IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO.28 OF 2025
IN
COMMERCIAL SUIT NO.9 OF 2025
WITH
INTERIM APPLICATION NO.12806 OF 2025

Dr. Bawaskar Technology (Agro) Pvt. Ltd.)
Having its office at: S. N. 36,)
Manjari Farm, Pune – Solapur Road,)
Manjari, Pune- 412307,)
Maharashtra, India.) …Appellant
(Orig. Plaintiff)

Vs.

1. Anannya Agro Products & Anr.)
Having address at:)
a. Shop No. D/206, S No.320/1,)
Vighnahar Sankul Junnar)
Narayangaon, Maharashtra,)
India – 410504.)
Also having address at,)
b. Flat No. 27, Parvati Apartment,)
Shivnagar, Sutarwadi, Pashan,)
Maharashtra, India,)
Pune – 411021.)

2. Avishkar Agro Chem)
Having address at :)
Shop No. D/206, Second Floor,)
Vignhahar Complex, Nasik Road,)
Narayangaon, Maharashtra,)
India, Pune – 410504.) ...Respondents
(Orig. Defendants)

Mr. Hiren Kamod, a/w Mr. Sumedh Ruikar, i/b RK Dewan Legal Services, for Appellant.

Mr. Shailendra Kanetkar, i/b Mr. Akshay Karlekar, for Respondents.

CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.

RESERVED ON : 06th FEBRUARY 2026

PRONOUNCED ON : 16th MARCH 2026

JUDGMENT:- (PER ADVAIT M. SETHNA, J.)

Prologue:-

1. This is a classic case where we are called upon to adjudicate the impugned order dated 4 October 2025, passed below Exh. 5 by the Commercial Court at Pune in Commercial Suit No. 9 of 2025 ("**Impugned Order**" for short), in the context of the fundamental principles governing trademark jurisprudence. As an Appellate Court, we are required to examine the cardinal principles and classifications applicable to marks, viz. generic, descriptive, suggestive, and arbitrary/fanciful. Such legal principles, as applicable to infringement and passing off, form the subject matter of our analysis and scrutiny in light of the findings of the Trial Court in the Impugned Order.

2. The Trial Court had vide the Impugned Order rejected the application of the Appellant (Original Plaintiff) seeking temporary injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code ("**CPC**" for short) against the Respondents (Original Defendants). The sequitur of this being that the Appellant/Plaintiff seeks continuation/confirmation of the earlier order of the said Trial Court dated 2 April 2025 granting ad-interim

injunction in favour of the Appellant/Plaintiff and against the Respondents/Defendants.

Factual Matrix:-

3. The predecessors of the Appellant/Plaintiff conceptualized, developed and commercially introduced formulation sold under the Trade Mark "GERMINATOR". This was coined in the year 1981 and used continuously since then. According to the Appellant/Plaintiff, it became the most recognized brand amongst agriculturist across India.

4. The Appellant/Plaintiff Company was incorporated on 24 April 2009 as would be evident from the Certificate of Incorporation, bearing such date.

5. The Appellant/Plaintiff launched another product under the name and style of "HARMONY" which is said to be one of the flagship registered brands and Trade Mark of the Appellant/Plaintiff. This was in use since the year 2010. The artistic label and packaging of "HARMONY" constitutes original artistic work, according to the Appellant/Plaintiff being protected under the Copyright Act, 1957.

6. The Appellant/Plaintiff had initially applied for registration of the mark "GERMINATOR" under No. 3505073 on 4 March 2017 with the Trade Mark Registry.

7. Such application of the Appellant/Plaintiff for the Trade Mark "GERMINATOR" was deemed as abandoned by Registry of Trade Marks,

Mumbai, vide order dated 13 October 2023 for non-receipt of hearing notice for filing a counter statement.

8. The Appellant/Plaintiff filed a review against such abandonment order on 2 May 2024 before the Trade Mark Registry, which is pending adjudication.

9. The Appellant/Plaintiff filed a fresh application for registration under No. 6750663 on 11 December 2024 for the Mark "GERMINATOR" claiming continuous use since 1981. Said application was accepted and advertised by the Trade Mark Registry. The opposition proceedings in respect thereof are underway.

10. The Appellant/Plaintiff's Mark "GERMINATOR" has an international registration in U.K. on 20 March 2017.

11. The Appellant/Plaintiff had instituted a Civil Suit No.21 of 2019 on 13 August 2019 before the District Court, Pune being against the Respondent No. 1 for Trade Mark infringement in respect of the Respondent No. 1 Mark "GERMI-FAST" on the ground that the same was deceptively similar to the Appellant/Plaintiff's registered Trade Mark "GERMI". The said Suit was dismissed by the Trial Court on 2 February 2024 without any relief in favour of the Appellant/Plaintiff.

12. On 15 February 2025, a long standing customer of the Appellant/Plaintiff forwarded a bottle of product sold under the Appellant/Plaintiff's Trade Mark "GERMINATOR" expressing suspicion

regarding its authenticity and genuineness. Upon inspection, the Appellant/Plaintiff discovered that the said Respondents/Defendants had indicated in the manufacturing and marketing of a formulation having the similar mark of the Appellant/Plaintiff. Not just that but also the trade dress of the bottle in which the Respondents/Defendants marketed its formulation was also almost identical to that of the Appellant/Plaintiff. Investigation conducted at the Appellant/Plaintiff's end also revealed that the Respondents/Defendants were gearing this to market a similar product under the mark "HARMONY" being identical to the Appellant/Plaintiff's registered Trade Mark "HARMONY".

13. The Appellant/Plaintiff instituted Commercial Suit No.9 of 2025 before the Trial Court viz. District Judge-2, Pune, for Trade Mark infringement, Passing Off and Copyright Infringement seeking reliefs to restrain the Respondents/Defendants from using the Appellant/Plaintiff's Trade Mark. Along with the said Suit, the Appellant/Plaintiff filed an application for interim injunction under Order 39 Rules 1 and 2 of CPC before the Trial Judge, against the said Respondents/Defendants.

14. The Trial Court in the Suit passed two orders on 2 April 2025. One vide which the Appellant/Plaintiff's application for Joinder of Cause of Action for Trade Mark Infringement and Passing Off was allowed. Another order granting *ex-parte* ad-interim injunction in favour of the Appellant/Plaintiff in terms of the prayer clauses (a) to (e) of the said

application against the Respondents/Defendants.

15. The Appellant/Plaintiff being aggrieved by the acts of the Respondents/Defendants in continuing to sell the products under the Trade Mark "GERMINATOR", issued Cease and Desist Notices to the Respondents/Defendants on 18 April 2025. The Appellant/Plaintiff filed an application on 25 April 2025 under Order 39 Rule 2A of the CPC for wilful disobedience of the injunction order dated 2 April 2025 passed by the Trial Court against the Respondents/Defendants. The Respondents/Defendants filed an application under Order 39 Rule 4 CPC seeking vacation of the ad-interim injunction order passed on 2 April 2025 by the said Trial Court.

16. Pursuant to the above, the proceedings came up for hearing before the Trial Court. On 2 July 2025 the Trial Court recorded statements of the Respondents/Defendants that they were ready and willing to change their Trade Dress for the product bearing the mark "GERMINATOR" and that they would not launch the product bearing the mark "HARMONY" in the market. The Respondents/Defendants also submitted a photograph of the changed Trade Dress according to them, before the Trial Court on the said date i.e. 2 July 2025. The Trial Court vide order dated 4 October 2025 i.e. the Impugned Order rejected the prayer for injunction sought by the Appellant/Plaintiff against the Respondents/Defendants. The Impugned Order was uploaded on 16 October 2025.

17. It was on 9 October 2025 that the Trial Court passed an order

directing that the Impugned Order shall not be acted upon until 4 November 2025. Being aggrieved, the Respondents/Defendants challenged the above order dated 9 October 2025 of the Trial Court in a Writ Petition (St) No.34124 of 2025. By an order dated 17 December 2025 the said Writ Petition of the Respondents/Defendants was disposed of by directing the Respondents/Defendants to remove the office objections within two weeks.

18. The Appellant/Plaintiff aggrieved by the Impugned Order dated 4 October 2025 filed the present Appeal assailing the Impugned Order. Vide order dated 4 November 2025, this Court directed that the Impugned Order dated 4 October 2025 be kept in abeyance.

19. It is in the above backdrop assailing the Impugned Order, that the Appellants have preferred the present Appeal.

20. The Respondents/Defendants filed an Affidavit-in-Reply dated 11 November 2025 to which the Appellant/Plaintiff filed its Rejoinder dated 16 December 2025 and a Sur-Rejoinder is also filed by the Respondents/Defendants dated 24 December 2025. Both the parties have filed extensive written submissions all of which have been duly noted and considered in the paragraphs below.

