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

\+ FAO (COMM) 217/2025 & CM APPL. 49543/2025

CHACHA SAREE BAZAR
PVT. LTD. & ANR. .....Appellants

Through: Mr. Rishi Bansal, Mr. Rishabh Gupta, Ms. Shruti Manchanda, Mr. Vibhor Sethi and Mr. Mankaran Singh, Advs.

versus

CHACHA CLOTH HOUSE .....Respondent

Through: Ms. Anukriti Pareek, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 12.02.2026

C. HARI SHANKAR, J.

The *lis*

1. The appellant is the registered proprietor of the marks CHACHA SAREE BAZAR PVT LTD and CHACHE DI HATTI, both as word and device marks, under Section 23 of the Trade Marks Act, 1999[1] for textiles, clothing and garments such as sarees, lehengas, and like goods. The respondent, without any registration, is using the mark CHACHA CLOTH HOUSE for trading in identical goods. The appellant sued the respondent alleging infringement of its registered trade marks. The suit is pending. An application, by the appellant

[1] "the Act" hereinafter

under Order XXXIX of the CPC[2] for interim injunction stands dismissed by the learned District Judge (Commercial Court)-01[3] on the ground that "Chacha" is a generic and commonplace expression, over which no one can claim a monopoly. The appellant is in appeal.

Our view

2. To our mind, the learned Commercial Court is in error on principle. The aspect of whether a mark possesses, or lacks, distinctiveness, has to be assessed vis-à-vis the goods or services in respect of which the mark is used, and not in the abstract. A commonplace word of everyday usage may be distinctive when used as a mark for goods with which it has no etymological connection. Viewed thus, we are of the view that "CHACHA" cannot be said to lack in distinctiveness, when used for selling sarees and other like garments.

Rival Stands before the learned Commercial Court

I. <u>The case of the appellant before the learned Commercial Court</u>

3. The appellant is the proprietor of several registrations, under Section 23 of the Act, including, *inter alia* the following:

S. No.	Trademark	Class	Date of application	Goods/ Services
1	CHACHA SAREE BAZAR PVT. LTD (word mark)	24	14 January 2013	Textiles and textile

[2] Code of Civil Procedure, 1908
[3] "the learned Commercial Court" hereinafter

				goods, not included in other classes, bed and table covers, sarees
2	CHACHA SAREE BAZAR PVT. LTD (word mark)	25	14 January 2013	Clothing, footwear, headgear
3	CHACHE DI HATTI (Device)	24	16 December 1988	Suiting, shirting & sarees
4	CHACHE DI HATTI (Device)	25	6 January 2010	Clothing
5	CHACHA SUIT GALLERY	25	1 June 2010	Clothing, footwear, headgear
6	CHACHA SUIT GALLERY	24	1 June 2010	Textiles and textile goods, not included in other classes; bed and table covers

4. The appellant has only one outlet, at Shops No. 8 and 9, Sarojni Nagar Market, New Delhi-110023.

5. The respondent runs an outlet at Yamuna Nagar, Haryana. The nature of business conducted by the appellant and respondent is the same, i.e., trading and marketing in garments such as suits, sarees, lehengas and like goods. The respondent was using the marks labels/logos 

and 

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6. Though the respondent has applied for registration of certain

marks, it is undisputed that, as on date, the respondent does not possess any trade mark registered under Section 23 of the Act.

7. The appellant, in its suit, alleged that the respondent's marks CHACHA, CHACHA CLOTH HOUSE and labels/logos 

and 

infringed the appellant's registered trade mark CHACHA SAREE BAZAR PVT LTD and CHACHE DI HATTI and that the simultaneous use of these marks resutled in likelihood of confusion among consumers.

8. The appellant, therefore, has sought, in its suit, a decree of permanent injunction, restraining the respondent from using the marks CHACHA and CHACHA CLOTH HOUSE, in any form, including in the form of the logos 

and 

, for any goods which may be identical or similar to the goods of which appellant's mark is regsitered.

II. <u>Case of the respondent before the learned Commercial Court</u>

9. Contesting the suit, the respondent pleaded, before the learned Commercial Court, that "Chacha" is merely the vernacular for "uncle" and is, therefore, a generic expression used in everyday speech. It was therefore neither distinctive nor inventive. It was further pleaded that

the word CHACHA is common to the trade and is used in several businesses, even as part of trade marks. The respondent submitted that no person can seek a monopoly over such a commonly used word.

10. In any case, submitted the respondent, the rival marks were required to be compared in their entirety and not by extracting, from them, the word "CHACHA". Compared in their entirety, respondent submitted that the marks CHACHA SAREE BAZAR PVT LTD and CHACHA CLOTH HOUSE have no similarity whatsoever and there is no likelihood of confusion between two marks in the mind of a consumer of average intelligence and imperfect recollection. The mere fact that "CHACHA" is common to the two marks is insufficient to make out a case of likelihood of confusion.

