IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.42 OF 2026

APPELLANTS (Original Plaintiffs) :-

1) Tervinder Singh Jhans, Aged about 60 years, Plot No. 2B, Mount Road Extension, Sadar, Nagpur-44001, Maharashtra.

2) M/s Barbecue, a Proprietory Concern, Through its Proprietor, Mr. Tervinder Singh Jhans, Plot No. 2B, Mount Road Extension, Sadar, Nagpur-440001, Maharashtra.

3) Barbecue Food Services Pvt Ltd., Through its Director, having its registered office at Plot No.2B, Mount Road Extension, Sadar, Nagpur-440001, Maharashtra.

..VERSUS..

RESPONDENTS (Original Defendants) :-

1) Pankaj Rai, Aged about Major, Occu: Business R/o Satyam Apartment, Plot No.55 Canal Road, Gokulpeth, Nagpur-440010.

2) Kumkum Pankaj Rai, Aged about Major, Occu: Business, R/o Satyam Apartment, Plot No. 55, Canal Road, Gokulpeth, Nagpur-440010.

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3) Mrityunjay Surendra Singh,
Additional Director, Epices Hospitality (OPC) Pvt. Ltd., Flat No. 102, Satyam Appett Canal Road, Gokulpeth Nagpur, Maharashtra-440010.

4) Epices Hospitality (OPC) Pvt. Ltd.
Flat No.102, Satyam Apartment,
Canal Road, Gokulpeth,
Nagpur, Maharashtra-440010.

Mr. M.V. Samarth, Senior Counsel assisted by Mr. Apurv De and Ms Vaishnavi Ramidhani, counsels for appellants
Adv. C. S. Dharmadhikari a/w Mr. S.D. Pagay, counsel for respondent Nos. 2 and 4.

CORAM : Y.G. KHOBRAGADE, J.
DATE OF RESERVE : 13/08/2026
DATE OF DECISION : 01/09/2026

JUDGMENT :

1. **Admit.** With consent of the both the sides, it is heard finally at the stage of admission.

2. The present appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, is directed against the order dated 04/08/2026 passed below Exhibit-5 in Trade Mark Suit No. 02 of 2026, by the learned District Judge-15, Nagpur,

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thereby declined to grant a temporary injection restraining the Respondents/ori. Defendants from desisting infringement of Copy Right or Trade Mark "BARBECUE"/“BARBEQUE” in relation to the Appellants/plaintiffs business.

3. Heard, the learned Senior Counsel M.V. Samarth, assisted by Mr. Apurv De, learned counsel for the appellants/plaintiffs and Adv. C. S. Dharmadhikari, the learned counsel appearing for the Respondents 2 & 4.

4. The appellants are the original plaintiffs, whereas the respondents are the original defendants in Trade Mark Suit No. 02 of 2026. For the sake of brevity, the parties to the present appeal shall hereinafter referred in their original capacity.

5. Mr. M. V. Samarth, the learned Senior Counsel appearing for the Appellants canvassed that, the Appellants/ plaintiffs instituted a Trade Mark Suit No. 02 of 2026 on ground that they have been carrying on the business of providing Food and Beverage services in the name of the “BARBECUE/ BARBEQUE”, Sadar, Nagpur, since past 30 years. The plaintiffs possess rights in the said trade mark and copyright. Further, the plaintiffs are having registration with the MSME and Udyam

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Authorities and acquired considerable Goodwill and Reputation in their business throughout Nagpur city.

6. It the further canvassed on behalf of the Plaintiffs that, they adopted the Copy Right/ Trade mark “BARBECUE”, in the year 1994 and are using the same along with it's variants, including “BARBEQUE”, in relation to Class 42 & 43 Services. The Copy Right and proprietary rights in the distinctive Artistic Work, colour combination, style of writing, hence, said trade mark/label vested with the plaintiffs. Since, the plaintiffs have obtained registration of the copyright/trade mark in the name and style of “BARBEQUE” and that Copyright Registration No. A-144348/2023 has been issued by the Registrar of Copyrights, therefore, except them no one having right to use said name, trade mark/copy right. However, in the month of November 2022, the plaintiffs noticed that, the defendants are running the business in the name of "BARBECUE” and using trade marks, labels, logos and branding it with their restaurant business, which is deceptively similar to those of the plaintiffs. Therefore, use of such trade marks, logos and labels on part of the defendants causing confusion amongst the consumers/ customers of the plaintiffs, hence, action on part of the

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Defendants amounts to infringement of trade, hence, prayed for decree of declaration.

