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

Judgment reserved on: 22.01.2026
Judgment pronounced on:18.03.2026

\+ RFA(OS)(COMM) 22/2025 & CM APPL. 45700/2025

COROMANDEL INDAG PRODUCTS INDIA LTD. .....Appellant

Through: Mr. J Sai Deepak, Sr. Adv. with Mr. Shravan Kumar Bansal and Mr. Pankaj Kumar, Advs.

versus

SUMITOMO CHEMICAL COMPANY LTD. & ANR. .....Respondents

Through: Mr. Rajshekhar Rao, Sr. Adv with Mr. Prashant Gupta, Mr. Aadhar Nautiyal, Mr. Karan Singh, Ms. Shivangi Kohli and Mr. Anirudh Vats, Advs.

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

JUDGMENT

% 18.03.2026

OM PRAKASH SHUKLA, J.

1. The Appellant challenges the impugned judgment dated 03.07.2025 passed by a learned Single Judge of this Court, wherein the application filed by the Respondents seeking rejection of the plaint under Order VII Rule 11(a) of the Code of Civil Procedure, 1908[1] ("CPC"), was allowed. The learned Judge held that the Appellant had failed to establish a cause of action to maintain the suit, deeming the same to be purely illusory.

2. Parties are referred to as they stood before the learned Single

[1] "CPC" hereinafter

Judge for ease of reference in these proceedings.

BRIEF FACTS

3. The factual position in a nutshell, as averred in the plaint, is that the Plaintiff, incorporated in 1983, is an Indian agro-chemical company and the parent entity of the Coromandel Group, which comprises of Agrimas Chemicals Ltd.[2] and Coromandel Agrico Pvt. Ltd.[3] (under liquidation). The Plaintiff asserts that under an Agreement dated 27.01.2000, CAPL was appointed as the marketing agent for the Plaintiff's products. Subsequently, an Agreement dated 06.12.2004 was executed between the Plaintiff and CAPL, wherein CAPL was granted a royalty-based license to use the Plaintiff's trademarks, including "PADAN 4G" and "PADAN 50SP".

4. The Plaintiff contends that Takeda Chemical Industries Ltd.[4] (predecessor of Defendant No.1), which later became Sumitomo Chemical Takeda Agro Co. Ltd.[5] (a Joint Venture with Sumitomo Chemical Co. Ltd.), and eventually absorbed by Defendant No. 1, holds the registration for the word mark "PADAN" and the device mark "

" under Class 05, dated 18.05.1970 and 25.03.2010 respectively, on a proposed-to-be-used basis. The Plaintiff claims that the non-use of the registration by the Defendants in India renders it liable to be cancelled under Section 47 of the Trade Marks Act, 1999.

[2] "Agrimas" hereinafter
[3] "CAPL" hereinafter
[4] "Takeda" hereinafter
[5] "Sumitomo JV" hereinafter

5. The Plaintiff avers that it entered into an agreement with Takeda for the procurement of *Cartap Hydrochloride* and was granted a non-exclusive and royalty-free license to use the mark "PADAN"[6] in India with respect to insecticides and pesticides.

6. The Plaintiff asserts that it had been using the trademark "PADAN" continuously in India since 1988. In 2006, it independently designed the artistic work for the packaging and labelling of the product bearing the impugned mark, i.e., "  " which it claims is protected under Section 14 of the Copyright Act, 1957. It is further asserted that the Plaintiff has developed substantial goodwill through extensive sales, promotion, and quality control which has resulted in the acquisition of secondary meaning and exclusive association of the "PADAN" mark with the Plaintiff.

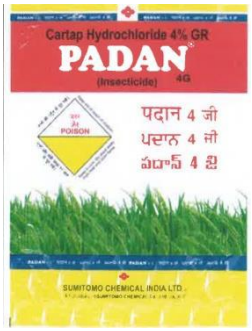
7. The Plaintiff alleges that neither Takeda nor the Defendants or their alleged licensees have used the impugned mark in India. The Plaintiff claims exclusive use of the mark "PADAN" and its associated goodwill.

8. The Plaintiff states that in 2007, upon the compound becoming public, the Defendant ceased its supply and granted the Plaintiff a temporary license *vide* email dated 24.12.2007 to source the product

[6] Alternatively referred to as "impugned mark"

from other suppliers during 2008 or till resumption of supply by the Defendant. However, the Plaintiff avers that the supply did not resume and the Plaintiff continued use with Defendant's knowledge. The Plaintiff further contends that Defendant No. 2 manufactured similar insecticide/pesticide under the marks "SANVEX" and "SUMI TAZ", i.e., "

" in India but in May 2023, the Plaintiff claims to have discovered that Defendant No. 2 launched a similar insecticide/pesticide using the same compound with deceptively similar packaging to that of the Plaintiff's. The comparison of the Plaintiff's packaging and Defendant No.2's packaging and Defendant No.2's packaging is as follows:

Plaintiff	Defendant No. 2
	

9. Aggrieved by the alleged dishonest adoption and imitation of its mark, the Plaintiff instituted the present suit seeking a decree of permanent injunction restraining the Defendants from dealing in the trademark "PADAN" or any other identical or deceptively similar trademark/packaging/artwork in relation to insecticides and agro-

chemicals on grounds of copyright infringement, passing off and dilution of goodwill, along with rendition of account or damages of Rs. 2,00,01,000/- with costs. The Plaintiff also sought an injunction against interference with its business under the "PADAN" mark, along with declaration that Plaintiff is the owner and proprietor of the trademark/packaging "PADAN", with goodwill and reputation acquired thereunder in India.