11. What the appellant was seeking to achieve, by the suit, it was submitted, was a monopoly over the use of the generic expression CHACHA, which is impermissible in law.

The Impugned Order

12. On 30 January 2025, the learned Commercial Court granted an *ex parte ad interim* injunction in favour of the appellant and against the respondent, restraining the respondent from using the mark CHACHA and CHACHA CLOTH HOUSE for any goods or services similar to those in which the appellant was using the mark CHACHA SAREE BAZAR and CHACHE DI HATTI.

13. By the impugned order dated 30 July 2025, under challenge in

the present appeal, the learned Commercial Court has dismissed the application under Order XXXIX and has, thereby, vacated the *ad interim* injunction granted on 30 January 2025.

14. In para 11 of the impugned order, the learned Commercial Court identifies the "basic dispute" between the parties as "the question of right to exclusive use of the word/term "Chacha" by the plaintiff". This, in turn, notes the learned Commercial Court, would include the application of Section 17[4] of the Act.

15. After referring to various judicial authorities, the learned Commercial Court holds, in paras 17 and 18 of its order, as under:

> "17. Now coming back to the facts of the present case, if "CHACHE DI HATTI, CHACHA SAREE BAZAR, CHACHA SAREE BAZAR PVT Ltd." are compared with the mark being used by defendant i.e. "CHACHA/CHACHA CLOTH HOUSE", one can find that except for the word "Chacha", there is no similarity in these trade-marks. Plaintiffs have brought this suit to stop the defendant from using the word "Chacha". However, word "Chacha" is also a generic word. Monopoly over such word cannot be given unless it is proved that this word has acquired a secondary meaning in the mind of customers to relate this word only with plaintiffs. Defendant has taken a categorical stand that his business is confined to Yamunanagar and nearby places in Haryana. Any advertisement on social media or other platform is common for all business men. Hence, if same is done by the defendant, no exception can be taken for the same. Plaintiffs have not shown their dominant presence with a particular image attached to their trademark beyond Delhi.

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[4] **17. Effect of registration of parts of a mark**.—
(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.
(2) Notwithstanding anything contained in sub-section (1), when a trade mark—
(a) contains any part—
(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or
(ii) which is not separately registered by the proprietor as a trade mark;
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the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

> 18. Thus, the element of secondary meaning attributed to word "Chacha" with its exclusive connection with the goods of plaintiffs, is not prima facie established on the record. Hence, I do not find a prima facie case tilting in favor of plaintiffs at this stage. Moreover, I also have serious doubts regarding maintainability of this suit against a proprietorship firm. Hence, application under Order XXXIX Rule 1 & 2 CPC as moved by the plaintiffs is hereby rejected. Ad-interim injunction granted vide order dated 30.01.2025, is hereby vacated."

16. Aggrieved by the aforesaid order, the appellant has preferred the present appeal.

17. We have heard Mr. Rishi Bansal for the appellants and Ms. Anukriti Pareek for the respondent at length.

18. Both sides have also filed written submissions.

Rival contentions before this Court

I. Submissions of Mr. Bansal for the appellants

19. Mr. Bansal submits that there is no justification for finding by the learned Commercial Court that the trade mark "CHACHA" is generic. He submits that the issue of whether a mark is, or is not, generic has to be decided vis-à-vis the goods or services in respect of which it is used. Viewed in the background of goods for which the rival marks are used, Mr. Bansal submits that "CHACHA" cannot be treated as generic. He relies, in this context, on the judgment of the Division Bench of this Court in ***KRBL v. Praveen Kumar Buyyani***[5].

[5] **316 (2025) DLT 783 (DB)**

20. Mr. Bansal submits that the impugned decision of the learned Commercial Court is contrary to the anti-dissection rule contained in Section 17 of the Act and relies, for this purpose, on the judgment of the Division Bench in ***Under Armour Inc. v Anish Agarwal***[6]**.**

21. Mr. Bansal further submits that, as the respondent has itself applied for registration of the mark CHACHA CLOTH HOUSE, the respondent was estopped from contending that the mark CHACHA was generic and incapable of monopolisation and cites, in support, the judgment of the Division Bench of this Court in ***Jain Shikanji Pvt Ltd. v. Satish Kumar Jain***[7]**.**

22. Mr. Bansal further submits that the fact that the appellant has an outlet in Sarojni Nagar, New Delhi and the respondent has an outlet in Yamuna Nagar, Haryana, is irrelevant to the aspect of infringement and injunction and relies, for this purpose on the judgment of the Supreme Court in ***Laxmikant V. Patel v. Chetanbhai Shah***[8] which advises Courts to keep in mind the fact that a party may always choose to expand its business.

