IN THE COURT OF SH. POORAN CHAND, DISTRICT JUDGE (COMM.)-08 CENTRAL, TIS HAZARI COURT, DELHI

CS Comm. No. 636/2025

CNR No. DLCT01-008133-2025

Surya Roshni Limited
Padma Tower-1, Rajendra Place,
New Delhi-110008
Through Authorized Representative
Sh. Ambrish Kumar Srivastava

.....Plaintiff

Versus

Sh. Sanjay Kumar Tiwari
Trading as: Jay Vijay Traders
2103/10, Bhagirath Palace, Chhippy Wada,
(Behind Jublee Cinema), Chandni Chowk,
New Delhi-110006
Also at:
K-56/93, Ausanganj, Iswargangi,
Varanasi, Uttar Pradesh-221001

.....Defendant

Date of Institution : 31.05.2025
Arguments heard on : 05.10.2026
Date of Judgment : 28.10.2026

JUDGMENT:

1. Plaintiff Surya Roshni Limited has filed the present suit seeking a permanent injunction against the Defendants for allegedly infringing and passing off the Plaintiff's registered and reputed "SURYA" trademarks and related intellectual property.

Brief facts of the case:

2. The Plaintiff has filed the present suit seeking a permanent injunction to restrain the Defendants from the unauthorized use of the Plaintiff's registered and prior-adopted trademark "SURYA" under Classes 9, 11 and 35 for electrical products and business. The Defendants are using the marks 'JAYSURYA' and JAYSURYA,, along with identical / similar trade dress, trade name, domain and copyrighted artwork, resulting in infringement of the Plaintiff's well-known trademarks "SURYA", and other 'SURYA' formative marks.

2.1 It is averred that the Plaintiff, incorporated in 1973, is a leading Indian multinational and one of the largest manufacturers in the steel segment and the second-largest in the lighting sector. It is engaged in manufacturing and marketing a wide range of products, including LED lights, electrical fans, heating appliances, climate control equipment, professional lighting systems, solar lighting, steel and PVC pipes, and other home electrical appliances, under the brand name "SURYA" in both domestic and international markets.

2.2 That the Plaintiff Company was originally incorporated as PARKASH TUBES PRIVATE LIMITED on 17th October 1973 as a private limited company. Subsequently, on 15th November 1973, it was converted into a public limited company and renamed PARKASH TUBES LIMITED. The company was promoted by Shri Basudev Agarwal and his son Shri J.P. Agarwal. The Plaintiff Company is engaged in the manufacture of ERW Steel Pipes and Tubes (both black and galvanized), aluminum alloys, welding heads, GLS lamps, fluorescent tubes, tubular glass shells, and related products. On 9th October 1990, the company underwent a name change from SURYA ROSHNI PARKASH TUBES LIMITED LIMITED, with a fresh Certificate of Incorporation issued by the Registrar of Companies, Delhi and Haryana, on 14th December 1990. Since its inception, the Plaintiff Company has established itself as a leading conglomerate in the steel industry and the second largest player in

the lighting sector. The products of its Electrical and Lighting Division are marketed under the brand name 'SURYA'. A copy of fresh Certificate of Incorporation dated 14th December 1990 is annexed herewith.

2.3 It is averred that the Plaintiff's goods under the trademark "SURYA" have been extensively advertised across India through various print and electronic media, including newspapers, magazines, hoardings, promotional materials, and television. As a result of continuous, aggressive marketing and widespread use, the mark "SURYA" has acquired significant goodwill and distinctiveness.

2.4 It is also averred that the Plaintiff's trademark "SURYA" has been extensively advertised through various print and electronic media, TV networks, including newspapers, magazines, hoardings, and promotional materials. Such aggressive marketing has resulted in the mark "SURYA" acquiring distinctiveness and goodwill.

2.5 It is further averred that the Plaintiff holds multiple trademark registrations for "SURYA" and its formative marks, particularly in Classes 9, 11 and 35. These marks have been in continuous and uninterrupted use since their adoption. The Plaintiff Company also holds copyright registrations SURYA SURYA for the mark EVERY CITY EVERY HOME and when the sun sets Surya rises.etc. which was specifically designed and the said artistic lettering style being a unique design stands registered with the Plaintiff company under the Copyright Act, 1957 connotes and denotes the source and origin as well as high quality of products manufactured and sold by the Plaintiff.

2.6 It is averred that due to the success of plaintiff’s products, they are widely recognized all over the India and abroad. Further, due to the maintenance of exacting and constant high standards of quality and effectiveness, Plaintiff goods have the distinction of being one of the Plaintiff best known and popular products. Moreover, 'SURYA', being the umbrella brand of the Plaintiff, it has become a source identifier for the Plaintiff and its group of companies. The

Plaintiff has created a pan- India presence with over 3,00,000 retail outlets, 300+ RTF and 2,500+ DSPs. Needless to say, 'SURYA' mark is a valuable asset to the Plaintiff business given the immeasurable reputation and goodwill amongst the purchasing public.

2.7 It is further averred that Plaintiff submits that their Revenue figures and Advertisement & Promotional Expenses are an indicator of substantial goodwill and reputation earned by the Plaintiff.

2.8 It is averred that in the first week of May 2025, the Plaintiff discovered the Defendants' infringing products being sold in Bhagirath Palace Market, Delhi, under the impugned mark 'JAYSURYA' JAYSURYA. The Plaintiff immediately activated its investigative team.

2.9 On 5th May 2025, Plaintiff through its investigator successfully conducted an investigation at the Defendant's premises. During the visit, the Plaintiff's representative confirmed that the Defendant was engaged in the trading of electrical products bearing the impugned mark 'JAYSURYA' / JAYSURYA The Plaintiff's representative purchased a ceiling fan and received a rough handwritten bill.

2.10 Further, on 15th May 2025, the Plaintiff's representative once again visited the Defendant's premises to purchased few other electrical products bearing the impugned mark, paid via UPI and again received a rough handwritten bill. Upon conducting a trademark search on the official website of the Indian Trademarks Registry, the Plaintiff found that the Defendant had filed any application for the mark JAYSURYA (label) in Class 11 under Application No. 3661208, dated 23/10/2017, which was opposed by the Plaintiff on date 29/07/2020.

2.11 The Defendants' use of deceptively similar trademarks, trade dress, trade name, domain and copyrighted work associated with "SURYA" for identical products and services is a mala fide attempt to misrepresent their goods as those

of the Plaintiff, thereby infringing the Plaintiff's intellectual property rights and harming its goodwill.

2.12 The cause of action for the present suit arose in first week of May 2025 when the Plaintiff first came across the impugned products under impugned mark JAYSURYA' JAYSURYA being sold in the markets of Delhi. The Plaintiff immediately launched an enquiry /investigation against the spurious products.

2.13 The cause of action further arouse on 05th May 2025, when Plaintiff investigator successfully traced the Defendant address (as provided in Memo of Parties) where impugned products are being stocked and being sold under mark JAYSURYA' that is deceptively similar/ identical to that of Plaintiff's well-known and registered trademark 'SURYA'. Plaintiff representative purchased two LED bulbs and one ceiling fan under the impugned mark 'JAYSURYA' to which the defendant did not provide GST bill rather provided a handwritten rough bill evading GST, seller details and any warranty claims.

2.14 The cause of action further arose on 15th May 2025 when plaintiff representative again visited the defendant premises at the same address and purchased few more electrical products under the impugned mark 'JAYSURYA' and received a rough handwritten bill without GST and received a quotation of various products being manufactured, marketed and sold by the defendant.

2.15 That further the impugned goods are being manufactured and sold by Defendant without mentioning the impugned brand names on the bill/invoice. It is also apprehended that Defendant is falsely using ISI mark on the impugned products without holding any valid license from the BIS. Such sub-standard low quality products of the Defendant are available and being sold in the markets of Delhi/NCR and nearby states through various retailers and stockiest. The cause of action is still continuing as the defendant is still selling its low quality products to the public at large.

2.16 It is further averred that this Hon'ble Court has the jurisdiction to entertain and try the present suit as the Plaintiff is carrying on business within the jurisdiction of this Hon'ble Court. It is submitted that the Plaintiff have their Corporate office at address Padma Tower-1, Rajendra Place, New Delhi-110008, (India) from where the Plaintiff is operating, selling, marketing, carrying on business and voluntarily carrying on business for gain, which is well within the jurisdiction of this Hon'ble Court. The Plaintiff sells its products through a number of authorized Stockiest/dealers that are located around Delhi/NCR and also at Central Delhi area. The Plaintiff submits that the goods of the Plaintiff is extensively and consistently sold and marketed within the jurisdiction of this Hon'ble Court through Plaintiff dealers and therefore this Hon'ble Court has the territorial jurisdiction to try and entertain the present suit in view of section 134(2) of the Trade Marks Act, 1999. The Plaintiff also advertise its SURYA products all over Delhi through magazines, bill boards, TV etc.

2.17 It is further averred that the suit is valued for the purposes of court fees and jurisdiction at Rs. 25,01,700/- and court fee of Rs. 27,000/- is paid thereon.

2.18 In view of these facts, the Plaintiff is seeking following prayers :

(a) to seek orders and directions against the Defendants for a permanent injunction restraining the Defendants from manufacturing, selling, marketing, or dealing in identical or any goods, under the marks 'JAYSURYA' JAYSURYA or any deceptively similar marks, which amounting to infringement of the plaintiff registered trademarks, copyrights etc. At present the Plaintiff estimates that a damage from the infringing acts of the Defendant is in lakhs of rupees.

b) An order for delivery up of all finished and unfinished goods, dies, blocks, labels and any other printed matter bearing the impugned marks 'SURYA', to the authorized representative of the Plaintiff for the purpose of destruction/erasure;

c) A decree of damages against the Defendant and in favor of the Plaintiff, on account of their illegal activities.

d) For an order of rendition of accounts of profits earned by the Defendant by their impugned illegal trade activities and a decree for the amount so found in favor of the plaintiff on such rendition of accounts.

e) An order for costs of the proceedings.

SERVICE OF DEFENDANT:

3. Pursuant to issuance of summons, the defendant was duly served with the summons of the suit through speed post on 12.07.2025.

4. It is pertinent to mention that though defendant was served, however, no Written Statement was filed on behalf of defendant within the stipulated period of 30 days and hence, the right of defendant to file W.S was accordingly closed and following notional issues were framed vide order dated 14.08.2025.

Notional Issues:

i. Whether plaintiff is entitled to decree of permanent injunction restraining the defendant or any of their subjects acting through them from manufacturing, trading, selling (online and offline), marketing, printing, offering for sale the electrical and allied goods i.e. Lights, LED, spot lights, panel lights, fancy lights, flood lights, street lights, electrical switches, PVC electrical panels, wires and cables, cooling and heating appliances, ceiling fans, exhaust fans, fan heaters, halogen heaters, air cooler pumps and other goods under the mark 'JAYSURYA' and JAYSURYA, and any other mark/device/logo/domain name or trade name which is identical or deceptively similar to plaintiff's registered mark 'SURYA' as prayed for?(OPP)
ii. Whether Plaintiff is entitled to permanent injunction against defendant and his subjects to injunct them from using the copyright vested in device/logo of 'SURYA' and any other registered 'SURYA' marks in violation of plaintiff's copyright as prayed? (OPP)
iii. Whether plaintiff is entitled to decree of permanent injunction against defendant and his subjects restraining them from passing off the goods of plaintiff's registered trademark 'SURYA' as prayed? (OPP)
iv. Whether plaintiff is entitled to decree of delivery up of finished and unfinished goods in violation of the above trademark? (OPP)
v. Whether plaintiff is entitled to damages? (OPP)
vi. Whether plaintiff is entitled to decree of rendition of accounts of profits earned by defendant in violation of plaintiff's above trademark? (OPP)
vii. Relief.

5. On 21.07.2025, appearance was put on behalf of defendant and defendant was directed to file Written Statement. Thereafter, W.S was filed and was taken on record vide order dated 19.08.2025.

WRITTEN STATEMENT OF DEFENDANT

6. It is averred in the W.S that the present suit filed by the Plaintiff is nothing besides being a gross abuse of the process of law and is thereby liable to be dismissed with exemplary costs being imposed upon the Plaintiff.

6.1 That the present suit filed by the Plaintiff is bound to get dismissed as it suffers from concealment and suppression of material facts. It is submitted that the Plaintiff has approached this Hon'ble Court with unclean hands and has deliberately misrepresented and manipulated the entire facts pertaining to the present case in order to mislead this Hon'ble Court.

6.2 That the present suit is a gross abuse of the process of law and is liable to be dismissed in limine on the account that the Plaintiff is not entitled to claiming exclusivity over the word "SURYA".

6.3 That the Plaintiff claims to have become aware of the Defendant's activities in May 2025 and claims to have investigated the Defendant in the month of May itself, but as per its own admission in the plaint, it opposed the defendant’s trade mark application numbered 3661208, dated 23/10/2017 under class 11 in the year 2020. This delay of 5 years in filing the suit, which is neither justified nor addressed in the Plaint, clearly demonstrates the absence of any real urgency. Consequently, the Plaintiff was not entitled to bypass the mandatory pre-institution mediation contemplated under Section 12A of the Commercial Courts Act, 2015. The suit, having been filed without complying with the statutory requirement, is not maintainable.

6.4 It is further submitted the name SURYA which is a Hindi dictionary word for SUN and is suggestive of light and thus electrical appliances, is used

predominantly in the industry of electrical appliances and related products and is in consonance with the industry norms. It is further submitted that several trademarks bearing the name SURYA and its formatives are registered in the name of various third parties.

6.5 The Plaintiff has not provided any instances of market confusion despite claiming a "real and tangible risk" of confusion. Plaintiff's knowledge of Defendant since the year 2020 when it opposed its trademark suggests that the present suit has been filed with mala fide intent, and the Plaintiff's delayed response undermines the urgency of their prayer for a permanent injunction and therefore the Plaintiff was not entitled to any urgent relief.

6.6 That under Section 11(6) of the Trade Marks Act, 1999, a mark's well-known status requires consideration of factors like public recognition, duration of use, and geographic extent, typically formalized by a declaration from the Registrar or a court. The Plaintiff provides no evidence of such a declaration. Their reliance on business metrics and awards does not substitute for legal recognition. The Plaintiff's claim to enhanced protection as a well-known mark is thus premature and unsubstantiated, weakening their case for injunctive relief based on alleged dilution.

6.7 It is averred that in order for Plaintiff to claim monopolistic rights in the word 'SURYA' which is a word of Hindi dictionary for sun, it must not only establish that the said trademark 'SURYA' has been in use over a long time but it must establish that the word itself is associated solely with the Plaintiff's goods and services. The Defendants mark JAYSURYA depicted as a device mark incorporating three leaves and the image of the Defendant's son, Jay, along with the mark 'OVERDRIVE is distinct from the Plaintiff's mark 'SURYA'. The prefix 'JAY', also reflected in the Defendant's firm's name being 'JAY VIJAY ELECTRICALS' is derived from the Defendant's son's name, combined with 'SURYA' creates a composite mark that is phonetically, visually, and

conceptually different. The mark 'JAYSURYA' is arbitrary, as the combination of 'JAY' (the Defendant's son's name) and 'SURYA' forms a unique, invented term with no direct reference to the goods. The device marks unique elements, such as the three-leaf symbol which is supposed to depict bale leaves which is associated with Lord Shiva and the city of Varanasi from where the Defendant belongs. The image of Defendant's son Jay, further enhances its distinctiveness. The Plaintiffs allegation of deceptive similarity under Section 29 is misconceived, as the overall impression of 'JAYSURYA' does not resemble 'SURYA' negating any likelihood of confusion among consumers of average intelligence and imperfect recollection. Additionally, the use of the mark JAYSURYA with the mark 'OVERDRIVE' leaves no scope for confusion. Additionally, it is a settled proposition of law that no single entity can claim exclusivity over a basic combination of colors, in this case orange and white which the Defendant adopted to suggest the nature of goods as orange is often associated with fire and therefore electrical appliances. The Plaintiff cannot restrain the use of an entire color combination by drawing vague comparisons to its own trade dress JAYSURYA in a bona fide and arbitrary manner. Section 12 of the Trade Marks Act, 1999, allows honest concurrent use of similar marks if adopted without deceptive intent. The Defendant's distinct business model and lack of evidence of consumer confusion support its fair use claim. Additionally, the use of the mark JAYSURYA Overdrive JAYSURYA with the mark 'OVERDRIVE" makes it even more arbitrary. The Plaintiff's allegation of mala fide intent is unsubstantiated, as the Defendant's mark aligns with its business identity and does not mimic the Plaintiff's branding elements in any manner whatsoever. This bona fide adoption negates claims of infringement and passing off.