7. The plaintiffs also filed Exh. 5 an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 and prayed for temporary injunction in terms prayer clause (Vi) & Vii) as under:

> *vi) Grant Temporary Injunction in favour of the Plaintiffs and against the Defendant to immediately cease and desist the Defendant from using the trade mark/ trade name, wordmark, label mark, copyright owned by the Plaintiffs-in the word "BARBECUE", and/ or any other identical/similar mark, which may cause likelihood of confusion and/or likelihood of Association in the minds of customers, from all the services and product wrappers of the Defendant and change the same.*
>
> *vii) Grant Temporary Mandatory Injunction in favour of the Plaintiffs and against the Defendant to immediately destroy all the stock of the above mentioned infringing wrappers, advertisements, banners, bills, publicity material, stationary, etc. stored in Defendant's godowns, with an intention to be used on their services and products.*

8. The learned Senior Counsel appearing for the plaintiffs canvassed that, the plaintiffs are carrying restaurant business in the name and style of “BARBECUE/ BARBEQUE” at Sadar, Nagpur, since past 30 years. The plaintiffs are possessing

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trade mark and copyright rights in said name and registered with MSME and Udyam. The establishment of the plaintiffs is well-known throughout Nagpur City and acquired substantial goodwill and reputation in the field of Food and Beverage services, hospitality and restaurant business. In the year 1994, the plaintiffs created an artistic work in the label and logo of their firm, “BARBECUE”, having a peculiar and distinctive style of writing, colour scheme and overall artistic get-up. In the year 1994, they adopted trade mark “BARBECUE” and its combinations, including the word “BARBEQUE”, in relation to the services falling under Class 43.

9. It is further canvassed on behalf of the plaintiffs that, in the year 2005, the plaintiffs applied for registration of trade mark/label comprising the word “BARBECUE”, along with the distinctive colour combination and style of writing and in the year 1994, the plaintiffs are created an artistic work in the label and logo of their firm, “BARBECUE”, having a peculiar and distinctive style of writing, colour scheme and overall artistic get-up. In the year 1994, they adopted trade mark “BARBECUE” and its combinations, including the word “BARBEQUE”, in relation to the services falling under Class 43. The plaintiffs have

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created an artistic work on the label as well as logo of the brand “BARBECUE”, with peculiar and distinctive style of writing, colour scheme and artistic get-up. Therefore, except the plaintiffs no one has right use said name. However, in the month of November 2022, the plaintiffs acrossed about fact that the defendants are carrying business in the name and style of "BARBECUE” and using trade marks, labels, logos and branding it with their restaurant business, which is deceptively similar to those of the plaintiffs. Therefore, action on part of the Defendants amounts to infringement of trade mark, hence, prayed for temporary injunction restraining the Defendants from using name and style of the plaintiffs trade mark/copy right till decision of the suit.

10. It is further canvassed on behalf of the plaintiffs that, the learned Trial Court passed the impugned order without considering facts that, the manner in which consumers behave while using food-delivery aggregator platforms such as Zomato and Swiggy. Therefore, using name/label/ copy right/ trade mark “Barbeque"/“Barbeque" of the Plaintiffs by the defendants in deceptively manner, which is similar in phonetic nature and branding by the defendants is likely to cause confusion amongst

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consumers and adversely affect the business, goodwill of the plaintiffs.

11. It is further canvassed on behalf of the plaintiffs that, the plaintiffs are carrying Restaurant in the name “BARBECUE”, whereas the defendants are carrying the business of supply of food items through online platforms in the name of “Barbeque Gokulpeth”. Therefore, using of such name, which is phonetically similar to the plaintiffs copy right/trade mark certainly put impact on mind of the consumers/customers about supply of food items by the plaintiffs restaurant from it's Gokulpeth branch. Therefore, there is infringement of trade mark/copy right at the hands of the defendants.

12. In support of his submissions, learned Senior Counsel placed reliance on the following case laws as under :-

1] N.R. Dongre and others Vs Whirlpool Corporation and Another [(1996) 5 SCC 714]

2] Sanjay Soya Pvt Ltd V. Narayani Trading Company [MANU/MH/0879/2021]

3] T.V. Venugopal Vs Ushodaya Enterprises Limited and Another [(2011) 4 SCC 85]

4] Pemod Richard India Pvt. Ltd. And another Vs

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Karanveer Singh Chhabra [2025 SCC Online SC 1701]

5] Impresario Entertainment and Hospitality Private Limited Vs M/s Social Tribe [23IA(L)-7092-2024]

6] Renaissance Hotel Holdings Inc. V B. Vijaya Sai and others [(2022) 5 SCC 1]

7] Heinz Italia and Anr. Vs Dabour India Ltd. [(2007) 6 SCC 1]

8] Parle Products (P) Ltd. Vs J.P. and Co. Mysore [(1972) 1 SCC 618]

13. The Respondents 2 & 4/defendant Nos. 2 and 4 filed their reply and strongly opposed the prayer for temporary injunction. According to the defendants, the plaintiffs are mischievously and interchangeably using the words “BARBECUE” and “BARBEQUE”. The defendants further contended that, the word “BARBECUE” is different from the word “BARBEQUE”, under which name they are carrying on their business and there is no similarity, therefore, they have not infringed any copy right or trade mark of the Plaintiff.

