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

Judgment reserved on: 18.03.2026
Judgment pronounced on: 21.04.2026

\+ FAO (COMM) 334/2025 & CM. APPl. 75353/2025

MS ANURADHA SHARMA & ANR. .....Appellants

Through: Mr. Suhail Dutt, Sr. Adv. with Mr. Prakhar Sharma and Mr. Azhar Alam, Advs.

versus

JIVA AYURVEDIC PHARMACY LIMITED & ORS. ....Respondents

Through: Mr. Virender Goswami, Ms. Soni Singh, Mr. Abhinav Bhalla, Ms. Swati Goswami, Ms. Parkhi Singh and Mr. Vedang Upadhayay, Advs.

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

JUDGMENT

% 21.04.2026

OM PRAKASH SHUKLA, J.

1. This appeal is filed against order dated 17.11.2025 passed by the learned District Judge (Commercial Courts), Central, Tis Hazari Courts in CS (Comm) 554/2023. In the impugned order, the learned Commercial Court disposed of the Respondents' application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908[1]. The application was filed by the Respondents, as Plaintiffs in the suit, seeking an injunction to restrain the Appellants from using the mark "SHATAM JEEVA" and its associated symbols, which are registered

[1] "CPC" hereinafter

and in use by the Appellants, i.e., "Shatam Jeeva" (Appellants' registered mark) and "shatam jeeva By Baidyanath" (Appellants' mark in use).

2. By the impugned order, the learned Commercial Court granted the relief as sought by the Plaintiffs. It issued an injunction restraining the Appellants, along with all others acting on their behalf from using the mark "SHATAM JEEVA"[2] or any other trademark that is identical or deceptively similar to the Plaintiffs' registered trademarks, namely "JIVA". Furthermore, the Appellants have been restrained from engaging in any act that may amount to infringement, passing off, or unfair competition in relation to the Plaintiff's trademarks.

3. For the sake of convenience and consistency, the parties herein will be referred to in the same manner as in the original suit. Accordingly, the Appellants will be referred to as the 'Defendants', and the Respondents will be referred to as the 'Plaintiffs' in this appeal.

Case of the Plaintiffs as per the Plaint

4. Plaintiff No. 1 is a company incorporated under the Companies Act, 1956, and Plaintiff No. 2 is a registered society under the Societies Registration Act,1860, which purportedly owns the "JIVA"

[2] Alternatively referred to as "impugned mark"

trademarks. Plaintiff No. 3 is a Director of Plaintiff No. 1 and the President of Plaintiff No. 2.

5. The Plaintiffs and their associated entities form part of the 'JIVA Group', which was founded by Plaintiff No. 3, Sh. Rishi Pal Chauhan.

6. The Plaintiffs claim that they have been using the "JIVA" mark since 1992, in respect of a wide range of Ayurvedic products and services. They assert that "JIVA" was intentionally adopted as the common trademark and trade name across all their associated entities, thereby forming the "JIVA GROUP." Due to consistent, continuous, and widespread use since 1992, the trade name and trademark "JIVA" has acquired significant goodwill. Additionally, the Plaintiffs state that they have created a distinguished presence in the Ayurvedic, health, wellness, and beauty industries.

7. The Plaintiffs aver that they have adopted the trademark "JIVA", with the prominent element being "Jiva" and other elements, including the Lotus/flower symbol.

8. The Plaintiffs state in the plaint that they have obtained registrations in various classes for the "JIVA" trademark, the details of which are reproduced below:

S. No.	Trademark	Class	Proprietor	Date of Registration

1.	 (Device) (1096505)	16	Plaintiff No. 3	18.02.2002 User since – 01.06.1994
2.	 (Device) (2436446)	3	Plaintiff No. 1	03.12.2012 User since – 01.01.1992
3.	 (Device) (4085257)	5, 35, 39, 41, 42, 45	Plaintiff No. 2	01.11.2017 Proposed to be used.
4.	Jiva Vedic Psychology (Word) (3667226)	41, 44	Plaintiff No. 1	01.11.2017 Proposed to be used.
5.	 (Device) (4903000)	41	Plaintiff No. 1	13.03.2021 User since – 01.01.1992
6.	 (Device) (4935494)	44	Plaintiff No. 1	06.04.2021 User since – 01.11.2018

7.	JIVANANDA (Word) (4950207)	41	Plaintiff No. 1	19.04.2021 User since – 30.05.2009

9. Additionally, the Plaintiffs claim to have international trademark registrations in countries such as Japan, Lithuania, Poland and other European Union nations, as stated in paragraph 20 of the plaint.