Rival Contentions:-

Submissions of the Appellant/Plaintiff :-

21. Mr. Kamod, learned counsel for the Appellant/Plaintiff, would at the outset submit that the Appellant/Plaintiff had applied for registration of the

word mark 'GERMINATOR' in Class I under No. 3505073 by an application dated 4 March 2017, claiming use since 1 March 1981. Such trademark application was erroneously treated as abandoned by an order of the Trade Marks Registry dated 13 October 2023. The Appellant/Plaintiff promptly filed a review application against the said order of abandonment, which is pending. The Appellant/Plaintiff had also applied for registration of the word mark "GERMINATOR" by another application in Class I dated 11 December 2024 under No. 6750663, claiming use since 1 March 1981. According to the Appellant/Plaintiff, one Seema Jain, trading as Indian Organic Company, filed a notice of opposition against such trademark application before the Trade Marks Registry, and the same is pending.

22. The Appellant/Plaintiff had also obtained registration for the word mark 'HARMONY', bearing No. 4201889 in Class I, dated 10 June 2019, claiming use since 1 June 2010.

23. According to Mr. Kamod, since 1981 and 1995, the Appellant/Plaintiff has been openly and extensively using the trademark "GERMINATOR" and the distinctive trade dress in respect of the said goods. Accordingly, the Appellant/Plaintiff has acquired tremendous goodwill and reputation in respect of goods bearing the said mark "GERMINATOR". To substantiate such claim, the Appellant/Plaintiff has duly relied upon several documents annexed to the plaint, including the following:-

"9.1. Statement of Annual Sales of the Appellant/Plaintiff's

*goods bearing the trade mark "GERMINATOR" from **2010-2011 to 2023-2024;***

*9.2. Appellant/Plaintiff's Chartered Accountant's certificate certifying its annual sales turnover **from 2010-2011 to 2023-2024** in respect of its said goods bearing the trade mark "GERMINATOR";*

9.3. Various Awards earned by the Appellant/Plaintiff's Founder Dr. Vinayak Bawasakar who is a PHD holder himself;

*9.4. Few specimens of sales invoices **from the year 1997 onwards** in respect of its goods bearing the trade mark "GERMINATOR";*

9.5. Screenshots of promotional materials from the Appellant/Plaintiff's social media accounts;

9.6. Few specimens of the promotional material in respect of its goods bearing the trade mark "GERMINATOR";

9.7. Newspaper articles and magazines promoting the Appellant/Plaintiff's goods bearing the trade mark "GERMINATOR"; and

9.8. Listings of the Appellant/Plaintiff's goods bearing the trade mark "GERMINATOR" on e-commerce."

24. Mr. Kamod would accordingly submit that all of the above form part of the Plaint and were very much placed before the Trial Court at the time of hearing and passing of the Impugned Order.

25. Mr. Kamod would strenuously urge that there are several irregularities, much less illegality which would vitiate the Impugned Order. The first being that the Trial Court has proceeded on an erroneous finding that the mark "GERMINATOR" is generic. It was never the Respondents/Defendants' case, as would be clear from their pleadings, that such mark was generic. It is difficult to fathom as to how the Trial Court

reached such a conclusion, and the basis thereof is not known. There is no justification, much less reason, to arrive at such finding that the mark "GERMINATOR" is generic. Therefore, on such ground alone, the Impugned Order deserves to be set aside, as Mr. Kamod would urge.

26. Mr. Kamod, would submit that the Respondents/Defendants have failed to establish that the mark "GERMINATOR" is descriptive/common to trade. The Respondents/Defendants have failed to produce any document in this regard, for the Trial Court to reach to a conclusion that the said mark is descriptive, which has an exception of secondary meaning having held that the same is generic.

27. Mr. Kamod, would contend that the Respondents/Defendants have relied on an alleged Permissive user/Trade Mark License Agreement dated 14 December 2024 executed between the Respondents/Defendants and one Seema Jain. In this regard, Mr. Kamod would submit that the act of the Respondents/Defendants to execute a license agreement to use "GERMINATOR" is implicit to imply that the "GERMINATOR" is distinctive and can be monopolized, contrary to it being exclusively descriptive. This is where the Trial Court in the Impugned Order fell in serious error.

28. Mr. Kamod, in support of his submission that the Trial Court proceeded on erroneous fact, *inter alia*, referred to paragraph 13 of the Impugned Order. In this regard, he would submit that the Trial Court has proceeded on the wrong footing that the Appellant/Plaintiff had abandoned

its rectification proceedings against Seema Jain's Trade Mark Registration No. 2742855. Such finding is contrary to the facts on record. This is in as much as a bare perusal of the paragraph 14 (e) of the Plaint would demonstrate that the Appellant/Plaintiff's rectification Application against Seema Jain's Trade Mark Registration (Supra) is pending before the Trade Mark Registry.

29. Mr. Kamod would take the Court through the findings more particularly in paragraph 9 of the Impugned Order. This is to emphasize that the Trial Court observed that on the test of prior and consistent use the plaintiff (Appellant/Plaintiff) has an upper edge, making it clear that such findings are *prima facie*. This would go to show that the Trial Court recognized that the Appellant/Plaintiff acquired reputation in its Trade Mark "GERMINATOR" and their rights in relation to the said mark are, therefore, superior to that of the Appellant/Plaintiff and the said Seema Jain.

30. According to Mr. Kamod, the Trial Court fell in serious error in allowing the Respondents/Defendants to place on record an amended label and to adjudicate the Suit on the basis of such amended label. The legality of the Respondents/Defendants' conduct ought to have been tested with reference to the infringing label/mark which form the foundation of the claim of the Plaintiff (Appellant/Plaintiff) and not on the basis of subsequent unilateral modification, in such label, introduced unilaterally by

the Respondents/Defendants. Encouraging such practice would lead to endless litigation and unworkable situation, which is not legally acceptable.

31. Mr. Kamod would strenuously urge that the Trial Court erred in overlooking and in fact, failing to consider the factors which would clearly demonstrate the dishonesty of the Respondents/Defendants. These being the following :

A) The Respondents/Defendants adoption and use of the Appellant/Plaintiff's impugned Trade Dress, which is a replica of the Appellant/Plaintiff's distinctive Trade Dress. This would lead no manner of doubt of the intention of the Respondents/Defendants to ride upon the goodwill and reputation of the products of the Appellant/Plaintiff, bearing the mark "GERMINATOR".

B) The Respondents/Defendants have failed to provide any explanation, much less justification for simply adopting the Trade Dress of the Appellant/Plaintiff.

C) The Respondents/Defendants have similarly adopted the Appellant/Plaintiff's Trade Mark 'HARMONY', to demonstrate a systematic attempt to ride upon the goodwill and reputation of the Appellant/Plaintiff. This is more so as the Respondents/Defendant had in the earlier order of the Trial Court dated 2 July 2025, conceded that they would not use the

same Trade Mark 'HARMONY'.

D) The Respondents/Defendants waited almost until completion of rejoinder submissions before the Trial Court, evidently after they sensed that the Appellant/Plaintiff is likely to succeed in the Interim Application, to offer their willingness to change the Trade Dress for the impugned product, which otherwise warrants no justifiable reason.

32. Mr. Kamod, would submit that the impugned Trade Dress of the Respondents/Defendants product before making changes thereto was identical to the Appellant/Plaintiff Trade Mark "GERMINATOR" and its distinctive "GERMINATOR" Trade Dress. The Respondents/Defendants are using the impugned Trade Mark "GERMINATOR"/impugned Trade Dress for identical products used by the Appellant/Plaintiff. Such use by the Respondents/Defendants of the impugned Trade Mark "GERMINATOR" with the impugned Trade Dress is likely to cause confusion amongst the general public. Moreover, the use of the impugned Trade Mark in impugned Trade Dress by the Respondents/Defendants would dilute the distinctiveness of the impugned Trade Mark and Trade Dress of the Appellant/Plaintiff, leading to injury and prejudice to the Appellant/Plaintiff's goodwill and reputation. Therefore, such use by the Respondents/Defendants of the impugned Trade Mark "GERMINATOR" and its Trade Dress would tantamount to the tort of passing off by the

Respondents/Defendants in respect of the impugned Trade Mark and Trade Dress.

33. Mr. Kamod would urge that the Appellant/Plaintiff has made out an overwhelming and *prima facie* case for the grant of an ad interim injunction and reliefs against the Respondents/Defendants. Unless reliefs as prayed for are granted, the Appellant/Plaintiff would suffer irreparable injury which money cannot compensate.