23. Mr. Bansal finally submits that the learned Commercial Court has not returned any finding on the actual issues in controversy, i.e., similarity between the marks and likelihood of confusion. On these aspects, he submits that, the appellant has a clear *prima facie* case in its favour and is entitled, therefore, to an injunction.

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[6] 2025 SCC OnLine Del 3784
[7] 2023 SCC OnLine Del 1241
[8] (2002) 3 SCC 65

II. Submissions of Ms. Anukriti Pareek

24. Ms. Pareek, arguing for the respondent, submits that the aspect of infringement or passing off has to be seen by comparing the two rival marks in their entirety, as whole marks, and not on the basis of the common CHACHA feature between them. Viewed as whole marks, she submits that there is no similarity between CHACHA SAREE BAZAR and CHACHA CLOTH HOUSE. She has particularly drawn our attention to the rival logos used by the appellant and respondent, which may be reproduced as under:

	Appellant's trade mark	**Respondent's trade mark**
Primary Word Mark	CHACHA SAREE BAZAR PVT. LTD	Chacha Cloth House
Primary Logo mark		
Other marks	CHACHE DI HATTI CHACHA SUIT GALLERY 	

Thus, she submits that there is no likelihood of confusion between the rival marks when compared as whole marks.

25. Ms. Pareek has also relied on the restriction entered by the trade mark registry while granting registration to the word mark CHACHA

SAREE BAZAR PVT LTD to the appellant, which reads "This is condition of registration that both/all labels shall be used together". She further draws attention to the finding of the learned Commercial Court that CHACHA is a generic expression which is common to the trade and used by several in the business. It is completely lacking in distinctiveness and, therefore, no one can seek to monopolise such an expression.

26. Ms. Pareek submits that monopoly could be sought for the word CHACHA only if it had acquired secondary meaning, in the minds of the public, and was associated solely with the appellant. This, she submits, is at the highest a matter of trial. She further submits that the reliance, by the appellant on Section 17 of the Act is misplaced, as the appellant had itself sought to invoke the dominant feature test and asserted that CHACHA was the dominant feature of the appellant's mark. The appellant could not simultaneously invoke the anti-dissection rule and the dominant feature test.

27. Ms. Pareek further submits that there is no territorial overlap between the activities of the appellant and the respondent, as the appellant has only one outlet at Sarojni Nagar, New Delhi and the respondent has only one outlet at Yamuna Nagar, Haryana. There is, therefore, no likelihood of confusion.

Analysis

28. Having heard learned Counsel and applied ourselves to the facts and law on the subject, we are of the opinion that the learned

Commercial Court has erred on principle and that the appellant is entitled to an interlocutory injunction on the ground of infringement. We, therefore, do not propose to examine the plea of passing off.

I. Applicable principles

29. Where infringement is found to exist, normally an injunction must follow. This is categorically held in para 5 of the judgment of the Supreme Court in ***Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia***[9] which reads thus:

> "5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest."

30. The above principle in ***Midas Hygiene*** has been followed by Division Bench of this Court in several cases including ***Ganraj Enterprises v. Land Mark Crafts (P) Ltd***.[10], ***Leayan Global (P) Ltd. v. Bata India Ltd.***[11] and ***Saurabh Gupta v. Sheopals (P) Ltd.***[12]

31. Infringement is defined in the various sub-sections of Section 29 of the Act, of which the only relevant sub-section for our purpose is Section 29(2)(b)[13]. As per the said clause, if a person, not being

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[9] **(2004) 3 SCC 90**
[10] **2025 SCC OnLine Del 9290**
[11] **2025 SCC OnLine Del 9128**
[12] **2025 SCC OnLine Del 8579**
[13] **29. Infringement of registered trade marks** –

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(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or

himself the registered proprietor or permissive user, uses a mark which is deceptively similar to a registered trade mark of another, for goods or services which are identical or deceptively similar to the goods or services in respect of which the mark of the other is registered, and such usage results in likelihood of confusion or likelihood of the public believing an association between the two marks, infringement results. The "public" is represented by a consumer of average intelligence and imperfect recollection, as held by the Supreme Court in ***Amritdhara Pharmacy v. Satyadeo Gupta***[14], ***Satyam Infoway Ltd v Siffynet Solutions (P) Ltd***[15], and several other decisions.