6.8 It is also pertinent to note that the word 'SURYA' in itself is a common word of the Hindi vocabulary or in other words a publici juris. The Plaintiff

cannot objectively claim exclusivity in the word 'SURYA' as the word is very commonly used in daily life and cannot be monopolised by a single party or entity. Moreso ever, the Plaintiff in the present matter by trying to draw a vague comparison between a dissected matter of the Defendant's mark 'JAYSURYA'/ JAYSURYA and its own mark 'SURYA' is pushing the boundaries of the extent to which this settled legal principle can be disregarded.

6.9 That it is also important to note that Defendant has also been making sale of fans since the year 2009 under the mark JAYSURYA JAYSURYA. It is submitted that the plaintiff only entered in the business of fans in the year 2018. The Plaintiff having entered the business of fans subsequently cannot seek to restrain the Defendant from using the said mark for the business of fans prior to the Plaintiff. It is further submitted that the plaintiff is not dealing/manufacturing and tarding in respect of Switches and Wire. Therefore, the rival goods are different. It is the law of acquiescence the plaintiff cannot restrain the defendant after knowing the existence of the defendant goods in the market since last 5 years under section 33 of the Trade Mark act. It is pertinent to mention here that there was no dispute found between the defendant and plaintiff in spite of defendant's goods remain in existence in the market since the year 2009 to the year 2020 when the plaintiff firstly filed opposition against the applicant's trade mark vide application no.3661208. It is apparently a matter of public record. Since the plaintiff was silent for the existence of the defendant's goods in the market for last 11 years since the year 2009-2020, and no disputes being arises during these year between the plaintiff and the defendant, the principles of co-existence applies and therefore, balance of convenience also lies in favor of the defendant.

6.10 It is further averred by the Defendant that it is engaged in the business of electrical appliances since the year 2008 and started its sole proprietorship firm in the year 2009 under the name of JAY VIJAY TRADERS in Varanasi and also

opened its branch in Chandni Chowk, Delhi in the year 2023, The said firm has now become a prominent equipment seller with a formidable presence across the market. That the Defendant was initially engaged in the business of fans, switches and bulb but has now expanded its domain to multiple brands of electrical appliances and components through its sole proprietorship.

6.11 It is also averred that the Defendant has a well-established business network of various manufacturers and suppliers of electrical appliances. Defendant's products are certified to conform to Indian and International Standard and the Defendant is proud to cater India's emerging electrical requirements.

6.12 It is further averred that the Defendant had in the year 2008 coined the mark by taking JAYSURYA from his son's name 'JAY' which combined with the word 'SURYA' being the Hindi word for sun becomes an arbitrary and composite mark vaguely suggestive to electrical appliances and uniquely distinct to Defendant's goods and services. Over the past 15 years the Defendant has poured its time, efforts, money and resources into popularizing its mark and goods associated therewith, as a result of which the Defendant's firm has become one of the leading names in the electrical appliances industry in India due to the renowned quality of its electrical appliances.

7. Plaintiff filed its replication to the Written statement of defendant denying the contents therein and reiterated the contents of the plaint.

8. It is pertinent to note that on the application of defendant filed under Order 14 Rule 5 CPC, vide order dated 17.09.2025, following additional issues were framed.

Issues:

1. **Whether suit is hit by Section 33 of Trademarks Act under Principle of Acquiescence? OPD**

2. **Whether suit of the plaintiff is hit by non-compliance of Section 12A of Commercial Courts Act, 2015? OPD**

9. Evidence in this case was ordered to be recorded before Ld. L.C. as per protocol created by this Court under Order 18 Rule 4 CPC read with Order 15A Rule 6 (l) and (o) CPC as applicable to Commercial suits. Evidence was recorded before Ld. LC Sh. Chitragupt Dagar, Advocate appointed by this Court for the sake of timely disposal of this case.

Plaintiff's evidence

10. To substantiate its case, the plaintiff examined its authorised representative, Sh. Ambrish Kumar Srivastava, as PW-1. PW-1 tendered his evidence by way of affidavit and relied upon the following documents:

Exhibit No.	Details of Exhibit
PW-1/A	Evidence affidavit of Sh. Ambrish Kumar Srivastava
PW-1/1	Power of attorney dated 24.01.2024 in favour of Plaintiff's AR
PW-1/2	Board resolution dated 28.05.2013 in favour of Raju Bista
PW-1/3	Printout of photographs of plaintiff's products
PW-1/4	Printout of photographs of plaintiff's products
PW-1/5	Documents detailing the history and legacy of the Plaintiff
PW-1/6	Price list and other products of Plaintiff
PW-1/7	Printout of e-newspaper about the new campaign of the Plaintiff company
PW-1/8	Printouts of online posts/tweets detailing out Padma Shri Award to Mr. Jai Prakash Aggarwal, Chairman of Plaintiff company
PW-1/9	Printout of Facebook post of plaintiff's lighting installed at various sites
PW-1/10	Printouts of online statuses of plaintiff's trademarks

PW-1/11 (colly)	Original LPCs of Plaintiff's trademark registrations
PW-1/12 (colly) (OSR)	Copyright certificates of Plaintiff
PW-1/13 (colly)	Printout of plaintiff's commercial starring famous Bollywood celebrity Preity Zinta
PW-1/14	Printout of plaintiff's commercial starring famous Bollywood celebrity Shankar Mahadevan
PW-1/15	Printout of plaintiff's Trademark being displayed on jersey of IPL team Rajasthan Royals at IPL 2019
PW-1/16	Printout of plaintiff's Trademark being displayed on jersey of Pro Kabbadi League 2022 team U-Mumba and on the Para Games 2023
PW-1/17 (Colly) (OSR)	Rough hand written bill dated 05.05.2025 and 15.05.2025 alongwith payment receipt
PW-1/18 (OSR)	Quoation of products dated 15.05.2025 provided by defendant
PW-1/19 (OSR)	Business card of defendant
PW-1/20 (OSR)	Photographs of defendant’s premises
PW-1/21	Printout of defendant’s GST registration obtained through GST website
PW-1/22 (colly)	Copies of third party e-commerce websites such as Indiamart.com meesho.com and other
PW-1/23	Copy of defendant’s official website
PW-1/24	Copy of current status of defendant’s trademark application

11. After examination of PW1/plaintiff, plaintiff’s evidence was closed and the matter was fixed for defendant’s evidence.

Defendant’s evidence

12. To substantiate its case, the defendant Sh. Sanjay Kumar Tiwari examined himself DW-1. DW-1 tendered his evidence by way of affidavit and relied upon the following documents:

Exhibit No.	Details of Exhibit
DW-1/A	Evidence by affidavit of DW-1
DW-1/1	Copy of GST Registration Certificate of the Defendant issued by GST department Government of India
DW-1/2	Copy of Brochure of defendant showcasing the 'JAYSURYA' mark and product
DW-1/3 (colly)	Copies of few selected GST invoices issued by the Defendant evidencing legitimate sales under 'JAYSURYA' mark
DW-1/4	Form GSTR-3B returns filed by the defendant for the financial year 2024-25, 2025-26 (Colly)
DW-1/5	Copy of invoice from 2009 showing the sales of ceiling fans under Defendant's mark 'JAYSURYA'
DW-1/6	Extract of The Hindu Business Line article evidencing the launch of fans by the plaintiff in the year 2014
DW-1/7	Copies of various articles evidencing the common nature and relevance of the word 'SURYA' in Hindi vocabulary
DW-1/8	Extracts of the trademark public search report of various third-party trademark registration of the mark 'SURYA' and its formatives accessed from TM public search website
DW-1/9	Extracts of various third party commercial uses of the mark 'SURYA' and its formatives collectively, sourced from the world wide web
DW-1/10 (colly)	Certificate u/s 63(4)(c) of Bhartiya Sakshya Adhiniyam, 2023
DW-1/11	Certificate of electronic records under Order XI Rule6(3) of CPC

13. Thereafter, final arguments were heard on behalf of both the sides. Both the parties also filed written submissions in support of its contentions alongwith judgments. In support of its contentions, plaintiff relied upon the following judgments:

i. Kaviraj Pandit Durga Dutt Sharma V. Navaratna Pharmaceutical Laboratores 1964 SCC Online SC 14

ii. K.R. China Chettiar V. Shri Ambal And Co. Madras and Another (1969) 2 SCC 131

iii. Laxmikant V. Patel V. Chetanbhai Shah And Another (2002) 3 SCC 65

iv. Gujrat Bottling Co. Ltd and Others Vs. Coca Cola Co. and Others (1995) 5 SCC 545

v. Indchemie Health Specialities Pvt. Ltd., Mumbai V. Naxpar Labs Pvt. Ltd and Another

vi. Intel Corporation V. Dinakaran Nair & Ors. 2006 SCC Online Del 459

vii. Cadila Pharmaceuticals Limited V. Sami Khatib of Mumbai 2011 SCC Online Bom 484

viii. Bal Pharma Ltd Vs. Centaur Laboratories Pvt Ltd. & Anr. 2001 SCC Online Bom 1176

ix. Metropol India (P) Ltd Vs. Praveen Industries India (Regd.) 1997 SCC Online Del 705

x. Shree Girirajji and Co. Vs. Gagan Pagrani Proprietor of Plastica Industries 2024 SCC Online Del 2084

xi. Pankaj Goel Vs. Dabur India Ltd 2008 SCC Online Del 1744

xii. M/s Hindustan Pencils Pvt Ltd Vs. M/s India Stationery Products Co. & Another ILR (1988) II Delhi

xiii. M/s Power Control Appliances and Others Vs. Sumeet Machines Pvt Ltd. With Sumeet Research and Holdings Vs. Sumeet Machines And Another (1994) 2 SCC 448

xiv. Midas Hygiene Industries (P) Ltd. And Another Vs. Sudhir Bhatia And Others (2004) 3 SCC 90

xv. Patil Automation Pvt. Ltd And Others Vs. Rakheja Engineers (P) Ltd (2022) 10 SCC 1

xvi. Bolt Technology OU Vs. Ujoy Technology Private Limited And Anothe 2023 SCC Online Del 7565

xvii. Kaulchand H. Jogani Vs. Shree Vardhan Investment and Others 2022 SCC Online Bom 4752

xviii. Chemco Plastic Industries Pvt. Ltd. Vs. Chemco Plast 2024 SCC Online Bom 1607

xix. Yamini Manohar Vs. T.K.D Keerthi (2024) 5 SCC 815

xx. Novenco Building and Industry Vs. Xero Energy Engineering Solutions Private Ltd. & Anr. Passed in SLP (C) No. 2753 of 2025

xxi. Modi- Mundipharma Pvt. Ltd. Vs. Speciality Meditech Pvt. Ltd & Anr. 2025 SCC Online Del 4627

xxii. Shiv Kumar Gupta and Another Vs. Amit Agarwal Sole Proprietor of M/s. Seetu Electricals No. 136/1 and Anr 2026 SCC Online Mad 137

Defendant has also relied upon the following judgments in support of his arguments:

(i) Mittal Electronics Vs. Sujata Home Applicances (P) Ltd. & Ors. 2020 SCC Online Del 2658

(ii) Freudenberg Gala Household Products Private Ltd Vs. Gebi Products Commercial Appeal No. 72 of 2017

(iii) Mayank Jain Proprietor of Mahaveer Udyog Vs. M/s Atulya Discs Pvt. Ltd. & Ors. CS (Comm) 412/2025

(iv) Kaviraj Pandit Durga Dutt Sharma V. Navaratna Pharmaceutical Laboratores 1964 SCC Online SC 14

(v) M/s Gufic Ltd. & Anr. Vs. Clinique Laboratories LLC & Anr FAO 222/2009

(vi) Pernod Ricard India Pvt Ltd Vs. Karanveer Singh Chabra 2025 SCC Online SC 1701

(vii) Khoday Distilleries Ltd Vs. Scotch Whiskey Association & Ors. Manu/SC/2361/2008

(viii) Mankind Pharma Ltd. Vs. Micor Labs Limited & Ors. MANU/TN/6618/2024

(ix) BDA Private Limited Vs. Paul P. John and Ors. MANU/DE/1025/2008

(x) Yonex Kabushiki Kaisha Vs. Philips International and Ors. MANU/DE/2397/2007

(xi) Yamini Manohar Vs. T.K.D Keerthi (2024) 5 SCC 815

(xii) M/s Dhanbad Fuels Pvt Ltd. Vs Union of India & Anr. Civil Appeal No. 6846 of 2021 Supreme Court

Findings and observations

14. I have heard and considered the oral as well as written submissions filed on behalf of both the sides, judgments relied upon by both the sides and perused the material on record.

15. Now, I shall proceed to give issue-wise findings in this case.

Issue No.1.

Whether plaintiff is entitled to decree of permanent injunction restraining the defendant or any of their subjects acting through them from manufacturing, trading, selling (online and offline), marketing, printing, offering for sale the electrical and allied goods i.e. Lights, LED, spot lights, panel lights, fancy lights, flood lights, street lights, electrical switches, PVC electrical panels, wires and cables, cooling and heating appliances, ceiling fans, exhaust fans, fan heaters, halogen heaters, air cooler pumps and other goods under the mark 'JAYSURYA' and JAYSURYA, and any other mark/device/logo/domain name or trade name which is identical or deceptively similar to plaintiff's registered mark 'SURYA' as prayed for?(OPP)

The onus of proving this issue is on the plaintiff.

Plaintiff's arguments:

15.1 It is argued that Plaintiff company was incorporated in 1973 using 'SURYA' as the house mark and since 1984 for the lighting products. The

Plaintiff's Revenue in FY2023-24 was Rs. 7808 Crores from Operations and Plaintiff spent Rs. 16.07 Crores in Advertisement and Publicity.

15.2 The Plaintiff is the registered proprietor of trademarks 'SURYA' bearing Application Nos. 472227, 552869, 557915, 607502 in class 9, Application nos. 472229, 557914.3027231 in class 11 and Application no. 1751247 in class 35 for variety of goods and services related to "Electrical products". Same have been proved as Ex.PW1/10 and Ex.PW1/11. The Plaintiff also has registrations from the copyright office bearing registration no. A 129617/2019, A-61394/2002 and A-55046/1998 Exhibit PW1/12).

15.3 It is argued that in May 2025 first week, the Plaintiff for the first time came across Defendant infringing products being sold in Bhagirath Market Delhi under the impugned marks "JAYSURYA". Defendant operates in the identical business of "Electrical products". Plaintiff conducted investigation and traced Defendant's premises located in Chandani Chowk, Delhi and purchased impugned product and received non-GST rough handwritten bill. Further on 15.05.2025, Plaintiff re-investigated Defendant and purchased few more impugned products and obtained quotation and again received non-GST rough handwritten invoice (Exhibit PW/17, PW1/18, PW1/19 and PW1/20). Also, Defendant is actively promoting, advertising and selling impugned goods under the mark JAYSURYA' through third-party e-commerce website such as Indiamart.com. Meesho.com. as well from their official website www.jaysurya.com which is accessible throughout India, including within the territorial jurisdiction of this Hon'ble Court (Exhibit PW1/22 and PW1/23).