10. Thereafter, the Defendants preferred an application under Order VII Rule 11(a) of the CPC praying for rejection of the plaint on the ground that the Plaintiff failed to disclose any cause of action. They contended that the Plaintiff's claims were illusory, baseless, and did not meet the threshold required for the maintainability of the suit.

IMPUGNED JUDGMENT

11. The learned Single Judge rejected the plaint relying on the principles laid down in ***Salomon v. Salomon & Co. Ltd.***[7] and ***Vodafone International Holdings BV v. UOI***[8] by holding that the Plaintiff could not maintain the suit on behalf of CAPL since it was a distinct legal entity and Defendant No. 1's non-exclusive licensee and the communications referred to by the Plaintiff were between Defendant No. 1 and CAPL, not directly with the Plaintiff. Furthermore, since CAPL was undergoing liquidation, its affairs were under the control of the Resolution Professional, leaving the Plaintiff without a valid claim on behalf of CAPL.

[7] **[1897] AC 22: (1895-99) All ER Rep 33 (HL)**
[8] **(2012) 6 SCC 613**

12. The learned Single Judge further observed that certain material documents were deliberately withheld by the Plaintiff, including the non-exclusive license granted by Takeda to CAPL and the Distribution Agreement[9] ("DA") dated 26.12.2005. Relying on the judgment in ***Church of Christ Charitable Trust and Education Charitable Society v. Ponniamman Educational Trust***[10] and ***Dahiben v. Arvindbhai Kalyanji Bhansali***[11], the learned Judge opined that since the DA was mentioned in the plaint, it became incorporated by reference therein. Hence, the Court was entitled to examine the contents of the DA, even if it was filed by the Defendants. Upon reviewing the DA, the learned Single Judge found that it was between CAPL and Defendant No. 1, not between the *Plaintiff* and Defendant No.1. This agreement granted CAPL a non-exclusive license to use the impugned mark but did not assign any rights to CAPL regarding the mark. Further, by relying on ***Hilton Roulunds Ltd. v. Commissioner of Income Tax***[12], it was reasoned that any use of the impugned mark by CAPL, as a licensee, would inure to Defendant No. 1, the registered proprietor.

13. Regarding the claim of copyright infringement, the learned Single Judge noted that the Assignment Deed dated 04.04.2006 between Mr. Uttam Sharma and CAPL lacked a specific period for assignment. Therefore, as per Section 19(5) of the Copyright Act, 1957, the Agreement was deemed to be valid for five years, and as the five-year period had since expired, the Plaintiff's claim for copyright

[9] "DA", hereinafter
[10] **(2012) 8 SCC 706**
[11] **(2020) 7 SCC 366**
[12] **2018 SCC OnLine Del 8556**

infringement became time barred. Thus, no cause of action arose in favour of the plaintiff under copyright law. On the issue of passing off, the Court observed that the invoices and promotional expenditure figures relied upon by the Plaintiff pertained to CAPL and Agrimas, not the Plaintiff. It was held that the Plaintiff failed to establish a link between these figures and itself, thereby failing to prove any goodwill associated with the mark "PADAN". Hence, no cause of action for passing off could be sustained.

14. The learned Single Judge further noted that Defendant No. 1 not only was the registered proprietor of the impugned mark and but also, based on the Formulation Guideline dated 23.05.1983, was also the prior user of the impugned mark in India. It was found that the impugned packaging bore the name of Sumitomo JV, which was associated with Defendant No. 1 and acted as a source identifier. In reference to the Agreement dated 06.12.2004 (between CAPL and the Plaintiff), the learned Single Judge observed that the Plaintiff had failed to substantiate its claim that it was registered proprietor of certain marks including "PADAN 4G" and "PADAN 50SP". In fact, on the contrary, it was admitted that Defendant No. 1 was the registered proprietor of these marks. Consequently, the learned Single Judge opined that the Agreement dated 06.12.2004 (between Plaintiff and CAPL) appeared to be fabricated and unsupported by any evidence.

15. The learned Single Judge concluded that a holistic reading of the plaint demonstrated that the suit was vexatious and malicious. It was held that it was legally untenable for the Plaintiff to file the suit

on behalf of CAPL, since CAPL was a distinct legal entity, and also since the Plaintiff had failed to place certain material documents on record. Further that the non-exclusive license granted to CAPL did not confer any right to the Plaintiff and also that the Plaintiff could not establish its own sales figures for the impugned mark. The learned Judge, therefore, held that, *"there is no cause of action whatsoever in favour of the plaintiff to institute the present suit against the defendants and the cause of action alleged by the plaintiff is purely illusory."*

16. Aggrieved by the impugned judgment, the Plaintiff approached this Court by way of the present appeal, assailing the findings of the learned Single Judge.