32. It is also well settled that infringement is not be assessed by placing the rival marks side-by-side[16], but by assessing whether such an average consumer, who comes across the plaintiff's mark at one point of time and later comes across the defendant's mark, is likely to be confused between the two, or believe an association between them. It is also settled that the aspect of likelihood of confusion is to be examined from an initial interest perspective[17]. In other words, what has to be seen is whether, when the average consumer initially sees the defendant's mark, having come across the plaintiff's mark at an earlier point of time, the first impression on the psyche of such a consumer

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services covered by such registered trade mark; or
(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,
is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

[14] **AIR 1963 SC 449**
[15] **(2004) 6 SCC 145**
[16] Refer **Pernod Record India Ltd v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701**
[17] Refer **Shree Nath Heritage Liquor Pvt Ltd v Allied Blender & Distillers Pvt Ltd, 221 (2015) DLT 359 (DB)**

would be of confusion or association. The fact that, later, this impression might be dispelled, does not mitigate the aspect of infringement.

33. It is clear, therefore, that an infringement action can lie only at the instance of a registered proprietor of the mark and cannot lie against another registered proprietor. The infringer must be a person who is not the registered proprietor of the allegedly infringing mark and is not using it by way of permitted use. Else, it is not infringement within the meaning of Section 29(2) of the Act. The fact that an infringement action cannot lie at the instance of one registered proprietor against another is also clear from Section 28(3)[18] of the Act.

34. Registration of a mark entitles the registrant, under Section 28(1)[19], to (i) exclusive use of the registered mark, for the goods or services in respect of which it is registered and (ii) a right to relief against infringement. The reliefs available against infringement are set out in Section 135(1)[20] and include an injunction, apart from damages and delivery-up.

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[18] (3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

[19] **28. Rights conferred by registration**. –
(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

[20] **135. Relief in suits for infringement or for passing off**. –
(1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

35. Section 28(1), no doubt, requires registration of a mark to be valid in order for the rights envisaged by that section to be available to the registrant. However, at the Order XXXIX stage, the plaintiff/registrant, who seeks interlocutory injunction on the ground of infringement, is only required to set up a *prima facie* case. In other words, he is only required to show that the registration of the mark which he asserts is *prima facie* valid.

36. Section 31(1)[21] of the Act statutorily obviates the necessity of a plaintiff, who is the registered proprietor of the allegedly infringing mark, from establishing, *prima facie*, that the registration is valid. The provision states the very fact that a mark is registered, shall operate as *prima facie* evidence of validity. The requirement of adducing *prima facie* evidence of validity, which is all that is required at the Order XXXIX stage, is, therefore, statutorily obviated by Section 31(1), by the very fact of registration of the mark.

37. That said, there may be extreme cases in which a defendant may be able, even at the *prima facie* stage, to prevail upon the Court not to rely solely on the fact of registration of the mark as sufficient to make out a case of *prima facie* validity. These, however, are extreme cases. This Bench, in ***Quantum Hi-Tech Merchandising Pvt Ltd v. LG Electronics India Pvt Ltd***[22], came across one such instance in which the mark which was registered was different from the mark for which

[21] **31. Registration to be prima facie evidence of validity**. –
(1) In all legal proceedings relating to a trade mark registered under this Act (including applications under Section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof.

[22] **2025 SCC OnLine Del 8238**

application for registration was filed. In such a case, the presumption of evidence as engrafted in Section 31(1) of the Act cannot come to the aid of the plaintiff, as it is apparent, *ex facie*, that the registration is invalid.

38. Save for such rare and exceptional cases, however, at the Order XXXIX stage, the fact that the plaintiff's mark is registered is itself sufficient *prima facie* valid proof of the registration and the consequent entitlement, of the plaintiff, to the benefits of Section 28(1) of the Act.

39. Section 29 is followed by provisions which set out exceptions to infringement and exceptions to the entitlement to injunction. Even where the circumstances envisaged in Section 29 are found to exist, the act of the defendant would not be infringing if it falls within the various sub-sections of Section 30. Equally, if the case attracts Sections 34 to 36, then, even if infringement exists, the plaintiff would not be entitled to an injunction against the defendant.

40. We need not refer to these provisions in detail, as none of them has been invoked by either side before us.

41. There is, however, one other provision which conditions the aspect of infringement, and that is Section 17. Section 17 applies in the case of composite marks, i.e., marks which are not merely a single word or a single label. Of the various clauses of Section 17, the facts of the present case and the rival contentions advanced before us only require us to advert to Section 17(2).

42. Section 17(2) contains two clauses – Section 17(2)(a) and 17(2)(b) – which are fundamentally different and distinct from each other. Learned Counsel have invoked both these clauses and, therefore, we would refer to both of them and examine their applicability in the facts of the present case.

43. Section 17(2)(a) states that if a trademark consists of more than one part, and registration is of the trademark as a whole, no exclusive right would enure in favour of the registrant in respect of any part of such a mark which is not separately registered and in respect of which no separate application for registration of a mark is pending.

44. By its very nature, therefore, Section 17(2) applies only to the plaintiff's marks, as exclusivity is being claimed by the plaintiff and not by the defendant.