14. Adv. C. S. Dharmadhikari, the learned counsel appearing for the Defendants canvassed that, the word

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"BARBECUE" nor "BARBEQUE" is neither the copy right or trade mark but it is a composite/device mark comprising the word "BARBECUE" written in a unique cursive style with a sweeping underline, together with a distinctive diamond-shaped logo in orange and bright yellow colours. He further submits that, the Registrar of Trade Marks granted registration in favour of the plaintiffs under Class 42 and 43 but no registration has been granted in faour of the plaintiff for the word mark "BARBECUE". However, the plaintiffs' application for registration of the trade mark "BARBEQUE" is sub-judice before the competent authority. Therefore, the defendants neither infringed nor violated any trade mark of the plaintiffs, hence, prayed for rejection of the application.

15. It is further canvassed on behalf of the Defendants 2 & 4 that, the plaintiffs are having a diamond-shaped symbol containing the word "BARBECUE", which constitutes a device mark/composite mark. As per the certificate dated 09/01/2008, said device mark is registered in respect of goods and services falling under Class 42. As per certificate dated 09/11/2020, the trade mark "BARBEQUE", is in device form and registered in favour of the plaintiffs in respect of restaurant services falling

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under Class 43. On 06/07/2022, the Registrar of Copyrights issued a certificate in respect of the artistic work titled “BARBECUE”. Therefore, the plaintiffs are using the word “BARBECUE” along with a diamond-shaped logo. The defendant Nos. 2 and 4 are carrying online food supply business in the name of “Barbeque, Gokulpeth”, which is different than the name used by plaintiffs. Therefore, though there may be phonetic similarity between the two words but the defendants are carrying business from Canal Road, Gokulpeth, Nagpur. Therefore, there is no confusion in the minds of the customers/consumers and it can be easily distinguishable between the two establishments.

16. It is further canvassed on behalf of the defendants that, the defendants are operating a cloud kitchen and they are not running a restaurant having a label or logo similar to that of the plaintiffs. Therefore, merely the defendants are using the word “Barbeque”, for running business of supply of kitchen items through the online platforms such as Zomato and Swiggy it does not infringe the copyright or trade mark rights of the plaintiffs.

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17. In support of these submissions the learned Counsel for the Defendants placed reliance on the following case laws:

a) *Pernod Ricard India Pvt. Limited and another*, [2025 SCC Online SC 1701]

b) *Haveli Restaurant and Resorts Limited Vs Restrar of Trademarks and another [2025 SCC OnLine Del 8616]*

c) People Interactive (India) Private Limited a Company Incorporated and registered under the Companies Act, 1956 vs Vivek Pahwa an inhabitant of India having his office and others [2016 SCC OnLine Bom 7351].

18. Having regard to the submissions canvassed on behalf both the sides, I have gone through the record. In case in hand core question arises that, whether the defendants are infringing name/label/copy right/trade mark of the plaintiffs by using deceptively similar name and brand.

19. Since the question arises about infringement of copy right/trade mark, therefore, it is necessary to incorporate relevant provisions of Trade Mark Act,1999 as well as Copy Right Act, which reads as under:

20. *Section 2(b) "assignment" means an assignment in writing by act of the parties concerned;*

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(c) "associated trade Marks" means trade marks deemed to be, or required to be, registered as associated trade marks under this Act;

[***]

(e) "certification trade mark" means a mark capable of distinguishing the goods or service in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of service not so certified and registrable as such under Chapter IX in respect of those goods or service in the name, as proprietor of the certification trade mark , of that person;

[***]

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932 (9 of 1932) which is the proprietor of the mark from those of others.

(h) "deceptively similar", - A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion.

(i) "false trade description" means-

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied or

(II) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect, or

(III) any trade description which denotes or implies that there are contained, as regards the goods to

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which it is applied, more yards or meters than there are contained therein standard yards or standard meters, or

(IV) any marks or arrangement or combination thereof when applied-

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are.

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some persons other than the person whose services they really are, or

(V) any false name or initials of a person applied to goods or service in such manner as if such name or initials were a trade description in any case where the name or initials-

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorized the use of such name or initials, and

(c) is or are either the name or initials of a fictions person or some person not bona fide carrying on business in connection with such goods or services,
And the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act.

(j) "goods" means anything which is the subject of trade or manufacture.

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral,

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shape of goods, packaging or combination of colors or any combination thereof.

(o) "name" includes and abbreviation of a name.

(p) "notify" means to notify in the Trade Mark Journal published by the Registrar.

(q) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork.