SUBMISSIONS

17. Mr. J. Sai Deepak, learned Senior Counsel for the Plaintiff, submitted that the learned Single Judge erred in rejecting the plaint at the threshold under Order VII Rule 11(a) of CPC. It was contended that the learned Judge had improperly delved into the merits of the case, which is beyond the scope of Order VII Rule 11(a) CPC. It was submitted that the impugned judgment suffered from various infirmities, including a failure to appreciate the distinction between the non-disclosure of a cause of action in the plaint and the absence of a cause of action for the suit. It was urged that the learned Single Judge conducted a mini-trial by recording a finding that, *"the plaintiff has not even made out a case for passing off in its favour.",* which is clearly beyond the purview of Order VII Rule 11(a) CPC. The plaint

must, therefore, be read as a whole, and all averments made therein be presumed to be true. Reliance was placed on the following judgments to support this position, ***Bhupendrabhai Hasmukhbhai Dalwadi v. Deceased Savitriben Ganumal Krishnani***[13]***, M.V. "Sea Success I" v. Liverpool and London Steamship Protection and Indemnity Association Ltd.***[14], ***Jageshwari Devi & Ors. v. Shatrughan Ram***[15] and ***Mayar (H.K.) Ltd. & Ors. v. Owners & Parties, Vessel M.V. Fortune Express & Ors.***[16]

18. It was argued that the learned Single Judge failed to consider material documents such as the Notice of Assignment dated 29.10.2002 and the letter dated 31.10.2002, which clearly established the subsisting relationship between the Plaintiff and Defendant No.1. The denial of these documents by the Defendants was, according to the Senior Counsel, contrary to the material on record and amounted to perjury. Therefore, the non-consideration of these documents led to an erroneous conclusion by the learned Single Judge.

19. Learned Senior Counsel also submitted that the Plaintiff, being the parent company of CAPL and Agrimas, had granted CAPL a royalty-based license under the Agreement dated 06.12.2004 to use the marks "PADAN 4G" and "PADAN 50 SP", and CAPL had undertaken the Plaintiff's marketing operations under the Agreement dated 27.01.2000. Learned Senior Counsel relied on Section 48(2) of the Trade Marks Act, 1999, which provides that the use of a trademark

[13] **AIR 2011 Guj 42**
[14] **2001 SCC OnLine Bom 1019**
[15] **(2007) 15 SCC 52**
[16] **(2006) 3 SCC 100**

by a licensee would inure to the benefit of the licensor. Therefore, the finding that Plaintiff did not have *locus standi* was erroneous. Further, it was contended that the finding of concealment of the DA was misplaced because it was not in the Plaintiff's possession and, in any case, the Agreement was never acted upon. Thus, reliance on the DA to conclude that the use of the mark by CAPL would inure to Defendant No. 2 was a misreading of the facts.

20. It was asserted that the learned Single Judge gravely erred in characterising the Agreement dated 06.12.2004 as fabricated without conducting a trial. Such a finding, it was argued, necessarily involves the adjudication of disputed questions of fact, which require evidence and cannot be decided merely at the threshold. It was pointed out that CAPL had in fact enforced the royalty-based license by filing C.S.(OS) No. 89 of 2005, which resulted in an temporary injunction restraining the Plaintiff from using the licensed marks until the suit was dismissed for default in 2017.

21. It was submitted that the learned Single Judge failed to appreciate the commercial relationship between the entities by placing reliance on various precedents[17]. Under the Agreement dated 27.01.2000, CAPL undertook the marketing of the Plaintiff's products, and therefore, communications between CAPL and Sumitomo JV were consistent with this arrangement and did not negate Plaintiff's rights. The promotional support provided by

[17] George V. Records, SARL v. Kiran Jogani & Anr., CS(OS) 739 of 2003; 2004 (28) PTC 347 (Del.); Mahendra and Mahendra Seeds Pvt. Ltd. v. Mahindra & Mahindra Ltd., MANU/GJ/0427/2002: AIR 2002 SC 117; Nuvoco Vistas Corp. Ltd. v. J.K. Lakshmi Cement Ltd. & Anr., Order dated 15.04.2019 in CO(Comm) 256/2014

Defendant No. 1 was minimal, only lasting for a year, and the supply of the technical compound was not forthcoming.

22. The learned Senior Counsel further highlighted that the Plaintiff held valid registrations under Section 9(3) of the Insecticides Act, 1968, for "PADAN 4G" and "PADAN 50 SP", as evidenced by the Formulation Guides dated 23.05.1983 and April 1988 issued by Takeda. This further substantiated the Plaintiff's entitlement to use the impugned marks.

23. It was submitted that the Plaintiff enjoyed a royalty-free permission to use the mark "PADAN", and neither Takeda nor the defendants had used the mark in India. The Plaintiff's exclusive use was substantiated by the Notice of Assignment dated 29.10.2002 and Takeda's letter dated 31.10.2002 to the Central Insecticide Board and Registration Committee, mentioning the Plaintiff and Agrimas as the one of the authorised entities to import *Cartap Hydochloride Technical*. It was pointed out that the other two companies named in this letter did not import the compound. Thus, it was argued that while the license was non-exclusive, the absence of any other licensees and the lack of supervisory control, as evidenced by the email dated 24.12.2007, amounted to a naked license, which evolved into goodwill over time.

24. It was further contended that since 2000, Defendant No. 2 had manufactured the same product in India under the marks "SANVEX" and "SUMI TAZ" but did not use the mark "PADAN. This further evidenced the non-use by the Defendants. The Plaintiff alone had used

"PADAN" in India since 1988 and continued to do so in its own right since 2012. Sales documents and promotional materials from 2005 were relied upon to assert the Plaintiff's long-standing commercial use and the acquisition of goodwill.