45. In the present case, the appellant's registered trademarks are CHACHA SAREE BAZAR and CHACHE DI HATTI. Both are registered as word and device mark in Classes 24 and 25. It is clear, therefore, that, while examining the aspect of infringement, the Court has to compare the rival marks as whole marks, in their entirety, and cannot compare individual parts of the marks which are not separately registered. The manner in which composite marks which consist of various parts are to be compared as whole marks has, however, been clarified by a Division Bench of this Court in ***South India Beverages***

Pvt Ltd v. General Mills Marketing Inc*[23]. The principle in ***South India Beverages stands reinforced by the judgment of the Supreme Court in ***Pernod Ricard India (P) Ltd***. In ***South India Beverages***, the Division Bench has held as under:

> "20. At this juncture it would be apposite to refer to a recent decision of this Court reported as ***Stiefel Laborataries*** **v** ***Ajanta Pharma Ltd***.[24] The Court whilst expounding upon the principle of 'anti-dissection' cited with approval the views of the eminent author on the subject comprised in his authoritative treatise- McCarthy on Trademarks and Unfair Competition. It was observed:
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> > "41. The anti-dissection rule which is under these circumstances required to be applied in India is really based upon nature of customer. It has been rightly set out in McCarthy on Trademarks and Unfair Competition about the said rule particularly in Para 23.15 which is reproduced hereunder:
> >
> > 23.15 Comparing Marks: Differences v. Similarities
> >
> > [1] The Anti-Dissection Rule
> >
> > [a] *Compare composites as a Whole : Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the "anti dissection" rule.* The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. *However, it is not a violation of the anti-dissection rule to view the component parts of conflicting composite marks as a preliminary step on the way to an ultimate determination of probable*

[23] **(2015) 61 PTC 231**
[24] **211 (2014) DLT 296**

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

should not engage in "technical gymnastics" in an attempt to find some minor differences between conflicting marks.

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

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

21. The view of the author makes it scintillatingly clear, beyond pale of doubt, that the principle of '*anti dissection*' does not impose an absolute embargo upon the consideration of the constituent elements of a composite mark. The said elements may be viewed as a *preliminary step* on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, the principle of '*anti-dissection*' and identification of '*dominant mark*' are not antithetical to one another and if viewed in a holistic perspective, the said principles rather compliment each other.

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37. The factual contours of the said case may be succinctly noted in order to appreciate the findings arrived at by the Court. The respondent board had denied the registration of appellant's mark 'ENERCON' on the opposition made by the proprietor of the registered trademark 'TRANSFORMERS ENERGON'. The appellant challenged the said rejection on the ground that word

> 'ENERGON' was not a dominant part of the registered trademark and therefore negated any likelihood of confusion. The Court rejected the plea of the appellant and observed that *both the elements of the opposer's registered trademark i.e. 'transformers' and 'energon' were equally distinctive and dominant.* The Court added that assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; on the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be *dominated by one or more of its components*."

46. This principle is reiterated in ***Pernod Ricard*** in the following words:

> "4. However, the application of this principle is nuanced. Courts are not expected to adopt a mechanical, side-by-side comparison of the marks. Rather, judicial scrutiny is guided by interpretative doctrines such as the anti-dissection rule and the doctrine of the dominant mark, *inter alia*, other well-established tests. Although these principles are frequently applied in tandem, they do not always align perfectly, and courts have differed in their application depending on the specific facts and context of each case.
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> 5. The present case offers an opportunity for this Court to clarify the appropriate analytical framework for evaluating competing trademarks. While the anti-dissection rule - which requires the mark to be considered as a whole - has statutory foundation under the Trade Marks Act, 1999, the doctrine of the dominant mark is a judicially evolved principle, aimed at identifying the essential or memorable component of a mark that is likely to influence consumer perception. The purpose of this doctrine is to determine whether the impugned mark creates a deceptive association in the minds of consumers, thereby enabling the defendant to unjustly benefit from the plaintiff's established reputation. This analysis is guided by the perspective of an average consumer with imperfect recollection, who is not expected to retain or compare marks with exact precision.
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> 32. A foundational principle in trademark law is that marks

must be compared as a whole, and not by dissecting them into individual components. This is known as the anti-dissection rule, which reflects the real-world manner in which consumers perceive trademarks - based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In ***Kaviraj Pandit Durga Dutt Sharma*** **v.** ***Navratna Pharmaceuticals Laboratories***[25], this Court underscored that the correct test for trademark infringement is whether, when considered in its entirety, the defendant's mark is deceptively similar to the plaintiff's registered mark. The Court expressly cautioned against isolating individual parts of a composite mark, as such an approach disregard how consumers actually experience and recall trademarks.

32.1. While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non-distinctive components *per se*, courts may still identify dominant or essential features within a composite mark to assess the likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.