15.4 It is further argued that Defendant was well aware of the Plaintiff's prior presence, goodwill, and statutory rights in the mark "SURYA", when the Plaintiff filed a Notice of Opposition against the Defendant trademark application on 29.07.2020. Despite having full knowledge of the Plaintiff's right, the Defendant continued to use and sell its products under the impugned mark

"JAYSURY at its own peril, thereby knowingly continuing with the infringing activities. (PW1/24).

15.5 It is further argued that an ex-parte ad-interim injunction was passed in favour of the Plaintiff and against the defendant on 06.06.2025 and a local commissioner was appointed who duly conducted the commissi on 18.06.2025 at Defendant premises based in Chandani Chowk Delhi wherein huge quantity of impugned goods were found and seized and handed over to the defendant on superdar as per the report of Local Commissioner. As per the report, Defendant was maintaining a nearby godown for storing the impugned products and was initially reluctant to hand over its keys, which were ultimately produced upon the intervention of the landlord. During the second commission conducted on 15.10.2025, the Defendant was found to have concealed products bearing the impugned mark “JAYSURYA” behind cartons of other lighting brands. The Ld. Local Commissioner also recorded that the Defendant attempted to conceal a bag containing the impugned products intended for sale to a customer, refused to hand over the same, and initially denied possessing the keys to the rented premises, which he subsequently produced. No bill books or books of accounts were found at the shop. Further, products bearing the impugned marks with manufacturing dates ranging from July 2025 to October 2025 were found at the premises despite the ex-parte ad-interim injunction order dated 06.06.2025. Original products of the Plaintiff bearing the mark “SURYA” were also found alongside the impugned products.

15.6 It is further argued that during the cross-examination of the Defendant sole witness, Mr. Sanjay Kumar Tiwari, on date 04.10.2025, it is admitted by the Defendant that the Defendant has never sold any product of the Plaintiff-Surya Roshni Limited which is contradictory to what has been observed in the report of Ld. Local Commissioner. It is further submitted that Defendant has also stated that he does not know that 'SURYA' is a famous brand in the market and

further admitted that he has never seen any advertisement of the 'SURYA' brand in newspapers, television, or elsewhere.

15.7 It is further argued that Defendant was aware that the trademark application filed by him for the mark JAYSURYA' was opposed by the Plaintiff Surya Roshni Limited in the year 2020, however, during the second visit of Local Commissioner conducted on 15.10.2025, the Ld. Local Commissioner found original products of the Plaintiff bearing the mark "SURYA" at the Defendant's premises. This clearly establishes that the Defendant was fully aware of the Plaintiff's goodwill, reputation. and the quality associated with the mark "SURYA", and despite such knowledge, deliberately stocked and sold the Plaintiff's original products along with infringing products bearing the impugned mark "JAYSURYA" from the same sales counter. Such conduct is inherently deceptive and is bound to cause confusion in the minds of consumers of average intelligence and imperfect recollection, who are likely to believe that the infringing goods bearing the mark "JAYSURYA" originate from, are associated with, or are connected to the Plaintiff.

15.8 It is further argued that a side-by-side comparison of the Plaintiff's and the Defendant's products from the perspective of an average consumer of imperfect recollection clearly demonstrates that the Defendant has adopted a deceptively similar trade dress, colour combination, and overall get-up of the Plaintiff. The Defendant's adoption of the identical white and fluorescent orange colour scheme, coupled with the prominent use of a red logo in relation to identical electrical products, is calculated to create an association with the Plaintiff's well-known products and is likely to deceive and confuse consumers into believing that the Defendant's goods originate from, ar associated with, or are endorsed by the Plaintiff. The mere addition of the prefix "JAY" or the inclusion of a 'Bel Patra' device is insufficient to distinguish the Defendant's

products from those of the Plaintiff, as the overall visual impression and commercial identity of the compet products remain deceptively similar.

15.9 It is further argued that defendant himself is the dealer and engaged in the multiple goods of different brands and products from the same counter and SURYA original products were also found during the visit by Local Commissioner.

15.10 It is further argued that defendant has no goodwill or market demand fo the mark JAYSURYA. During the cross-examination of the Defendant sole witness, Mr. Sanjay Kumar Tiwari, on date 04.10.2025, it is admitted by Defendant that he did not remember the turnover/sales of their firm M/s. Jay Vijay Traders in FY2024-25 as well as at the time of establishment in year 2007-08. Defendant has not filed any advertisement or promotional material for Jaysurya' dated between 2009 to 2025 with their WS. Defendant never appointed any celebrities or famous personality or brand ambassador for the brand "Jaysurya' except his son's photo Jay'. Defendant never done any promotional expenses since 2009 to till date. In view of the aforesaid admissions made by the defendant during his cross examination, it is clear that Defendant has failed to establish any goodwill, reputation, or market demand in respect of the impugned mark "JAYSURYA". Consequently, no irreparable loss or prejudice would be caused to the Defendant if a permanent injunction is granted restraining the use of the impugned mark "JAYSURYA". On the contrary, the grant of a permanent injunction would merely prevent the Defendant from continuing its infringing activities and would not adversely affect any legitimate proprietary rights of the Defendant.

15.11 It is further argued that Defendant during his cross-examination admitted that defendant does not have any GST registration for his Delhi shop address from where Defendant regularly does business and also huge quantity of impugned products got discovered and seized during visits by Ld. Local

Commissioner. It is further admitted by the Defendant that Defendant is running the business in Chandani Chowk Delhi since 2023 without obtaining GST registration for that address. Therefore, it is clear that all the sales done by the defendant in Delhi is the clandestine sale. It is not only cheating with the customers who already paying taxes while purchasing defendant product on MRP but is also the tax evasion/theft of the Government of Delhi and Government of India.

15.12 It is further argued that it is an admitted position that the Defendant does not possess any GST registration for the Delhi premises from where infringing goods were found and sold. The Defendant has sought to rely upon GST registration pertaining to Varanasi, Uttar Pradesh, which is wholly inapplicable to the business activities carried out in Delhi. Accordingly, the Defendant's reliance on a GST registration of another State does not legitimise or regularise the sales effected from the Delhi premises, and such sales are clearly unauthorised and clandestine.

Defendant's arguments:

15.13 It is argued that Defendant, Sanjay Kumar Tiwari, trading as M/s. Jay Vijay Traders, has been honestly and continuously carrying on business in electrical appliances since 2008-2009 from Varanasi and since 2023 from Chandni Chowk, Delhi. In 2008-2009, the Defendant coined and adopted the JAYSURYA composite trademark 'JAYSURYA' by combining his son's name 'JAY' with the word 'SURYA' (a common Hindi dictionary word meaning 'Sun' and suggestive of light/electrical goods).

15.14 It is further argued that the composite label trademark is used along with the mark "OVERDRIVE/representing the Defendant's long-term collaboration with one of his manufacturers, the device of three leaves bel patra symbol symbolising Lord Shiva and the Defendant's roots in Varanasi where the Defendant belongs, and prominently features the photograph of the Defendant's

son 'Jay' on packaging and products. The Defendant's full trade Overdrive dress and branding is depicted as 'OVERDRIVE JAYSURYA & JAYSURYA with the house device 'JAY VIJAY TRADERS'/ forming the composite trade dress JAYSURYA.

15.15 Importantly, the Defendant has been using 'JAYSURYA' for fans and electrical goods since 2009, prior to the Plaintiff's entry into the fans business in 2014. The adoption was bona fide, arbitrary and without any intent to deceive. The Plaintiff itself opposed the Defendant's Trade Mark Application No. 3661208 dated 23.10.2017 for the mark 'JAYSURYA' on 29.07.2020 and opposition has been filed against the same by the Plaintiff which has been exhibited as PW-1/24 and subsequently initiated no action against the defendant for 05 years despite active knowledge but deliberately suppressed this fact in the plaint, claiming first knowledge of Defendant's use only from May 2025. This concealment and delay of 5 years disentitles the Plaintiff from any equitable relief and a renders the suit non-maintainable for non-compliance with mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

15.16 It is further argued that Plaintiff has failed to prove that 'SURYA' is a well-known mark under Section 11(6) of the Trade Marks Act, 1999 as it is not in the list of well-known trademarks maintained by the Trade Marks Registry and therefore the Plaintiff cannot claim monopoly over a common dictionary word which denotes Hindu sun deity 'SURYA' or generic colour schemes of orange which denotes light and energy. The Defendant's business is legitimate, GST-compliant and enjoys independent goodwill. Balance of convenience and irreparable injury clearly lie in favour of the Defendant.

15.17 It is further argued that vide order dated 06.06.2025 this Hon'ble Court passed an ad-interim ex-parte injunction against the Defendant's use of trademark 'JAYSURYA' without according the Defendant the opportunity to put

forward its case against an ad-interim injunction and also appointed a local commissioner to visit the Defendant's premises for the purpose of search and seizure which was carried out on 18.06.2025.

15.18 It is further argued that the plaintiff's witness by its own admission during his cross examination has stated that the plaintiff only entered in the business of fans and LED light bulbs in the year 2014 and in the business of home appliances in the year 2015, while it is not at all in the business of electrical switches. It is the settled position of law as laid down as held in ***Mittal Electronics v. Sujata Home Appliances (P) Ltd., 2020 SCC Online Del 2658*** that in cases of trademark infringement and passing off, the real question is the likelihood of confusion to the public. In the said case, the Hon'ble High Court of Delhi observed that even in the same class the only commonality in the nature of goods between Plaintiff and Defendant was geysers and accordingly modified the injunction order persisting against the Defendant. The Hon'ble Court also observed the underhanded tactics adopted by the Plaintiff who concealed a material fact and observed that a party that does not approach the Court with clean hands is not entitled to the relief of injunction. The Plaintiff in the present case has not only suppressed knowledge of Defendant's activities since the year 2020 when it filed oppositions against its TMA No.3661208 but PW-1 in his cross examination also admitted that the Plaintiff deliberately waited for more than 05 years for the goods to be available in market and therefore, indirectly created the cause of action.

15.19 It is argued that the deliberate concealment of the 2020 opposition and the inordinate delay establish that no genuine urgency existed. The suit was filed bypassing the statutory requirement on the basis of a false narrative of recent discovery. The Plaintiff being the subsequent user for the goods such as fans and non-user of the goods such as electrical switches cannot restrain the Defendant who is a user since 2009.

15.20 It is the settled position of law that words that belong inherently to the public domain cannot be monopolised by a single party as categorically held by Hon'ble Bombay High Court in Freudenberg Gala Household Products Private Limited vs. Gebi Products Suit No.758/2015 and confirmed in Freudenberg Gala Household Products Private Limited vs. Gebi Products Commercial Appeal 72/2017 wherein the Hon'ble Courts held that the competing mark of Defendant MAHALAXMI against Plaintiff's LAXMI can continue to operate as LAXMI is the name of a Hindu deity and is, therefore, a common word of Hindi dictionary. The Delhi High Court has also taken consistent view on this legal aspect in Mayank Jain, proprietor of Mahaveer Udyog v. M/s Atulya Discs Pvt Ltd & Ors. CS(COMM) 412/20258. The Hon'ble Court went on to hold that if a Plaintiff chooses a common word belonging to religious pantheon as its trademark then its knowingly runs the risk of other parties being able to use it too.

15.21 It is argued that 'SURYA' is a publici juris word that means Sun/Sun god and is descriptive of light. The Plaintiff cannot claim exclusivity or monopoly over it and the present case falls squarely under the purview of above judgment. The word 'SURYA' is not inherently distinctive and falls within the category of words that are publici juris.

15.22 It is further argued that several third parties have validly registered and are using marks incorporating 'SURYA' or its formatives in Classes 9, 11, and 35. The Defendant has produced a comprehensive table detailing several such co-existing many of which pre-date the Plaintiff's use in lighting/fans. Under Section 9 of the Trade Marks Act, 1999, marks that are descriptive or common to trade are not registrable unless they have acquired distinctiveness exclusively referable to the Plaintiff. In his own cross examination, PW-1 has admitted that the word 'SURYA' is a common word.

15.23 I have considered rival submissions on this issue and have perused the judgments relied by both the sides.

15.24 For the purpose of deciding this issue, it is imperative for this Court to see the statutory requirements which deal with the infringement of trademarks.

> ***29.Infringement of registered trade marks****.—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*
>
> *(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—*
>
> *(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or*
>
> *(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or*
>
> *(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.*
>
> *(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.*
>
> *(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—*
>
> *(a) is identical with or similar to the registered trade mark; and*
>
> *(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and*
>
> *(c) the registered trade mark has 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.*
>
> *(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.*
>
> *(6) For the purposes of this section, a person uses a registered mark, if, in particular, he*

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.....

(9) 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 and reference in this section to the use of a mark shall be construed accordingly."

15.25 Section 9(1) bars registration of trademarks that are deceptive, non-distinctive, or commonly used in trade. However, the proviso carves out an exception where such marks have acquired distinctiveness through prolonged and exclusive use – commonly referred to as having acquired a "secondary meaning".

15.26 Section 11 prohibits registration of marks identical or similar to earlier marks for identical or similar goods or services, where a likelihood of confusion exists. It further extends protection to well-known trademarks, even across dissimilar goods or services, thereby recognizing the doctrine of dilution.

15.27 Section 28 confers on the registered proprietor exclusive rights to use the trademark and to obtain relief in case of infringement.

15.28 Section 29 outlines specific instances of infringement: Sub-section (1) covers identical or deceptively similar marks used for identical goods or services, Sub-section (2) expands the scope to include similar goods / services likely to cause confusion, Sub-section (4) protects well-known marks even in cases of dissimilar goods / services provided there is unfair advantage or damage to the mark's reputation, Significantly, Section 29(3) raises a presumption of confusion when identical marks are used for identical goods/ services, easing the evidentiary burden on the plaintiff.

15.29 **Section 135** empowers courts to grant relief in suits for infringement or passing off. This includes temporary or permanent injunctions, damages, account of profits, and orders for seizure of infringing goods.

15.30 A plain reading of the above provisions indicates that Section 2(h) defines "deceptively similar" as a mark that so nearly resembles another mark as to be likely to cause confusion or deception. This definition forms the cornerstone of the test applied in registration refusals and infringement disputes. Section 2(m), (q), (v), (w), (zb) respectively define mark, package, registered proprietor, registered trademark, and trademark, laying the foundational terms used throughout the Act.

15.31 Now, coming to the present dispute.

15.32 So far as the submissions advanced by the Defendant are concerned, in my considered opinion, same are misconceived insofar as they seek to defeat the Plaintiff's statutory rights merely on the basis of the Defendant's alleged bona fide adoption of the mark "JAYSURYA", its asserted prior use, and the addition of other words and devices to its packaging. The question for determination under Section 29 of the Trade Marks Act, 1999 is whether the Defendant, without being the registered proprietor or a permitted user, has used a mark identical with or deceptively similar to the Plaintiff's registered trade mark in

the course of trade, in relation to goods covered by the registration, in a manner likely to cause confusion or association.