25. It was submitted that Defendant's letter dated 04.01.2011 terminated the naked license since it referred to the DA dated 26.12.2005 which indicated that Defendant No. 1 was ready to supply the technical compound in April 2011, however, the supply did not resume, and the Plaintiff continued to use the impugned mark with the Defendants' knowledge. It was further submitted that in June 2023, the Defendant No. 2 allegedly launched a product with deceptively similar packaging, thereby violating the Plaintiff's copyright in the packaging for the same product. The Defendants' non-use of the impugned mark was argued to amount to abandonment, rendering their registration liable to be cancelled. A cancellation petition had already been filed by the Plaintiff. In support, ***Tractors & Farm Equipment Ltd. v. Massey Ferguson Corpn.***[18], was cited.

26. *Per contra,* Mr. Rajshekhar Rao, learned Senior Counsel for the defendants, strongly supported the impugned judgment and submitted that the plaint was liable to be rejected as it failed to disclose any enforceable legal right in favour of the Plaintiff. According to Mr. Rao, even assuming the Plaintiff's claim of proprietorship over the mark "PADAN" based on use by its sister concern (CAPL), the agreement with CAPL had been terminated, and therefore no enforceable right survived in favour of the Plaintiff.

[18] **2025 SCC OnLine Mad 864**

27. Mr. Rao argued that the Plaintiff could not sue on behalf of CAPL, as CAPL was merely a licensee of Defendant No. 1, and a licensee cannot assert proprietary rights to the detriment of the licensor. Any such claim, it was contended, would be contrary to settled law. In support of this argument, reliance was placed on ***Sant Lal Jain v. Avtar Singh***[19], ***Motorpresse International Verlagsgeselischaft Holding mbH & Co. v. Mistrale Publishing Pvt. Ltd.***[20] and ***Viridian Development Managers Pvt. Ltd. & Anr. v. RPS Infrastructure Ltd.***[21]. Mr. Rao further referred to the Agreement dated 21.05.2004 between Takeda and CAPL, along with various communications dated 28.03.2005, 14.06.2005, 07.02.2006, and 11.06.2007, filed by the Plaintiff. These documents demonstrated that Defendant No. 1 played a role in advertising and promoting the "PADAN" products. It was also pointed out that the Plaintiff's packaging mentioned "*In Association With Sumitomo Chemicals Takeda Agrico Company Limited, Japan",* which, according to the Defendants, negated any independent claim of proprietorship by the Plaintiff.

28. Mr. Rao further contended that under the DA dated 26.12.2005, the non-exclusive license to use the impugned mark in India was granted to CAPL, and not to the Plaintiff. The corporate distinction between the Plaintiff and CAPL, both of which are independent legal entities, could not be ignored to create an illusory *locus* for the Plaintiff. Also, no documents were provided by the Plaintiff to show

[19] **(1985) 2 SCC 332**
[20] **2005 SCC OnLine Del 346**
[21] **2023 SCC OnLine Del 7134**

any independent sales or promotional figures. Furthermore, it was emphasized that CAPL was undergoing insolvency proceedings, therefore, the suit ought to have been instituted by the Resolution Professional of CAPL, not by the Plaintiff. Mr. Rao also pointed out that the plea of naked licensing was an afterthought since it was not raised in the plaint but only introduced in the grounds of appeal.

29. On the issue of copyright infringement, Mr. Rao submitted that the Assignment Deed dated 04.04.2006 between Mr. Uttam Sharma and CAPL did not specify a duration for the assignment. Under Section 19(5) of the Copyright Act, 1957, the assignment was deemed to have expired after five years. Furthermore, the DA required CAPL to obtain Defendant No. 1's approval for any new packaging of "PADAN" products, which indicated that the rights in artistic work were vested in Defendant No. 1 and not the Plaintiff. Therefore, any claim of copyright infringement in the Plaintiff's favour was untenable.

30. Mr. Rao argued that the Plaintiff had suppressed material documents, including the Trade Mark Agreement dated 15.03.2003 between Takeda and CAPL, (not the plaintiff) and the DA dated 26.12.2005. These documents unequivocally established that CAPL was only a licensee and was subject to quality checks for the impugned products, in line with Defendant No. 1's Formulation Guide for the manufacture of these impugned products. Mr. Rao also pointed out that the Plaintiff's contention regarding the non-use of the

PADAN logo “ ” was belied by the Plaintiff’s own packaging, which bore the said mark, thereby undermining its claim.

31. The learned Senior Counsel vehemently disputed the purported license agreement between the Plaintiff and CAPL, particularly since it mentioned the Plaintiff as *“registered trademark holder”* of “PADAN 4G” and “PADAN 50SP”. This claim was contradicted by the admitted trademark registrations in the name of Defendant No. 1. Reliance was also placed on the following precedents to demonstrate the importance of truthful disclosure of material facts: ***S.P. Chengalvaraya Naidu v. Jagannath***[22]***, S.P. Chengalvaraya Naidu v. Jagannath***[23]***, S.P. Chengalvaraya Naidu v. Jagannath***[24]***, Satish Khosla v. Eli Lilly Ranbaxy Ltd.***[25]***, Raj Kumari Garg v. S.M. Ezaz & Ors.***[26]***, Babita Pal & Ors. v. Jagdish Bansal***[27] and ***Sandip Singh v. MIS Cholamandalam Investment and Finance Co. Ltd. & Ors.***[28]

32. Lastly, Mr. Rao opposed the Plaintiff’s application under Order XLI Rule 27 of CPC to introduce additional evidence, arguing that such evidence could not be adduced at this stage as it would gravely prejudice the Defendants. Furthermore, he argued that Order XLI Rule 33 could not be invoked to circumvent the requirements of Order XLI Rule 27. It was also urged that conditions under Order XLI Rule 27 were not met as the Plaintiff had knowledge of the documents for over