(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from choose of others and may include shape of goods, their packaging and combination of colors, and in relation to Chapter XII (other than section 107), a registered trade mark or mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark, and in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate to a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

21. Section 2(c) of the Copyright Act, 1957, reads as under:

2(c) “artistic work” means,—

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(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a [1] [work of architecture]; and

(iii) any other work of artistic craftsmanship;

22. In ***N.R. Dongre and others Vs Whirlpool Corporation and Another (supra),*** the Hon'ble Supreme Court in para 18 observed as under :

"*18. Injunction is a relief in equity and is based on equitable principles. On the above concurrent findings, the weight of equity at this stage is in favour of the plaintiffs and against the defendants. It has also to be borne in mind that a mark in the form of a word which is not a derivative of the product, points to the source of the product. The mark/name 'WHIRLPOOL' is associated for long, much prior to the defendants' application in 1986 with the Whirlpool Corporation, Plaintiff No. 1. In view of the prior user of the mark by plaintiff No. 1 and its trans-border reputation extending to India, the trade mark 'WHIRLPOOL' gives an indication of the origin of the goods as emanating from or relating to the Whirlpool Corporation - Plaintiff No. 1. The High Court has recorded its satisfaction that use of the 'WHIRLPOOL' mark by the defendants indicates prima facie an intention to pass off defendants' washing machines as those of plaintiffs' or at least the likelihood of the buyers being confused or misled into that belief. The fact that the cost of defendants' washing machine is l/3rd of the cost of the plaintiffs' washing machine as stated by Shri Sibal, itself supports the plaintiffs' plea that the defendants' washing machines are not of the same engineering standard and are inferior in quality to the washing*

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machines of the plaintiffs. In addition, it has been rightly held that the grant of interlocutory injunction would cause no significant injury to the defendants who can sell their washing machines merely by removing the. small metallic strip bearing the offensive trade mark/name which includes 'WHIRLPOOL'. On the other hand, refusal of the interlocutory injunction would cause irreparable injury to the plaintiffs' reputation and goodwill since the trade mark/name 'WHIRLPOOL' is associated for long because of prior user and even otherwise with the plaintiff No. 1, Whirlpool Corporation. These factors which have been relied on for grant of the interlocutory injunction by the trial court indicate that the exercise of discretion was in accordance with the settled principles of law relating to the grant of interlocutory injunctions in a passing-off action. The affirmance of the trial court's order by the Division Bench on an appeal reinforces the trial court's view."

23. In **Sanjay Soya Pvt Ltd V. Narayani Trading Company (supra)** the Hon'ble Supreme Court in para 62 & 63 observed as under :-

62. Mr. Burad's attempts to make fine or nice distinctions between the two labels are of no avail. This is not the established test for copyright infringement. One will not look at the size of a soyabean or the shape or size of the oil teardrop. The difference in nomenclature in the green oval shape device is also immaterial. As I have said, these minor variations are inconsequential. It is impossible to believe, given Sanjay Soya's prima facie established product popularity and reputation, that Narayani Trading was unaware of Sanjay Soya's market presence. I have now noted more than once that Narayani Trading does not show that the artistic work and label was in use before Sanjay Soya began using it, or before SK Oil began to

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using it. It cannot show that Narayani Trading was itself a prior user or that the artistic work is of the original authorship of Narayani Trading. The rest must follow as a matter of inescapable, irresistible and ineluctable conclusion: that knowing of Sanjay Soya's presence in the market, of its label and of its artistic work, Narayani Trading illicitly and without bonafide intent adopted a label that is confusingly, deceptively and strikingly similar to that of Sanjay Soya; and in doing so, copied substantially, if not wholly, the artistic work comprised in Sanjay Soya's trade dress and packaging, and of which copyright Sanjay Soya through its predecessor-in-title is indeed the owner.

63. This finally takes us to the consideration of the cause of action in passing off. As we know, this is a common law action for damages in the tort of deceit. In 1978-79, Diplock LJ set out five guidelines for passing off actions in Erven Warnink V Townend & Sons Ltd.[19] [1979] AC 731, 742 (HL)], Oliver LJ in Reckitt & Colman Products Ltd. V Borden Inc. MANU/UKHL/0012/1990:[1990] 1 ALL ER 873 distilled these into the three probanda in the tortiuos actions in passing off that we now know as the 'Classic Trinity': (i) goodwill owned by a claimant; (ii) misrepresentation; and (iii) damage to that goodwill. The Classic Trinity places on a plaintiff the burden of proving goodwill in its goods or services, trade dress, brand, mark or even the thing itself. That Sanjay Soya has prima facie done. A plaintiff must also show false representation (it matters not that this is unintended) to the public that leads it to believe that the goods or services of the defendant are those of the plaintiff. Fraud is not a necessary element.[20] [Laxmilant V Patel V. Chetanbhai Shah & Anr, MANU/SC/0763/2001: AIR 2002 SC 275]. This, too, is achieved by Sanjay Soya for the reasons discussed earlier. The test of deception or its likelihood is that of the common person. Here again, the similarity tests used in infringement actions have a role to play; a court will look to the aural, visual and conceptual similarity. A plaintiff need not prove actual or special damage; a reasonably foreseeable probability is sufficient. As in the case of beauty, similarity and its extent are matters that lie

