark creates in its totality. It has been held to be a violation of the anti-dissection rule to focus upon the "prominent" feature of a mark and decide likely confusion solely upon that feature, ignoring all other elements of the mark. Similarly, it is improper to find that one portion of a composite mark has no trademark significance, leading to a direct comparison between only that which remains."

10. Learned Senior Counsel submits that the registered trade mark of the appellant and the trademark by which name the respondent is running her business, are deceptively similar. It is argued that it has to be seen from the perspective of a common purchaser, who may come into the trap of deception. In this regard, learned Senior Counsel has placed reliance on the principle of law as laid down in the case of Amritdhara Pharmacy Vs. Satya Deo Gupta, AIR 1963 SC 449.

11. In the case of Amritdhara Pharmacy (*Supra*), the Hon'ble Supreme Court interpreted that word "likely to deceive or cause confusion" and in para 6 observed as follows:-

> "6. It will be noticed that the words used in the sections and relevant for our purpose are "likely to deceive or cause confusion". The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion. On an application to register, the Registrar or an opponent may object that the trade mark is not registrable by reason of clause (a) of Section 8, or sub-section (I) of Section 10, as in this case. In such a case the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or

cause confusion. In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused. A trade mark is likely to deceive or cause confusion by its resemblance to another already on the Register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market. In considering the matter, all the circumstances of the case must be considered. As was observed by Parker, J., in Pianotist Co Application, (1906) 23 RPC 774 - which was also a case of the comparison of two words.

> "You must take the two words. You must judge them, both by their look and by their sound. You 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 a trade mark for the goods of the respective owners of the marks." (p. 777)

For deceptive resemblance two important questions are : (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be adopted in judging whether such resemblance exists. As to confusion, it is perhaps an appropriate description of the state of mind of a customer who, on seeing a mark thinks that it differs from the mark on goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection. (See Kerly on Trade Marks, 8th Edition, p. 400.)"

12. Further, in the case of Amritdhara Pharmacy (*Supra*), in para 8, the Hon'ble Supreme Court observed, "**...A critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall**

similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague recollection that he had purchased a similar medicine on a previous occasion with a similar name. The trade mark is the whole thing-the whole word has to be considered..."

13. Learned Senior Counsel would further argue that the infringement of the trade marks has to be examined keeping in view the fact that both the trade marks/labels are not before a common purchaser. A purchaser or a person dealing with the business of the appellant and the respondent may not have the opportunity of having both the trade marks/labels side by side. He would refer to the principle of law as laid down in the case of Parle Products (P) Ltd. Vs. J.P. and Co. Mysore, (1972)1 SCC 618, in which case, in para 8, the Hon'ble Supreme Court observed as follows:-

> "**8.** According to *Karly's Law of Trade Marks and Trade Names* (9th Edn., para 838):
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> > "Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Thus, for example, a mark may represent a game of football; another mark may show players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade marked goods, and relying, as they frequently do, upon marks, should be able

> to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own.""

14. Further, in the case of Parle Products (*Supra*), the Hon'ble Supreme Court in para 9 observed as follows:-

> "**9.** It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. .....
> ....."

15. Learned Senior Counsel would submit that *prima facie* it is established that the trademark/label which the respondent is using is similar to the registered trademark of the appellant and the goods and services covered by the registered trade mark/label of the appellant and the goods and services provided by the respondent are similar or identical. Hence, it is submitted that *prima facie* case of infringement of registered trade mark/label is made out. He submits that actual loss in such cases is not necessary to be established. He submits that in order to stop infringement it is sufficient that the act may likely to cause confusion.

16. Learned counsel appearing for the respondent submits that the impugned order is in accordance with law, which does not warrant any interference. He also raised the following points in his submissions:-

(i) Both the trade marks/labels are quite distinct, in pronunciation, in spelling, in their presentation, etc. “SWARNIKA” alone is not the trade mark/label, it is “SWARNIKA Gems and Jewels”, which is distinct from “SUNAREKA”.

(ii) The trade mark/label should be compared as a whole along with logo and name and if it is so compared, both the trade marks/labels are quite different. The trade mark/label which the respondent is using may not likely to cause any confusion or deception, especially when one cannot see them on the product to be sold.

17. Learned counsel for the respondent also submits that the scope of appeal against rejection of an application under Order 39, Rules 1 and 2 of the Code is quite restricted. In an appeal, if there are two views possible, the view adopted by the trial court has to be respected.