34. Mr. Kamod has placed reliance on several decisions in support of his submission. He would refer to the decision of this Court in ***R.R. Oomerbhoy Private Limited Vs. Court Receiver, High Court, Bombay & Ors***[1]. This Court has held that the Defendants cannot seek seal of approval from the Court to use a revised Trade Mark. He would rely on an excerpt from the judgment in ***K.L.F. Nirmal Industries Pvt. Ltd. In the matter between Marico Limited Vs. K.L.F. Nirmal Industries Pvt. Ltd.***[2], where the Court held that under the 'Safe Distance Rule', once a party infringes on another Trade Dress, Trade Mark, the confusion sowed is not magically remedied by *de minimis fixes.* In this context, according to Mr. Kamod, the findings in the Impugned Order regarding the amended trade dress of the Respondents/Defendants are not teneable. The Trial Court failed to appreciate the reliance on the amended label for the impugned product which is *ex facie* a dishonest attempt by the Respondents/Defendants.

1. 2003 (5) Mh.L.J 372
2. 2023 SCC OnLine Bom 2734

35. Mr. Kamod would rely on the decision of this Court in ***Hem Corporation Pvt. Ltd. Vs. ITC Ltd.***[3]. This Court held that even if the defendants intended to use the impugned Trade Mark descriptively, it would make no difference if the use of the impugned Trade Mark is likely to be taken as being used as a Trade Mark.

36. Mr. Kamod would then refer to the decision of this Court in ***Pidilite Industries Ltd. Vs. Jubilant Agri & Consumer Products Ltd.***[4] . This is to contend that the Respondents/Defendants have manifested their own understanding that the impugned Trade Mark "GERMINATOR" used by them is used as a Trade Mark in as much as it includes the Trade Mark license taken from Seema Jain for using the Trade Mark "GERMINATOR". This, as held in the said decision, would not be altered/diluted/affected by the subsequent withdrawal of the Application (on legal advice) post filing of the Suit.

37. Mr. Kamod would urge that reliance on the above judgments would indicate that the Respondents/Defendants has been taking inconsistent, contrary stand and blowing hot and cold at the same time. Such conduct of the Respondents/Defendants which is otherwise not acceptable in law, is in fact given a go by in the Impugned Order, which makes it legally vulnerable.

38. Mr. Kamod has placed reliance on the decision of the Supreme Court

3. 2012 SCC Online Bom 551
4. 2014 SCC OnLine Bom 50

in ***Rasiklal Manikchand Dhariwal and Anr. Vs. M.S.S. Food Products***[5]. The Supreme Court *inter alia* in paragraph 70 of the said judgment has observed that if the Trial Court commits illegality or irregularity in the exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in Appeal/Revision or by High Court in its supervisory jurisdiction. Mr. Kamod would urge that the Trial Court in the present case did not apply the correct test as laid down by the Supreme Court.

39. Mr. Kamod has on similar lines as above relied on the decision of this Court in ***Medley Laboratories (P) Ltd. Vs. Alkem Laboratories Ltd.***[6]. This is to emphasize that in discretionary matters, judicial interference is limited. However, while making an adjudication, which may be *prima facie*, when the correct test is not applied it is open for the Appellate Court to interfere with the discretionary order made by the Trial Court. It is for this reason that the Impugned Order warrant reversal by this Court, in the given facts.

40. Mr. Kamod would urge that the judgments cited on behalf of the Respondents/Defendants are in completely different facts and circumstances. Therefore, the same being clearly distinguishable on facts alone, such decisions do not in any manner come to the rescue of the Respondents/Defendants. Accordingly, such decisions, as cited by the Respondents/Defendants, would not be even remotely applicable in the

5. (2012) 2 SCC 196
6. 2002 SCC OnLine Bom 444

given case.

41. For all the above reasons, Mr. Kamod would urge that the Impugned Order of the Trial Court be set aside and the Appeal be consequentially allowed.

Submissions of Respondents/Defendants :-

42. Mr. Kanetkar, the learned counsel for the Respondents/Defendants has submitted that following three issues arise for consideration:-

(i) Whether the Plaintiff *prima facie* makes out the case of passing off of the mark "GERMINATOR" by the Defendants?

(ii) Whether the Plaintiff is entitled for the equitable relief of injunction?

(iii) Whether the Impugned Order passed by the learned Trial Court is patently illegal and whether it can be set aside?

43. Mr. Kanetkar with respect to issue of Passing Off, contends that the Respondents/Defendants' specific defence is that the word mark "GERMINATOR" is a descriptive word which describes the use of the product i.e. a product which is useful for germination process.

44. Mr. Kanetkar further submits that though the Trial Court has used the word "generic", however, on careful perusal of entire Impugned Order it is evident that the Trial Court has arrived at the finding that the mark "GERMINATOR" is a descriptive mark and the Appellant/Plaintiff has failed to establish acquisition of secondary meaning in respect of such mark.

45. Mr. Kanetkar would urge that it is admitted by the Appellant/Plaintiff in the Plaint as well as Appeal that the product of Appellant/Plaintiff is used for germination process. Mr. Kanetkar would therefore submit that the word "GERMINATOR" is a dictionary word which is used for the purpose of germination process. Thus, the word describes the said product.

46. According to Mr. Kanetkar the Appellant/Plaintiff is aware that the mark "GERMINATOR" is descriptive. The pleadings merely contain vague averments to the effect that the Appellant/Plaintiff is the continuous and uninterrupted user of the mark "GERMINATOR". Therefore, Appellant/Plaintiff cannot contend that the mark "GERMINATOR" is not descriptive and/or is inherently distinctive by advertising it in a different manner. There is no pleading in the Plaint to that effect and the said ground raised by the Appellant/Plaintiff, for the first time, before this Court is untenable.

47. Mr. Kanetkar submits that the Trial Court's finding on "GERMINATOR" being a descriptive mark is based on pleadings and documents filed on record. Therefore, when the Trial Court has given a reasoned finding after considering the material, the same ought not to be interfered with unless it is perverse or results in manifest injustice.

48. Mr. Kanetkar on the aspect of prior use as alleged since 1981 further submits that although the Appellant/Plaintiff claims use of the mark "GERMINATOR" since March 1981, no document has been produced to

establish that its predecessor entity i.e. Maharashtra Seeds and Pesticides was even established in the year 1981. He further contends that the only document relied upon is the Application for registration of the trademark "GERMINATOR" filed in 2017 which mentions the date of use of the mark for the first time without there being any independent proof that the Appellant/Plaintiff is using the word mark "GERMINATOR" since 1981.

49. Mr. Kanetkar further contends that on the alleged trade dress it is mentioned that the usage is since 1978, while the user affidavit dated 26 July 2017 filed by the Appellant/Plaintiff mentions the company having been established in 1970. However, no document is produced to show the existence of alleged company since 1970, and the Plaint itself states that the company was registered in the year 2009.

50. Mr. Kanetkar further submits that if the Appellant/Plaintiff claims use of the mark since 1981 and trade dress since 1996 then the Appellant/Plaintiff has to *prima facie* establish such claim, which the Appellant/Plaintiff has miserably failed to do so. Accordingly, the Trial Court rendered specific findings to that effect which cannot be brushed aside.

51. Mr. Kanetkar on the aspect of no extensive and uninterrupted use contends that the Appellant/Plaintiff is further relying on photocopies of magazines "Krushidarshika" (1992) and "Krushividnyan" (1999) claiming advertisements of its product. However, these appear to be the

Appellant/Plaintiff's own publications and do not establish continuous commercial use of the mark "GERMINATOR" since 1981 as claimed. Mr. Kanetkar would further submit that there is no single document demonstrating commercial use even in the year 1992 or 1999. He would urge that the Appellant/Plaintiff has falsely stated that there are documents to establish extensive and uninterrupted use by the Appellant/Plaintiff.

52. Mr. Kanetkar would further submit that five letters from alleged customers of the Appellant/Plaintiff have been produced, which bear no dates and contain identical wording. Further, it is claimed in the said letters that the product "GERMINATOR" is developed in 1980 whereas, the Appellant/Plaintiff itself claims that it is from 1981 and it is mentioned in such letters that Appellant/Plaintiff is using the Trade Dress since 1996. Upon perusal of photograph of the Trade Dress, it appears that the bottle image refers to a UK Trademark Registration obtained only in 2017 and the Appellant/Plaintiff Company itself is established in 2009.