10. The Plaintiffs further state that the Jiva Group owns and operates various active websites and online platforms, including a Facebook page, YouTube channel and other domain names, the same are as follows:

(i) www.jiva.org (registered on 28.04.1995)
(ii) www.jiva.com (registered on 16.04.1998)
(iii) www.jivaayurveda.com (registered on 26.08.2003)
(iv) www.jivapublicschool.com (registered on 23.06.2008)
(v) www.jivajobs.com (registered on 09.07.2013)

11. According to the Plaintiffs, their advertising and marketing expenditure has exceeded Rs. 11 crores since the year 2015–16, and that for the financial year 2021–22 alone, it stood at Rs. 12,85,24,966/-. Furthermore, their annual sales from the year 2015–16 to 2020–21 ranged between Rs. 67 crores and Rs. 93 crores, with sales of Rs. 69,20,82,773/- in the year 2020–21.

12. The Plaintiffs state that the cause of action arose in April of 2022, when a client approached them enquiring about a wellness retreat named 'Shatam Jeeva', which was not affiliated with the Plaintiffs. This led the Plaintiffs to discover that the Defendants had adopted the name "SHATAM JEEVA" for operating their wellness retreat and were also using the domain name www.shatamjeeva.com. Upon scrutiny, the Plaintiffs found that the Defendants had registered a device mark "Shatam Jeeva" under Class 5 in 2018, which the Plaintiffs' claim is visually, structurally, and phonetically similar to the Plaintiffs' registered marks.

13. Thereafter, aggrieved by the Defendant's adoption of the impugned mark, the Plaintiffs sent a legal notice to the Defendants via email on 25.04.2022. In their response dated 28.04.2022, the Defendants denied any similarity between their marks and that of the Plaintiffs.

14. Subsequently, the Plaintiffs instituted the suit seeking, *inter alia,* a decree of permanent injunction to restrain the Defendants from directly or indirectly dealing in goods bearing the impugned marks, on the ground of trademark and copyright infringement as well as passing off. Additionally, the Plaintiffs preferred an application under Order XXXIX Rules 1 and 2 of the CPC, seeking a temporary injunction to restrain the Defendants from using the impugned marks during the pendency of the suit.

Case of the Defendants as per the Written Statement

15. It was averred by the Defendants that Defendant No. 1 is the registered proprietor of the trademark "Shatam Jeeva" (Registered Trademark No. 3969212), which was registered in 2018 and later assigned to Defendant No. 2. In addition, the Defendants are using the mark "shatam jeeva By Baidyanath" (Shatam Jeeva By Baidyanath) along with the domain name "https://shatamjeeva.life".

16. The Defendants stated that to commemorate 100 years of their family brand, "Baidyanath", which is allegedly a well-known and one of the oldest brands manufacturing Ayurvedic medicines and products, they conceptualised the idea of a wellness retreat. In furtherance of this, they applied for registration of "Shatam Jeeva" in 2018 under Class 5.

17. The Defendants launched the 'Shatam Jeeva' retreat in 2021 in Jhansi, on the land owned by Defendant No. 2.

18. The Defendants further claim that the mark "SHATAM JEEVA" is derived from the ancient notion of longevity and well-being and is mentioned in the Vedas and other religious texts. The

Defendants assert that the mark should be viewed as a whole, rather than splitting the individual components for comparison. Moreover, the use of the disclaimer "by Baidyanath" is said to be a distinguishing factor between the Plaintiffs' and the Defendants' marks. Hence, the Defendants argue that there is no deceptive similarity between the rival marks.

19. The Defendants also claim that their adoption of the impugned mark was honest and that their use predates the Plaintiffs'. The Defendants contend that the Plaintiffs are relatively new in the market, with Plaintiff No. 2 starting in 1992 and Plaintiff No. 1 being incorporated in 2005. It is further asserted that the Plaintiffs themselves purchased Ayurvedic medicines from the "Baidyanath" and "Sharmayu" entities (another family group of the Defendants), which undermines their claim to exclusive rights over the mark.

20. The Defendants argue that 'Jiva' or 'Jeeva' is a common Sanskrit word, widely used in trade by third parties, and point out that 'Jiva Auroville' is another wellness retreat that operates under a similar name, which, according to the Defendants, has been deliberately concealed by the Plaintiffs.