18. In support of his contention, learned counsel placed reliance on the principle of law as laid down by the Hon’ble Supreme Court in the case of Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others, (2024)11 SCC 351, in which case, the

Hon'ble Supreme Court preferred the principle of law as laid down in the case of Wander Ltd. Vs. Antox India (P) Ltd., 1990 Supp SCC 727 and Evans Vs. Bartlam, 1937 A.C. 473 and many other case laws and in para 21 to 25 observed as follows:-

> "21**.** With regard to (*a*), this Court held thus: (*Wander case* [*Wander Ltd.* v. *Antox India (P) Ltd.*, 1990 Supp SCC 727] , SCC p. 733, para 14)
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> > "*14*. ... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ... The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below.... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."
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> 22. This Court, while arriving at the above findings, relied on its earlier judgment in *Printers (Mysore) (P) Ltd.* v. *Pothan Joseph* [*Printers (Mysore) (P) Ltd.* v. *Pothan Joseph*, 1960 SCC OnLine SC 62] , wherein it was held thus: (*Printers case* [*Printers (Mysore) (P) Ltd.* v. *Pothan Joseph*, 1960 SCC OnLine SC 62] , SCC OnLine SC para 9)
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> > "*9*. ... as has been observed by Viscount Simon LC in *Charles Osenton & Co.* v. *Johnston* [*Charles Osenton & Co.* v. *Johnston*, 1942 AC 130 (HL)] , the law as to reversal by a court of appeal of an order made by a Judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the

application of well-settled principles in an individual case."

23. It is pertinent to note that in *Printers* [*Printers (Mysore) (P) Ltd.* v. *Pothan Joseph*, 1960 SCC OnLine SC 62] this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in *Charles Osenton & Co.* v. *Johnston* [*Charles Osenton & Co.* v. *Johnston*, 1942 AC 130 (HL)] , after stating the above, went on to quote Lord Wright's decision in *Evans* v. *Bartlam* [*Evans* v. *Bartlam*, 1937 AC 473 (HL)] : (*Evans case* [*Evans* v. *Bartlam*, 1937 AC 473 (HL)] , AC p. 486)

> "... It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the Court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."

24. In *Evans case* [*Evans* v. *Bartlam*, 1937 AC 473 (HL)] , Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

25. What flows from a plain reading of the decisions in *Evans* [*Evans* v. *Bartlam*, 1937 AC 473 (HL)] and *Charles Osenton* [*Charles Osenton & Co.* v. *Johnston*, 1942 AC 130 (HL)] is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

> (*a*) Examine whether the discretion has been properly exercised i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and
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> (*b*) In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders."

19. Reference has also been made to the judgment in the case of Skyline Education Institute (India) Private Ltd. Vs. S.L. Vaswani and another, (2010)2 SCC 142, with regard to power to be exercised in appeal against an order rejecting a prayer for injunction. In para 19 of the judgment, Hon'ble Supreme Court observed as follows:-

> "**19.** We have thoughtfully considered the entire matter. Before pronouncing upon the tenability or otherwise of the appellant's prayer for restraining the respondents from using the word "Skyline" for the Institute of Engineering and Technology established by them, we consider it necessary to observe that as the suit filed by the appellant is pending trial and issues raised by the parties are yet to be decided, the High Court rightly considered and decided the appellant's prayer for temporary injunction only on the basis of the undisputed facts and the material placed before the learned Single Judge and unless this Court comes to the conclusion that the discretion exercised by the High Court in refusing to entertain the appellant's prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done to it, there will be no warrant for exercise of power under Article 136 of the Constitution."

20. Learned counsel for the respondent also submits that the matter has to be examined in entirety. At the stage of deciding of a

temporary injunction application, a mini trial may not be conducted; the rights of the parties may not be determined finally; the rights are decided finally after parties get an opportunity of adducing evidences. He would submit that the *prima facie* case, balance of convenience and irreparable loss have been examined by the court below. The impugned order does not warrant any interference and the best course in such situation would be to maintain *status quo.* He would refer to the principle of law as laid down by the Hon'ble Supreme Court in the case of Maharwal Khewaji Trust (Regd.) Vs. Baldev Dass, (2004) 8 SCC 488. In the case of Maharwal Khewaji Trust (Regd.), the Hon'ble Supreme Court accepted the argument that, "**unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.**"

21. Undoubtedly, in an order rejecting an application for temporary injunction, it is not easily interfered with unless there are valid reasons to do so. This relief basically rests on discretion guided by the principle of law pronounced by the courts. The broad and significant parameters are *prima facie* case, balance of convenience and irreparable loss.

22. It is the case of the appellant that the registered trademark/label is being infringed.

23. Section 29 of the Act is 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.

(4) 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-

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

(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 labelling 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.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising-

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly."

24. Trade mark in a business is a kind of lifeline. A business runs through it. Its infringement gives right to its owner to bring a suit to seek injunction.

25. In the case of Ramakant Ambalal Choksi (*supra*), the Hon'ble Supreme Court based on the judgment in the case of Evans (*Supra*) and Charles Osentons & Co. Vs. Johnston, 1942 A.C. 130 summed up the principle in para 25. At the cost of repetition, para 25 of the judgment in the case of Ramakant Ambalal Choksi (*supra*) is being reproduced here once again:-

> **"25.** What flows from a plain reading of the decisions in *Evans* [*Evans* v. *Bartlam*, 1937 AC 473 (HL)] and *Charles Osenton* [*Charles Osenton & Co.* v. *Johnston*, 1942 AC 130 (HL)] is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:
>
> (*a*) Examine whether the discretion has been properly exercised i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and
>
> (*b*) In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders."