15.33 The Defendant's explanation that "JAYSURYA" was coined by combining the name of his son with the word "SURYA" does not, by itself, negate infringement. Similarly, the use of additional expressions such as "OVERDRIVE" and "JAY VIJAY TRADERS", a *bel patra* device, or the photograph of the Defendant's son cannot automatically dispel the likelihood of confusion if the impugned mark reproduces the distinctive or essential feature of the Plaintiff's registered trade mark. The competing marks must be assessed in their entirety, having regard to their visual, phonetic and structural similarities and the circumstances in which the goods are offered for sale. In the instant case, the plaintiff's mark SURYA

15.34 Further, the Defendant's contention that "SURYA" is a common dictionary word, or that the Plaintiff's mark has not been formally declared well known, is equally insufficient to defeat a claim under Section 29(1) or Section 29(2). Such a declaration is not a prerequisite to enforcement of a valid registration in respect of the goods covered thereby. The Plaintiff's claim must, however, remain within the scope of its registrations, and the extent of protection available for any common or non-distinctive element must be assessed in the context of the registered mark as a whole.

15.35 Merely the Defendant's assertion of use of his adopted mark JAYSURYA against the Plaintiff's registration particulars since 2009 does not give him protection unless the defendant is able to establish its bonafide use and adoption, however, the defendant has failed to establish his bonafide use.

15.36 Furthermore, the allegation that the Plaintiff did not manufacture electrical switches, or entered certain product segments only in 2014 or 2015, does not by itself determine the issue of infringement. The relevant inquiry is whether the goods in question are covered by the Plaintiff's registrations and whether the competing marks, when used in relation to those goods, are likely to cause confusion or association within the meaning of Section 29. The Plaintiff has been able to prove on record registrations of its trademark SURYA, the evidence of commercial use, reputation and market circumstances, to the extent established on record whereas defendant has failed to prove anything on record in respect of its mark's reputation, goodwill or expenditure in its commercial use which further establishes the fact that defendant was merely enjoying the reputation and goodwill of the plaintiff's mark SURYA and hence, the adoption of mark JAYSURYA by the defendant is not bonafide.

15.37 So far as the decision in *Mittal Electronics v. Sujata Home Appliances (P) Ltd.*, 2020 SCC OnLine Del 2658 is concerned, it must be applied with due regard to its facts, including the particular goods involved and the suppression of material information considered by the Court. It does not dispense with the statutory inquiry required under Section 29 in the present case. The Plaintiff submits that the competing registrations, goods, marks and evidence of confusion or commercial association must be examined on their own merits.

15.38 The Plaintiff has relied upon Surya Roshni Ltd. v. Electronic Sound Components Co., 1994 PTC 200 (Del), in support of its contention that "SURYA" is distinctive in relation to electrical goods. It has further relied upon Automatic Electric Ltd. v. R.K. Dhawan & Anr., 1999 PTC (19) 81 (Del), and Corn Products Refining Co. v. Shangrila Food Products Ltd., AIR 1960 SC 142,

to contend that third-party registrations or use do not, by themselves, defeat its rights.

15.39 Accordingly, the Defendant's objections cannot be accepted merely on the basis of the asserted origin of the mark, the addition of other branding elements, the absence of a well-known trade mark declaration, or the alleged passage of time. The decisive question remains whether the Defendant's impugned use falls within Section 29 of the Trade Marks Act, 1999, as established by the Plaintiff's registrations and the evidence on record.

15.40 The fact that products bearing the Plaintiff's mark "SURYA" were found at the Defendant's premises during the Local Commissioner's visit is also a relevant circumstance while examining the Defendant's plea of independent adoption. Although such presence is not conclusive by itself, it may support the Plaintiff's contention that the Defendant was familiar with its products and their commercial presentation.

15.41 Further, the Defendant's assertion of longstanding use and independent goodwill in the mark "JAYSURYA" has to be assessed in the light of the evidence produced. The inability of the Defendant's witness to recall the firm's turnover, coupled with the absence of contemporaneous advertising or promotional material and other documentary evidence demonstrating the extent and continuity of use, weakens the evidentiary basis of the Defendant's claim of substantial independent market recognition. While the absence of promotional expenditure does not, by itself, negate goodwill, the Defendant's plea must be supported by credible evidence commensurate with the longstanding use asserted which is missing as the defendant during his cross examination failed to disclose the amount spent in advertising or promoting its products. On the other hand, the plaintiff has proved on record that it spend around Rs. 16 crores

in promotional advertisement of its products containing the mark "SURYA" and engaging many Bollywood stars.

15.42 The Defendant's assertion that "SURYA" is common or generic ought to be considered in the light of the Plaintiff's subsisting registrations and the evidence concerning the mark's distinctiveness in relation to the relevant goods. The mere existence of other marks on the Register would not establish that the Plaintiff's mark has lost its distinctive character in the relevant market and the Plaintiff's registered rights cannot be disregarded merely because other traders may use similar expressions. The Defendant was under obligation to bring the evidence negating the contentions of plaintiff, however, the defendant has failed to produce any evidence showing its mark's distinctiveness and its market share and recognition.

Findings:

15.43 Upon consideration of the rival submissions and the evidence on record, the Plaintiff's contention regarding the deceptive similarity of the competing products merits consideration. The similarity in the colour combination, trade dress and overall get-up, when viewed from the perspective of an average consumer possessing an imperfect recollection, may give rise to a likelihood of confusion or association. The addition of the prefix "JAY" or the bel patra device does not, by itself, eliminate such likelihood if the overall commercial impression remains deceptively similar to that of the Plaintiff's products.

15.44 In view of the foregoing reasons, the Defendant's reliance upon the prefix "JAY", the bel patra device and the alleged independent origin of the mark does not, by itself, satisfactorily answer the Plaintiff's allegations. If the comparison of the competing marks and products establishes the requisite likelihood of confusion or association in relation to the goods covered by the

Plaintiff's registration, the Defendant's use would attract the applicable provisions of Section 29 of the Trade Marks Act, 1999 and as such, I have no hestitation to hold that defendant has failed to show any bonafide use of the trademark JAYSURYA. Therefore, it is clear that defendant has infringed the trademark of plaintiff SURYA in its products and as such, plaintiff is entitled to relief under section 135 of the Trademarks Act, 1999.

15.45 Therefore, issue no.1 is decided in faovur of the plaintiff and against the defendant. Resultantly, the plaintiff is entitled to decree of permanent injunction restraining the defendant or any of their subjects acting through them from manufacturing, trading, selling (online and offline), marketing, printing, offering for sale the electrical and allied goods i.e. Lights, LED, spot lights, panel lights, fancy lights, flood lights, street lights, electrical switches, PVC electrical panels, wires and cables, cooling and heating appliances, ceiling fans, exhaust fans, fan heaters, halogen heaters, air cooler pumps and other goods under the mark 'JAYSURYA' and JAYSURYA, and any other mark/device/logo/domain name or trade name which is identical or deceptively similar to plaintiff's registered mark 'SURYA'.

16. Issue No.2

Whether Plaintiff is entitled to permanent injunction against defendant and his subjects to injunct them from using the copyright vested in device/logo of 'SURYA' and any other registered 'SURYA' marks in violation of plaintiff's copyright as prayed? (OPP)

Plaintiff's arguments:

16.1 It is aruged that plaintiff company also holds copyright registrations SURYA for the mark EVERY CITY EVERY HOME and when the sun sets Surya rises.etc. which was specifically designed and the said artistic lettering style being a unique design stands registered with the Plaintiff company under

the Copyright Act, 1957 connotes and denotes the source and origin as well as high quality of products manufactured and sold by the Plaintiff.

16.2 It is also argued that due to the success of plaintiff's products, they are widely recognized all over the India and abroad. Further, due to the maintenance of exacting and constant high standards of quality and effectiveness, Plaintiff goods have the distinction of being one of the Plaintiff best known and popular products. Moreover, 'SURYA', being the umbrella brand of the Plaintiff, it has become a source identifier for the Plaintiff and its group of companies. The Plaintiff has created a pan- India presence with over 3,00,000 retail outlets, 300+ RTF and 2,500+ DSPs. Needless to say, 'SURYA' mark is a valuable asset to the Plaintiff business given the immeasurable reputation and goodwill amongst the purchasing public.

16.3 It is further argued that Plaintiff company's revenue figures and Advertisement & Promotional Expenses are an indicator of substantial goodwill and reputation earned by the Plaintiff.

16.4 It is further argued that Defendants' use of deceptively similar trademarks, trade dress, trade name, domain and copyrighted work associated with "SURYA" for identical products and services is a mala fide attempt to misrepresent their goods as those of the Plaintiff, thereby infringing the Plaintiff's intellectual property rights and harming its goodwill.

Defendant's arguments:

16.5 It is argued that the Plaintiff's claim of copyright infringement is wholly misconceived and without any basis. The Plaintiff has alleged infringement of its copyrighted artistic work in the SURYA logo/label, however, a bare comparison of the two works clearly demonstrates that there is no reproduction or substantial copying of the Plaintiff's artistic work.

16.6 The Plaintiff's registered artistic work consists of the word 'SURYA' written in a specific stylized red font with a particular get-up. In contrast, the

Defendant's mark JAYSURYA' is a JAYSURYA composite device mark featuring the word 'JAYSURYA' in a completely different font and style, prominently accompanied by a distinct three-leaf device symbolizing Bel leaves associated with Lord Shiva and Varanasi, the photograph of the Defendant's son "Jay", and the additional house mark 'OVERDRIVE'.

16.7 These elements are entirely original to the Defendant and create a wholly different visual impression. There is no copying of the artistic features, layout, colour scheme, or get-up of the Plaintiff's work. Mere use of the word "SURYA" as part of a larger composite mark does not amount to infringement of copyright, as copyright does not protect words, ideas, or common terms but only the specific artistic expression.

16.8 The Defendant's use falls squarely within the criteria of Section 12 and is honest and concurrent which is evident from the fact that the Defendant has undertaken his best of efforts to make his trademark distinctive by adding composite elements that make its trademark distinctive and unique. It is a settled proposition of law that the rule of honest and concurrent use is an exception to the rigours of trademark infringement.

16.9 I have considered rival submissions on this issue.

Reasons and Findings on Copyright Infringement

16.10 For the purpose of deciding this issue, it is imperative for this Court to see the statutory requirements which deal with the infringement of copyright.

> ***Section 2(c) — Definition of "artistic work"***
>
> *"artistic work" means,—*
>
> *(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 work of architecture; and*
>
> *(iii) any other work of artistic craftsmanship.*

*Sec.14. **Meaning of copyright**.— For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—*

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to adaptation of the work any of the acts specified in sub-clauses (i) to (iv)."

***51. When copyright infringed.**— Copyright in a work shall be deemed to be infringed—*

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
(iii) by way of trade exhibits in public, or
(iv) imports into India any infringing copies of the work.

***55. Civil remedies for infringement of copyright**.—*
(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:
Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

16.11 Upon consideration of the rival submissions and the material placed on record, this Court finds that the Plaintiff's claim of copyright infringement merits consideration on the basis of the originality of its artistic work, its subsisting copyright therein, and the extent to which the Defendant's impugned artistic work reproduces the protectable elements of the Plaintiff's work.

16.12 The Plaintiff has asserted that it is the proprietor of copyright registrations in respect of its artistic works, including the "SURYA" logo/label and the artistic expressions associated with the slogans "EVERY CITY EVERY HOME" and "When the Sun Sets, Surya Rises" which have been proved as Ex.PW1/12 (colly). The Plaintiff's case is that the said artistic works were specifically designed and have acquired a distinctive identity through extensive commercial use. The existence of copyright in the relevant artistic work, however, is to be assessed with reference to the registration certificates, the works deposited thereunder, and the evidence establishing the Plaintiff's ownership and

subsistence of copyright. Upon verification of the relevant registrations and the original artistic works, the Court must determine whether the Plaintiff has established its entitlement to protection under the Copyright Act, 1957.

16.13 The Defendant has contended that its mark "JAYSURYA" is a composite device mark comprising the word "JAYSURYA", a three-leaf device associated with *Bel* leaves and Lord Shiva, a photograph of the Defendant's son, and the house mark "OVERDRIVE". According to the Defendant, these additional elements, together with the different font, style and get-up, distinguish its artistic work from that of the Plaintiff and negate any possibility of copyright infringement.

16.14 The aforesaid contention, however, cannot be accepted merely on the basis that the rival artistic works are not identical in their entirety. The test for copyright infringement is not confined to a comparison of the works as a whole to ascertain whether they appear identical. The Court must examine whether the Defendant has copied the whole or a substantial part of the original artistic expression embodied in the Plaintiff's work. In undertaking this exercise, the Court must distinguish between unprotectable elements, such as a word or an idea in isolation, and the original artistic features in which copyright protection subsists.

16.15 In the present case, the Plaintiff's claim is not required to be determined solely on the basis of its right over the word "SURYA" considered in isolation. Rather, the relevant inquiry is whether the artistic representation of the word, including its distinctive lettering, arrangement, stylisation and other original visual features, has been reproduced in the Defendant's impugned label to a substantial extent. The fact that the Defendant has incorporated additional elements in its label would not, by itself, absolve it of liability if the essential and substantial features of the Plaintiff's original artistic work have been copied.

The Defendant's reliance upon the three-leaf device, the photograph of the Defendant's son and the house mark "OVERDRIVE" must, therefore, be examined in the context of the protectable elements allegedly appropriated from the Plaintiff's work. If the comparison of the registered artistic work with the impugned label demonstrates that the Defendant has adopted the Plaintiff's distinctive artistic lettering or other original visual features, and that such appropriation constitutes a substantial reproduction of the Plaintiff's work, the addition of independent device elements would not defeat the claim of infringement. Conversely, mere use of the common word "SURYA", without copying any substantial part of the Plaintiff's original artistic expression, would not be sufficient to establish copyright infringement.

16.16 The Plaintiff has further relied upon its extensive commercial presence, sales turnover, advertisement and promotional expenditure, and the widespread recognition of the "SURYA" brand. These circumstances, insofar as established by documentary evidence, lend support to the Plaintiff's assertion that the artistic work has been commercially exploited and is associated with its business. Nevertheless, commercial reputation and goodwill, though relevant to the overall dispute, cannot substitute for proof of copyright ownership and copying of a substantial part of the protected artistic work. The Plaintiff must establish its claim on the basis of the rights conferred by the Copyright Act, 1957.

16.17 The Defendant's plea of honest concurrent use under Section 12 of the Trade Marks Act, 1999, does not constitute a defence to a properly established claim of copyright infringement. The said provision concerns the registration of trade marks in cases of honest concurrent use or other special circumstances and does not, by itself, authorise the reproduction of another person's copyrighted artistic work. Consequently, even if the Defendant establishes that its composite mark possesses additional distinguishing features or that its adoption was

honest, such circumstances would not extinguish the Plaintiff's copyright if unauthorised reproduction of a substantial part of the protected artistic work is proved.

16.18 Finding:

In view of the foregoing reasons, this Court is of the considered opinion that the Defendant has infringed the Plaintiff's copyright and that the Plaintiff is entitled to a permanent injunction restraining further unauthorised reproduction or use of the infringing artistic work in device/logo of 'SURYA' and any other registered 'SURYA' marks in violation of plaintiff's copyright.

16.19 Therefore, issue no.2 is decided in faovur of the plaintiff and against the defendant. Resultantly, the plaintiff is entitled to decree of permanent injunction restraining the defendant or any of its subjects from using the plaintiff's device/logo SURYA and any other registered 'SURYA' marks in violation of plaintiff's copyright.

17. Issue No.3

Whether plaintiff is entitled to decree of permanent injunction against defendant and his subjects restraining them from passing off the goods of plaintiff's registered trademark 'SURYA' as prayed? (OPP)

Plaintiff's arguments:

17.1 It is argued that Plaintiff is the registered proprietor of the trade mark "SURYA" in multiple classes, including Classes 9, 11 and 35, with registrations dating back several decades. The validity of these registrations has never been challenged by the Defendant by way of rectification or cancellation proceedings. Consequently, the registrations remain valid and constitute conclusive evidence of the Plaintiff's exclusive statutory rights under the Trade Marks Act, 1999 and same have been proved as Ex.PW1/10 to Ex.PW1/11.