53. Mr. Kanetkar would urge that the above mentioned correspondence has been fabricated in collusion with customers as there is no independent evidence to establish that the mark "GERMINATOR" is used since 1981 and alleged Trade Dress is used since 1996. On the basis of such material and by playing fraud upon the Court the Appellant/Plaintiff was able to obtain the earlier ex-parte injunction order dated 2 April 2025 which was rightly vacated by the Trial Court vide the Impugned Order dated 4 October 2025.

54. Mr. Kanetkar submits that the Appellant/Plaintiff claims sales through various e-commerce platforms, however, those platforms also show several other companies selling the agricultural products by the same Trade Mark i.e "GERMINATOR". The Appellant/Plaintiff has intentionally suppressed such facts. Therefore, the Respondents/Defendants has filed the documents before the Trial Court (Exh. 48) showing the word mark "GERMINATOR" is used in the agricultural market as the same is a descriptive mark, to this effect the Trial Court has also given specific finding. He would contend that, the Trial Court correctly rendered a finding that similar bottles are used in the agricultural field and there is no evidence filed by the Appellant/Plaintiff to show that alleged Trade Dress of Appellant/Plaintiff has achieved distinctiveness.

55. Mr. Kanetkar further contends that *prima facie,* the Appellant/Plaintiff has failed to prove prior, exclusive, extensive and uninterrupted use, the mark cannot acquire distinctiveness or secondary meaning for the mark "GERMINATOR". Adoption of a descriptive mark carries the inherent risk of similar use by other players in the field. He would submit that the Appellant/Plaintiff's advertisements describe the product as "Dr. Bawaskar Technology's Germinator", indicating awareness that the mark is commonly used in the market by several players.

56. Mr. Kanetkar would contend for the purpose of establishing alleged goodwill the Appellant/Plaintiff relied on screenshots of its website and

customer reviews of e-commerce website. However, these reviews are recent and relate to different products of the Appellant/Plaintiff and not specifically to the mark "GERMINATOR". According to Mr. Kanetkar, similarly the awards relied upon by the Appellant/Plaintiff were granted for different products of the Appellant/Plaintiff and not specifically for the mark "GERMINATOR".

57. Mr. Kanetkar submits that the Appellant/Plaintiff produced sales figures certified by a Chartered Accountant for 2010-11 to 2023-24. However, these figures differ substantially from the sales figures stated in the user Affidavit filed before the Trademark Registrar on 26 July 2017.

58. Mr. Kanetkar next contends that in the alleged C.A. Certificate the highest sales are shown for the financial year 2020-21, despite widespread disruption due to the Covid-19 pandemic. This discrepancy suggests that the sales figures and the C.A. certificate may have been created later to generate evidence and that the Appellant/Plaintiff is in the habit of creating false evidence and has failed to establish its goodwill in respect of Trade Mark "GERMINATOR".

59. Mr. Kanetkar would urge that the Respondents/Defendants have elaborately pointed out the differences in the trade dress between the bottles of the Appellant/Plaintiff and the Respondents/Defendants. A bare perusal and comparison of such trade dress would indicate the stark differences. The Respondents/Defendants pursuant to the orders of the Trial

Court dated 2 July 2025 has completely changed the trade dress of the Respondents/Defendants in so far as the mark "GERMINATOR" is concerned *qua* the bottle containing the said formulation. It is the Respondents/Defendants' case that they have significantly added the matter to sufficiently distinguish their trade dress from that of the Appellant/Plaintiff. For instance, there is prominent use of red colour unlike them. There is change in the shape and colour of the background appearing on the said bottle. Pertinently, from the Appellant/Plaintiff's trade dress, it is evident that there is prominent use of the expression "Dr. Bawaskar" whereas in the change trade dress of the Respondents/Defendants "Ananya Agro Products" has been used to distinguish it from the trade dress of the Appellant/Plaintiff. This has been sufficiently considered in the Impugned Order. The findings in that regard therefore warrant no interference.

60. Mr. Kanetkar would submit that in the earlier Suit the Respondents/Defendants had specifically contended that the Trade Mark "GERMINATOR" is registered in the name of one Seema Jain from 2014 and is valid up to 2034. However, the Appellant/Plaintiff had applied for the Trade Mark thereafter in the year 2017. Mr. Kanetkar submits that if the Appellant/Plaintiff had diligently been using the mark since 1981, there is no explanation as to why did the Appellant/Plaintiff not seek registration or take any action with respect to registered Trade Mark for such a long period.

61. Mr. Kanetkar further with respect to the issue of entitlement of equitable relief for injunction would contend that the Appellant/Plaintiff had earlier instituted Civil Suit bearing number 21 of 2019 against the Respondent No. 1 for infringement and passing off of the product mark "Germi-Fast" which was dismissed on 2 February 2024. The Appellant/Plaintiff suppressed the fact that the said Suit was dismissed on merits.

62. Mr. Kanetkar would submit that the Appellant/Plaintiff had filed another Suit bearing No.22 of 2019 against one Puma Crop Care for Infringement of the Trade Mark "GERMINATOR". The said Suit was also dismissed on 14 February 2024 and the said judgment is suppressed by the Appellant/Plaintiff. The said Suits were not challenged by the Appellant/Plaintiff, thereby attaining finality. Therefore, now it does not lie in the mouth of the Appellant/Plaintiff to urge that the trade mark "GERMINATOR" is exclusively used by the Appellant/Plaintiff, as its trade mark. Mr. Kanetkar submits that Appellant/Plaintiff's registration application was also treated as abandoned, although a review is stated to be pending before the Trade Mark Registry. Thus, Appellant/Plaintiff has accepted the said decision. Therefore, Doctrines of Acquiescence and Prosecution History Estoppel squarely applies.

63. According to Mr. Kanetkar, Appellant/Plaintiff claims to be engaged in the production of the Agricultural Products since long period of time.

However, if MSME Certificate i.e. Udyam Registration Certificate dated 21 February 2021 issued by the Ministry of MSME Central Government is perused, the same is not for Production of Agricultural Products and for repair and maintenance of electronic and optical equipments but for installation of machineries. Also, the date of commencement of business therein is mentioned as 24 April 2009. Therefore, it is clear from the Appellant/Plaintiff's own document that there is no valid Udyam Certificate for the Production of Agricultural Products. The Appellant/Plaintiff, as an after thought, claims that they have applied for the correction in the said certificate. Mr. Kanetkar would urge that the Appellant/Plaintiff is, therefore in the habit of creating false documents.

64. Mr. Kanetkar would submit that the judgments relied by the Appellant/Plaintiff in the Appeal pertain either to actions for infringement of inherently distinctive i.e. coined marks. However, the present dispute concerns passing off of a descriptive mark. In view thereof, the findings arrived by the Trial Court cannot be interfered. Mr. Kanetkar would urge that it is a specific finding of the Trial Court that Appellant/Plaintiff failed to substantiate that he was the first proprietor to use the mark GERMINATOR. Therefore, Appellant/Plaintiff has failed to make out any ground to establish that the Impugned Order is vitiated by an error of law.

65. Mr. Kanetkar has placed reliance on Judgments of Supreme Court and High Court to support his contentions. Mr. Kanetkar draws this Court's

attention to judgment of Supreme Court in ***Skyline Education Institute (India) Pvt. Ltd. vs. S.L. Vaswani & Anr.***[7] Applying this to the given facts, he would urge that the word mark GERMINATOR is a descriptive word. The Appellant/Plaintiff in addition to prior use has to establish that the word is used by the Appellant/Plaintiff exclusively, uninterruptedly and extensively and whether it has acquired secondary meaning and distinctiveness. Also, once the Court of first instance exercises its discretion to grant or refuse to grant temporary injunction based on objective consideration of material and cogent reasons, the Appellate Court will be loath to interfere merely because on a *de novo* consideration it may form a different opinion on *prima facie* case, balance of convenience, irreparable injury and equity.

66. Mr. Kanetkar further places reliance on the judgment of this Court in ***Garware Polyester Ltd. v. 3M Company and Ors.***[8] wherein it was held that there is no presumption of distinctiveness. Absent cogent material, distinctiveness is not a conclusion easily to be reached. Accordingly, in the given facts and circumstances, Appellant/Plaintiff cannot claim that Trade Mark "GERMINATOR" is distinctive on the ground of acquisition of such mark.

67. Mr. Kanetkar would draw this Court's attention to the decision of ***S.P. Chengalvaraya Naidu (dead) by Lrs. Vs. Jagannath (dead) by Lrs. And Ors.***[9]

7. 2010 2 SCC 142

8 MANU/MH/1150/2016

9 AIR 1994 SC 853

wherein it has been held that a party suppressing material facts and important documents from Court is required to be thrown out of the Court at any stage of the proceeding as such suppression is nothing but fraud on Court. He further relies on ***Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors.***[10] wherein it was held that it is for the Court to decide, which fact is material and which is not. Obligation is on the litigant to come upfront and clean with all the facts. He also places reliance on ***Pidilite Industries Ltd. Vs. Astra Chemtech Pvt. Ltd. And Ors.***[11] wherein this Court vacated ex-parte injunction granted in favour of the Plaintiff, thereby holding that the Plaintiff made misleading statements and he must disclose all material facts.