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in the eyes of the beholder, and in all intellectual property matters, the beholder is, perhaps unfortunately, in the first instance always the judge tasked with deciding the dispute. We often speak of the impression on a person of imperfect recollection and average intelligence – and whether or not this is meant to refer to judges, I do not know and will not venture to answer. In this case, I would suggest from the images rendered at the start of this judgment, that even a most punctilious individual would be hard put to tell the two apart; and the test is not of the view of such a person. Looking at these two packets on my desk, all I can say is "which is whose? I cannot tell, "That must surety be enough. The response from Mr. Khandekar is, of course, to promptly say "that is all", and to take his seat. For that is really the totality of his case. If a Court cannot tell one from the other, then, in his submission, and order must follow.

24. In **T.V. Venugopal Vs Ushodaya Enterprises Limited and Another (supra)**, the Hon'ble Supreme Court held as under :-

(a) The respondent Company's mark 'Eenadu' has acquired extraordinary reputation and goodwill in the State of Andhra Pradesh. The respondent Company's products and services are correlated, identified and associated with the word `Eenadu' in the entire State of Andhra Pradesh. `Eenadu' literally means the products or services provided by the respondent Company in the State of Andhra Pradesh. In this background the appellant cannot be referred or termed as an honest concurrent user of the mark `Eenadu';

(b) The adoption of the words `Eenadu' is ex facie fraudulent and mala fide from the very inception. By adopting the mark `Eenadu' in the State of Andhra Pradesh, the appellant clearly wanted to ride on the reputation and goodwill of the respondent Company;

(c) Permitting the appellant to carry on his business

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would in fact be putting a seal of approval of the Court on the dishonest, illegal and clandestine conduct of the appellant;

(d) Permitting the appellant to sell his product with the mark `Eenadu' in the State of Andhra Pradesh would definitely create confusion in the minds of the consumers because the appellant is selling agarbattis marked `Eenadu' as to be designed or calculated to lead purchasers to believe that its product agarbattis are in fact the products of the respondent Company. In other words, the appellant wants to ride on the reputation and goodwill of the respondent Company. In such a situation, it is the bounden duty and obligation of the Court not only to protect the goodwill and reputation of the respondent Company but also to protect the interest of the consumers;

e) Permitting the appellant to sell its product in the State of Andhra Pradesh would amount to encouraging the appellant to practise fraud on the consumers;

f) Permitting the appellant to carry on his business in the name of `Eenadu' in the State of Andhra Pradesh would lead to eroding extraordinary reputation and goodwill acquired by the respondent Company over a passage of time;

g) The appellant's deliberate misrepresentation has the potentiality of creating serious confusion and deception for the public at large and the consumers have to be saved from such fraudulent and deceitful conduct of the appellant;

h) Permitting the appellant to sell his product with the mark `Eenadu' would be encroaching on the reputation and goodwill of the respondent Company and this would constitute invasion of proprietary rights vested in the respondent Company;

i) Honesty and fair play ought to be the bases of the policies in the world of trade and business.

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25. In **Pemod Richard India Pvt. Ltd. And another Vs Karanveer Singh Chhabra (supra), the Hon'ble Suprement Court observed as under :-**

> *"35.2 - The test is equally relevant to both inherent and acquired distinctiveness. A mark has inherent distinctiveness if, by its very form and appearance, it identifies trade origin to the average consumer at the time of registration. A mark may acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular commercial source – even if the consumer cannot name the source precisely. What matters is not that the consumer knows the producer, but that the mark serves as an indicator of origin."*

26. In ***Impresario Entertainment and Hospitality Private Limited Vs M/s Social Tribe,*** **(supra),** the Hon'ble Supreme Court held as under :-

> *7. Perusal of the same would indicate that the Plaintiff's registered trade mark "SOCIAL" has been copied in its entirety by the Defendant. The manner in which Defendant has used the word "SOCIAL" is deceptively similar to the trade mark of the Plaintiff. The suffix word "TRIBE" to the word "SOCIAL" does not take away the fact that the Defendant had attempted to infringe the Plaintiff's registered trade mark by coming as close as possible to the registered trade mark. Similarly, use of the colour scheme of pink, orange, yellow is deceptively similar to that of the Plaintiff's mark. There is also identity in the services provided by Plaintiff and Defendant. Prima facie, upon consideration of the rival trade marks, I am of the opinion that the Defendant has attempted to infringe the registered trade mark of the*

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Plaintiff. The Plaintiff being proprietor of the registered trade mark is entitled to exclusive use of the registered trade mark and its formatives and there are various orders passed by the Delhi High Court in favor of Plaintiff. A brazen attempt is made by the Defendant to infringe the said trade mark which requires to be restrained. It also cannot be disputed that Plaintiff has robust presence in the restaurant business which is prima facie demonstrated from the sales turn over figures and promotional expenses set out. In event, the Defendant is not restrained, despite a prima-facie case being made out, the Plaintiff will suffer irreparable loss, harm and prejudice and the balance of convenience tilts in favor of Plaintiff as the Plaintiff is proprietor of the registered trade mark as well as its formatives."