21. The Defendants also allege that the Plaintiffs have acquiesced to the use of the mark by the Defendants. They claim that despite the Plaintiffs' knowledge of the use of the "Baidyanath" and "Sharmayu" marks, the Plaintiffs failed to take any action to seek the cancellation of the impugned mark, thereby tacitly consenting to its use.

22. The Defendants rely on Section 28(3) and 30(2)(e) of the Trade Marks Act, 1999, asserting that since both rival marks are registered, the Plaintiffs cannot claim exclusivity over the mark, i.e., they contend that no infringement can be established if both marks are registered under the provisions of the Trade Marks Act.

Impugned Order

23. The learned Commercial Court made the following findings:

(i) The Defendants cannot claim that 'Jiva' is a common word, as they themselves sought registration for the same mark.

(ii) The contention of honest adoption by the Defendants was rejected. The Court opined that the Defendants were aware of Plaintiff's mark prior to 2017-18, based on the Defendants' own admission that the Plaintiffs had purchased their products. Further, since both parties operate in the same industry, the Defendants should have been aware of the Plaintiff's prior registered mark. The Court supported this finding by referencing the availability of news articles about the Plaintiffs' mark on a Google search, which dated back to 2020.

(iii) The Court applied the standard laid down in ***Amritdhara Pharmacy v. Staya Deo Gupta***[3] and observed that both parties dealt in Ayurvedic medicines; considering the general impressions or phonetic recollection of the marks, an ordinary

[3] **(1963) 2 SCR 484: AIR 1963 SC 449**

person of average intelligence may be deceived into believing that the marks are related. The Court further opined that such a person may not notice the subtle differences in the logos, the Plaintiffs' logo featuring a lotus and the Defendants' logo incorporating the letter 'S' along with herbs. To substantiate this, the Court noted that confusion was evident in April 2022, when a client of the Plaintiffs' approached them to inquire about their association with the Defendants' wellness retreat.

(iv) The Court held that the Plaintiffs are the prior users of the mark 'Jiva'. The Plaintiffs were already operating a wellness retreat under this mark before the Defendants began using it.

(v) The Court held that, *prima facie,* it did not appear that the Defendants honestly adopted the impugned mark. Additionally, the balance of convenience tilted in favour of the Plaintiffs.

(vi) As a result, the Court issued an injunction against the Defendants, restraining them from dealing in the impugned mark or any other mark that is identical or deceptively similar to the Plaintiffs' registered mark 'Jiva'. The Defendants were also restrained from engaging in any activity that may amount to infringement, passing off or unfair competition.

Rival Submissions before this Court

24. Mr. Suhail Dutt, the learned Senior Counsel for the Appellants/Defendants, vehemently opposed the impugned order,

contending that it is untenable in law. He argued that the order wrongly assumes that the Plaintiffs hold exclusive rights over the mark 'Jiva', which has been registered by them. According to Mr. Dutt, the Defendants adopted the mark "Shatam Jeeva" to celebrate the centenary of the 'Baidyanath' brand. He explained that the term 'Shatam' means 'one hundred', and 'Jeeva' means 'live', thus signifying the concept of a healthy life for a hundred years. Mr. Dutt further submitted that the impugned order failed to consider that both the Plaintiffs' and the Defendants' marks were registered, and therefore, no action for infringement could lie under such circumstances.

25. Mr. Dutt contended that the learned Commercial Court ought to have adhered to the anti-dissection rule, as established in decisions such as ***Vasundhra Jewellers Pvt. Ltd. v. Kirat Vinodbhai Jadvani & Anr.***[4] and ***South India Beverages v. General Mills***[5]**.** He emphasized that the impugned mark should be viewed in its entirety and not split for comparison. Upon such a holistic comparison, he contended that the rival marks were completely distinct and that there was no likelihood of confusion among consumers. It was submitted that the marks were neither phonetically nor visually similar, and that the use of the disclaimer "By Baidyanath" created further distinction. He highlighted that 'Baidyanath' has carried immense goodwill and reputation for over a century.

[4] **2022 SCC OnLine Del 3370**
[5] **2014 SCC OnLine Del 1953**

26. It was further submitted that since 'Jiva' is a common Sanskrit word, the Plaintiffs were required to establish that the mark had acquired secondary meaning, which they failed to do. Mr. Dutt pointed out that the Plaintiffs did not possess a registration for the word 'Jiva' itself and had also not applied for one. Moreover, the Plaintiffs had not sought cancellation of the impugned mark, thereby undermining their claim.