[22] **(1994) 1 SCC 1**
[23] **(1994) 1 SCC 1**
[24] **(1994) 1 SCC 1**
[25] **1998 (44) DRJ (DB)**
[26] **2012 (132) DRJ 108 (DB)**
[27] **2013 (133) DRJ 332 (DB)**
[28] **2022 SCC OnLine Del 2913**

two years and had failed to produce them at an earlier stage. It was submitted that these documents were not required to be disclosed at the appellate stage in a matter governed by Order VII Rule 11(a) CPC. To support this, Mr. Rao relied on paragraph 10 of ***Natha Singh v. Financial Commr., Taxation, Punjab***[29], ***UOI v. Ibrahim Uddin & Ors.***[30] and paragraph 19 of ***N. Kamalam v. Ayyasamy***[31].

ANALYSIS AND FINDINGS

33. We have heard the arguments advanced on behalf of both parties and perused the material placed on record. The present dispute emanates from the Plaintiff's suit against the defendants for copyright infringement, passing off, and dilution of goodwill.

34. At the outset, it is important to note that the Plaintiff instituted the suit based on its claim of exclusive use of the impugned mark "PADAN" in India. According to the Plaintiff's pleadings, under the Agreement dated 06.12.2004, CAPL was the Plaintiff's licensee and *vide* another agreement, also a non-exclusive licensee of Takeda. The Plaintiff alleges that despite the defendants holding registrations of the impugned word and device marks, they have failed to use the impugned mark or authorize its use by any other licensee in India, thereby allowing the Plaintiff to exclusively use the mark. The Plaintiff claims that in 2006, it devised its own packaging for the product and continued to use the mark "PADAN" with the knowledge and acquiescence of the defendants. The plaint further asserts that CAPL's sales figures between 2013-2022 were approximately Rs.

[29] **(1976) 3 SCC 28**
[30] **(2012) 8 SCC 148**
[31] **(2001) 7 SCC 503**

913.68 crores, while sales by Agrimas in 2022-23 amounted to Rs. 5.15 crores, and that CAPL incurred Rs. 49.75 crores in promotional expenses from 2013-2022. On this basis, the Plaintiff asserts that it has acquired goodwill and reputation in the mark and claims that the Defendants' use of a deceptively similar packaging is likely to cause confusion and harm the Plaintiff's business.

35. Thus, the central issue before this Court is whether the learned Single Judge's rejection of the plaint on the ground that the cause of action disclosed in the plaint was illusory, is sustainable in the context of the material facts and applicable law. This issue must be evaluated within the narrow confines of Order VII Rule 11(a) CPC, which governs the rejection of a plaint for non-disclosure of cause of action.

36. For convenience, Order VII Rule 11 CPC reads as follows:

> *"**11. Rejection of plaint.—** The plaint shall be rejected in the following cases:—*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
> *(e) where it is not filed in duplicate;*
> *(f) where the plaintiff fails to comply with the provisions of rule 9:*
> *Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court*

and that refusal to extend such time would cause grave injustice to the plaintiff."

(emphasis supplied)

37. Rejection of plaint under Order VII Rule 11 CPC is a special remedy available to a defendant to challenge the maintainability of a suit. The term '*shall'* in the provision clearly indicates that the Court is required to reject the plaint if it suffers from any of the infirmities specified under the said Rule. One such infirmity is the non-disclosure of cause of action.

38. The concept of "cause of action" has been well-defined in Indian jurisprudence. We deem it fit to delve into a brief inquiry to understand its contours in the present case.

39. Cause of action was defined in ***ABC Laminart (P) Ltd.* v. *A.P. Agencies***[32], as follows:

> *"12.* ***A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court****. In other words, it is a bundle of facts which taken with the law applicable to them* ***gives the plaintiff a right to relief against the defendant****.* ***It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded****.* ***It does not comprise evidence*** *necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."*
>
> *(emphasis supplied)*

[32] **(1989) 2 SCC 163**

40. In ***Mayar (supra)***, the Supreme Court defined cause of action and further clarified as follows:

> *"12. ...**A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence** except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. **So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint**..."*
>
> *(emphasis supplied)*

41. In ***Om Prakash Srivastava v. Union of India***[33]**,** the Supreme Court carved out the meaning of cause of action in detail, as follows:

> *"9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322].)*
>
> *10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See Sadanandan Bhadran v. Madhavan Sunil Kumar [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471].)*
>
> *11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443]]*
>
> *12. The expression "cause of action" has acquired a judicially*

[33] (2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24 : 2006 SCC OnLine SC 758

settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294].)

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh [(1977) 1 SCC 791] .)

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra [(2000) 7 SCC 640 : 2001 SCC (Cri) 215] .)

15. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

> *" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a*

> *particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."*
>
> ***
>
> *17. It would be appropriate to quote para 61 of the said judgment, which reads as follows : (Mohd. Khalil Khan case [(1947-48) 75 IA 121 : AIR 1949 PC 78] , AIR p. 86)*
> *"61. ...(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. (Read v. Brown [(1888) 22 QBD 128 : 58 LJQB 120 : 60 LT 250 (CA)])*
> *(3) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey [(1884) 14 QBD 141 : (1881-85) All ER Rep 357 : 53 LJQB 476 : 51 LT 529 (CA)])*
> *(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey [(1884) 14 QBD 141 : (1881-85) All ER Rep 357 : 53 LJQB 476 : 51 LT 529 (CA)])*
> *(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers ... to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. (Chand Kour v. Partab Singh [(1887-88) 15 IA 156 : ILR 16 Cal 98 (PC)]) This observation was made by Lord Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2 Rule 2) where plaintiff made various claims in the same suit." (IA pp. 139-40)"*

42. The principle established in the above-mentioned cases is that a cause of action consists of a set of material facts that may, if proved entitle the plaintiff to seek relief and that it must include some act by the defendant; in absence thereof, no cause of action shall lie. Further, a court should not reject a plaint on the mere ground that the plaintiff may not succeed in proving its case, as long as the plaint discloses facts sufficient to support such a claim. Cause of action is a broad concept and must include all material facts, but not evidence, required for a suit to be maintainable.

43. Having outlined the principles governing cause of action, we now turn to the statutory provisions regulating pleadings and documents in a plaint.

44. Order VI Rule 2(1) of the CPC stipulates that pleadings must state material facts and not the evidence. Material facts constitute the cause of action, their omission would render the cause of action incomplete[34] and result in rejection of the plaint under Order VII Rule 11(a).

45. Order VII Rule 14 of the CPC provides for the production of documents relied upon by the plaintiff in the plaint. These documents must be considered at the stage of deciding an application under Order VII Rule 11(a) of CPC[35].

46. In light of the foregoing statutory framework, we now briefly examine the scope of jurisdiction under Order VII Rule 11(a) CPC, before addressing the present factual scenario and submissions of both parties.

47. It is well-settled that for adjudication under Order VII Rule 11(a) CPC, the averments in the plaint alone are relevant[36], and the averments in the written statement are wholly irrelevant[37]. Furthermore, considering the consequences of outright rejection of a

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[34] ***Popat and Kotecha Property v. State Bank of India Staff Association*, (2005) 7 SCC 510; *Church of North India v. Lavajibhai Ratanjibhai*, (2005) 10 SCC 760; *Mayar (supra); Roop Lal Sathi v. Nachhattar Singh* Gill, (1982) 3 SCC 487**

[35] ***Dahiben v. Arvindbhai Kalyanji Bhanusali*, (2020) 7 SCC 366**

[36] ***D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; *Raptakos Brett & Co. v. Ganesh Property*, (1998) 7 SCC 184; *Mayar (supra); Central Provident Fund Commissioner v. Lala J.R. Education Society*, (2016) 14 SCC 679**

[37] ***Saleem Bhai* v. *State of Maharashtra*, (2003) 1 SCC 557**

plaint, this jurisdiction is to be exercised sparingly[38]. It is also trite that the plaint must be viewed in its entirety and cannot be segregated[39]. If the allegations in the plaint *prima facie* reveal a cause of action, the court cannot inquire into veracity of the allegations[40] at this stage.

48. In ***Liverpool & London S.P. & I Assn. Ltd.* v. *M.V. Sea Success I***[41], the Supreme Court laid down the test for exercising power under Order VII Rule 11(a) CPC, as follows:

> ***"****139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct.* ***The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."***
>
> *(emphasis supplied)*

49. In ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal***[42], the Supreme Court articulated the ambit of Order VII Rule 11 as follows:

> *"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit.* ***The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under***

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[38] ***Dahiben v. Arvindbhai Kalyanji Bhansali*, (2020) 7 SCC 366**
[39] ***Popat and Kotecha Property v. State Bank of India Staff Association*, (2005) 7 SCC 510; *Hardesh Ores (P) Ltd.* v. *Hede & Co.*, (2007) 5 SCC 614**
[40] ***Dahiben v. Arvindbhai Kalyanji Bhanusali*, (2020) 7 SCC 366 : (2020) 4 SCC (Civ) 128 : 2020 SCC OnLine SC 562; *D. Ramachandran* v. *R.V. Janakiraman*, (1999) 3 SCC 267; *Vijay Pratap Singh* v. *Dukh Haran Nath Singh*, AIR 1962 SC 941**
[41] **(2004) 9 SCC 512**
[42] **(2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602**

Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to*. The averments of the plaint have to be* ***read as a whole*** *to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case.* ***The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint.*** *Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action,* ***the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage****."*

(emphasis supplied)

50. A coordinate Bench of this Court in ***Inspiration Clothes & U. v. Colby International Ltd.***[43]**,** held thus:

*" ...****The plea of the defendant that there is no cause of action does not amount to the plea that the plaint does not disclose any cause of action. A distinction must always be drawn between a plea that plaint does not disclose a cause of action and the plea that the plaintiff has no cause of action to sue.*** *The grounds on which plaint can be rejected are enumerated in clauses (a) to (d) of Rule 11 of Order 7 CPC The first ground on which plaint can be rejected is that it does not disclose a cause of action. While considering the prayer to reject the plaint on ground (a) of Order 7 Rule 11 CPC that the plaint discloses no cause of action, which is essentially a demurrer, the defendant must be taken to admit for the sake of argument that* ***the allegations of the plaintiff in the plaint are true in manner and form. The power to reject the plaint on this can be exercised only if the Court comes to the conclusion that even if all the allegations are taken to be proved, the plaintiff would not be entitled to any relief whatsoever.*** *A distinction must always be drawn between a case where the plaint on the face of it discloses no cause of action and another in which after considering the entire material on the record the Court comes*