68. Mr. Kanetkar on the aspect of Doctrine of Acquiescence and Prosecution History Estoppel would rely on the judgment of ***Shantappa Vs. Anna***[12] wherein this Court has laid down Doctrine of Prosecution History Estoppel and held that even if passing off action is common law remedy and registration of Trade Mark is irrelevant, it does not mean that earlier conduct and stands taken by the parties before Trade Marks Registry and in infringement action cannot be gone into.

69. Mr. Kanetkar would contend that the Appellant/Plaintiff has relied on the judgment of Delhi High Court in ***Sunil Mittal and Ors. Vs. Darzi on Call***

10 AIR 2013 SC 523
11 AIR 2025 BOM 112
12 MANU/4816/2023

[13] and this Court in ***Neon Laboratories Ltd. Vs. Themis Medicare Ltd[14].*** However, the said decisions were rendered in infringement actions, which is not applicable in the given case.

70. It is further submitted that under Order 41 Rule 22 read with Section 108 CPC, this Court being the first Appellate Court has ample power to give its own findings. Since the Impugned Order is in favour of the Respondents/Defendants, there is no requirement for them to file separate appeal or cross-objections merely against the findings, as an appeal always lies against the order and not against findings. Even if findings regarding licensed use of the said mark which is not argued by the Respondents/Defendants are ignored, the appeal deserves dismissal. In such context, reliance is placed on judgments of the Supreme Court ***Baldev Singh & Ors v. Manohar Singh & Anr[15]*** and ***Banarsi & Ors v. Ramphal[16]***.

71. Mr. Kanetkar would submit that in the light of aforesaid submissions, the Appeal is devoid of merits and therefore deserves to be dismissed.

Analysis:

72. At the outset, we are constrained to observe that the Impugned Order begins with reasons that are not well founded, conflicting with the well settled legal parameters making it vulnerable, thereby warranting intervention of this Court. To illustrate, the Trial Court, *inter alia* in

13 MANU/DE/1028/2017
14 MANU/MH/1633/2014
15 (2006) 6 SCC 498
16 (2003) 9 SCC 606

paragraph 7 of the said Judgment, observes that the word "GERMINATOR" is a 'generic' word. In this regard, it is pertinent to note that such finding is completely extraneous to the pleadings on record. The Respondents/Defendants nowhere in the written statement has taken such plea of the said mark being 'Generic'.

73. An objection was raised by Mr. Kanetkar that the Appellant/Plaintiff has not questioned the Impugned Order on its findings of the said mark being 'Generic'. However, the record bears out that the Appellant/Plaintiff has in the Appeal Memo dealt with the findings of the Trial Court in this regard, despite of it being the Court's independent findings, *dehors* the pleadings. At this juncture we may refer to decision of the Supreme Court in ***Trojan & Co. v. Nagappa Chettiar***[17] where the Supreme Court held that it is well-settled that the decision in a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Thus, the Trial Court has erred in going beyond the pleadings and defense in the written statement to observe and hold that the mark "GERMINATOR" is generic, a finding in light of the said decision is not tenable. Moreover, the Respondents/Defendants are not correct in submitting that this aspect is not dealt with by the Appellant/Plaintiff in the Appeal Memo, as it finds mention in grounds [(h), (l) and (dd)] of the Appeal Memo.

17. AIR 1953 SC 235

74. The Impugned Order then records a finding that the said mark "GERMINATOR" would fall in the category of a descriptive word mark. The Trial Court has observed that even if a trademark is descriptive or common dictionary word, the same is entitled to legal protection provided it acquires distinctiveness. Mr. Kanetkar to support such finding of the Trial Court placed reliance on a decision of this Court in ***Garware Polyster Ltd.*** (supra), where the subject mark was 'sun control' for window films. As noted by this Court in the decision of ***Garware Polyster Ltd.*** (supra), even as the record bears out that the Respondents/Defendants have not been able to produce any document/material/evidence on record in support of the contention that the mark "GERMINATOR" is used in the descriptive sense in relation to the subject goods/liquid solution in question.

75. Mr. Kamod, is therefore, justified in distinguishing the decision in ***Garware Polyester Ltd.*** (supra). The Respondents/Defendants without any supporting material, in support of its stand that the mark "GERMINATOR" is descriptive, is unable to even meet, much less cross over such threshold to even *prima facie* demonstrate that the word mark "GERMINATOR" is used purely as a Descriptive mark. A similar view is taken by the Delhi High Court in ***Marico Limited v. Agro Tech Foods Ltd.***[18] where the subject matter was 'LOSORB' in relation to edible oil product. The Court reiterated that a descriptive mark cannot be monopolized unless it has become distinctive to

18 MANU/DE/3131/2010

a particular product, from the consumer's perspective, by acquisition of secondary meaning to be demonstrated by the material produced by the Plaintiff, as in the given case.

76. We find that the Trial Court has placed reliance on some undated photographs produced by the Respondents/Defendants (at **Exh.48**) where a number of players in the market used the mark "GERMINATOR", in the common field activity. This, alone may not satisfy the legal requirements. This is in as much as the Appellant/Plaintiff has been using the said mark much prior to the use of such mark by the Respondents/Defendants. The latter is in use thereof only since December 2024. We, accordingly, find merit in the stand of the Appellant/Plaintiff that its use of the said mark since 2010 is, in any way, prior to the Respondents/Defendants' claim of user since December 2024 as also the Respondents/Defendants' licensor's user claim since 2014. It is thus clear that the Respondents/Defendants are aware of the distinctive nature of the registered Trade Mark "GERMINATOR". This being so, it is not open to the Respondents/Defendants to contend and canvass that such mark is descriptive and support an inconsistent finding in this regard, in the Impugned Order.

77. Moreover, the Appellant/Plaintiff in the Plaint has annexed several documents to indicate its goodwill and reputation in the said mark "GERMINATOR" coupled with its distinctive Trade Dress. This being: (a)

statement of Annual Sales of the goods of the Appellant/Plaintiff bearing the Trade Mark "GERMINATOR" from 2010-11 to 2023-24; (b) the Appellant/Plaintiff's C.A.'s Certificate certifying its Annual Sale Turnover from 2010-11 to 2023-24 in respect of the said goods bearing Trade Mark "GERMINATOR"; (c) various awards earned by the Appellant/Plaintiff's founder Dr. Vinayak Bawaskar; (d) few specimen of Sale Invoices from the year 1997 onwards in respect of the goods bearing Trade Mark "GERMINATOR"; (e) screenshots of promotional material from the Appellant/Plaintiff's social media accounts; (f) few specimen of promotional material in respect of its goods bearing Trade Mark "GERMINATOR"; (g) newspaper articles and magazines promoting the Appellant/Plaintiff's goods bearing Trade Mark "GERMINATOR" and (h) listing of the Appellant/Plaintiff's goods bearing the Trade Mark "GERMINATOR" on e-commerce websites. The Respondents/Defendants have in their written statement attempted to deny the above on the ground of these being fraudulent. Such stand of the Respondents/Defendants would also apply to the Udyam Registration Certificate in favour of Appellant/Plaintiff which according to them is not proper. However, in this context, there is no finding/deliberation in the Impugned Order of the Trial Court, being the Court of first instance, except to state that the Appellant/Plaintiff has placed such documents in an abrupt manner. In our *prima facie* view, there is no suppression much less suppression of facts on

the part of the Appellant/Plaintiff neither does this appear from the findings in the Impugned Order. Also, the decisions cited in that regard are therefore not applicable. In any event, the veracity of such allegation ought to be examined during trial by leading evidence.

78. It is apparent from the record that even at this stage, the Appellant/Plaintiff has been able to demonstrate prior extensive use of the said mark coupled with the product source association in the consumer's mind *qua* such mark, in order to establish that the said mark "GERMINATOR" for the product of the Appellant/Plaintiff has acquired distinctiveness. The Trial Court has clearly found that the Appellant/ Plaintiff has an 'upper edge' in relation to continuous use of the said Trade Mark, comparatively having sound reputation. Even then, the said mark is held to be Descriptive. This is another instance of inconsistent/mutually contradictory findings making the Impugned Order susceptible to challenge.