27. In **Renaissance Hotel Holdings Inc. V B. Vijaya Sai and others (supra),** it is observed as under :-

"53. Undisputedly, the Appellant-Plaintiff's trade mark "RENAISSANCE" is registered in relation to goods and services in Class 16 and Class 42 and the mark "SAI RENAISSANCE", which is identical or similar to that of the Appellant-Plaintiff's trade mark, was being used by the Respondents Defendants in relation to the goods and services similar to that of the Appellant-Plaintiff's.

54. In these circumstances, we are of the considered view that, it was not open for the High Court to have entered into the discussion as to whether the Appellant- Plaintiff's trade mark had a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. We find that the High Court has erred in entering into the discussion as to whether the Respondents-Defendants and the Appellant - Plaintiff cater to different classes of customers and as to whether there was likely to be confusion in the minds of consumers with regard to the hotel of the Respondents - Defendants belonging to the same group as of the Appellant- Plaintiff's. As held by this Court in the

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case of Ruston & Hornsby Limited(supra), in an action for infringement, once it is found that the Defendant's trade mark was identical with the Plaintiff's registered trade mark, the Court could not have gone into an enquiry whether the infringement is such as is likely to deceive or cause confusion. In an infringement action, an injunction would be issued as soon as it is proved that the Defendant is improperly using the trade mark of the plaintiff.

55. It is not in dispute that the Appellant-Plaintiff's trade mark "RENAISSANCE" is registered under Class 16 and Class 42, which deals with hotels and hotel related services and goods. It is also not in dispute that the mark and business name "SAI RENAISSANCE", which was being used by the Respondents-Defedants, was also in relation to Class 16 and Class 42. As such, the use of the word "RENAISSANCE" by the Respondents-Defendants as a part of their trade name or business concern, would squarely be hit by "Sub-section (5) of Section 29 of the said Act.

56. It is further to be noted that the words "RENAISSANCE" and "SAI RENAISSANCE" are phonetically as well as visually similar. As already discussed hereinabove, Sub-section (9) of Section 29of the said Act provides that where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation. As such, the use of the word "SAI RENAISSANCE" which is phonetically and visually similar to "RENAISSANCE", would also be an act of infringement in view of the provisions of Sub-section (9) of Section 29of the said Act.

28. In ***Heinz Italia and Anr. Vs Dabour India Ltd (supra),*** **the Hon'ble Suprement Court observed in para 17 as under :-**

"17. In Cadila Health Care case [(2001) 5 SCC 73 : 2001 PTC 300], it has also been held that in the case of a passing off action the similarities rather than the dissimilarities have to be taken note of by the court and the principle of phonetic "similarity" cannot be ignored and the

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test is as to whether a particular mark has obtained acceptability in the market so as to confuse a buyer as to the nature of product he was purchasing. We observe that both Glucon-D and Glucose-D are items containing glucose and to us it appears that there is remarkable phonetic similarity in these two words."

29. In ***Parle Products (P) Ltd. V. JP and Co.Mysore (supra),*** the Hon'ble Supreme Court held as under **:-**

"In order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In the present case the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other."

30. In case of ***Pernod Ricard India Pvt. Limited and another,*** *cited (supra) on behalf of the defendant,* wherein in para No.31.4, 31.5 and 32, the Hon'ble Supreme Court as under :-

"31.4. The strength of a trademark lies in its

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inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks – such as Kodak or Solio – are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, deceptive marks – such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI – are not inherently distinctive and must acquire secondary meaning in the minds of the public to qualify for protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark – whether inherently or through acquired reputation – the stronger its position in infringement or passing off actions.

31.5. In the case of composite marks – those contained multiple elements, such as words and logos – the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or deceptive elements. Courts have often required disclaimers of such generic parts at the time of registration. For instance, in Tungabhadra Industries Ltd v. Registrar of Trade Marks [AIR 1959 SC 989], the registration of "Diamond T" in a diamond-shaped logo was granted, but the word "Diamond" was required to be disclaimed due to its non-distinctiveness.