27. It was also urged by Mr. Dutt that the Defendants' wellness retreat caters to a different consumer segment, given that it is positioned at a higher price point as compared to the Plaintiffs' offerings.

28. Mr. Dutt further highlighted that there were several other entities using the name 'Jiva' for their business, including wellness centres and hotels. He pointed out the existence of another wellness retreat called 'Jiva Auroville', arguing that the Plaintiffs could not claim exclusivity over the word 'Jiva', especially since there were no such exclusive rights granted in the Plaintiffs' trademark registration. In support of this argument, reliance was placed on Section 17 of the Trade Marks Act, 1999, which grants exclusive rights to the registered proprietor of a mark, to contend that the Plaintiffs could not claim exclusivity over 'Jiva' given that they had not registered the mark.

29. Mr. Dutt vehemently contended that since the impugned mark is registered, the Plaintiffs could not claim infringement under Sections 28(3) and 30(2)(e) of the Trade Marks Act, 1999. He relied on the

rulings in ***S. Syed Mohideen v. P. Soluchana Bai***[6] and ***Vaidya Rishi India Health Pvt. Ltd. & Anr. v. Suresh Dutt Parashar & Ors.***[7] to argue that infringement could not be made out when both marks are registered. Additionally, Mr. Dutt contended that, upon comparison, the rival marks were not similar in any respect, and therefore, no claim for passing off could be established. He referred to ***Brihan Karan Sugar Syndicate (P) Ltd. v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana***[8]**,** to contend that the Plaintiffs had failed to demonstrate any misrepresentation, loss, likelihood of loss, or confusion. Mr. Dutt emphasized that the learned Commercial Court failed to find that the Plaintiffs had goodwill and reputation, which is essential for establishing a passing off claim. He further relied on Section 17 of the Trade Marks Act to argue that once a composite mark is registered, the proprietor obtains protection over the entire mark as a whole, and not over the individual components.

30. *Per contra*, Mr. Virender Goswami, learned Counsel for the Respondents/Plaintiffs, ardently supported the impugned order. He submitted that the Plaintiffs have been extensively and continuously using the 'Jiva' trademarks and house mark since 1992 and, as a result, have acquired distinctiveness both in India and abroad.

31. Mr. Goswami argued that "Jiva" is the dominant part of the Plaintiffs' mark. If this element were removed, only the lotus flower remained. He argued that "Jiva" serves as the common denominator across various trademarks and Classes, constituting the Plaintiffs'

[6] (2016) 2 SCC 683
[7]2025 SCC OnLine Del 6147
[8](2024) 2 SCC 577

house mark. To substantiate this, Mr. Goswami relied on sales invoices dating back to 2004, newspaper extracts, sales revenue, marketing expenditure, and domain name usage to establish the Plaintiffs' continuous and widespread use of the mark since 1992.

32. It was further argued that an action for infringement could lie, as the mark used by the Defendants for their wellness retreat was registered under Class 5, which pertains solely to Ayurvedic products, and not wellness services. Hence, the impugned mark used for the retreat was unregistered and could be subject to infringement.

33. Mr. Goswami clarified that in respect of the impugned mark under Class 5, the Defendants' action against the Plaintiffs amounted to passing off. However, for the Plaintiffs' trademarks in other classes and for other alleged or proposed uses of the impugned mark by the Defendants, both infringement and passing off claims applied, for which the Defendants were liable to be injuncted. Reliance was placed on the rulings in ***S. Syed Mohideen (supra)***, ***Brihan Karan (supra)***, ***Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd. and Ors,***[9]***, N.R. Dongre and Ors. v. Whirlpool Corpn. and Ors.***[10] and ***Laxmikant V. Patel v. Chetanbhai Shah and Ors.***[11] to contend that a claim for passing off is maintainable even against a registered trademark.

34. Mr. Goswami argued that the impugned mark was deceptively similar to the Plaintiffs' mark and was adopted to ride on the