79. We find merit in the contentions advanced by Mr. Kamod and reliance placed by him on the decisions in the case of ***Corn Products Refining Co. vs. Shangrila Food Products Ltd***.[19], ***Pidilite Industries Ltd. v. Riya Chemy***[20] and ***Jagdish Gopal Kamath & Ors. v. Lime and Chilli Hospitality Services Private Limited***[21]. The ratio in these decisions assist the Appellant/Plaintiff. This Court in ***Pidilite Industries*** (supra) relying on the

19 (1960) 1 SCR 968
20 2022 SCC OnLine Bom 5077
21 2015 SCC OnLine Bom 531

latter decisions in ***Jagdish Kamath*** (supra) has held that the burden of proving alleged use by third parties or use common to trade, in regard to the contention that the mark is descriptive, lies on the party who is asserting the same, which in the present case would be on the Respondents/Defendants. In ***Pidilite Industries*** (supra), the Court held that the principle or requirement of proving extensive and substantial use by third parties is applicable even at the interlocutory stage which, the Respondents/Defendants, has *prima facie*, failed to prove.

80. The Impugned Order has placed due reliance on extensive, exclusive and continuous use for claiming monopoly/distinctiveness qua a descriptive word as Trade Mark. In this context, the record/additional compilation of documents in the written statement bears out that the Respondents/Defendants have themselves filed the sale invoices of the Appellant/Plaintiff before the Trial Court. This, in fact, would demonstrate the use of the Trade Mark "GERMINATOR" since 2005. Further, the Appellant/Plaintiff has produced documents from the compilation of documents, to show its prior user since 1992 followed by continuous use in 1994, 1996, 1999, 2000, 2001 and 2002. The Appellant/Plaintiff's Trade Mark Application No.6750663 for the mark "GERMINATOR" was filed before the Trademark Registry with user affidavit and evidence claiming use since 1 March 1981. It has been accepted and advertised in the journal by the Trademark Registry. This is not controverted by the

Respondents/Defendants. In any event, it is quite clear that the Appellant/Plaintiff's user of the said Trademark since 2010 is much prior to the Respondents/Defendants' user claim since December 2024 coupled with the Respondents/Defendants' licensor's user claim since 2014, as noted above. The record also bears out that the Appellant/Plaintiff has a Copyright Registration Certificate dated 18 June 2019 in respect of the word mark "GERMINATOR".

81. Mr. Kanetkar is at pains to deal with and distinguish all documents relied on by the Appellant/Plaintiff as noted (supra). He would contend that the magazines copies which have been relied upon by the Appellant/Plaintiff are the Plaintiff's own publication. No independent magazine or like material is produced to show the use of the said mark "GERMINATOR" since 1981. At the *prima facie* stage, we are not conducting a mini trial. In view thereof, what is material for us, at this stage, is to ascertain whether the Appellant/Plaintiff is able to show that the mark "GERMINATOR" is distinctive to its products and that it is in continuous, extensive and uninterrupted use of the said mark as a prior user. We limit ourselves accordingly at this stage of the proceedings.

82. In the above backdrop, for the purpose of further analysis/testing the findings in the Impugned Order regarding the said mark "GERMINATOR" as Generic and/or descriptive, it would be apposite to refer to Section 9 of the Trademark Act, which reads thus:-

"*9. Absolute grounds for refusal of registration. —* *(1) The trade marks -*

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade,

shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if—

(a) it is of such nature as to deceive the public or cause confusion;

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

(3) A mark shall not be registered as a trade mark if it consists exclusively of —

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

Explanation.—For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration."

Sub-section(1)(a) refers to the Trade Mark devoid of distinctive character which would indicate that such words/marks would fall under the category of generic words, in respect of which there cannot be a Trade Mark. Section 9(1)(b) refers to descriptive marks for which, they cannot stand alone, be a Trade Mark. The proviso to sub-section (1) of Section 9 refers to Trade Marks which shall not be refused registration, if before the

date of application of the registration they acquired a distinctive character or becomes a well-known Trade Marks. This would include marks which are suggestive, arbitrary or fanciful which being inherently distinctive can best illustrate a Trade Mark. The Court cannot be oblivious to such parameters and principle when dealing with the issue of Passing Off.

83. In other words, the statutory provisions as noted above, under the Trade Mark Act provide for a categorical classification as envisaged under the Abercrombie Spectrum in the case of ***Abercrombie & Fitch Company v. Hunting World, Incorporated***.[22] The Trial Court ought to have been cautious in applying the expressions 'generic' and 'descriptive' to the mark "GERMINATOR". This, more particularly, when the concepts, connotations and legal implications flowing from these are distinct and different. We are, therefore, not able to accede to the submissions of Mr. Kanetkar that the Trial Court though referring to the mark being 'generic' actually meant that it is descriptive. This classification being fundamental in Trade Mark jurisprudence, such reasoning is not in sync with what the law stipulates and/or mandates.

84. In **Abercrombie & Fitch Company** (Supra) the Court considered that 'Deep Bowl' when used for an article which is a 'Deep Bowl' does not only describe the article but only identifies it. Therefore, 'Deep Bowl' is generic when used for a 'Deep Bowl'. Similarly, the term 'spoon' is not merely

22 537 F.2d 4 (2d Cir.1976); MANU/FESC/0340/1976

descriptive of the article i.e. 'spoon' but identifies the article and therefore is generic. Such test of the marks being categorized under what is commonly known as Abercrombie Spectrum, is often applied by the Supreme Court in its judgments. Noteworthy, is the decision in ***Pernod Ricard India Private Ltd. & Anr. Vs. Karanveer Singh Chhabra***[23] where as an example, marks like 'Kodak' being inherently distinctive become entitled to highest protection. Descriptive marks such as Mother Dairy, Air India, Windows, Doordarshan, LIC, SBI are not inherently distinctive but must acquire secondary meaning in the minds of the public, to associate the mark with a particular source. Therefore, simply put a mark like "GERMINATOR", *prima facie*, could be suggestive. This for the reason that a consumer would have to take a mental leap to understand the relationship between such mark and the product sold under it. It is well-settled principle that suggestive trade marks are liable to be protected under the Act whereas descriptive trade marks, *per-se* are not entitled to protection.

85. The Supreme Court in ***Pernod Ricard India Private Ltd & Anr.*** (supra) also summarized the legal principles governing the Infringement of Trade Mark and passing off. The Supreme Court observed that passing off action applies to both registered and unregistered marks where an intent to deceive is not a necessary element nor is the proof of actual deception or damage. What is required is likelihood of confusion or deception. A