17.2 It is further argued that Defendant himself applied for registration of the mark "JAYSURYA" (device) under Application No. 3661208 thereby acknowledging that the essential and dominant feature ‘SURYA’ is capable of distinguishing goods and is entitled to statutory protection. A party who seeks exclusive registration of a mark incorporating "SURYA" cannot simultaneously contend that the very same mark is generic or incapable of protection. Furthermore, the Defendant was fully aware of the Plaintiff's statutory rights, as the Plaintiff filed a Notice of Opposition against the Defendant's trademark application on 29.07.2020, yet the Defendant knowingly continued using the impugned mark at his own peril.

17.3 It is further argued that the distinctiveness and reputation of the mark "SURYA" has also received judicial recognition. The Hon'ble High Court of Delhi, in Surya Roshni Ltd. v. Electronic Sound Components Co., 1994 PTC 200 (Del), recognised "SURYA" as a distinctive mark exclusively associated with the Plaintiff in relation to electrical goods and restrained the use of a deceptively similar mark.

17.4 It is also argued that the mark "SURYA" was judicially recognized as a distinctive and well-known trademark as early as 1994 by the Hon'ble High Court of Delhi in Surya Roshni Ltd. v. Electronic Sound Components Co., 1994 PTC 200 (Del), wherein the Court held that the mark "SURYA" is exclusively associated with the Plaintiff in relation to electrical goods and that even the use of synonymous expressions such as "BHASKAR" (also meaning Sun) amounts to deceptive similarity and infringement. Accordingly, the Defendant's plea that "SURYA" is common or generic, stands squarely rejected in view of the aforesaid binding judicial determination.

17.5 It is further argued that the contention raised by the Defendant in para 10 of the Written Statement that the addition of a prefix or suffix is sufficient to avoid infringement is contrary to settled law. The Hon'ble Supreme Court in

Amritdhara Pharmacy v. Satya Deo Gupta, AIR 1963 SC 449 held that marks must be compared as a whole and that phonetic similarity and overall impression are decisive. Similarly, in Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980, the Supreme Court held that where the essential feature of a registered mark is adopted, the addition of other matter is immaterial. The Hon'ble Supreme Court in Corn Products Refining Co. v. Shangrila Food Products Ltd., AIR 1960 SC 142 further held that mere addition of words or prefixes does not avoid deception when the dominant part of the mark is copied. Further, the Hon'ble Delhi High Court in Laxmikant V. Patel v. Chetanbhat Shah, (2002) 3 SCC 65, reiterated that likelihood of confusion is sufficient and dishonest adoption defeats such defences.

17.6 In view of the aforesaid settled principles, the Defendant's adoption of the Plaintiff's regist mark "SURYA" in its entirety by merely adding the prefix "JAY" to form "JAYSURYA while dealing in identical goods, squarely attracts infringement and passing off. The defence taken by the defendant is, therefore, liable to be rejected.

17.7 It is submitted that once the Registrar of Trade Marks has granted registration for the word mark "SURYA", the Plaintiff is entitled to seek alternative statutory reliefs available under the Trade Marks Act, 1999. The Defendant has never challenged the validity of any of the Plaintiff's trademark registrations by way of rectification or cancellation proceedings. It is settled law that a duly registered and subsisting trademark cannot be characterized as "publici juris" in an infringement action, unless its registration is set aside in accordance with law.

17.8 It is settled law that a defendant cannot claim any benefit from third-party trademark registrations to defeat the statutory rights of a registered proprietor. Mere existence of third- party marks on the Register does not dilute or weaken the exclusivity of the Plaintiff's registered trademark unless the registration itself

is challenged by way of rectification. The Hon'ble Delhi High Court in Automatic Electric Ltd. v. R.K. Dhawan & Anr., 1999 PTC (19) 81 (Del) held that third-party registrations or use cannot be relied upon by an infringer to justify infringement (Para 6). The Hon'ble Supreme Court in Corn Products Refining Co. v. Shangrila Food Products Ltd., AIR 1960 SC 142 further held that the mere presence of other marks on the Register does not affect the distinctiveness of the Plaintiff's mark (Paras 14-16). The Hon'ble Bombay High Court in Ultra Tech Cement Ltd. v. Alaknanda Cement Pvt. Ltd., 2011 (48) PTC 1 (Bom) has also rejected reliance on third-party registrations in the absence of rectification.

Defendant's arguments:

17.9 Section 17 mandates that a composite mark confers rights in the mark taken as a whole. The anti-dissection rule prohibits isolating parts of a mark for comparison. The Defendant's mark 'JAYSURYA' and its added matters such as device of three leaves, trade dress containing his son's photograph, house mark 'JAY VIJAY TRADERS', and 'OVERDRIVE' must be viewed in entirety. The overall impression on a consumer of average intelligence and imperfect recollection is entirely different.

17.10 The Defendant's bona fide adoption of 'JAYSURYA' with added matter, honest concurrent use under Section 12, and distinct trade dress negate any likelihood of confusion or passing off. It is a settled law that in Apex Court's **Kaviraj Pandit Durga Dutt Sharma vs Navaratna Pharmaceutical Laboratories 1964 SCC Online SC 14**" that sufficient added matter in the Defendant's mark can qualify it to pass the triple test of passing off. Similar view was adopted in **M/s Gufic Ltd. & Anr. vs. Clinique Laboratories LLC & Anr. FAO 222/200913 and Pernod Ricard India Pvt Ltd vs Karanveer Singh Chabra 2025 SCC OnLine SC 170114**.

17.11 Additionally, the Plaintiff has failed to establish an impregnable goodwill which can accord it the right to restrain the use of a common publici juris word such as 'SURYA'. Therefore, the Plaintiff fails the triple test of passing off.

17.12 In the present matter, the plaintiff relies upon its longstanding trademark registrations and the judicial recognition of the mark ‘SURYA’ in relation to electrical goods. These circumstances support the plaintiff’s assertion that the mark has a protectable commercial identity. If, as alleged, the defendant is using the mark ‘JAYSURYA’ in relation to identical or allied goods, the adoption of the plaintiff’s mark as an integral part of the defendant’s mark is capable of diverting trade, creating an erroneous impression of commercial association and impairing the distinctiveness and reputation associated with the plaintiff’s mark. Such consequences constitute a legitimate basis for preventive relief where the requisite facts are established.

17.13 So far as the defendant’s contention that the plaintiff must establish an impregnable or absolute monopoly over the word ‘SURYA’ is concerned, same is highly misconceived. The plaintiff is not required to establish that no other person can ever use the expression in any context. The question is whether the defendant is entitled to use the impugned mark in the particular commercial circumstances of the present case. The protection sought by the plaintiff must be assessed in relation to its established rights, the nature of the goods and the likelihood of confusion arising from the defendant’s use.

17.14 Likewise, the defendant cannot defeat the plaintiff’s claim merely by referring to the existence of other marks on the Register. The existence of third-party registrations, without evidence sufficient to establish their relevance to the market and the particular goods in question, does not by itself extinguish the plaintiff’s statutory rights or establish that the defendant is entitled to adopt the impugned mark. The rights of the parties must be determined on the basis of

their respective registrations, the applicable statutory provisions and the evidence relevant to the use in dispute.

17.15 Furthermore, the plaintiff has proved on record that it has spent crores of rupees in advertising and has engaged celebrities in promoting its goodwill and products.

Findings:

17.16 Upon an overall consideration of the rival contentions, the material relied upon by the plaintiff and the applicable legal principles, I am of the considered opinion that the defendant's principal defences do not, by themselves, furnish sufficient justification for the use of 'JAYSURYA' in circumstances where the plaintiff has established prior and subsisting rights in 'SURYA' in relation to the relevant goods. The defendant has incorporated the plaintiff's mark in its entirety, and the addition of the prefix 'JAY' and other device or trade-dress elements cannot automatically be regarded as sufficient to dispel the likelihood of confusion. The plaintiff's registrations, the judicial recognition relied upon by it and the circumstances surrounding the defendant's adoption collectively support the plaintiff's claim to protection against the impugned use.

17.17 Further, the balance of convenience also favours protection of established trademark rights where continued use of a deceptively similar mark is likely to cause confusion in the market and impair the goodwill associated with the plaintiff's mark. An injunction in such circumstances serves the dual purpose of protecting the plaintiff's legitimate commercial interests and preventing consumers from being misled regarding the origin or commercial connection of the goods.

17.18 Accordingly, this issue stands decided in favour of the plaintiff and against the defendant. The plaintiff is held entitled to a decree of permanent injunction restraining the defendant, his agents, representatives, dealers and all persons acting on his behalf from using the mark 'JAYSURYA', or any other

mark deceptively similar to the plaintiff's registered trademark 'SURYA', in relation to the goods for which the plaintiff has established enforceable rights, in a manner amounting to infringement or passing off, as prayed for.

18. Now, I shall proceed to decide issues no. (iv), (v) and (vi).

(iv) Whether plaintiff is entitled to decree of delivery up of finished and unfinished goods in violation of the above trademark? (OPP)

(v) Whether plaintiff is entitled to damages? (OPP)

(vi) Whether plaintiff is entitled to decree of rendition of accounts of profits earned by defendant in violation of plaintiff's above trademark? (OPP)

Plaintiff's Arguments:

18.1 It is argued on behalf of plaintiff that plaintiff is entitled to damages as well as rendition of accounts in view of the Defendant's dishonest, deliberate, and continued acts of trademark infringement, passing off, and copyright infringement. The evidence on record establishes that the Defendant continued to manufacture, stock, advertise, and sell the infringing products even after the ex parte ad interim injunction dated 06.06.2025, as products manufactured between July 2025 and October 2025 were found during the second Local Commission.

18.2 It is also argued that the Defendant has also failed to produce genuine books of accounts, sales records, turnover details. or reliable invoices in support of his alleged business. On the contrary, the Defendant admitted that no bill books or account books were maintained at the Delhi premises, was operating the Delhi establishment without GST registration, and the invoices relied upon by him suffer from material discrepancies and are apparently false, fabricated, or otherwise unreliable. In such circumstances, an adverse inference is liable to be drawn against the Defendant, and the Plaintiff is entitled to rendition of accounts as well as compensatory and punitive damages to adequately compensate the

Plaintiff for the loss suffered and to deter the Defendant from continuing such dishonest and contemptuous conduct.

Defendant's arguments:

18.3 It is argued that Plaintiff is not entitled to the reliefs of damages, delivery up of finished and unfinished goods, or rendition of accounts. These reliefs are purely discretionery and equitable in nature and can be granted only upon clear proof of actual infringement or passing off coupled with quantifiable loss suffered by the Plaintiff or profits earned by the Defendant directly to the alleged infringement. The allegations of issuing handwritten bills to Plaintiff's investigator are also baseless as the Defendant is in the business of issuing proper invoices in terms of the GST act and only issued a handwritten invoice to Defendant's investigator at his request. It is pertinent to mention that Rule 47 of the CGST Rules, 2017 provides a time limit for issuing tax invoice within the rigours of GST Act, a GST invoice can be issued within 30 days from the transaction. Therefore, the objection regarding the same is without merits and deserves to be rejected.

18.4 In the present case, there is no evidence whatsoever of any actual confusion, deception, dilution, or loss of sales suffered by the Plaintiff on account of the Defendant's use of the mark "JAYSURYA. The Plaintiff's claims in this regard are entirely speculative, assumptive, and unsupported by any material on record. In the absence of any proven infringement or passing off, the foundation for these reliefs does not exist.

18.5 Moreover, in view of the Plaintiff's inordinate delay of five years, acquiescence since at least 2020, and suppression of material facts, it is disentitled in equity from claiming these reliefs. Rendition of accounts would require the Plaintiff to demonstrate that the Defendant has earned profits solely on account of the alleged infringement, which is impossible as the Defendant's

mark is distinct, arbitrary, and possesses its own independent goodwill built over 15 years.

18.6 A decree of delivery up of finished and unfinished goods would cause grave and irreparable harm to the Defendant's business and livelihood without offering any corresponding benefit to the Plaintiff, especially when the goods in question are not infringing and form part of the Defendant's legitimate stock-in-trade. The Plaintiff having approached this Hon'ble Court with unclean hands is barred from seeking any such equitable or monetary reliefs.

Findings and Reasons on Delivery Up, Rendition of Accounts and Damages

19.1 I have considered the rival submissions advanced on behalf of the parties, the evidence led on record, the testimony of the Defendant's sole witness, Mr. Sanjay Kumar Tiwari, and the reports submitted by the learned Local Commissioner. The question that arises for consideration is whether, in view of the findings concerning infringement of the Plaintiff's intellectual property rights, the Plaintiff is entitled to the consequential reliefs of delivery up of infringing goods, rendition of accounts of profits and damages.

19.2 At the outset, it is necessary to distinguish the nature and purpose of these reliefs. Delivery up is intended to remove infringing goods and materials from circulation and prevent their further commercial exploitation. Rendition of accounts enables the ascertainment of profits attributable to the infringing activities. Damages, on the other hand, are intended to compensate for the injury caused by the unlawful conduct and, where justified by the evidence and applicable law, may also serve a deterrent purpose. The grant of these reliefs must, therefore, be considered independently, having regard to the evidence relevant to each.

A. Delivery up of infringing goods:

19.3 The Plaintiff's entitlement to delivery up is supported by the circumstances recorded in the reports of the learned Local Commissioner. Pursuant to the ex parte ad-interim injunction dated 06.06.2025, a commission was executed at the Defendant's premises on 18.06.2025, during which a substantial quantity of the impugned goods was found. The goods were seized and handed over to the Defendant on superdari, as recorded in the report of the learned Local Commissioner. The report further records the existence of a nearby godown used for storing the impugned products and the Defendant's initial reluctance to produce the keys thereof, which were ultimately produced upon the intervention of the landlord.

19.4 Further, the circumstances surrounding the second commission, conducted on 15.10.2025, assume particular significance. The learned Local Commissioner recorded that products bearing the impugned mark "JAYSURYA" had been concealed behind cartons bearing other lighting brands. A bag containing the impugned products, allegedly intended for sale to a customer, was also sought to be concealed, and the Defendant refused to hand it over. The report further records that the Defendant initially denied possessing the keys to the rented premises, but subsequently produced them.

19.5 These circumstances, considered cumulatively, do not support the Defendant's plea that the goods constituted ordinary and legitimate stock-in-trade. Rather, they lend support to the Plaintiff's case that the Defendant was dealing in the impugned products and was attempting to conceal their presence during the commission proceedings. The evidentiary value of these circumstances lies not in any isolated act of reluctance, but in their cumulative effect when considered alongside the actual recovery of the impugned goods. It is further the fact that products bearing the impugned marks, with manufacturing dates ranging from July 2025 to October 2025, were found during the second commission. These dates fall after the injunction dated 06.06.2025. The

presence of such products provides a substantial basis to infer that the Defendant's dealings in the impugned goods continued notwithstanding the subsisting injunction.

19.6 It is further seen that the Defendant cannot successfully resist delivery up merely by asserting that the goods form part of his stock-in-trade. Once the goods have been found to bear the impugned mark and their infringing character has been established, their continued retention would permit the possibility of further commercial exploitation. The appropriate course is, therefore, to direct delivery up of the infringing goods, labels, packaging and other materials bearing the impugned mark, for erasure or destruction in accordance with law.

19.7 The above conclusion is consistent with the approach adopted by the Delhi High Court in intellectual property disputes, where delivery up has been granted to remove infringing materials from circulation and prevent further infringement. In **M/s Ambience Pvt. Ltd. v. M/s Hotel Ambience & Ors., 2018:DHC:6084**, the Court considered reliefs including delivery up alongside injunction and monetary remedies in a trademark infringement action.

Accordingly, the Plaintiff is entitled to a decree for delivery up of the infringing goods and materials, subject to the directions specified in the operative portion of this judgment.