26. A bare reading of the aforesaid principles, makes it abundantly clear that interference in the discretion exercised by the trial court may not be made unless the discretion exercised is arbitrary, capricious or contrary to the principles of law, and, in some cases, the court may adjudicate on facts even in such discretionary orders, if the order is wrong.

27. Learned counsel for both the parties have argued that trademark/label has to be seen as a whole. Anti-dissection is a rule; the words and letters cannot be read in isolation or in groups or in disjunction. In the impugned order, the court has, in fact, did dissection to both the words, "SUNAREKA" and "SWARNIKA",

which it appears is not permissible at this stage. The impugned order also takes note of spelling.

28. It is also true that a person who comes across to the business of the parties may not have the option of keeping both the trademarks/labels side by side. As held in the case of Parle Products (*Supra*), "**A person acquainted with one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted.**" Here is a case of deception or confusion and who are the buyers, the general public in the city of Udham Singh Nagar.

29. As stated hereinbefore, the appellant did apply for his trademark registration in the month of September, 2022 which was granted to him on 28.07.2023. During the course of arguments, learned Senior Counsel for the appellant referred to the reply notice given by the respondent, particularly paras 2 and 3, which record that the respondent has been doing wholesale business of Gemstones, Rudraksha and Rudraksha Mala and sea pearls under the trade name and style of "SHRI GURU RATAN KENDRA" since 2019 and in para 3 in the reply notice, it is written that recently they started business of gold, jewelleries under the trade name and style of "SWARNIKA JEWELLERY". This reply notice is dated 13.11.2023.

30. During the course of arguments, learned counsel appearing for the respondent submits that in the month of June,

2023 the respondent started business in gold, jewelleries, as such. It is argued that earlier when they were doing business with the gemstones and sea pearls, there also they were using silver and gold so as to cover those gemstones and pearls, etc.

31. So the chronology is clear. After the appellant's application for registered trade mark in the month of September, 2022, some time in the month of June, 2023 respondent started gold business. Earlier they were not into that business as such. On 28.07.2023, the appellant got his trademarks registered in the name of "SUNAREKA". It is admitted at Bar that both the shops of the appellant as well as of the respondent are in the same street and at a distance of less than 500 Meters.

32. In the case of Amritdhara Pharmacy (*Supra*), the Hon'ble Supreme Court had made a very critical analysis, then it was observed that, "**A critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine**....." Similar is the instant case. There is similarity in the marks which is being used by the respondent. Their items are also similar. Therefore, the appellant has, in fact, made out a *prima facie* case.

33. In so far as balance of convenience is concerned, it is the case of the appellant that he has also been into the business of jewelleries for the last approximately 12 years.

34. Learned counsel for the respondent submits that earlier that in the year 1962 the respondent's business was in the name of "Guru" Jewellers. The fact remains that in their reply notice dated 13.11.2023, the respondent has replied saying that recently they started business of gold jewelleries under the name of "Swarnika".

35. In view of the foregoing discussions, this Court is of the view that, in fact, the balance of convenience also lies in favour of the appellant.

36. In so far as irreparable loss is concerned, the business of the appellant in the name of registered trademark is violated. Definitely, it may cause irreparable loss to the appellant.

37. In view of the aforesaid, this Court is of the view that the court below has committed an error in rejecting the application. Consequently, the appeal deserves to be allowed.

38. The appeal is allowed.

39. The impugned order dated 18.07.2026, passed in Civil Suit No.01 of 2024, Deepanshu Bansal Vs. Poonam Bhatt, by the court of First Additional District Judge, Udham Singh Nagar is set aside.

40. The application filed before the court below on behalf of the appellant herein under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908, is allowed. By way of *ad-interim* injunction, the respondent is restrained from

manufacturing, selling, using, displaying, advertising, importing/exporting or by any other mode or manner dealing with the impugned Trade Mark/ Label “SWARNIKA” or any other trade mark deceptively similar to the appellant’s trade mark “SUNAREKA”, either by herself or through her individual Directors/Proprietors, Partners, Agents, Representatives, Distributors, Assigns, stockist, dealers, retailers, etc., till the disposal of Civil Suit No. 01 of 2024, Deepanshu Bansal v. Poonam Bhatt, pending before the court of District Judge, Rudrapur, District Udham Singh Nagar.

(Ravindra Maithani, J.)
07.10.2026

Sanjay

SANJAY KANOJIA

Digitally signed by SANJAY KANOJIA
DN: c=IN, o=HIGH COURT OF UTTARAKHAND, ou=HIGH COURT OF UTTARAKHAND, 2.5.4.20=e50e50b49596520698ef87e0a08bbd504686df4d1afc60f54a287831dec46fe, postalCode=263001, st=UTTARAKHAND, serialNumber=26EEB7122EDDDD23233A255DD8EC450A84B515A0E7CAEFD1B3179A7DEAE40699, cn=SANJAY KANOJIA
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