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 (supra),*** *this Court underscored that the correct test for*

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> *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."*

31. In ***Haveli Restaurant and Resorts Limited Vs Restrar of Trademarks and another [2025 SCC OnLine Del 8616],*** *cited on behalf of the Defendant,* the Delhi High Court held that, the word "HAVELI" is a common trade and does not have distinctive character that requires protection given that there are several proprietors of register trade marks having "HAVELI" as a part of the said trade mark and observed in para Nos. 61 to 69 as under:-

> *61. The Mark 'HAVELI' is descriptive in nature and has dictionary meaning in Hindi being a traditional townhouse or a mansion having historical and architectural significance. There is a widespread use of the Mark 'HAVELI' for various goods and services across India.*
>
> *62. Hence, 'HAVELI' is publici juris and common to trade and is not uniquely identifiable with a particular goods or services of the Appellant. The Appellant has also not produced any material to show that the Mark 'HAVELI' has acquired secondary meaning. The Mark 'HAVELI' does not have an exclusive character and, therefore, the Appellant is not entitled to claim exclusive right over the same.*

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Deceptive similarity between the Impugned Marks and the Appellant's Marks

63. The Impugned Orders have held that the Appellant's Marks and Impugned Marks are not deceptively similar as the Impugned Marks have to be considered as a whole. Further, the prefix 'AMRITSAR' does not serve as an indication of geographical origin for the services under the Impugned Marks as the term 'AMRITSAR' does not indicate geographical location for origin of services for providing food and drinks. The registration of a city name can be permitted, if it does not result in indication of geographical origin.

64. A comparison between the Appellant's Marks and the Impugned Marks would show that the Appellant's Marks contain device of 'Haveli' in Class 43 and word 'HAVELI' in Class 16, whereas the Impugned Marks are word Marks being 'AMRITSAR HAVELI' and 'THE AMRITSAR HAVELI' in Class 43. Accordingly, considering the Impugned Marks as a whole there is no deceptive similarity between the Appellant's Marks and the Impugned Marks given the word 'AMRITSAR' as prefix to the Mark 'HAVELI'.

65. As 'HAVELI' is found to be generic and common to the trade, the Appellant cannot claim exclusive ownership over the part of the Impugned Marks containing the Mark 'HAVELI' as a part of them. As per Section 17 of the Act when a Trade Mark consists of several matters, its registration shall confer on the proprietor exclusive right to use of the Trade Mark taken as a whole. Considering that the Appellant has no exclusive right over the Mark 'HAVELI', there is no deceptive similarity between the Appellant's Marks and the Impugned Marks.

66. As held in Vasundhara Jewellers (supra), when a generic mark is part of the composite mark the Appellant cannot oppose registrations of the composite marks including the generic mark by claiming exclusive monopoly over the said generic mark.

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Further, the Appellant itself has taken inconsistent stands on phonetic / visual differences of the Mark 'HAVELI' and, therefore, is not entitled to oppose the registration of the Impugned Marks on the ground of deceptive similarity between the Appellant's Marks and the Impugned Marks.

67. It is well settled that the registration of Device Marks does not automatically grant the exclusive right in respect of the word mentioned in the Device Marks. The Division Bench of this Court in **Ganesh Gouri Industries v R.C. Plasto Tanks & Pipes (P) Ltd.,(2024) 5 HCC (Del) 425** *has observed that the rationale for the 'anti-dissection' rule is that the commercial impression of a composite trade mark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. This Court in Ganesh Gouri Industries (supra) further observed that where a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole as the label does not consist of each particular part of it, but consists of the combination of them all.*

68. The registration of the Device Mark is to be considered as a whole and while determining the deceptive similarity with another Trade Mark, both the Marks have to be examined as a whole by applying 'anti-dissection rule' rather than breaking the Marks into their component parts for comparison. To determine whether there is any deceptive similarity between the two Marks, it is imperative to decide if the similarity is likely to cause any confusion or deceive.

69. In the present case, the Appellant's Marks and the Impugned Marks if considered as a whole cannot be held to be deceptively similar and are able to be distinguished by the use of word 'AMRITSAR'. In addition, the descriptive nature of the Mark 'HAVELI' commonly used in the hospitality industry shows that

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there is no deceptive similarity between the Appellant's Marks and the Impugned Marks.

32. In ***People Interactive (India) Private Limited -vs- Vivek Pahwa and ors.***, ***[2016 SCC OnLine Bom 7351]***, relied by the defendants. In this case the Coordinate Bench of this Court at the Principal Seat considered the "phonetic similarity" between the words “Shaadi.com” and “Shadi.com” and held that, if the expressions “shaadi.com” and “secondshaadi.com” are generic or commonly descriptive of the services offered, and each service is distinguishable, Section 30(2)(a) of the Trade Marks Act must apply. It was further held that if such expressions commonly describe the nature of the services, such use is also protected under Section 35 of the Trade Marks Act.