B. **Rendition of accounts of profits**

19.8 The Plaintiff has further sought rendition of accounts on the ground that the Defendant has continued to stock, offer for sale and deal in the impugned products, while failing to produce reliable records from which the extent of such commercial activity and the profits derived therefrom may be ascertained.

The evidence on record reveals that no bill books or books of accounts were found at the Defendant's Delhi premises during the commission

proceedings. The Plaintiff also relies upon the Defendant's admissions concerning the absence of such records and the alleged lack of GST registration for the Delhi establishment, as well as discrepancies in the invoices relied upon by the Defendant. These circumstances must be considered together with the recovery of the impugned goods and the evidence concerning their continued availability after the injunction.

19.9 The Defendant contends that rendition of accounts cannot be ordered in the absence of proof of profits earned specifically through the alleged infringement. This submission overlooks the purpose of the remedy. Rendition of accounts is sought precisely to ascertain the profits attributable to the infringing activity when the relevant particulars are principally within the knowledge and control of the Defendant. To insist that the Plaintiff establish the precise amount of profits before obtaining an order requiring their disclosure would, in appropriate cases, defeat the very object of the remedy.

19.9 Nevertheless, rendition of accounts is not automatic upon a finding of infringement. The Court must be satisfied that the evidence justifies an accounting exercise and that the order is appropriately confined to the infringing transactions. In the present case, the recovery of the impugned goods during two commissions, the presence of products manufactured after the injunction and the absence of reliable contemporaneous business records furnish a sufficient basis for directing disclosure of the Defendant's relevant business accounts.

19.10 The Defendant's contention that his mark is distinct and that his business possesses independent goodwill does not answer the issue of accounting once the use of the impugned mark has been found to constitute infringement. Nor can the Defendant rely upon the absence of reliable accounts to defeat the Plaintiff's claim, where the absence of such records materially impedes the ascertainment of profits from the impugned transactions.

19.11 The Defendant's alleged independent goodwill, if any, does not confer a right to derive profits from infringing activity. At the same time, the accounting exercise must not extend indiscriminately to legitimate transactions unrelated to the impugned goods. The accounts to be rendered must, therefore, be confined to the manufacture, procurement, purchase, stock, distribution, offers for sale and sale of products bearing the impugned mark "JAYSURYA" or other marks found to infringe the Plaintiff's rights.

19.12 The Defendant's objection that the Plaintiff has not proved actual confusion or a specific loss of sales is not sufficient, by itself, to defeat rendition of accounts. The object of the remedy is to ascertain the profits attributable to the infringing conduct, rather than merely to quantify the Plaintiff's lost sales. The extent of any profits ultimately payable to the Plaintiff, however, must be determined on the basis of the accounts rendered, the supporting records and the evidence led by the parties.

19.13 The Delhi High Court has recognised rendition of accounts as a distinct remedy in intellectual property litigation. In *Reddy Pharmaceuticals Ltd. v. Dr. Reddy's Laboratories Ltd.*, the Court's discussion of the reliefs of delivery up and rendition of accounts illustrates that these remedies may be considered independently of a claim for damages where the evidentiary basis for the latter is insufficient.

19.14 In view of the above discussion, the Plaintiff is entitled to a decree for rendition of accounts of profits arising from the Defendant's infringing activities.

C. Claim for damages

19.15 The Plaintiff has also sought damages on the ground that the Defendant's conduct was deliberate, dishonest and continued even after the grant of the injunction. The Defendant, on the other hand, contends that damages cannot be

awarded in the absence of proof of actual confusion, loss of sales or profits directly attributable to the impugned mark. The Defendant further relies upon the alleged delay of five years, acquiescence and suppression of material facts.

19.16. The rival submissions require the Court to distinguish between the establishment of infringement and the assessment of monetary relief. A finding of infringement does not dispense with the requirement that damages be assessed on a rational and legally sustainable basis. Equally, the absence of exact proof of every rupee of loss does not necessarily preclude all monetary relief where infringement and circumstances supporting an assessment of injury have been established.

19.17 In the present case, the evidence relied upon by the Plaintiff goes beyond a bare allegation of infringement. The impugned goods were found during the first commission on 18.06.2025 and were again found during the second commission on 15.10.2025. Products bearing manufacturing dates subsequent to the injunction were also found. The second report records concealment of products bearing the impugned mark and the presence of a bag containing such products allegedly intended for sale. Further, original products bearing the Plaintiff's mark "SURYA" were found at the Defendant's premises alongside the impugned products.

19.18 These circumstances are relevant to the Defendant's knowledge of the Plaintiff's mark, the manner in which the competing products were dealt with and the likelihood of confusion in the relevant market. The presence of the Plaintiff's genuine products at the same premises does not, in isolation, establish that the Defendant sold those products. However, when considered alongside the recovery of the impugned goods and the other circumstances recorded by the learned Local Commissioner, it lends contextual support to the Plaintiff's case concerning the Defendant's familiarity with the Plaintiff's products and the market in which they were sold.

19.19 The testimony of the Defendant's sole witness, Mr. Sanjay Kumar Tiwari, also requires consideration. The witness is stated to have admitted that the Defendant had never sold any product of the Plaintiff and that he was unaware of the reputation of the mark "SURYA" and had never seen its advertisements. These admissions must be evaluated with the documentary and commission evidence, rather than in isolation. The assertion that the Defendant had never sold any genuine product of the Plaintiff does not, by itself, disprove the sale or stocking of products bearing the impugned mark. Likewise, the absence of personal knowledge of the Plaintiff's advertising cannot negate the existence of the Plaintiff's goodwill which has been established on the record.

19.20 The explanation of defendant in this regard is inconsistent with the established evidence, it cannot be accepted merely because the Defendant disputes the Plaintiff's allegations.

19.21 The Defendant's reliance upon delay and acquiescence is also not sufficient, in the circumstances described, to defeat the monetary and consequential reliefs. The Defendant's trademark application is stated to have been opposed by the Plaintiff in 2020. Such opposition is a relevant circumstance when assessing whether the Defendant could reasonably have been unaware of the Plaintiff's objection to the mark. The mere passage of time, without proof of the legal elements necessary to establish acquiescence or another equitable bar, does not automatically extinguish the Plaintiff's rights.

19.22 More importantly, the evidence concerning products manufactured after the injunction is relevant to the continuing nature of the alleged infringement. The Defendant's conduct after the institution of proceedings and after the grant of interim protection must be assessed independently of the earlier period of use. Any delay attributable to the Plaintiff cannot, without more, justify continued infringement in disregard of a subsisting judicial order.

19.21 The Defendant's submission that the handwritten invoice was issued at the request of the Plaintiff's investigator and that Rule 47 of the Central Goods and Services Tax Rules, 2017 permits issuance of a tax invoice within the prescribed period does not resolve the central controversy. Compliance with the time limit for issuing a tax invoice is a distinct question from whether the Defendant dealt in infringing goods. The explanation concerning the invoice must be assessed on its own evidentiary merits and cannot displace the evidence recorded by the learned Local Commissioner regarding the goods found at the premises.

19.22 Similarly, the absence of proof of actual consumer confusion is not conclusive against the Plaintiff where the finding of infringement and likelihood of confusion has otherwise been established in view of the findings to issues no. (i), (ii) and (iii). In assessing damages, however, the Court must still identify a rational basis for the amount awarded, rather than treating infringement alone as sufficient justification for an arbitrary or punitive sum.

19.23 The principles governing assessment of damages in intellectual property disputes require consideration of the evidence relating to the nature and duration of infringement, the profits earned by the infringer, the loss suffered by the rights holder, the possibility of a reasonable royalty and the degree of intention or neglect underlying the conduct. In *Lifestyle Equities CV & Anr. v. Amazon Technologies, Inc.*, decided on 25.02.2025, the Delhi High Court discussed notional damages where infringement is established but direct evidence of financial loss is unavailable, while distinguishing such damages from compensatory and punitive damages.

19.24 The decision in *Lifestyle Equities* (supra) supports the proposition that the assessment of monetary relief must be grounded in the evidentiary circumstances of the particular case. It does not authorise an automatic award of

punitive damages merely because infringement has been established or accounts have not been produced.

19.25 Applying these principles, the Court finds that the Plaintiff has established circumstances warranting monetary relief. The repeated recovery of the impugned goods, the presence of products bearing post-injunction manufacturing dates and the conduct recorded during the second commission provide an evidentiary basis for concluding that the alleged infringement was not merely an isolated or inadvertent occurrence. These circumstances support an award directed at recognising the injury associated with the established infringement and discouraging its continuation.

19.26 At the same time, the precise extent of the Plaintiff's lost sales and the Defendant's profits cannot presently be quantified from the material summarised above. The absence of reliable accounts is relevant, but it cannot be treated as an independent and conclusive basis for imposing an arbitrary punitive award. The Court must avoid conflating compensatory damages with the separate remedy of rendition of accounts.

19.27 Accordingly, the Plaintiff is entitled to an award of reasonable notional damages, the amount of which must be fixed having regard to the nature of the goods, the duration and apparent continuity of the infringing activity, the evidence of dealings after the injunction, the conduct recorded by the learned Local Commissioner and the evidentiary material actually proved at trial. Any award of punitive or exemplary damages would require a separate, legally sustainable justification and cannot rest solely upon the Defendant's failure to produce accounts.

19.28 The Court is also mindful that the remedies of damages and rendition of accounts must be framed so as to avoid double recovery for the same injury. If the Plaintiff elects to pursue an account of profits, the final monetary decree

must identify the basis on which the amount is payable and ensure that any damages awarded for the same loss are appropriately accounted for. The Plaintiff cannot recover the same economic injury twice merely by invoking different forms of monetary relief.

In view of the evidence concerning continued dealings in the impugned goods, the Plaintiff's claim for monetary relief cannot be rejected merely because the precise profits are not presently ascertainable.

Conclusion on the consequential reliefs

19.29 For the foregoing reasons, the Court finds that the Plaintiff has established its entitlement to delivery up of the infringing goods and materials and to rendition of accounts of profits attributable to the infringing activities. The evidence of continued availability of the impugned products after the injunction, considered alongside the circumstances recorded in the reports of the learned Local Commissioner, also supports the Plaintiff's claim for damages, subject to a reasoned determination of quantum.

19.30 The Defendant's objections founded upon the absence of proof of actual confusion, alleged independent goodwill, delay and the asserted legitimacy of the stock-in-trade do not, in the circumstances established on record, provide sufficient grounds to deny these reliefs.

20. Operative Order:

20.1 In view of the findings recorded above, the suit is decreed in favour of the Plaintiff and against the Defendant in the following terms, subject to the findings already recorded on infringement and the reliefs claimed in the plaint:

20.2 Delivery up: The Defendant shall deliver up all finished and unfinished goods, products, labels, packaging, cartons, promotional material and other articles bearing the impugned mark "JAYSURYA", or any other mark found in

this judgment to infringe the Plaintiff's rights, for erasure of the infringing matter or destruction in accordance with law. The Defendant shall not retain or commercially exploit any such infringing material.

20.3 The goods already seized or inventoried pursuant to the reports of the learned Local Commissioner be handed over to the plaintiff for destruction as per law. Further, genuine products bearing the Plaintiff's own mark "SURYA" shall not be treated as infringing goods merely because they were found at the Defendant's premises.

20.4 Rendition of accounts & Damages:

20.5 So far as the reliefs of rendition of accounts and damages are concerned, Section 135 of Trade Marks Act is very relevant.

20.6 Section 135 of the Trade Marks Act, 1999 serves as the statutory anchor for civil remedies in suits for trademark infringement and passing off, explicitly codifying a dual structure of relief that balances preventive measures with financial restitution. Under Section 135(1), once a violation is established, the court is empowered to grant an injunction alongside an order for the delivery-up of infringing materials for destruction or erasure. Crucially, regarding monetary compensation, the section mandates an alternative remedy, explicitly providing that the court may award either damages or an account of profits, but strictly prohibiting a cumulative grant of both. This statutory framework forces the plaintiff to make a binding election between two distinct legal theories: damages, which seek to quantify and compensate for the actual financial loss or brand dilution suffered by the plaintiff, and an account of profits, an equitable remedy that strips the infringer of the unjust gains directly attributable to the unlawful use of the trademark. While a plaintiff may plead both reliefs in the alternative at the time of filing the suit to preserve their options, they must conclusively elect a single financial remedy during the trial, ensuring the

defendant is not subjected to double jeopardy for the same wrongdoing. This compensatory scheme is further reinforced by Section 135(2), which provides robust interim mechanisms—such as *ex parte* search, seizure, and asset-freezing orders—to preserve evidence and secure the final monetary award, though such financial relief may be restricted to nominal damages under Section 135(3) if the defendant proves they acted innocently and ceased the infringement immediately upon discovery.

20.7 It is thus clear that the plaintiff has to opt for either of the two i.e. rendition of accounts and damages. Since there is no seizure of books of account from the defendant which could have become basis for computation/assessment of damages caused to the plaintiff by the sale of infringement of trademark of plaintiff, the plaintiff is entitled for damages which is required to be assessed.

20.8 The Plaintiff's claim for damages is allowed in principle. The quantum shall be determined on the basis of the evidence already proved, the nature and duration of the infringement, the circumstances recorded in the Local Commissioner's reports, the evidence concerning post-injunction dealings and the applicable legal principles governing notional and compensatory damages.

20.9 **ASSESSMENT OF RELIEF OF DAMAGES**

20.10 The plaintiff has sought damages to the tune of Rs. 25 lacs on account of profits illegally earned by the defendant by the sale of infringing products.

20.11 Having established the factum of infringement and passing off against the Defendant, this Court now turns to the adjudication of the consequential relief. Under Section 135(1) of the Trade Marks Act, 1999, the legislature has explicitly codified an alternative compensatory mechanism, mandating that a successful plaintiff may be awarded "either damages or an account of profits."

20.12 In determining the manner and quantum of such compensatory damages, this Court places primary reliance upon the authoritative framework established

in **Koninlijke Philips N.V. & Anr. vs Amazestore & Ors.AIRONLINE 2019 DEL 826** which scales financial restitution in direct proportion to the nature of the infringement and the evidentiary record. The evidentiary bedrock of the present assessment is the comprehensive report submitted by the duly appointed Court Commissioner. The inventory logs contained within the said report conclusively establish the scale of the Defendant's illicit operations, capturing a physical seizure of large quantities of different goods bearing the infringing mark directly from the Defendant's premises. This documented inventory provides an objective, unspeculative metric reflecting the extent of brand dilution and the volume of market diversion suffered by the Plaintiff.

20.13 Therefore, considering the decision given in Koninlijke Philips (supra) and the seizure of goods crystallized by the Court Commissioner's seizure report on 18.06.2025 and 14.10.2025, evaluating the duration of the infringement, the clear mala fide intent demonstrated by the Defendant in replicating the Plaintiff's mark, and the baseline inventory seized, this Court assesses the damages at the rate of 15% of the damages claimed i.e. Rs 25,00,000/- which comes to Rs. 3,75,000/- and accrodingly, this Court awards a sum of ₹3,75,000/- (Rupees Three Lacs Seventy Five Thousands only) as damages in favour of the Plaintiff and against the Defendant. The Defendant is directed to pay the said sum within a period of eight weeks from today, failing which it shall attract interest at the rate of 9% per annum from the date of the decree until realization.

21. Now I shall proceed to decide the issue no. VII.

Issue No. VII:

> **Whether the plaintiff has acquiesced within the meaning of section 33 of the trademark act, 1999 and is thereby barred from seeking injunction or any other relief in the present suit? (OPD)**

Defendant's arguments:

21.1 It is argued that once acquiescence is established, the Plaintiff is estopped from seeking equitable relief such as injunction, as it would be inequitable and unjust to disturb the Defendant's established business after such long silence. The Plaintiff's conduct clearly demonstrates implied consent to the Defendant's continued use of the mark. The five-year delay is inordinate, unexplained and fatal to the grant of any interim or permanent injunction.

