HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

***THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
AND
*** THE HON'BLE SMT JUSTICE RENUKA YARA**

+ CIVIL MISCELLANEOUS APPEAL NO.441 OF 2025

% 08.09.2026

M/s Sai Silks (Kalamandir) Limited

...Appellant

vs.

$ SKP B Gopinath Private Limited and 2 Others

... Respondents

!Counsel for the Petitioner: Mr.Basa Chanakya.

^Counsel for Respondents: Mr.Herur Rajesh Kumar.

<Gist :

>Head Note :

? Cases referred

[1] Salmon and Hueston on Law of Torts, 21st Edition.

[2] Reckitt & Colman Products V. Borden (1990) RPC 341, HL

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(CNR.No.HBHC010633302025)

8th September, 2026

Reserved on : 24.08.2026

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BETWEEN:

M/s Sai Silks (Kalamandir) Limited ...Appellant

AND

SKP B Gopinath Private Limited and 2 Others

...Respondents

Mr. Basa Chanakya, learned counsel appearing for the appellant.

Mr. Herur Rajesh Kumar, learned counsel appearing for the respondents.

JUDGMENT: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Civil Miscellaneous Appeal has been filed against a Common Order dated 24.07.2025 passed by the learned II Additional Chief Judge, City Civil Court at Hyderabad ('Trial Court') dismissing I.A.Nos.2449 and 2450 of 2024 in O.S.No.296 of 2024 filed by the appellant.

2. The appellant is the plaintiff before the Trial Court in a Suit for permanent injunction and infringement of trade mark under the provisions of The Trade Marks Act, 1999 ('the 1999 Act') read with section 55 of The Copyright Act, 1957.

3. The appellant filed two interlocutory applications ('I.As') in the said Suit; I.A.No.2449 of 2024 for appointment of a Local Commissioner to visit the premises of M/s.Kanchipuram Varahi Lakshmi Silks and seize all infringing materials, packaging and raw materials bearing the appellant's trade mark. I.A.No.2450 of 2024 was filed for an *ex parte ad* interim injunction restraining the defendants from using, selling, stocking or dealing with any goods or services under the trade mark, logo or word '*Kanchipuram Varahi Lakshmi Silks'* or from infringing the appellant's registered trade mark '*Kancheepuram Vara Mahalakshmi Silks'*, '*Vara Mahalakshmi Silks Kancheepuram'* and '*Vara Mahalakshmi'* or any other mark identical or deceptively similar to the appellant's trade mark.

4. By the impugned Common Order, the Trial Court dismissed both the I.As, filed by the appellant, on the ground that the competing marks contain several striking dissimilarities which outweighed any phonetic similarity between the marks. The Trial Court also found that the appellant's registered mark consists of a

word which is in common use indicating geographical origin. The Trial Court also found that the respondents have not copied the core and peculiar features of the appellant's mark.

5. Learned counsel appearing for the appellant/plaintiff submits that the appellant is the registered proprietor of several trade marks including '*Kancheepuram Vara Mahalakshmi Silks'*. Counsel submits that the appellant has expanded its business across South India by establishing numerous retail outlets by reason of which the mark '*Vara Mahalakshmi'* has become exclusively associated with the appellant. Counsel submits that the respondents adopted the trade name, '*Kanchipuram Varahi Lakshmi Silks'*, which is phonetically, visually and structurally deceptively similar to the appellant's distinctive trade dress. It is submitted that the respondent No.2 entered into a business Memorandum of Understanding (MoU) with the appellant to manage the day-to-day affairs of the appellant's retail outlet situated in Chennai, Tamil Nadu but commenced their independent business under the offending trade name in 2024 in violation of the appellant's intellectual property rights.

6. Learned counsel appearing for the respondents/defendants submits that the appellant suppressed material facts in its I.As.

with regard to the Business MoUs executed on 27.09.2012 and 03.11.2014 between the parties, whereby the parties agreed to revenue-sharing agreements. Counsel submits that the appellant filed the Suit for trade mark infringement solely to evade its revenue-sharing obligations under the Business MoU. Counsel relies on section 17 of the 1999 Act to urge that the appellant cannot claim any exclusive right over a composite mark, and urges that there is no likelihood of confusion between the two marks.

7. The dispute brought to the Court in the present Appeal is of infringement of trade mark and passing off.

8. Trade Mark infringement is premised on a registered trade mark where the registration confers certain proprietary and exclusive rights on the registered proprietor of the trade mark. The essential function of a trade mark is to indicate origin as the trade mark offers a guarantee to the consumer that the quality of the goods or services will be that to which the consumer has become accustomed. Thus, any use of an identical or similar mark which may or may not have a correlation with the plaintiff's goods would rupture the loyalty or comfort between the consumer and the particular product.

9. An action for infringement of trade mark is premised on a statutory right conferred on the holder of a registered trade mark under section 29 of The Trade Marks Act, 1999 to prevent another person from infringing the registered trade mark by way of using, affixing or offering or selling goods bearing the registered trade mark. The words 'trade mark' and 'mark' are being used interchangeably.