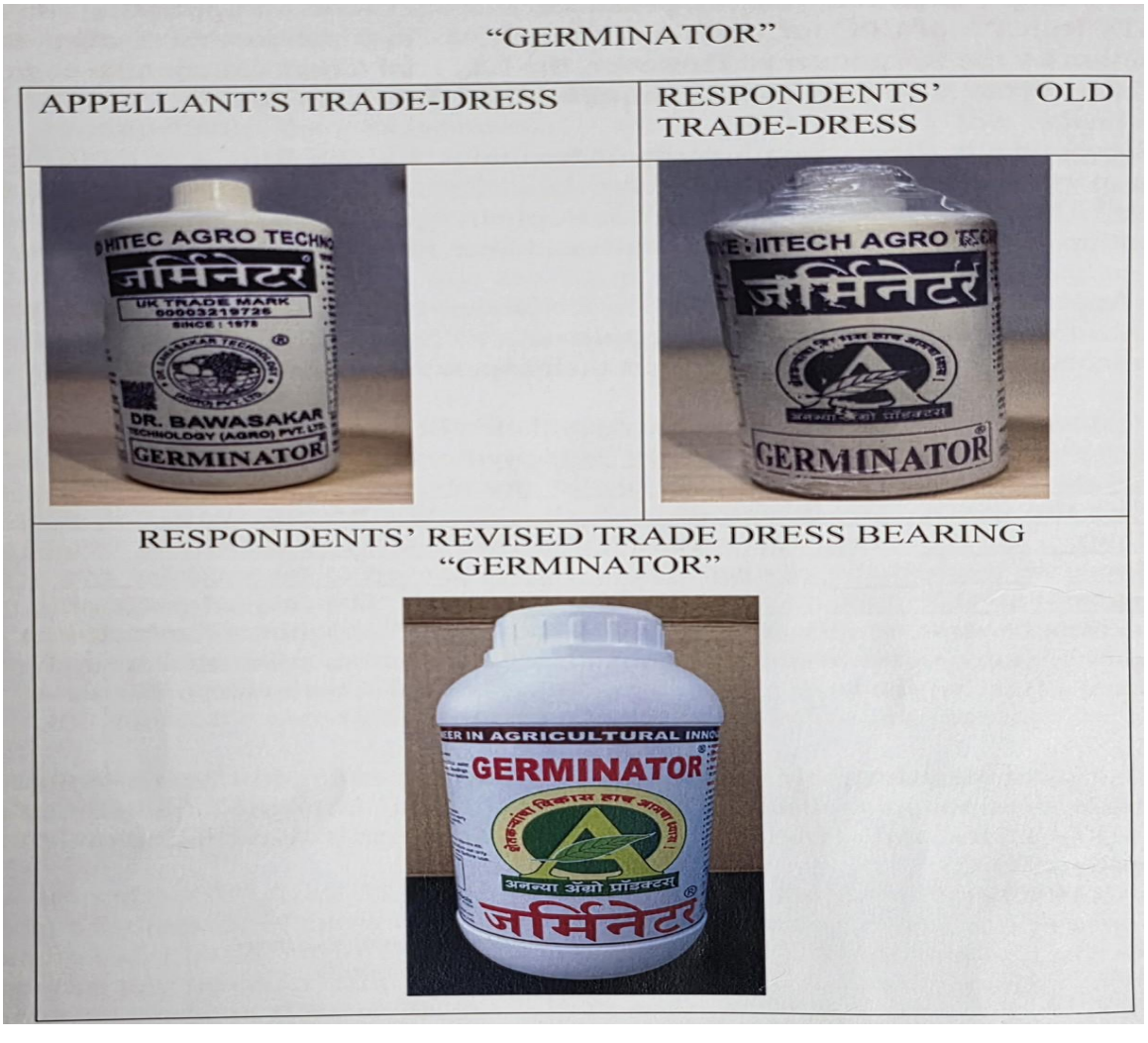
23. 2025 SCC Online SC 1701

common law action of passing off being a tortious action, misrepresentation that affects or likely to affect the Plaintiff's business/reputation is the key. We may now advert to the decision of the Supreme Court in ***Laxmikant V. Patel Vs. Chetanbhat Shah & Another***[24]. The Court observed in an action for passing off when there is a possibility/probability of confusion *qua* the mark and product, an injunction ought to be granted, even though the defendants adopted it innocently. This would be apposite in the given factual matrix.

86. We have noted the submission of Mr. Kamod that the use and adoption by the Respondents/Defendants of the said trademark "GERMINATOR" and Trade Dress of the Appellant/Plaintiff's is a near replica to that of the Appellant/Plaintiff. In this regard, in the order dated 2 July 2025 passed by the Trial Court a statement on behalf of the Respondents/Defendants was recorded, to the effect that the Respondents/Defendants shall change the trade dress of its product bearing the mark "GERMINATOR". We have taken due note of the finding in the Impugned Order that the added matter in the changed trade dress by the Respondents/Defendants is sufficient to distinguish the product of the Respondents/Defendants from that of the Appellant/Plaintiff. In this regard, the Trial Court in the Impugned Order has pertinently noted that both products i.e. of the Appellant/Plaintiff and Respondents/Defendants are used by agriculturists who have rudimentary knowledge of the composition

24. (2002) 3 SCC 65.

and details of the compounds used in agricultural products/operations. They would only go by the Trade Mark and Trade Dress of such products. In view of such findings it is apparent that the manner in which the trademark "GERMINATOR" is depicted on the product of the Appellant/Plaintiff, a clear source product affiliation/connection cannot be overlooked. The customers of such products being agriculturists and persons of imperfect recollection with impressionable minds are likely to associate the mark "GERMINATOR" only with the product of the Appellant/Plaintiff.



87. In our view, even on a side by side comparison of the two products, as above, the added matter in the changed trade dress of the Respondents/Defendants does not, *prima facie*, rule out the attempt by the Respondents/Defendants to ride on the goodwill and reputation of Appellant/Plaintiff. Evidently, the 'Essential Feature' of the trade dress "GERMINATOR" is almost identical to that of the Appellant/Plaintiff. In view thereof, the likelihood of confusion even after such unilateral change in the trade dress by the Respondents/Defendants in its Trade Dress cannot be *prima facie* brushed aside at this juncture of the proceedings.

88. Mr. Kanetkar has attempted to support the findings in the Impugned Order in regard to the above. However, the Respondents/Defendants have not been able to provide any justification/explanation for adopting a deceptively similar Trade Dress to that of the Appellant/Plaintiff, where the minimalistic changes does not, *prima facie*, rule out the possibility of Passing Off by the Respondents/Defendants, of their products as that of the Appellant/Plaintiff.

89. We find substance in the submission of Mr. Kamod to the effect that the practice of Respondents/Defendants to place on record an amended label and to invite the Trial Court to adjudicate the Suit on the basis of such label is legally untenable. Permitting this as a practice would amount to granting an impermissible seal of approval to the Respondents/Defendants unilateral modification of its marks/label, which is not what the law

mandates.

90. It is apposite to refer to the decision of this Court in ***KLF Nirmal Industries P. Ltd.*** (supra). This Court observed that the Defendant cannot seek a seal of approval from this Court to use a revised packaging which continues to be in violation to that of the Plaintiff. This Court found merit in the submission of the Plaintiff that once a party infringes on another's Trade Mark or Trade Dress, the confusion sowed is not magically remedied by *de minimis fixes.* A similar view was taken by this Court in an earlier decision in ***R. R. Oomarbhoy P. Ltd.*** (supra). The principles laid down in these decisions are clearly and squarely applicable to the given facts where the Respondents/Defendants cannot be permitted to sow confusion by *de minimis fixes*/changes in its Trade Dress and that too by seeking an *imprimatur* of this Court. The Respondents/Defendants have not distinguished these decisions cited on behalf of the Appellant/Plaintiff, apart from a bare denial which does not persuade us, to depart from the same.

91. We cannot loose sight of the fact that the Respondents/Defendants had earlier adopted the impugned Trade Mark "Harmony" which they by a statement recorded in an order dated 2 July 2025 passed by the said Trial Court stated that they would not trade in its products with the name "Harmony". So also, the Respondents/Defendants were earlier using the trademark 'Germi-Fast' which they decided to change to "GERMINATOR"

only in December 2024 without any justification as claimed by the Appellant/Plaintiff. Mr. Kanetkar has placed much reliance on the Suits filed earlier by the Appellant/Plaintiff in respect of the mark "Germi-Fast" and "GERMINATOR" both of which were dismissed. On such ground the Respondents/Defendants would seek dismissal of the present Appeal. However, considering the unique factual matrix in the given case, we are of the *prima facie* opinion that such stand does not aid or assist the Respondents/Defendants in the present *lis*.

92. The Trial Court in the Impugned Order has referred to such fact of the License Agreement being executed in favour of the Respondents/Defendants as a permitted user. However, the Trial Court proceeds on the basis that if the said Seema Jain can have registration of the trademark "GERMINATOR", which is descriptive, the Appellant/Plaintiff can also claim an exclusive right, therein. Such finding is not legally sound. This, given the fact that the said Seema Jain having a trademark registration for the said mark "GERMINATOR", makes it clear that it is distinctive and can never be descriptive. In view thereof, as held by this Court in ***Pidilite Industries Ltd. v. Riya Chemy*** (supra), the Respondents/Defendants are estopped from taking inconsistent and mutually contradictory stands, as the Impugned Order, would indicate.

93. The pleadings, more particularly, the written statement of the Respondents/Defendants bears a clear reference to Permissive

User/Trademark License Agreement dated 14 December 2024 executed between them and one Seema Jain. This to *prima facie* suggest that the Respondents/Defendants have acknowledged and accepted the use of the mark "GERMINATOR" as a trademark. Had it only been descriptive, there was no need, much less occasion for the Appellant/Plaintiff to enter into a License Agreement with the said Seema Jain. At this juncture, the decision of this Court in ***Hem Corporation (P) Ltd. vs. ITC Ltd.***[25] is instructive. This Court had held that even if a Defendant genuinely intended to use the impugned trademark descriptively, it would make no difference if the use of the impugned trademark is likely to be taken as being used as a trademark. In the given facts, it is, *prima facie*, apparent that the Respondents/Defendants intended to use the word mark "GERMINATOR", as a trademark.

94. It is pertinent to note that in paragraph 13 of the Impugned Order, the Trial Court has erred in proceeding on a footing that the Appellant/Plaintiff has abandoned its rectification proceedings against Seema Jain's Trademark Registration No.2742855. However, the record more particularly, the Plaint (paragraph 14e) indicates that the Appellant/Plaintiff's rectification application filed against Seema Jain's trademark registration is pending before the Trade Mark Registry. It is trite law that the Trial Court being the Court of first instance recording a factual

25 2012 SCC OnLine Bom. 551

finding contrary to the existing record, makes it perverse.