21.2 It is further argued that it is a settled principle of law that delay and acquiescence are fatal to the grant of injunction in trademark and passing off actions, particularly when the Defendant has built valuable goodwill during the intervening period. The Defendant has been using the mark "JAYSURYA" since 2009 and has been selling fans and other electrical goods under the said mark for more than 15 years.

21.3 It is further argued that the Plaintiff's belated attempt to restrain the Defendant after such a long period of inaction is barred by the doctrine of laches and acquiescence. It is a settled law that delay results in substantial changes in cause of action which may hamper justice as held in **Khoday Distilleries Ltd vs Scotch Whiskey Association & Ors. MANU/SC/2361/200815, Mankind Pharma Ltd. v. Micor Labs Limited & Ors.** Therefore, in view of the Plaintiff's acquiescence, the ex parte injunction order dated 06.06.2025 deserves to be vacated forthwith.

Plaintiff's argument:

21.4 The Defendant's plea under Section 33 of the Trade Marks Act, 1999 is wholly untenable and deserves to be rejected. Section 33 contemplates continuous acquiescence for a period of five years with knowledge of the infringing use, coupled with silence, inaction, and implied consent on the part of the registered proprietor. None of these essential ingredients are satisfied in the present case.

21.5 It is argued that the Plaintiff has, at every stage, consistently asserted its statutory rights. The Plaintiff had already opposed the Defendant's trademark application on 29.07.2020, thereby unequivocally objecting to the Defendant's adoption of the impugned mark. Immediately upon discovering the Defendant's infringing activities in Delhi, the Plaintiff approached this Hon'ble Court without any delay. There is, therefore, no acquiescence, no encouragement, and no inaction on the part of the Plaintiff so as to attract the bar under Section 33 of the Trade Marks Act, 1999. On the contrary, the Defendant continued to manufacture, stock, advertise, and sell the infringing products even after the ex parte ad interim injunction dated 06.06.2025, as recorded during the second Local Commission conducted on 15.10.2025. Such deliberate and continued infringement, in wilful disregard of the orders of this Hon'ble Court, disentitles the Defendant from claiming any equitable defence under Section 33. Accordingly, the Defendant's plea of acquiescence is liable to be rejected.

Findings:

21.6 The burden of proving the present issue is upon the Defendant. Having considered the rival submissions and the material placed on record, this Court is of the considered opinion that the Defendant has failed to establish that the Plaintiff has acquiesced in the use of the impugned trade mark JAYSURYA within the meaning of Section 33 of the Trade Marks Act, 1999.

21.7 Section 33 of the Trade Marks Act, 1999, does not make mere delay or inaction an absolute bar to the enforcement of trade mark rights. The provision requires the Defendant to establish, inter alia, that the later trade mark is registered and that the proprietor of the earlier trade mark, being aware of its use, acquiesced in such use continuously for a period of five years. The statutory bar is also subject to the exception concerning registration of the later mark not having been applied for in good faith.

21.8 In the present case, the Defendant has asserted that it has been using the mark JAYSURYA since 2009 and has developed substantial goodwill in the market by selling fans and other electrical goods for more than 15 years. However, the mere fact that the Defendant claims long-standing use of the impugned mark does not, by itself, establish acquiescence on the part of the Plaintiff. The material question is not merely the duration of the Defendant's use, but whether the Plaintiff, with knowledge of such use, knowingly permitted the Defendant to continue using the impugned mark in circumstances giving rise to an inference of consent to the invasion of its trade mark rights.

21.9 In this regard, the Plaintiff's opposition to the Defendant's trade mark application on 29.07.2020 assumes significance. The filing of the opposition constitutes an affirmative act demonstrating that the Plaintiff had objected to the Defendant's adoption of the impugned mark and had not willingly permitted its use without protest. Such conduct is inconsistent with the Defendant's contention that the Plaintiff had impliedly consented to the continued use of the mark. The Defendant has not established that, notwithstanding the said opposition, the Plaintiff subsequently adopted a course of conduct amounting to continuous acquiescence for the statutory period of five years.

21.10 The aforesaid conclusion is consistent with the principles laid down by the **Hon'ble Supreme Court in Power Control Appliances v. Sumeet Machines Pvt. Ltd., (1994) 2 SCC 44**8, wherein it was held that acquiescence involves positive conduct inconsistent with the assertion of exclusive rights and is distinguishable from mere negligence or inaction. The Court further observed that the conduct relied upon must be such as to justify an inference of a licence or consent sufficient to create a new right in favour of the Defendant. The mere fact that a Defendant has carried on business under a particular mark for a considerable period cannot,

in the absence of the requisite conduct on the part of the Plaintiff, automatically establish acquiescence.

21.11 The Defendant's reliance upon the principles of delay and laches is also insufficient to discharge its burden. Although delay may be a relevant consideration while determining entitlement to equitable relief, delay and acquiescence are distinct concepts. In the present case, the Plaintiff has asserted that it approached this Court upon discovering the Defendant's infringing activities in Delhi. In the absence of evidence establishing the date on which the Plaintiff acquired knowledge of the Defendant's relevant use, and demonstrating that it thereafter knowingly tolerated such use for the requisite statutory period, the plea of acquiescence cannot be sustained merely on the basis of the Defendant's claimed use since 2009.

21.12 The subsequent conduct of the Defendant is also relevant to the equitable considerations raised by the parties. The Plaintiff has alleged that the Defendant continued to manufacture, stock, advertise and sell the impugned products even after the grant of the ex parte ad interim injunction dated 06.06.2025, as recorded during the second Local Commission conducted on 15.10.2025. If borne out by the commissioner's report and the other evidence on record, such conduct would be inconsistent with the Defendant's attempt to invoke equitable considerations in its favour. A party cannot establish the Plaintiff's acquiescence merely by pointing to its own continued commercial activity, particularly when the Plaintiff has taken steps to assert its rights. The alleged post-injunction conduct, however, is considered as a relevant circumstance and not as a substitute for determining the specific statutory requirements of Section 33.

21.13 The judgments relied upon by the Defendant do not warrant a different conclusion. The principles concerning delay and acquiescence must be applied in light of the facts proved in each case. They do not dispense with the Defendant's

obligation to establish the essential ingredients of the defence raised. In the present matter, the Plaintiff's opposition dated 29.07.2020, its assertion that it approached the Court upon discovering the infringing activities, and the absence of sufficient evidence demonstrating five years of knowing and continuous acquiescence weigh against the Defendant's plea.

21.14 Accordingly, this Court holds that the Defendant has failed to discharge the burden of proof placed upon it. The Defendant has not established that the Plaintiff, with the requisite knowledge, acquiesced continuously for five years in the use of the registered later trade mark so as to attract the statutory bar under Section 33 of the Trade Marks Act, 1999. Nor has the Defendant established, merely by pleading prolonged use and delay, that the Plaintiff is otherwise disentitled to seek relief in the present suit.

21.15 The issue is, therefore, decided in favour of the Plaintiff and against the Defendant. The Defendant's plea of acquiescence under Section 33 of the Trade Marks Act, 1999, is rejected.

22. Issue No. VIII:

Whether suit of the plaintiff is hit by non-compliance of Section 12A of Commercial Courts Act, 2015? (OPD)

Defendant's arguments:

22.1 It is argued on behalf of defendant that the suit is not maintainable for non-compliance with mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, as there is no real urgency or continuing irreparable harm. The Plaintiff claims to have become are of the Defendant's activities only in May 2025. However, as per its own admission in para 32 of the Plaint, the Plaintiff had opposed the Defendant's trademark application No. 3661208 dated 23.10.2017 under Class 11 as far back as 29.07.2020. The Hon'ble High Court of Delhi in **BDA Private Limited Vs. Paul P. John and Ors.**

MANU/DE/1025/200817 and Yonex Kabushiki Kaisha Vs. Phillips International and Ors MANU/DE/2397/200718 held that delay and acquiescence are major factors in cases of passing off and the non-closure on part of plaintiff as to when it became aware of the Defendant's use directly affects the outcome of the suit.

22.2 This 5-year delay in filing the suit is neither explained nor justified. The Plaintiff was fully aware of the Defendant's bona fide use since at least 2017-2020 but chose to remain silent. Section 12A of the Commercial Courts Act, 2015 mandates pre-institution mediation in all commercial disputes unless the suit contemplates urgent interim relief. The Hon'ble Apex Court in **Yamini Manohar vs TKD Keerthi (2024) 5 Supreme Court Cases 815** held that unfettered right of Plaintiff to view cause of action as urgent as per its whims and fancies should not be encouraged and that non-compliance of Section 12A of CCA, 2015 should result in rejection of suit or abeyance thereof as held in M/S Dhanbad Fuels Pvt Ltd V. Union of India & Anr. Civil Appeal No. 6846 Of 2021 Supreme Court20.

22.3 The deliberate concealment of the 2020 opposition and the inordinate delay establish that no genuine urgency existed. The suit was filed bypassing the statutory requirement on the basis of a false narrative of recent discovery. Such suppression vitiates the grant of ex parte relief. The injunction order dated 06.06.2025 is liable to be vacated on this ground alone.

Plaintiff's arguments:

22.4 It is argued on behalf of the plaintiff that the present suit is neither barred under Section 12A of the Commercial Courts Act, 2015 nor is it liable to be dismissed on the ground of delay, laches, or acquiescence. The Defendant has himself admitted in the Written Statement that he established his first branch in Delhi only in the year 2023. The Defendant has further admitted during his cross-examination that he never sold products under the impugned mark "JAYSURYA" in Delhi during the period 2009 to 2023. It is for this reason that

the Plaintiff first came across the Defendant's infringing products bearing the impugned mark "JAYSURYA" only in the first week of May 2025, whereafter the Plaintiff immediately conducted investigations, purchased the infringing products, gathered evidence, and promptly instituted the present suit seeking urgent interim relief.

22.5 It is further argued that it is well settled that the mandatory requirement of pre-institution on mediation under Section 12A is inapplicable where the suit contemplates urgent interim relief. The present suit concerns continuing acts of trademark infringement, passing off, and copyright infringement, where any delay would have caused irreparable injury to the Plaintiff's statutory and proprietary rights. Upon considering the pleadings and material placed on record, this Hon'ble Court was satisfied that the matter involved urgency and accordingly granted an ex-parte ad interim injunction 06.06.2025, besides appointing a Local Commissioner. The grant of such urgent interim relief itself conclusively establishes that the suit squarely falls within the exception to Section 12A and renders the Defendant's objection wholly misconceived and untenable.

22.6 Further, the urgency of the matter stands further reinforced by the subsequent conduct of the Defendant During the second Local Commission conducted on 15.10.2025, infringing products manufactured between July 2025 and October 2025 were found at the Defendant's premises. demonstrating that the Defendant continued to manufacture, stock, and sell the infringing goods even after the injunction order dated 06.06.2025, Such continued and wilful infringement clearly establishes that any pre-institution mediation would have defeated the very purpose of protecting the Plaintiff's statutory rights. Equally, the Plaintiff instituted the present suit immediately upon discovering the Defendant's infringing activities, and therefore there is neither any delay, laches, nor acquiescence on the part of the Plaintiff. Accordingly. the objections raised

by the Defendant under Section 12A of the Commercial Courts Act, 2015 and on the grounds of delay, laches, and acquiescence deserve to be rejected.

Findings:

22.7 The onus to establish the objection raised under the present issue lies upon the defendant. The defendant contends that the plaintiff was aware of the defendant's activities as far back as 2017–2020, as the plaintiff had opposed the defendant's trademark application bearing No. 3661208 dated 23.10.2017 under Class 11 on 29.07.2020. It is argued that the plaintiff has failed to explain the alleged delay of approximately five years in instituting the present suit and that the plea of urgency is merely a device to circumvent the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015. Reliance has been placed upon **Yamini Manohar v. T.K.D. Keerthi, (2024) 5 SCC 815, and M/s Dhanbad Fuels Pvt. Ltd. v. Union of India & Anr., Civil Appeal No. 6846 of 2021.**

22.8 Per contra, the plaintiff submits that it acquired knowledge of the defendant's actual commercial use of the impugned mark **"JAYSURYA"** in the first week of May 2025. It is contended that the defendant commenced its business in Delhi only in 2023 and has admitted during cross-examination that it did not sell products under the impugned mark in Delhi between 2009 and 2023. According to the plaintiff, upon discovering the infringing products, it promptly undertook investigations, purchased the products, collected the relevant evidence and instituted the present suit seeking urgent interim relief. The plaintiff further relies upon the order dated 06.06.2025, whereby this Court granted an exparte ad interim injunction and appointed a Local Commissioner, as well as the subsequent discovery of allegedly infringing products during the second local commission conducted on 15.10.2025.

22.9 I have considered the rival submissions and the material placed on record.

22.10 Section 12A(1) of the Commercial Courts Act, 2015 mandates exhaustion of the remedy of pre-institution mediation before institution of a commercial suit which does not contemplate any urgent interim relief. The statutory scheme, therefore, recognises an exception in cases where the nature of the dispute and the relief sought genuinely warrant urgent judicial intervention.

22.11 The legal position in this regard stands explained by the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815. The Hon'ble Supreme Court has clarified that a plaintiff cannot avoid the statutory mandate merely by incorporating a prayer for urgent interim relief in the plaint. The Court must examine the nature and subject matter of the suit, the cause of action pleaded and the relief sought, viewed holistically from the standpoint of the plaintiff. At the same time, the Court is not required to determine the ultimate merits of the claim or conclusively adjudicate the three principles governing the grant of injunction while deciding whether the suit contemplates urgent interim relief.

22.12 Applying the aforesaid principles to the facts of the present case, it is evident that the plaintiff has instituted the suit alleging trademark infringement, passing off and copyright infringement and has sought immediate restraint against the defendant's alleged infringing activities. The nature of the dispute is such that continued commercial exploitation of an allegedly infringing mark may cause injury to the plaintiff's goodwill, dilute the distinctiveness of its mark and divert business in a manner that may not be adequately remedied by monetary compensation alone. The relief sought is, therefore, not merely declaratory or compensatory; it includes preventive relief intended to restrain the alleged infringement while the proceedings are pending.

22.13 The defendant's principal objection is founded upon the plaintiff's opposition to the defendant's trademark application in July 2020. However, in the considered view of this Court, knowledge of the filing of a trademark

application is not, by itself, conclusive proof of knowledge of the defendant's actual commercial use of the impugned mark in the relevant territorial market. The filing of an opposition may establish awareness of the proposed mark or the application in question, but whether it establishes knowledge of actual sales, the extent of commercial use, the geographical area of use or the resulting infringement is a matter requiring appreciation of the evidence.

22.14 In the present case, the plaintiff has specifically relied upon the defendant's pleadings and admission in cross-examination to contend that the defendant commenced business in Delhi only in 2023 and did not sell products under the impugned mark in Delhi during the period from 2009 to 2023. If these admissions are borne out by the record, they lend support to the plaintiff's explanation that its knowledge of the defendant's trademark application in 2020 did not necessarily translate into knowledge of actual infringing sales in Delhi. Consequently, the opposition proceedings of 2020 cannot, at this stage and in isolation, be treated as sufficient to establish that the plaintiff deliberately slept over its rights despite having knowledge of the actionable conduct now complained of.

22.15 The distinction between prior knowledge of a trademark application and subsequent discovery of actual commercial use is material to the present determination. The defendant's reliance upon delay, laches and acquiescence does not, by itself, establish that the urgent interim relief contemplated in the plaint was illusory or that the suit was instituted merely to evade pre-institution mediation.