[43] **2000 SCC OnLine Del 813**

to the conclusion that there is no cause of action. In the first case the plaint can be rejected but ***in the letter (sic) case the plaint cannot be rejected. The suit has to be dismissed.*** *Learned Single Judge adopted the second approach. This was not the stage where the Court was expected to enter into this controversy that whether there was a cause of action to the plaintiff against the defendant or not.* ***No doubt that where the plaint is based on a document, the Court will be entitled to consider the said document also and ascertain if a cause of action is disclosed in the plaint, but validity of the document cannot be considered at this stage****.* ***To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and documents accompanying the plaint only and nothing else****.* ***The Court, however, cannot look at the defence of the defendant or the documents relied upon by the defendant.*** *See D. Ramchandran v. R.V. Janakiraman (1999) 3 SCC 267…The effect of dismissal of suit is altogether different and district from the effect of rejection of the plaint. In case plaint is rejected under Order 7 Rule 11 CPC filing of a fresh plaint in respect of the same cause of is specifically permitted under Rule 13 of Order 7. C.P. C. Altogether different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11 CPC learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in T. Arivandandam's case (supra) relied upon by learned counsel for the appellant, it was held that if on a meaningful-not formal- reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the trial court should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable for damages for its acts of omission and commission.* ***It would be an altogether different situation that the plaintiff might not ultimately succeed in obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be***

maintainable against the defendant *and that plaintiff had a cause of action only against defendnat's principal and its parent unit in Hong Kong, but such aspect could not have been gone into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages."*

(emphasis supplied)

51. This Court, speaking through one of us (C. Hari Shankar, J.) in ***Westend Green Farms Society v. Vicky Kakkar***[44], observed as follows:

"15.2.6 ...This decision is of significance, as it rules, clearly, that a plaint must disclose material facts which give rise to the cause of action. ***In a suit for trade mark infringement or passing off, therefore, the plaint must not merely aver that infringement or passing off has taken place, but must disclose the facts on the basis of which the allegation is made****.*

***

15.3.4 *While examining whether a case for rejecting the plaint under Order VII Rule 11(a) on the ground of non-existence of a cause of action does, or does not, exist,* ***the plaint has to be read holistically****.* ***It is only where a complete reading of the plaint, juxtaposing one para with the other and harmonising the plaint as a whole, does not disclose the existence of a cause of action on the basis of which the plaintiff can sue, that the plaint can be rejected under Order VII Rule 11(a).*** *The Court has to be conscious of the fact that plaints may not always be artistically, or even, at times, elegantly drafted, and has to carefully scrutinize the assertions in the plaint before satisfying itself that no cause of action, within the meaning of Order VII Rule 11(a), is made out from the averments contained therein.*

****

15.4.2 *Applying this principle on a suit alleging infringement or passing off of trade mark, for example, the plaint must not merely allege infringement or passing off, must also plead the existence of the necessary ingredients which make out a case of infringement or passing off.*

****

16.1.11 *There is a fundamental difference between pleading the existence of the basis for a material fact and disclosing the evidence on the basis of which such existence is pleaded. Any*

[44] **2025 SCC OnLine Del 10701**

> *plaint must plead the former, but not the latter.* ***Expressed otherwise, all ingredients of the cause of action – meaning the facts which the plaintiff would have to establish to entitle it to a decree – must be pleaded.****"*
>
> *(emphasis supplied)*

52. Therefore, the primary question is whether a real cause of action is set out in the plaint or not[45]. As emphasized by the Supreme Court in ***T. Arivandandam v. T.V. Satyapal***[46], courts must remain vigilant against clever drafting that creates the illusion of a cause of action and curb such attempts at its nascent stage. However, it is equally essential for courts to refrain from engaging in an evaluative exercise to examine the probable success of a claim at this stage.

53. The averments in the plaint alone are germane when deciding an application under Order VII Rule 11(a) CPC. To recapitulate, a plaint must be viewed as a whole along with its annexed documents, and it must disclose a clear right to sue[47].

54. The Court, at the stage of Order VII Rule 11(a), proceeds on a demurrer, allegations in the plaint are presumed to be true, as recognised, *inter alia*, in ***Mayar (supra)*** and followed in ***Inspiration Clothes (supra)***.

55. At the cost of repetition, the issue before this Court is whether the plaint discloses a cause of action in order to survive the scrutiny of Order VII Rule 11(a) CPC. This question must be examined in light of the statutory framework and relevant precedents.

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[45] ***ITC Ltd. v. Debts Recovery Apellate Tribunal*, (1998) 2 SCC 70**
[46] **(1997) 4 SCC 467**
[47] ***T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467**

56. The Supreme Court in ***Madanuri Sri Rama Chandra Murthy (supra), Mayar (supra), Popat*** and ***Kotecha Property (supra) and T. Arivandandam (supra)*** held that the plaint must be read in its entirety and given a meaningful reading to ascertain whether it discloses a cause of action, i.e., a clear right to sue. Additionally, as per ***Om Prakash Srivastava (supra)***, ***Mayar (supra)*** and ***ABC Laminart (P) Ltd. (supra)***, a cause of action must disclose material facts that entitle a person to approach a court for relief. This includes the existence of a legal right, an act by the defendant that affects this right, and consequential legal injury caused by this act. In ***Roop Lal Sathi (supra)***, material facts were defined as the facts necessary to formulate a complete cause of action, omission of even a single material fact would render the cause of action incomplete and the plaint liable to be rejected.