[9] **(2018) 2 SCC 1**
[10] **(1996) 5 SCC 714**
[11] **(2002) 3 SCC 65**

Plaintiffs' goodwill. He further contended that the similarity between the marks would likely deceive an average consumer with imperfect recollection. In support of this, he relied on several precedents, including ***Amritdhara Pharmacy (supra)***, ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***[12], ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***[13], ***Parle Products (P) Ltd. v. J.P. and Co., Mysore***[14], ***K.R. Chinna Krishna Chettiar v. Shri Ambal and Co. and Ors.***[15], ***Wow Momo Foods Private Limited v. Wow Burger and Ors.***[16], ***Dindayal Industries Ltd. v. Dindayal Ayurved Bhawan. and Ors.***[17] and ***South India Beverages (supra)***. It was further contended that the Defendants' arguments of adopting the mark to commemorate 100 years of Baidyanath was merely an afterthought. Mr. Goswami highlighted that there was no reference to 'Baidyanath' in the Defendants' trademarks before the Trade Marks Office. To buttress the claim of lack of honest adoption, Mr. Goswami emphasized that the Defendants were aware of the Plaintiffs' presence and their trademarks as early as 2017-18. Additionally, Mr. Goswami argued that the Defendants' *mala fide* intention could be evidenced from their conduct of falsely claiming use of the mark since 2018, while admitting that their wellness retreat began in 2021. Reliance was placed on the Defendants' reply to the legal notice, wherein they acknowledged that they aimed to build their brand post-pandemic, specifically from 2022. Mr. Goswami also referred to the Plaintiffs'

[12] (2001) 5 SCC 73
[13] AIR 1965 SC 980
[14] (1972) 1 SCC 618
[15] (1969) 2 SCC 131
[16] 2025 SCC OnLine Del 6545
[17] MANU/DE/0496/2025; FAO (COMM) 15/2024 decided on 22.12.2025

invoices for the wellness centre, noting that only threeinvoices with negligible amounts were presented as evidence of sales before 2022.

35. It was submitted that in the case of ***The Indian Hotels Co. Ltd. & Ors. v. Jiva Institute of Vedic Science and Culture***[18], the Plaintiffs were established prior users and had acquired goodwill and repute. Mr. Goswami contended that one cannot copy the main or dominant part of another's trademark, especially when the original user is also the prior user. He further contended that the Defendants' use of the dominant part of the Plaintiffs' mark, 'Jiva', was made in bad faith. Even if 'Jiva' is a common Sanskrit word, common words can acquire secondary meaning through extensive use, as held in ***T.V. Venugopal v. Ushodaya Enterprises Ltd. and Ors.***[19]and ***Century Traders v. Roshan Lal Duggar Co.***[20].

36. Lastly, Mr. Goswami relied on the rulings in ***P.M. Diesels v. S.M. Diesels***[21]**,** ***Midas Hygiene Industries P. Ltd. & Ors. v. Sudhir Bhatia and Ors.***[22]and ***Heinz Italia & Ors. v. Dabur India Ltd.***[23], to argue that when dishonest adoption is proven, an injunction must necessarily follow. He also cited ***Wander Ltd. and Ors. Vs. Antox India P. Ltd.***[24], to emphasize that the Defendants' adoption of the impugned mark was dishonest and should be restrained by an injunction**.**

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[18] MANU/DE/0892/2008; FAO(OS) 44/2007 decided on 30.05.2008
[19] (2011) 4 SCC 85
[20] AIR 1978 Del 250
[21]MANU/DE/0636/1994; 1994 SCC OnLine Del 117
[22] (2004) 3 SCC 90
[23] (2007) 6 SCC 1
[24] 1990 (Supp) SCC 727

Analysis

37. We have heard the learned Counsel for both parties and perused the material on record. This Court, *vide* order dated 01.12.2025, stayed the operation of the impugned order and directed the learned Commercial Courts to explicitly clarify whether the injunction was granted on the grounds of infringement, passing off, or both. Furthermore, with respect to the passing off claim, the learned Commercial Courts were directed to clearly return a finding on the issue of goodwill, in light of the principles established in ***Brihan Karan (supra)***.

38. At the outset, we remind ourselves that an appeal against an order of a commercial court is an appeal on principle, and interference is justified only where the order is arbitrary, capricious, perverse, ignores settled principles governing interlocutory injunctions, or where the view taken by the learned Commercial Court was not reasonably possible based on the material before it.[25]

39. However, even within the limited parameters established in ***Wander (supra),*** we are of the view that this case warrants our interference.

Applicable Principles of Law

[25] **Wander Ltd v Antox India P Ltd, 1990 Supp SCC 727 (para 14), Pernod Ricard (para 19.8)**

40. It is clear from Section 29(2)(b) of the Trade Marks Act, 1999[26], that infringement can only be established when the following conditions are met: (a) the Plaintiffs have a registered trade mark, (b) the Defendants' mark is deceptively similar to the Plaintiffs' registered trademark, (c) the Defendants' mark is used in relation to goods or services that are identical or similar to those for which the Plaintiffs' trademark is registered, and (d) because of these factors, there exists a likelihood of confusion in the minds of the public, or the public might assume an association between the Plaintiffs' and Defendants' marks.