95. Mr. Kanetkar contended that the First Appellate Court has ample powers to give its own findings and that inconsistent defenses can be raised in the written statement although the same may not be permissible in case of plaint. In this context, he also relies on the provisions of Order 41 Rule 22 of the CPC and refers to the judgment in ***Baldev Singh & Ors.*** (supra). Mr. Kanetkar has also contended that there is no requirement for the Defendant to file separate Appeal or Cross-objections against the findings qua such defendants, placing reliance on the decision of ***Banarasi and Ors.*** (supra). In this regard, we find that the above Judgments are in the context of Order 6 Rule 17 and Order 41 Rule 22 of the CPC. Evidently, this is not even remotely the subject matter in the present proceedings. In view thereof, the said decisions as referred to by Mr. Kanetkar are neither apposite nor applicable in the given factual matrix, where we are confronted with a case under Order 39 Rule 1 and 2 of the CPC.

96. The submission of Mr. Kanetkar that "GERMINATOR" is not a coined or invented term, is also not consistent with the record. The said word "GERMINATOR" was used as a mark by the predecessor of the Appellant/Plaintiff way back in the year 1981. Thereafter, the sole proprietorship of the Appellant/Plaintiff underwent a change to Pvt. Ltd. Company in the year 2009 in the name and style of Dr. Bawaskar Technology (Agro) Pvt. Ltd. However, they continued to use and adopt the

said mark "GERMINATOR" in respect of the agricultural products. As discussed above, the Appellant/Plaintiff have successfully demonstrated at this *prima facie* stage, continuous and extensive use of the mark "GERMINATOR". Also, as to how it is distinctive to the Appellant/Plaintiff, by placing on record sufficient material/documentary evidence, in this regard.

97. On the aspect of change in the Respondents/ Defendants' trade dress, the Trial Court, in the Impugned Order, has placed emphasis on the decisions in ***S. Sayed Mohideen Vs. P. Sulochana Bai***[26] ***and Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories***[27]. In this regard, there is no quarrel with the principle that the Respondents/Defendants may escape liability if he can show that the added matter is sufficient to distinguish his case from that of the Appellant/Plaintiff. However, for the reasons noted above, this is not the case in the given factual matrix. The 'essential feature' of the Trade Mark and Trade Dress i.e. word "GERMINATOR" is prominently displayed on the Respondents/Defendants alleged new trade dress. This being identical, does not rule out the possibility of likelihood of confusion and Passing Off the product of the Respondents/Defendants as that of the Appellant/Plaintiff. For such reasons, the said decisions are of no assistance to the Respondents/Defendants, and does not take their case any further.

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26. MANU/SC/0576/2015
27. MANU/SC/0197/1964

98. It is trite law that the discretion conferred upon the Court under Order 39 Rules 1 and 2 by the CPC ought to be exercised in conformity with the settled judicial principles, which is echoed by the Supreme Court in ***Rasiklal Manikchand Dhariwal*** (supra) as rightly relied on by Mr. Kamod. The Supreme Court has caveated such principle by holding that if the Trial Court commits irregularity or illegality in exercise of the judicial discretion then such order is always amenable to correction by a higher court in Appeal or Revision or by the High Court in its supervisory jurisdiction.

99. In the given case, the Trial Court refused to grant injunction to the Appellant/Plaintiff. The Trial Court has by such findings, overlooked the settled legal principles applicable to cases of Passing Off. In the case of ***Medley Laboratories (P) Ltd***. (supra) the Division Bench of this Court held that the correct test to be applicable in a case of Passing Off is the possibility/likelihood of confusion and not actual confusion, following the decision of the Supreme Court in the case of ***Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd***[28]. When a wrong test is applied, the Appellants as held in that case were right in submitting that the decision deserves interference, which is apposite in the given factual complexion. In this regard, the decision cited by Mr. Kanetkar in ***Skyline Education Institute*** (supra) relates to the discretion of the Appellate Court in adjudicating grant/refusal of interim injunction; and the aspect of extensive use in those

28. (2001) 5 SCC 73

facts. It cannot be applied to the distinct factual matrix in the present case. Accordingly, the same is of no assistance to the Respondents/Defendants.

100. The decision relied by Mr. Kanetkar in ***Shantapa vs. Anna*** (supra) is clearly distinguishable. In the said facts the Plaintiff therein had taken a contradictory stand pertinent to the Trade Mark of the defendant before the Trademark Registry and also suppressed such stand taken from the Court. In such circumstances, the Court rightly refused the grant of any equitable relief of injunction, which situation clearly does not exist in the given factual matrix.

101. Mr. Kanetkar's reliance on ***T.V. Venugopal vs. Ushodaya Enterprises Ltd. & Anr.***[29] is noted. There the Court held that the word "Eenadu" though descriptive, has acquired secondary meaning and is fully identified with the product and services provided by the Plaintiff in that case. In fact, the Court there has held that even the descriptive trademark can acquire distinctiveness. Such finding assists the case of the Appellant/Plaintiff in the given case, as against to that of the Respondents/Defendants.

102. We are conscious of the law that this Court would not ordinary interfere with the exercise of discretion in the matters of grant of temporary injunction by the Trial Court. This is in conformity with the landmark decision in ***Wander Ltd & Anr Vs. Antox India P. Ltd.***[30]. An exception is carved out where the grant of interlocutory injunction to the plaintiff could

29. 2011(4) SCC 85
30. 1990 SCC OnLine SC 490

not have been refused, making it obligatory on the part of the Appellate Court to interfere as held by the Supreme Court in ***Laxmikant V. Patel (Supra).*** This decision was followed by the Supreme Court in subsequently in ***Ramdev Food Product (P) Ltd. Vs. Arvindbhai Rambhai Patel & Ors***[31] where the Court held that when wrong standards are adopted and applied a case for interference is made out. The Supreme Court in ***Anand Prasad Agarwalla V. Tarkeshwar Prasad & Ors.***[32] held that it would not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction.

103. We now advert to the settled law that an order which is contrary to pleadings and law, is a perverse order. In ***Godfrey v. Godfrey***[33], the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right or deviating from what is right, proper, correct, etc. Juxtaposing this to the facts in the given case, the findings in the Impugned Order, as noted above, deviates from the pleadings and material/documents on record and is not in sync with the same. It can therefore be said that the Trial Judge has departed from such settled legal principles, more particularly in a pending Suit. This cannot be countenanced.

104. For all the reasons as noted above, we find that the Appellant/Plaintiff has been able to establish a *prima facie* case for a grant

31. (2006) 8 SCC 726
32. (2001) 5 SCC 568
33. 106 NW 814

of injunction against the Respondents/Defendants in the given factual complexion. Moreover, the balance of convenience lies clearly in favour of the Appellant/Plaintiff who would sustain irreparable harm/prejudice if such relief is refused to them. Following the settled legal parameters for grant of injunction under Order 39 Rules 1 and 2 of the CPC, the trifecta of *prima facie* case, balance of convenience and irreparable prejudice are clearly made out by the Appellant/Plaintiff for us to allow the Appeal.

105. In light of the foregoing discussion/reasons, we pass the following order:-

ORDER

(i) Commercial Appeal From Order No.28 of 2025 is allowed;

(ii) The Impugned Order dated 4 October 2025 passed by the Commercial Court in Pune in Commercial Suit No.9 of 2025 is quashed and set aside.

(iii) The Respondents/Defendants are injuncted from Passing Off the trade mark “GERMINATOR” or any other mark that is identical or deceptively similar to the Appellant/Plaintiff’s trade mark “GERMINATOR” and/or trade dress of the Appellant/Plaintiff’s product, containing the trade mark “GERMINATOR” or any other mark, trade mark or trade dress that is deceptively similar to the Appellant/Plaintiff’s trade mark or trade dress in respect of the mark

"GERMINATOR", in relation to any goods in the course of the business or otherwise, either personally or through their dealers, consultants, distributors, employees or representatives, pending final disposal of the Suit before the Trial Court.

(iv) Accordingly, the Interim Application No.12806 of 2025 preferred by the Appellant/Plaintiff in the said Appeal, would not survive and the same is disposed of.

(v) No order as to costs.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA, J.]**

106. At this juncture, upon pronouncement, Mr. Kanetkar learned counsel appearing for the Respondents/Defendants, would request a stay of this judgment. Upon hearing both the parties, we direct that the parties shall maintain status-quo for a period of four weeks from the date of uploading of this judgment, which in the given factual complexion, would serve the ends of justice.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA, J.]**