32.2. This approach finds further support in the observations of scholars such as McCarthy in Trademarks and Unfair Competition, who note that consumers seldom engage in detailed, analytical comparisons of competing marks. Purchasing decisions are instead based on imperfect recollection and the general impression created by a mark's sight, sound, and structure. The anti-dissection rule thus aligns the legal test for infringement with the actual behaviour and perception of consumers in the marketplace.

32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element - particularly if it is descriptive or laudatory - will not by itself amount to infringement.

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33. In determining whether a mark is deceptively similar to

[25] **AIR 1965 SC 980**

another, courts often consider the dominant feature of the mark - that is, the element which is most distinctive, memorable, and likely to influence consumer perception. While the anti-dissection rule requires marks to be compared in their entirety, courts may still place emphasis on certain prominent or distinguishing elements, especially where such features significantly contribute to the overall commercial impression of the mark.

33.1. The principles of the anti-dissection rule and the dominant feature test, though seemingly in tension, are not mutually exclusive. Identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks. In certain cases, an infringing component may overshadow the remainder of the mark to such an extent that confusion or deception becomes virtually inevitable. In such instances, courts - while maintaining a contextual and fact-specific inquiry - may justifiably assign greater weight to the dominant element. However, emphasis on a dominant feature alone cannot be determinative; the ultimate test remains whether the mark, viewed as a whole, creates a deceptive similarity likely to mislead an average consumer of ordinary intelligence and imperfect recollection.

33.2. An analogy that aptly illustrates the significance of a dominant element in a composite mark is that of mixing milk and water. If a small quantity of milk is added to a half-glass of water, the mixture becomes cloudy - the change is perceptible, but the dominant character remains watery. Conversely, if the same amount of water is added to a half-glass of milk, the result still appears to be milk - the dilution is imperceptible. Though the components are the same, the perceptual impact differs, depending on which element dominates. Similarly, in trademark analysis, the presence of common elements across marks does not automatically indicate a likelihood of confusion. What matters is the relative prominence and distinctiveness of the elements. Just as the milk in the second example visually and qualitatively overwhelms the water, a dominant feature in a mark can subsume other components and shape consumer perception. Therefore, while assessing deceptive similarity, due weight must be given to the dominant element, without disregarding the composite nature of the mark.

33.3. The dominant feature of a mark is typically identified based on factors such as its visual and phonetic prominence, placement within the mark (with initial components often carrying greater perceptual weight), inherent distinctiveness, and the degree of consumer association it has generated. The dominant element functions as the “hook” that captures the consumer's attention and facilitates brand recall. For instance, in composite marks such as ‘BLENDERS PRIDE’ or ‘IMPERIAL BLUE’, the terms

> 'BLENDERS' and 'IMPERIAL' may be regarded as dominant, owing to their distinctive and less frequently used character. In contrast, elements such as 'PRIDE' or 'BLUE' are relatively generic, descriptive, or commonplace in the liquor industry, as evidenced by other marks like *ROCKFORD PRIDE, ROYAL PRIDE*, or *OAK PRIDE*. Such shared or non-distinctive terms cannot be monopolized, unless it is established that they have acquired secondary meaning through extensive and exclusive use, and are uniquely associated with the plaintiff's goods in the minds of the public."

47. Thus, where the Court is considering a composite mark of the plaintiff such as CHACHA SAREE BAZAR PVT. LTD., if anyone part of that mark is dominant, the Court can examine whether the whole mark of the plaintiff is deceptively similar to the whole mark of the defendant by examining whether the dominant feature has been copied in the defendant's mark. As the Supreme Court in ***Pernod Ricard*** and the Division Bench of this Court in ***South India Beverages*** have clarified, this does not amount to re-writing Section 17(2) and permitting vivisection of a composite mark. It emanates from the principle that a consumer of average intelligence and imperfect recollection, who sees two marks in both of which the same feature is dominant, and other features are subsidiary, would recollect the marks on the basis of their dominant feature. If the dominant feature is identical, or if the dominant features are deceptively similar to each other, therefore, the overall impression that such a consumer would form is similar. There is, therefore, likelihood of confusion or association between the marks in the perception of such a consumer of average intelligence and imperfect recollection.

48. We proceed, now, to apply these principles to the facts on hand.

II. *Prima facie* infringement

49. Viewed thus, it is clear that the dominant feature of the appellant's and the respondent's marks is CHACHA. The remaining part of both the marks only refers to the goods/services in respect of which the marks are used.

50. Inasmuch as the dominant feature of both the marks is identical, i.e., CHACHA, and the marks are used for identical goods or services, i.e., trading in sarees and other similar garments and apparel, a *prima facie* case of infringement within the meaning of Section 17(2)(b) of the Act exists.