10. Passing Off is a specie of the tort of Injurious Falsehood; which involves goods representing a falsehood about themselves which is calculated to mislead the buyer in particular or the public in general. The law of passing off is designed to protect traders against unfair competition which consists of acquiring for oneself, by means of false or misleading devices, the benefit of reputation already achieved by a rival trader[1].

11. An action for passing off authorises a person to institute proceedings in respect of an unregistered trade mark to prevent another from passing off his/her goods as those of the plaintiff. Section 27(2) of the 1999 Act recognizes the right to institute proceedings to prevent or recover damages consequent to passing

[1] Salmon and Hueston on Law of Torts, 21st Edition.

off a trade mark as that of another mark and essentially for riding on the goodwill and reputation of the latter mark.

12. Both actions, namely that of infringement and passing of share a common ground: likelihood of confusion and deception among the relevant sections of the public/consumers. The likelihood of confusion arises from the possibility of mistaking one trade mark for another, resulting in confusion as to the origin of the deceptively similar mark. The right of the holder of a registered mark (in the case of infringement) or the holder of an unregistered mark (for passing off) in the matter of restraining the wrongdoer/user of the offending mark, assumes significance in light of section 2(1)(zb) of the 1999 Act which defines 'trade mark', *inter alia,* as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others. The mark may include the shape of goods, packaging and combination of colours or the 'trade dress' of the mark.

13. Therefore, the present action would require the plaintiff/petitioner to satisfy the troika of a *prima facie* case, irreparable injury and balance of convenience where the petitioner seeks an *ad* interim injunction restraining the alleged infringer.

Apart from the satisfaction of the principles for an interim order of protection, the petitioner must satisfy the classical trinity of (i) the reputation/goodwill of the plaintiff's mark, (ii) misrepresentation with regard to the origin of the mark, and (iii) consequential damage to the owner of the mark as a result of the action complained of[2].

14. Trade mark cases mostly involve a side-by-side comparison of the competing marks and the impression of the Court at first-blush as to whether the marks are similar and have the potential to cause confusion. This is unlike infringement of patterns/designs or copyright which require the Court to make a more in-depth analysis of the scope of infringement in relation to the originality/novelty of the work. An objective analysis of the two marks is particularly relevant where the petitioner seeks to restrain the respondent from using the respondent's mark in the interregnum; i.e., before the suit for infringement of trade mark is decided. As stated above, the test is whether the respondent should be restrained pending disposal of the suit which would require merging both the tests, namely for temporary injunction and for infringement/passing off. The three pointers to each of the two tests have been stated above.

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[2] Reckitt & Colman Products V. Borden (1990) RPC 341, HL

15. Learned counsel for the appellant/plaintiff has placed a separate sheet reproducing the two marks in colour for our consideration. The two competing marks of the appellant/plaintiff and the respondents are reproduced below.

Appellant's mark: Respondents' mark:





16. The differences in the two label marks are obvious to the eye and outweigh the similarities between the marks so as to negate the possibility of being deceptively similar. The necessity of focusing on the dissimilarities is by reason of the fact that the appellant's mark is in the form of a label, as opposed to a word mark, simpliciter. The appellant's mark contains words which are common and hence cannot entitle the appellant to the exclusive use of the said words. It is well settled under the 1999 Act that common words cannot be trademarked unless those words have acquired distinctiveness. '*Kancheepuram*' is a city in Tamil Nadu, India which is famous for its distinctive silks. The Kanchipuram

Silk Sari, also known as the Kanjeevaram Sari, is traditionally woven in the city of Kanchipuram, Tamil Nadu. This variety of silk sarees has been accorded recognition as a *Geographical Indication* by the Government of India in 2005 – 2006.

17. Additionally, the words '*Vara'* and *'Mahalakshmi*' in the appellant's label signify Goddess Lakshmi. The expression '*Vara Mahalakshmi*' is a Sanskrit word which translates to Goddess Lakshmi, the Goddess of wealth and prosperity.

18. Therefore, the appellant cannot claim proprietary rights over the word '*Vara Mahalakshmi*' or restrain others, including the respondents, from using the words '*Vara'* or *'Mahalakshmi*' or any other variation thereof including '*Varahi Lakshmi*'. This is particularly so since '*Varahi'* is represented as a boar-faced manifestation of Goddess Lakshmi or Bhoodevi representing material abundance. Certain texts and traditions associate Goddess Varahi with Goddess Lakshmi as the divine feminine power linked to the Varaha avatar of Lord Vishnu. The direct reference to Goddess Lakshmi is unmistakable in the appellant's mark/label.

19. This would also be evident from the registrations granted to the appellant which primarily consist of label marks bearing the yellow-red colour-combination with the stylized representation of the feminine deity and the words '*Kancheepuram*', '*Vara*', '*Mahalakshmi*' and '*Silks'*. The other registrations are in the form of word marks – '*Kancheepuram Vara Mahalakshmi Silks*'. Hence, the appellant's trade mark is unmistakably a composite mark.