41. It is also trite that infringement is not assessed solely by comparing the dominant part of the marks. The ultimate test is whether a person of average intelligence and imperfect recollection is likely to be confused between the two marks or believe there is an association between them. While the dominant feature of a mark might aid in assessing deceptive similarity, the courts must focus on the overall impression created by the competing marks[27].

42. As mentioned earlier, infringement is only available to registered proprietors. Therefore, at the stage of seeking an interlocutory injunction under Order XXXIX of CPC, the party seeking the injunction must establish, *prima facie*, the validity of its trademark registration. In this regard, Section 31of the Act stipulates that the registration of the mark shall serve as *prima facie* evidence of its validity. Thus, the registration of the "Jiva" marks serves as *prima*

[26]"Act" hereinafter
[27]**Pernod Ricard India Private Limited & Another vs. Karanveer Singh Chhabrra (para 42)**

facie proof of the Plaintiffs' rights and the benefits associated with that registration.

43. The manner in which competing marks are to be assessed has been discussed in detail in the case of ***Pernod Ricard (supra).*** The Court highlighted the need for a holistic approach to assess the similarity of marks, taking into account not just individual features but also the overall impression the marks create in the minds of the public. The same merits reproduction:

> *"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,*** *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 asses 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.

33. In determining whether a mark is deceptively similar to 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."

(emphasis supplied)

44. Turning to the aspect of passing off, the case of ***Brihan Karan (supra)*** clarifies the essential ingredients of an action for passing off.

It was delineated that an action for passing off is founded on the classical trinity, namely goodwill, misrepresentation and damage. The Plaintiffs must establish prior goodwill in the mark, a misrepresentation by the Defendants likely to deceive the purchasing public, and the consequent or likely injury to the Plaintiffs' goodwill.

45. In addition to above, as clarified in ***Pernod Ricard (supra)***, to satisfy the ingredient of goodwill in a passing off action, the party seeking injunction must show the accumulation of goodwill prior to the Defendants' use of the mark. The volume of sales, extent of advertisement, and the overall market presence of the Plaintiffs' mark are all relevant factors in determining the accumulation of goodwill.[28]

46. Having outlined the legal principles applicable to the present appeal, we will now proceed to test the impugned order on the anvil of the above-mentioned principles.

Fallacies in the Impugned Order

47. The learned Commercial Court observed that both parties operate in the same field of Ayurvedic medicine and that any ordinary person may be deceived upon encountering the "SHATAM JEEVA" retreat. According to the learned Commercial Court, an ordinary person would likely associate "SHATAM JEEVA" with the Plaintiffs' mark.

[28] **Brihan Karan Sugar Syndicate (P) Ltd. v. Yashwantrao Mohite Krushna SahakariSakharKarkhana, (2024) 2 SCC 577**

48. Further, the learned Commercial Court justified the injunction on the following reasons, which are reproduced for ease of analysis:

> *"19. In the present case also plaintiffs and defendants both operate in the same field of Ayurvedic medicines and treatment. Any ordinary person may be deceived that the retreat Shatam Jeeva belongs to JIVA group or is associated with them in any manner.*
>
> *20. It is rightly submitted by learned Ms. Soni Singh that the court need not to see dissimilarities by pitting the two marks together as the marks are remembered by general impressions rather than the complete details or photographic recollection of the same. It is further rightly submitted that even the picture or logo associated with the defendant's mark cannot be said to be having no potential of causing confusion in the mind of an ordinary person. The logo of the plaintiff is stated to be having figure of a lotus flower whereas logo of the defendant is reflecting some herbs with the letter S written in the middle. An ordinary person may not surely decipher these minute details in the two logos and may be confused. The confusion of the an ordinary man further appears to be spelled out by the plaintiffs when it is pleaded that in April 2022 one of their clients "approached the plaintiffs and inquired about a Shatam Jeeva wellness retreat of the plaintiffs"*
>
> *21. From the record it is clear that the plaintiffs are prior user of their trademark JIVA and were also running their holistic therapy/medicine center or wellness center prior to the defendants. Prima facie it do not appear that the use of the words Shatam J eeva for the similar services by the defendants is bonafide. Plaintiffs thus appear to have a prima facie case in their favour being registered proprietors of JIVA marks.*
>
> *22. Balance of convenience also lies in favour of the plaintiffs as defendants launched their wellness centers only in the year 2021 and once they are found to be infringing th trademark of the plaintiff, continuous user thereof should not be allowed.*
>
> *23. Continuous use of the infringing trademark by the defendants may dilute the trademark, goodwill and reputation of the plaintiffs thereby causing irreparable loss.*
>
> *24. Plaintiffs are therefore entitled to injunction m their favour."*

(emphasis supplied)

49. Upon a plain reading of the impugned order, it is apparent that the learned Judge granted the injunction on the premise that (i) a consumer of average intelligence and imperfect recollection may be deceived or confused, and (ii) the Plaintiffs are the prior users of the mark.