51. The learned Commercial Court has, unfortunately, not adverted to this aspect of the matter at all. We, therefore, deem it necessary to return our own finding thereon.

III. Section 17(2)(b) – The "generic" mark finding – Absence of distinctiveness – Impact of Section 31(1) and 9(1)(a) at the *prima facie* stage, vis-à-vis Section 17(2)(b)

52. The learned Commercial Court has proceeded on the premise that the expression "Chacha" being generic, no person could be allowed to claim a monopoly over such an expression. This, in fact, is a principle which does not find any specific mention in the Act. The Act does not expressly place an embargo on monopoly in respect of generic expressions. However, what the learned Commercial Court appears to have done is to impliedly invoke Section 17(2)(b) of the Act which does not allow exclusivity to be claimed over a part of a

mark which is not distinctive in nature.

53. Distinctiveness, by its very nature, has to be examined *vis-v-vis* the goods or services in respect of which the mark is used. An everyday expression of common parlance, which would ordinarily be "generic", may be distinctive when used in respect of goods or services with which it has no connection whatsoever[26].

54. Mr. Bansal is clearly correct in his submission that distinctiveness, within the meaning of Section 17(2)(b) of the Act, has to be assessed not in *vacuo*, but *vis-a-vis* the goods or services in question. A mark which has no connection whatsoever with the goods or services for which it is used would ordinarily be distinctive.

55. CHACHA, though otherwise a word of common usage, has clearly no connection with sarees or garments. There is no basis, therefore, for a Court to hold that, when used for in connection with the sarees or garments, the word CHACHA is not distinctive.

56. In fact, ordinarily, an aspect of whether a mark is distinctive is lacking or is not lacking in distinctiveness in connection with the goods or services in respect of which it is used, would be a matter of evidence and, therefore, a matter of trial, unlike an aspect of deceptive similarity, which has to be decided by the Court on its own perception. There is no material cited by the learned Commercial Court to support its finding that the word CHACHA is lacking in distinctiveness when used for sarees and apparel. Nor has Ms. Pareek, either in her oral

[26] Refer **Saurabh Gupta v. Sheopals (P) Ltd.**

submissions or in her written arguments, been able to adduce any contention which could convince us, even *prima facie,* that the expression CHACHA is to be treated as not distinctive when used for sarees and garments. Her only submission is that "Chacha" is a vernacular word of common usage, which means "uncle". That, by itself, cannot be the basis for a Court to hold that the mark is lacking in distinctiveness. Unfortunately, as the learned Commercial Court has proceeded on this basis, the impugned order is fundamentally erroneous on principle and, therefore, invites interference within the meaning of para 14 of ***Wander Ltd v. Antox India P Ltd***[27].

57. Sections 31(1) and 9(1)(a) of the Act also segue into this discussion. As we have already observed, Section 31(1) operates to confer *prima facie* validity to a registered trade mark, by the very fact of its registration. The corollary would, therefore, be that the mark, again *prima facie*, does not suffer from any of the hurdles against registrability envisaged in Sections 9 and 11 of the Act.

58. Section 9(1)(a)[28] proscribes registration of a mark which is lacking in distinctiveness. A registered trade mark is, therefore, entitled to be regarded *prima facie* as distinctive, in view of Section 31(1) read with Section 9(1)(a).

IV. The "common to trade" argument

[27] **1990 Supp SCC 727**

[28] **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;
*****
shall not be registered:

59. It has also been sought to be contended that the word CHACHA is "common to trade". Ms. Pareek seeks to submit that there are several marks which use CHACHA as a part of the mark.

60. The submission, again, reflects an incomplete appreciation of Section 17(2)(b) of the Act, insofar as it proscribes a claim of exclusivity over a part of the composite mark as being common to the trade.

61. The proscription, as contained in Section 17(2)(b), applies where the plaintiff's mark or the part of the plaintiff's mark in question, is common to *the* trade. The use of the particular article "the" is of considerable significance. It conveys the idea that the mark must be common *to the trade which is under consideration*, in order for a claim to exclusivity not to be permissible in respect thereof.

62. In other words, it is only if the respondent could make out a case that, in the trade of sarees and garments, "CHACHA" is an expression which is commonly used, that it can be treated as common to the trade.