33. Taking into consideration the law settled by the Hon'ble Supreme Court discussed herein above, I have carefully gone through the material placed on record by both sides. In the case in hand, it is not in dispute that, appellants/plaintiffs have been running the business in the name and style of Barbecue Sadar, Nagpur, since past more than 30 years. It is a matter of record that, the plaintiffs having device mark in the

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name and style of “Barbecue” written in cursive style and accompanied by diamond-shaped device mark. The defendants have not disputed that the Udyam issued Registration Certificate and published it in General No. 1361-0 dated 02/01/2007 relating to registration of the device/composite mark containing the “Barbecue” label under Classes 42 and 43. It is also not in dispute that, on 06/07/2022, the Registrar of Copyrights issued a certificate in respect of the artistic work in favour of the plaintiffs.

34. The appellants/plaintiffs having printed/depicted labels on their delivery bags, bills and other related material, which contain the word “Barbecue” in cursive writing along with the diamond-shaped device. The plaintiffs have placed on record statements showing their approximate sales from 1994-95 to 2019-20, i.e. over a period of 26 years, amounting to approximately Rs.39,04,86,774/- due to running their business. However, defendant Nos. 2 and 4 have started supplying food items through online platforms and accepting online orders through Swiggy and Zomato under the name and style of "Barbecue" Gokulpeth, Nagpur”.

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35. The plaintiffs specifically pleaded about coming to know that the defendants were using a phonetically similar word, “Barbecue”, from the month of November 2022. According to the plaintiffs, the Defendants are also using a label/logo/device mark similar of the plaintiffs. Consequently, the plaintiffs issued a legal notice dated 27/12/2022 called upon the defendants to desist from infringing the plaintiffs' artistic work, label and device mark under the name “Barbecue”/"Barbeque". It is pertinent to note that, the name of a business itself becomes an important means of identification for consumers and enables them to distinguish one business from another similar business carried on by another person.

36. In the present case, it prima facie appears that, the plaintiffs are running the Restaurant and supplying food items under the name and style of “Barbecue” at Sadar, Nagpur. However, recently, the defendants are started supplying kitchen items through the online platforms such as Zomato and Swiggy under the name and style of “Barbecue Gokulpeth”. Thus, it prima facie, appears that, the defendants are using phonetic similar word “Barbecue” and running the online kitchen items supply business. The Word "Barbeque" and “Barbecue” are

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phonetically similar words. The plaintiffs are running the business in the name of “Barbecue” and phonetically similar word "Barbecue" is adopted by the defendants. The defendants never approached the Competent Authority for registration of the copyright or trade mark in respect of said name. Therefore, considering the law laid down by the Hon’ble Supreme Court of India as well as this Court as cited hereinabove including case of ***Renaissance Hotel,*** *cited (supra),* wherein the issue involved in present case is considered and held that, the use of phonetically as well as visually similar, particularly when accompanied by a similar representation, may amount to infringement under Section 29 of the Trade Marks Act.

37. Needless to say, the defendants are carrying the business of supply of Food items through Online Platform by using the phonetically similar name “Barbecue”, of the plaintiffs Restaurant, whereas, the plaintiff carrying the Restaurant under copy right/ trade mark "Barbecue"/Barbeque". Therefore, in my considered view, the defendants have prima-facie, infringed the plaintiffs artistic copy right/trademark/device mark. Therefore, if the defendants are permitted to continue to carry their business under the phonetic name "Barbeque", it will certainly

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cause irreparable loss and injury to the plaintiffs goodwill and reputation in the market. Further, the plaintiffs have made out prima face case and balance of convenience lies in favour of the plaintiff, hence, it is necessary to restrain the defendants from using the phonetic copy right/trade mark/ device mark, during the pendency of the suit. In view of above discussion, I am on considered view that, the plaintiffs/ appellants have prima facie established all three essential ingredients necessary for grant of temporary injunction.

38. On perusal of impugned order dated 04/08/2026, it appears that, the learned trial court has mainly proceeded on the ground that, the plaintiffs and the defendants are carrying their respective businesses at the different geographical locations, namely, Sadar and Gokulpeth. The expression "BARBECUE"/"BARBEQUE" is not exclusively associated with the public or consumers, hence, it is not amount to passing off. However, the learned Trail court passed the impugned order without appreciating the material as well law governing principles about infringement of the trade mark and passing off. Therefore, findings recorded by the learned Trial Court appear to be perverse and unsustainable in law. Consequently, the

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impugned order is liable to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER

A] Appeal Against Order No. 42 of 2026 is **allowed.**

B] The impugned order dated 04/08/2026 passed below Exhibit No.5 in Trade Mark Suit No.02 of 2026 by the learned District Judge-15, Nagpur, is hereby quashed and set aside.

C] The respondents/defendants, through their partners, assigns, licensees, agents and all persons claiming through or under them, are hereby restrained from using, selling, advertising, circulating, displaying, marketing or otherwise dealing with the trade mark “BARBECUE / BARBEQUE” or any mark deceptively similar to the label/device/trade mark and artistic work/ copyright of the appellants, during the pendency of the suit.

D] No order as to costs.

[Y.G. KHOBRAGADE, J]

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