50. Additionally, it is unclear from the impugned order whether the injunction was granted on the basis of passing off or trademark infringement. Moreover, the learned District Judge failed to return a specific finding of goodwill, which is an essential element for establishing passing off.

51. In addition to the above, the impugned order fails to consider the significant distinction created by the addition of the phrase "By Baidyanath", which clearly differentiate the services and goods of the Defendants from those of the Plaintiffs. This distinction should have been factored into the analysis of likelihood of confusion or deception.

52. The learned Commercial Court, unfortunately, has failed to provide a clear and coherent basis for granting the injunction. The Court's reasoning appears to lack a sound legal foundation and fails to address the key elements necessary for granting such relief.

53. In light of the above, we find it necessary to record our own findings.

***Prima facie* infringement**

54. At this stage, we reproduce the competing marks for assessment below as per the record before us:

Plaintiffs' Registered Mark	Defendants' Registered Mark
JIVA	Shatam Jeeva
Plaintiff's mark in use for the Retreat	**Defendants' mark in use for the Retreat**
JIVA AYURVEDA	shatam jeeva By Baidyanath

55. After comparing the competing marks as a whole, in their entirety, and considering all the principles mentioned above, this Court is of the opinion that there is no phonetic, visual, or conceptual similarity between the two trademarks. Hence, even an ordinary consumer would not mistake the Defendants' product for the Plaintiffs'.

56. Upon careful perusal of the rival marks, it is clear that the Defendants' mark uses "EE" in the word 'Jeeva', while the Plaintiffs' mark use "I". The colour schemes and artwork used in the marks are also distinct. The Plaintiffs' mark consists of the word "Jiva" with a device of a lotus flower, whereas the Defendants' consists of the

words “Shatam Jeeva” with a device featuring a circle containing the letter “S” along with the depictions of herbal plants.

57. Thus, the Defendants’ impugned mark, when considered in its entirety, has no similarity with the Plaintiffs’ marks. As such, there is no likelihood of confusion between the said marks.

58. Furthermore, the use of the word “Shatam” and the phrase “By Baidyanath” clearly distinguishes the source of the products and services. Average consumers would easily distinguish the Defendants’ mark from that of the Plaintiffs’.

59. Mr. Goswami, the learned Counsel for the Plaintiffs, submitted that it is a settled principle that no party can copy an essential or dominant part of another’s trademark. He contended that “Jiva” was the dominant part of the Plaintiffs’ mark, which had acquired distinctiveness for goods and services that are identical to those provided by the Defendants’, hence, creating a likelihood of confusion.

60. However, following the principles laid down by the Supreme Court in ***Pernod Ricard (supra)***, even assuming arguendo that “Jiva” is the dominant part of the Plaintiffs’ mark, the ultimate inquiry must still be the overall impression created by the marks in mind of the average consumer.

61. While it is true that the dominant part of the Plaintiffs' mark may be "Jiva", the overall impression created by both marks is distinct.

62. "Jiva" cannot be dissected and viewed independently, as both competing marks are composite device marks. The Defendants' impugned mark contains other prominent elements that make it clearly distinguishable and different from the Plaintiffs' mark, as discussed above.

63. Additionally, it cannot be argued that device marks, being composite in nature, protect only the specific visual representation of the mark and not the word elements contained therein. In cases involving composite device marks, both the visual elements and the word elements are crucial in determining the likelihood of confusion, and their overall impression must be considered.

64. In the decision of ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co***[29], the Supreme Court clarified that deceptive similarity is not to be assessed purely based on evidence, but rather on the Court's perception. The Court observed:

> *"6. The vital question in issue is whether, if the appellant's mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead's Application [(1950) 57 RPC 209, 214] for registration of a trade mark).* ***It is for the court to decide the question on a comparison of the competing marks as a whole and***

[29] **(1969) 2 SCC 131**

> ***their distinctive and essential features***. *We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature "Andal". There is a striking similarity and affinity of sound between the words "Andal" and "Ambal". Giving due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks."*
>
> *(emphasis supplied)*

65. Therefore, in light of the foregoing discussion, in the absence of deceptive similarity and the failure to establish any likelihood of confusion, we conclude that an action for infringement cannot succeed.