20. A composite mark would attract the qualification of section 17 of the 1999 Act. Section 17(1) contemplates a trade mark consisting of several matters and provides that the registration of such a mark shall confer an exclusive right on the proprietor to use the trade mark taken as a whole. Section 17(2)(a) begins with a non-obstante clause and declares that a mark containing a part which is not the subject matter of a separate application for registration, or which is not separately registered by the proprietor, shall not confer any exclusive right on the proprietor to use those parts.

21. Section 17(2)(b) is relevant for the present adjudication. Section 17(2)(b) contemplates a composite trade mark containing any matter which is common to the trade or is of a non-distinctive character. The import of section 17(2)(b) is that where a composite

trade mark contains parts which are common to the trade or are non-distinctive, as understood in section 9(1) of the 1999 Act, the registered proprietor shall not be entitled to claim exclusive right to those common and non-distinctive parts.

22. In the present case, at least two of the three words forming part of the appellant's trade mark, namely, '*Kancheepuram*' and '*Silks'* are not only common words but are also common to the trade i.e., to the business of the sale of sarees. Moreover, all the three words are non-distinctive, that is, are incapable of distinguishing the goods of the appellant from those of others. In essence, the appellant cannot claim that the words '*Kancheepuram'* or '*Vara Mahalakshmi'* or '*Silks'* are distinctive of the appellant's sarees or have become exclusively - associated with the appellant's sarees. The association factor is relevant since section 29(2) of the 1999 Act includes the likelihood of confusion or the <u>likelihood of association</u> of the offending mark with the registered trade mark. To sum up, the appellant cannot claim any exclusive right to any of the three words in its composite label mark and would squarely succumb to the restriction in section 17(2)(b) of the 1999 Act.

23. In conclusion, the similarities pale into insignificance when the marks are considered as a whole, having regard to the

substantial differences between them. Hence, the Trial Court rightly concluded that the dissimilarities between the two marks were sufficient to differentiate both the marks to the extent of removing any possibility of causing confusion to customers.

24. The appellant's label mark does not contain any single dominant or essential feature which is distinctive of the appellant. A dominant feature may be in the form of a unique or a peculiar word, a graphic, a stylized representation of a word, an image or even a colour-combination. Hence, a dominant/distinctive feature serves as an indicator of origin as well as an association with a particular product or entity

25.

26. . Admittedly, the appellant's mark does not contain any such dominant or essential feature which is distinctive of the appellant or which would distinguish the mark from other marks.

27. Counsel appearing for the parties have also informed the Court that the marks denote the shop/outlet of the rival parties. If this be the case, there would be even less chance of any confusion on the part of the purchasing public/consumers. Purchasers of sarees are expected to be conscious of the shop/outlet of their choice. Purchasing sarees is a planned and leisure activity where

the person in question would also be expected to devote some thought to the purchasing-decision. Saree-shopping is rarely a random activity where the person would be indifferent to or unaware of the shop. Thus, the test of a person with average intelligence and imperfect recollection would be unsuitable in instances of this nature. Moreover, ordering sarees simply on the trust of the sound of a shop is rare, if not impossible. Buying a saree is invariably a combination of visual and tactile sensations. Hence, the phonetic similarity of the two marks would not be the sole determining factor in the present case.

28. It is difficult to accept that in the age of print, digital and social media, a buyer would be insulated from purchasing options. In our considered opinion, the traditional test of a person of average intelligence and imperfect recollection should shift to a perceptive consumer with informed associations – who is mindful of the source, brand, quality, comfort and aspirational - index of the proposed purchase. The earlier test no longer serves the present society; consumers are now constantly exposed to product-promotions by means of print and social media feeds on a daily basis.

29. Hence, we are unable to accept the appellant's contention that women (or men) would unintentionally be drawn to the respondents' shop when, in fact, they intended to go to the appellant's shop for saree-shopping.

30. The above considerations are in line with the reasons given by the Trial Court for dismissing the appellant's I.As which sought for appointing a local commissioner to seize the material of the respondents and for restraining the respondents from dealing with any of the goods with the trade mark '*Kanchipuram Varahi Lakshmi*' or any other trade mark similar to the appellant's registered trade mark. The Trial Court found that the phonetic similarities between the two marks would pale into insignificance in the context of a visual comparison of the rival trade marks. The Trial Court also found that the appellant's mark did not contain any distinctive feature/s which would entitle the appellant to the exclusive use of the mark as a whole or to a part thereof.

31. We do not find any error in the approach adopted by the Trial Court. We have given our reasons in the paragraphs above. We accordingly do not find any merit in the Civil Miscellaneous Appeal.

32. CMA.No.441 of 2025, along with all connected applications, is accordingly dismissed. No costs.

MOUSHUMI BHATTACHARYA, J

RENUKA YARA, J

8th September, 2026

Note:
(1) L.R. copy be marked.
(2) The Registry is directed to issue the Pg.No.10 in colour.
(B/o.) *BMS/NDS*