63. The requisites for such a plea to succeed have been set out by a Division Bench of this Court in ***Pankaj Goel v. Dabur India Ltd***[29]. The plea advanced before the Court, in that case, is practically identical to the submission of Ms Pareek. The Court was concerned with the rival marks HAJMOLA and SATMOLA. The defendant

[29] **2008 (38) PTC 49 (DB)**

sought to contend that the suffix "MOLA" was common to trade and that, therefore, the fact that MOLA was the suffix in the rival marks could not be relied upon, by the plaintiff, to allege deceptive similarity or likelihood of confusion. This Court held (per Manmohan J, as His Lordship then was):

> "21. As far as the Appellant's argument that the word MOLA is common to the trade and that variants of MOLA are available in the market, *we find that the Appellant has not been able to prima facie prove that the said 'infringers' had significant business turnover or they posed a threat to Plaintiff's distinctiveness*. In fact, we are of the view that *the Respondent/Plaintiff is not expected to sue all small type infringers* who may not be affecting Respondent/Plaintiff business. The Supreme Court in ***National Bell v. Metal Goods***[30], has held that a proprietor of a trademark need not take action against infringement which do not cause prejudice to its distinctiveness. In ***Express Bottlers Services Pvt. Ltd. v. Pepsi Inc.***[31], it has been held as under:—
>
> > "….*To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade*. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks…. The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence… Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point… The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers…"
>
> 22. In fact, in ***Dr. Reddy Laboratories v. Reddy***

[30] **(1970) 3 SCC 665**
[31] **(1989) 7 PTC 14**

Paharmaceuticals[32], a Single Judge of this Court has held as under:—

> "…the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of "Taj Hotel", the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interest and starts misleading and confusing their customers."
>
> (Emphasis supplied)

64. Thus, it is not sufficient for a defendant to cite various marks existing on the Register of Trademark, or even existing outside the Register, to make out a case of the plaintiff's mark being common to the trade within the meaning of Section 17(2)(b) of the Act. The defendant would have to produce details of the trade in such marks. *Inter alia*, the defendant would also have to establish when these marks came into being and the extent to which these marks were in use in the trade in which the plaintiff and the defendant are engaged. The date on which the trade in these marks commenced becomes relevant, as there is every possibility of the marks being copied from the plaintiff's mark itself.

65. No case of the expression CHACHA, in connection with trade in sarees, apparels and other such goods being common to the trade within the meaning of Section 17(2)(b) of the Act, applying the ***Pankaj Goel*** principles, has been made out either in the written

[32] **(2004) 29 PTC 435**

statement filed by the defendant or in the submissions advanced before us.

66. No case for invoking the proscription applicable to marks which are common to the trade is, therefore, made out.

V. Plea regarding dissimilarity between the logos

67. An additional submission which was advanced by Ms. Pareek was that the rival marks are visually completely different from each other. She has drawn our attention to the comparison of the logos used by the appellant as reproduced in para 24 *supra.*

68. The law, on this issue, stands settled against the respondent by the judgment of the Supreme Court in ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.***[33] That, too, was a case of infringement. The rival marks were label marks. The judgment itself notes that the labels were completely dissimilar, when visually compared. However, each of the marks contained, as its dominant feature, the word AMBAL in the case of the plaintiff and ANDAL in the case of defendant. The Supreme Court held that, as the words AMBAL and ANDAL, which constituted the main feature of the rival marks, were phonetically similar and such as would be likely to result in confusion in the mind of the average consumer, the fact that the marks were visually dissimilar when seen as whole marks would not mitigate the possibility of infringement.

[33] **(1969) 2 SCC 131**

69. Applying the said principle to the present case, even though the individual logos used by the appellant and the respondent may visually be dissimilar, the main feature of the two logos are, in the case of the appellant, the words CHACHA SAREE BAZAR PVT. LTD. and, in the case of the respondent, the words CHACHA CLOTH HOUSE. As CHACHA CLOTH HOUSE clearly infringes CHACHA SAREE BAZAR PVT. LTD., the visual dissimilarity between the logos cannot come to the aid of the respondent.

70. Besides, in the present case, the appellant has word mark registrations for CHACHA SAREE BAZAR PVT. LTD. and CHACHE DI HATTI. These word mark registrations entitled the appellant to injunct not only the use of a word mark by any other person which is deceptively similar to the mark CHACHA SAREE BAZAR PVT. LTD. or CHACHE DI HATTI but also any device mark of which the prominent feature is textual, if the text infringes CHACHA SAREE BAZAR PVT. LTD. or CHACHA CLOTH HOUSE.

71. On this ground, too, therefore, the plea of visual dissimilarity between the logos of the appellant and the respondent cannot come to the aid of the respondent.

Conclusion

72. Inasmuch as the learned Commercial Court has proceeded on erroneous principles, and, applying the correct principles, we are of the opinion that a *prima facie* case of infringement is made out

between the respondent's and the appellant's marks, following the law enunciated in ***Midas Hygiene,*** an injunction has necessarily to follow.

73. We, therefore, set aside the impugned order to the extent it restricts the respondent from using the marks presently in use by them. The respondent shall, therefore, stand restrained, pending disposal of the suit, in using the marks  and  for any goods or services covered by Classes 24, 25 or 35, or any allied or cognate goods or services.

74. The appeal is accordingly allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 12, 2026/AR/*dsn*