22.16 The plaintiff's further case is that it discovered the allegedly infringing products in the first week of May 2025 and thereafter undertook investigations, procured samples and instituted the suit seeking immediate restraint. The sequence of events pleaded by the plaintiff, read with the nature of the relief claimed, supports its explanation that the proceedings were initiated upon

discovery of the alleged commercial infringement. No material has been identified in the submissions presently under consideration which conclusively establishes that the plaintiff had actual knowledge of the very acts of commercial infringement complained of in the present suit substantially earlier and deliberately withheld proceedings in order to manufacture a plea of urgency.

22.17 It is also relevant that this Court, upon consideration of the material presented at the institution stage, granted an ex-parte ad interim injunction on 06.06.2025 and appointed a Local Commissioner. The mere grant of an injunction does not conclusively determine the applicability of Section 12A, nor does it dispense with the independent judicial scrutiny mandated by *Yamini Manohar* (supra). Nevertheless, the nature of the relief sought and the fact that the Court considered immediate protective directions appropriate at the initial stage are relevant circumstances supporting the plaintiff's contention that the suit genuinely contemplated urgent interim relief.

22.18 The subsequent local commission conducted on 15.10.2025, during which products stated to have been manufactured between July 2025 and October 2025 were allegedly found at the defendant's premises, further lends support to the plaintiff's case that the alleged infringement was continuing and that the dispute was not confined to a historical or concluded transaction. This subsequent event is not the sole basis for determining the applicability of Section 12A, which must principally be assessed with reference to the plaint, the reliefs sought and the circumstances existing at the time of institution. It nevertheless provides relevant context to the nature of the controversy and the plaintiff's apprehension of continuing infringement.

22.19 The contention that the plaintiff ought necessarily to have exhausted pre-institution mediation before approaching the Court cannot be accepted in the circumstances pleaded. Where a suit genuinely contemplates urgent interim relief, Section 12A does not require the plaintiff to postpone its request for

immediate judicial protection merely to complete the mediation process. In intellectual property disputes involving allegations of continuing infringement, the possibility of continued sales, manufacture, stocking and commercial exploitation pending mediation is a relevant consideration, though the exception must be applied on the facts of each case and not as a blanket exemption for every intellectual property suit.

22.20 The defendant's reliance upon **M/s Dhanbad Fuels Pvt. Ltd. v. Union of India & Anr., Civil Appeal No. 6846 of 2021** does not advance its case on the facts presently before this Court. The requirement of pre-institution mediation is undoubtedly mandatory in a commercial suit that does not contemplate urgent interim relief. However, the consequence of non-compliance arises only where the suit falls outside the statutory exception. The said decision does not dispense with the necessity of first examining whether urgent interim relief was genuinely contemplated in the particular suit. In the present matter, the nature of the alleged continuing infringement, the reliefs sought and the plaintiff's explanation concerning the timing of discovery distinguish the case from one in which urgent relief is pleaded merely as a device to bypass the statutory requirement.

22.21 Upon a holistic consideration of the pleadings, the rival submissions and the circumstances set out above, this Court is of the considered view that the plaintiff's claim of urgency is supported by the nature of the dispute and the relief sought and cannot be characterised, on the material presently considered, as a mere camouflage to avoid pre-institution mediation. The defendant has not established that the present suit is one which did not contemplate urgent interim relief within the meaning of Section 12A(1) of the Commercial Courts Act, 2015.

22.22 Accordingly, **Issue No. VIII** stands decided in favour of the plaintiff and against the defendant. The objection regarding non-compliance with Section 12A of the Commercial Courts Act, 2015 is rejected. The suit is not liable to be

rejected on this ground, and the defendant's prayer to vacate the order dated 06.06.2025 solely on the basis of the alleged non-compliance with Section 12A is declined.

RELIEFS:

23. The plaintiff is entitled to the following reliefs:

A. Infringement of Registered Trademark of the Plaintiff:

Plaintiff is entitled to a decree of permanent injunction restraining the defendant or any of their subjects acting through them from manufacturing, trading, selling (online and offline), marketing, printing, offering for sale the electrical and allied goods i.e. Lights, LED, spot lights, panel lights, fancy lights, flood lights, street lights, electrical switches, PVC electrical panels, wires and cables, cooling and heating appliances, ceiling fans, exhaust fans, fan heaters, halogen heaters, air cooler pumps and other goods under the mark 'JAYSURYA' and JAYSURYA, and any other mark/device/logo/domain name or trade name which is identical or deceptively similar to plaintiff's registered mark 'SURYA'.

B. Infringement of Registered Copyright of the Plaintiff

Plaintiff is entitled to a decree of permanent injunction restraining the defendant or any of its subjects from using the plaintiff's device/logo SURYA and any other registered 'SURYA' marks in violation of plaintiff's copyright.

C. Passing off:

Plaintiff is held entitled to a decree of permanent injunction restraining the defendant, his agents, representatives, dealers and all persons acting on his behalf from using the mark 'JAYSURYA', or any other mark deceptively similar to the plaintiff's registered trademark 'SURYA', in relation to the goods for

which the plaintiff has established enforceable rights, in a manner amounting to infringement or passing off.

D. Delivery up:

Plaintiff is entitled to a decree for delivery up of the infringing goods and materials. The Defendant shall deliver up all finished and unfinished goods, products, labels, packaging, cartons, promotional material and other articles bearing the impugned mark "JAYSURYA", or any other mark found in this judgment to infringe the Plaintiff's rights, for erasure of the infringing matter or destruction in accordance with law. The Defendant shall not retain or commercially exploit any such infringing material.

The goods already seized or inventoried pursuant to the reports of the learned Local Commissioner be handed over to the plaintiff for destruction as per law. Further, genuine products bearing the Plaintiff's own mark "SURYA" shall not be treated as infringing goods merely because they were found at the Defendant's premises.

E. Damages:

Plaintiff is entitled to a decree of damages to the tune of ₹3,75,000/- (Rupees Three Lacs Seventy Five Thousands only) in its favour and against the Defendant. The Defendant is directed to pay the said sum within a period of eight weeks from today, failing which it shall attract interest at the rate of 9% per annum from the date of the decree until realization.

F. Cost:

The plaintiff is entitled to the costs of the suit.

There are two applications moved on behalf of plaintiff which are also pending disposal. Now, I shall proceed to decide both the applications.

Application of the plaintiff u/s 151 CPC seeking recovery of rental amount:

24. The plaintiff has also moved an application u/s 151 CPC seeking a money decree of Rs. 2,64,000/- (excluding security deposit of Rs. 44,000/-) alongwith further recurring rental till the disposal of the suit. It is stated in the application that pursuant to the visits of Ld. Local Commissioner on 18.06.2025 and 15.10.2025, the plaintiff had taken custody of the seized goods on superdari and for keeping those seized goods, the plaintiff has taken two godowns located at M/s R.K. Industries Plot No.166, Sector-66, Village Mamura, NOIDA, UP on a total rent of Rs. 44,000/- per month.

24.1 Reply to the said application filed on behalf of defendant wherein he has denied the averments made in the application. It is submitted that the claim of rental amount of Rs. 44,000/- is without any basis as no evidence in support of the claim of rental amount has been filed by the plaintiff.

24.2 I have considered rival submissions on the application under consdieration and perused the application as well as the entire record.

24.3 The plaintiff has merely claimed the rental amount of Rs. 44,000/-, however, has not filed any proof in support of its contentions. Neither the rent agreement nor any debit entry from the account showing the payment of rent have been placed on record. Therefore, in the absence of any documents in support of the claim of rental amount, the application is without any basis and merits and hence, same is accordingly stands dismissed.

Application of the plaintiff under order 39 Rule 2A r/w section 151 of CPC for taking action against the defendant for willful disobedience of the ex-parte injunction order dated 06.06.2025 passed by this Court.

25.1 By way of the present application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (hereinafter, "CPC"), the Plaintiff seeks initiation of proceedings against the Defendant for alleged wilful disobedience of the ex parte ad interim injunction order dated 06.06.2025.

25.2 It is contended that the Defendant had knowledge of the aforesaid injunction order on 18.06.2025, when the Learned Local Commissioner visited the Defendant's premises and apprised his son of the order. It is further averred that the Plaintiff, through its counsel, subsequently transmitted a copy of the order along with the suit papers to the Defendant through WhatsApp and email on 19.06.2025.

25.2 The Plaintiff has alleged that, despite such knowledge, the Defendant continued to deal in goods bearing the impugned mark 'JAYSURYA'. In support of its allegations, the Plaintiff has relied upon five GST invoices dated 28.06.2025, 30.06.2025 and 11.07.2025, which were filed by the Defendant himself along with his Written Statement and List of Documents. The Plaintiff has also alleged non-compliance with the direction contained in paragraph 12 of the injunction order requiring the Defendant to disclose, on affidavit, the stock of goods bearing the infringing mark and the amounts earned through its use.

25.3 During the course of proceedings while hearing final arguments on behalf of both the sides on 08.10.2026, the Defendant had tendered an unconditional apology for his conduct. The apology has been considered in the light of the allegations made in the application and the material placed on record. Ld. Counsel for plaintiff had submitted that in view of the apology tendered by the defendant, he does not press for criminal action against the defendant and woulud only press for monetary part.

25.4 Order XXXIX Rule 2A CPC provides for consequences where a party disobeys or breaches an injunction granted under Order XXXIX Rules 1 or 2 CPC. The jurisdiction under the said provision is intended to ensure compliance with judicial orders and to uphold the authority of the Court. At the same time, the question whether the alleged breach warrants action under the said provision must be determined in the facts and circumstances of each case, upon consideration of the material available on record.

25.5 In the present case, the invoices relied upon by the Plaintiff are stated to pertain to transactions subsequent to the passing of the injunction order. The Defendant's unconditional apology has been taken into consideration while assessing the appropriate course of action. An apology, by itself, does not automatically absolve a party of the consequences of a breach of an injunction, nor can it override the obligation to comply with the subsisting directions of the Court. Its bona fides and the surrounding circumstances must be assessed in the context of the alleged disobedience.

25.6 Having regard to the unconditional apology tendered by the Defendant, and the submissions of Ld. Counsel for plaintiff to this effect that he does not press for any criminal action against the deendant, this Court is satisfied that the apology is genuine and that the circumstances do not warrant further action under Order XXXIX Rule 2A CPC and hence, this Court is inclined to accept the apology and dispose of the present application without imposing any penalty under the said provision as already damages have been awarded in favour of the plaintiff and against the defendant.

25.7 The application under consideration stands disposed of in aforesaid terms.

26. Decree Sheet be prepared accordingly. File be consigned to Record Room.

Announced in the open Court
Dated : October 28th,2026.

Pooran chand
Digitally signed by Pooran chand
Date: 2026.10.28 16:45:55 +0530

(Pooran Chand)
District Judge(Commercial Court)-08
Central District, THC, Delhi.

FORM 'A'

LIST OF WITNESSES

S. No.	Name of Witness	Whether witness of plaintiff or defendant
1.	Sh. Sh. Ambrish Kumar Srivastava s/o Sh. P.N. Srivastava, r/o House No. 1009, Sector-02, Bahadurgarh, Haryana	Plaintiff
2.	Sh. Sanjay Kumar Tiwari, s/o Sh. Ram Kumar Tiwari, r/o K-56/93, Ausanganj, Iswargangi, Varanasi, U.P	Defendant

LIST OF DOCUMENTS

S.No.	Exhibit	Date of Exhibit	Description of Exhibit
1.	PW-1/A	18.09.2025	Evidence affidavit of Sh. Ambrish Kumar Srivastava
2.	PW-1/1	18.09.2025	Power of attorney dated 24.01.2024 in favour of Plaintiff's AR
3.	PW-1/2	18.09.2025	Board resolution dated 28.05.2013 in favour of Raju Bista
4.	PW-1/3	18.09.2025	Printout of photographs of plaintiff's products
5.	PW-1/4	18.09.2025	Printout of photographs of plaintiff's products
6.	PW-1/5	18.09.2025	Documents detailing the history and legacy of the Plaintiff
7.	PW-1/6	18.09.2025	Price list and other products of Plaintiff
8.	PW-1/7	18.09.2025	Printout of e-newspaper about the new campaign of the Plaintiff company
9.	PW-1/8	18.09.2025	Printouts of online posts/tweets detailing out Padma Shri Award to Mr. Jai Prakash Aggarwal, Chairman of Plaintiff company
10.	PW-1/9	18.09.2025	Printout of Facebook post of plaintiff's lighting installed at various sites
11.	PW-1/10	18.09.2025	Printouts of online statuses of plaintiff's trademarks
12.	PW-1/11 (colly)	18.09.2025	Original LPCs of Plaintiff's trademark registrations
13.	PW-1/12 (colly)	18.09.2025	Copyright certificates of Plaintiff

	(OSR)		
14.	PW-1/13 (colly)	18.09.2025	Printout of plaintiff's commercial starring famous Bollywood celebrity Preity Zinta
15.	PW-1/14	18.09.2025	Printout of plaintiff's commercial starring famous Bollywood celebrity Shankar Mahadevan
16.	PW-1/15	18.09.2025	Printout of plaintiff's Trademark being displayed on jersey of IPL team Rajasthan Royals at IPL 2019
17.	PW-1/16	18.09.2025	Printout of plaintiff's Trademark being displayed on jersey of Pro Kabbadi League 2022 team U-Mumba and on the Para Games 2023
18.	PW-1/17 (Colly) (OSR)	18.09.2025	Rough hand written bill dated 05.05.2025 and 15.05.2025 alongwith payment receipt
19.	PW-1/18 (OSR)	18.09.2025	Quoation of products dated 15.05.2025 provided by defendant
20.	PW-1/19 (OSR)	18.09.2025	Business card of defendant
21	PW-1/20 (OSR)	18.09.2025	Photographs of defendant’s premises
22.	PW-1/21	18.09.2025	Printout of defendant’s GST registration obtained through GST website
23.	PW-1/22 (colly)	18.09.2025	Copies of third party e-commerce websites such as Indiamart.com meesho.com and other
24.	PW-1/23	18.09.2025	Copy of defendant’s official website
25.	DW-1/A	04.10.2025	Evidence by affidavit of DW-1
26.	DW-1/1	04.10.2025	Copy of GST Registration Certificate of the Defendant issued by GST department Government of India
27.	DW-1/2	04.10.2025	Copy of Brochure of defendant showcasing the 'JAYSURYA' mark and product
28.	DW-1/3 (colly)	04.10.2025	Copies of few selected GST invoices issued by the Defendant evidencing legitimate sales under 'JAYSURYA' mark
29.	DW-1/4	04.10.2025	Form GSTR-3B returns filed by the defendant for the financial year 2024-25, 2025-26 (Colly)
30.	DW-1/5	04.10.2025	Copy of invoice from 2009 showing the sales of ceiling fans under Defendant's mark 'JAYSURYA'
31.	DW-1/6	04.10.2025	Extract of The Hindu Business Line article evidencing the launch of fans by the plaintiff in the year 2014
32.	DW-1/7	04.10.2025	Copies of various articles evidencing the common nature and relevance of the word 'SURYA' in Hindi

			vocabulary
33.	DW-1/8	04.10.2025	Extracts of the trademark public search report of various third- party trademark registration of the mark 'SURYA' and its formatives accessed from TM public search website
34.	DW-1/9	04.10.2025	Extracts of various third party commercial uses of the mark 'SURYA' and its formatives collectively, sourced from the world wide web
35.	DW-1/10 (colly)	04.10.2025	Certificate u/s 63(4)(c) of Bhartiya Sakshya Adhiniyam, 2023
36.	DW-1/11	04.10.2025	Certificate of electronic records under Order XI Rule6(3) of CPC
37.	DW-1/A	04.10.2025	Evidence by affidavit of DW-1
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