66. We also find no merit in the argument that by using the prefix "Shatam", the Defendants are attempting to position their product as a superior version of the Plaintiffs' product and that the phrase "By Baidyanth" is merely an afterthought.

67. Clearly, "Shatam" is a Sanskrit word meaning "hundred". There is no logical or reasonable connection between the word "Shatam" and the Plaintiffs' mark or products, thus eliminating the possibility of it being construed as an attempt to associate with the Plaintiffs' mark.

68. Further, even assuming arguendo that the use of "By Baidyanath" is an afterthought, it still clearly indicates a deliberate attempt to differentiate the Defendants' mark from that of the Plaintiffs. The addition of such a phrase serves to further disassociate the two marks, mitigating any possible confusion.

69. Hence, we find no deceptive similarity between the marks, nor do we see any scope for confusion between them from the perspective of an average consumer.

70. In these circumstances, after thoroughly assessing the marks in their entirety, we are not persuaded that the Defendants' mark is deceptively similar to the Plaintiffs' mark or that there exists a likelihood of confusion among average consumers.

Passing off

71. We shall now address the aspect of passing off.

72. The distinction between the enquiry for passing off and infringement has been discussed in detail in the case of ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories***[30], the same is reproduced thus:

> *"28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance*

[30]**AIR 1965 SC 980**

of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negativing the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that

the added matter is sufficient to distinguish his goods from those of the plaintiff.

29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff."

(emphasis supplied)

73. It has been held that in passing off actions, added elements can make a significant difference. The enquiry in passing off involves a comparison of the entire representation of the competing goods or services.

74. In this regard, since the Defendants are using the impugned mark in relation to a wellness retreat, it becomes necessary to reproduce the competing trade dressing of the rival marks for the sake of clarity, as follows:

Plaintiffs	Defendants
JIVA AYURVEDA / JIVA	shatam jeeva By Baidyanath

75. Upon examining the competing trade dresses, it is evident that there is no visual or conceptual similarity between the two marks. Apart from the occurrence of the words "Jeeva" and "Jiva", there are no substantial similarities in the trade dresses. The Defendants' mark features herbal plants, while the Plaintiffs' mark consists of a lotus flower. These are entirely different visual elements.

76. The use of the phrase "By Baidyanath" in the Defendants' mark clearly acts as a source-identifying feature, eliminating any reasonable doubt that a consumer might associate the Defendants' mark with the Plaintiffs' mark. The additional elements, such as the prefix "Shatam"

and the disclaimer "By Baidyanath", result in sufficient dissimilarity between the competing trade dresses. Thus, the likelihood of confusion or the possibility of a consumer associating the Defendants' product with the Plaintiffs does not arise.

77. Additionally, the Defendants have failed to place any material on record to demonstrate actual damage or the likelihood of damage to their goodwill or reputation. The Plaintiffs have not provided any evidence to support claims of loss or harm caused by the Defendants' mark.

78. However, as established in the case of ***Brihan Karan (supra)***, misrepresentation remains a crucial ingredient in passing off, and this is notably absent in the present *lis.* There is no evidence that the Defendants have misrepresented their goods or services as those of the Plaintiffs.

79. Therefore, in the absence of any deceptive similarity or misrepresentation between the competing trade dresses, no case of passing off can be sustained.

80. Since the Defendants' case fails on the ground of deceptive similarity, we do not find it necessary to examine the remaining two ingredients of passing off, namely, goodwill and damage.

Conclusion

81. In light of the above discussion, we are of the opinion that no *prima facie* case for infringement or passing off exists. This is because there is no deceptive similarity between the rival marks, nor has any misrepresentation been established.

82. Resultingly, no case for the grant of an interlocutory injunction has been made out. Therefore, the impugned order is set aside.

83. Accordingly, the present appeal is allowed.

84. We clarify that the observations and findings in this judgment are *prima facie* in nature and are made for the purpose of adjudicating the application for the interlocutory injunction only. These observations will not, in any manner, influence the learned Commercial Court's consideration of the merits of the suit pending before it.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

APRIL 21, 2026*/ss/gunn*