57. In the present case, the Plaintiff claims that it has exclusive and continuous use of the impugned mark "PADAN" in India, having developed and marketed the product since 1988. The Plaintiff asserts that it has substantial sales and promotional expenses, thereby acquiring goodwill in the said mark. It further claims that Defendant No. 2 has launched a product using deceptively similar packaging, thereby causing confusion and damaging the Plaintiff's reputation.

58. The plaint discloses the cause of action in paragraph 36 as follows:

> *"36. That in the above facts and circumstances, cause of action to file the present suit has arisen in favour of the plaintiff and against the defendants. Cause of action for the first time arose in favour of the plaintiff and against the defendants in the last week of May,*

2023, when plaintiff came across a leaf let of defendant no.2 which showed that it is going to launch pesticide based on CARTAP HYDROCLORIDE technical under the trademark PADAN. Cause of action thereafter arose in the 1st week of June, 2023 when plaintiff procured one such product from the market. Cause of action thereafter arose when the plaintiff filed cancellation petition against the trademark PADAN registered in favour of defendants. The cause of action is continuous one and is accruing every day and shall continue to so accrue till the defendants cease with use/claim in any manner over the impugned trademark/packaging or any other trademark identical with or deceptively similar to the plaintiff's said trade mark/packaging in relation to impugned goods."

59. Applying the aforesaid principles and reading the plaint holistically within the scope of Order VII Rule 11(a) CPC, we are of the view that the plaint discloses sufficient material facts to establish a cause of action. The facts delineated sufficiently establish the Plaintiff's right to sue based on the royalty-based license agreement dated 06.12.2004 between CAPL and the Plaintiff. The Plaintiff pleads its right in the impugned mark and packaging based on license arrangements, prior and exclusive use, sales, promotional expenses and accrued goodwill thereof. It is specifically pleaded that the Plaintiff designed the impugned packaging and that Defendant No.2 adopted deceptively similar packaging for identical goods, and that such use has caused confusion, dilution and injury to the Plaintiff. These averments must be presumed true at this stage, and if proven, would entitle the Plaintiff to relief, thereby satisfying the test laid down in ***Liverpool & London S.P. (supra)***. The correctness or ultimate sustainability of these averments will necessarily require evidentiary inquiry, which is impermissible at the stage of Order VII Rule 11(a) CPC.

60. The learned Single Judge, by relying on ***Ponniamman***

Educational Trust (supra), held that the since the DA was referred to in the plaint but not annexed, it could be incorporated by such reference in the plaint. We deem it fit to reproduce the relevant excerpt as follows of the impugned judgment below:

> *"21. ...**18.** In the light of the controversy, we have gone through all the averments in the plaint. In Para 4 of the plaint, it is alleged that the second defendant as agreement-holder of the first defendant and also as the registered power-of-attorney holder of the first defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement-holder". **We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The abovementioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint.** This position has been reiterated in U.S. Sasidharan v. K. Karunakaran [(1989) 4 SCC 482] and Manohar Joshiv. Nitin Bhaurao Patil [(1996) 1 SCC 169][48]*
>
> *[emphasis supplied]*
>
> *23. Therefore, since the aforesaid agreement has been relied upon in the plaint, the Court can look into it even though it has been filed on behalf of the defendants along with the written statement. It appears that the plaintiff has deliberately not filed the said agreement as it would show that the said agreement has been entered by and between the defendant no.1 and CAPL and the plaintiff was not a party to the said agreement.*
>
> *24. As per the Distribution Agreement dated 26th December 2005, the terms of trade mark license granted by the defendant no.1 in favour of CAPL are detailed in Article 8 of the said agreement dated 26th December 2005. Article 8.1 and 8.2 of the said agreement is set out below:*
>
> > *"8.1 **During the term of this Agreement and subject to the terms and conditions herein, STA grants to Distributor a non-exclusive, royalty fee non-transferrable license to use the Trademarks on the Products** as indicated in Exhibit D for distribution of the Products for the Field in the Territory with a right to*

[48] ***Church of Christ Charitable Trust and Education Charitable Society v. Ponniamman Educational Trust,* (2012) 8 SCC 706**

sub-license to its affiliates; provided that, Distributor shall cause its affiliates to abide by and carry out the duties and obligations imposed upon Distributor hereunder mutatis mutandis.

8.2 ***Distributor acknowledges STA's right, title and interest in and to the Trademarks and will not at any time do or cause to be done any action or inaction which in any way may impair or intend to impair any part of said right, title and interest. Distributor shall not question the validity of any of the Trademarks.*** *Neither Distributor nor any of its dealers nor other sales network entities shall use or attempt to use any advertising or promotional materials tending to dilute or harm the reputation or goodwill attached to STA or the Trademarks. Distributor shall use the Trademarks applicable hereto in connection solely with the sale of the Products in the manner and form in which they have hereto before been used by STA and in no other manner or form except as expressly authorized by STA in advance in writing. All advertising and promotional materials prepared or placed by Distributor and/or any of its dealers or other sales network entities, as well as the format of any of the Trademarks, shall be consistent with STA standards with regard to Product attributes and performance."*

[emphasis supplied]

25. These clauses demonstrate that CAPL was only given a license on a non-exclusive basis to use the mark PADAN and there was no assignment of the said mark in its favour. Therefore, under the terms of the aforesaid agreement, even CAPL could not have claimed any ownership/ proprietary right over the mark PADAN."

61. It is evident from the above that the learned Single Judge relied upon a document filed by the Defendants. This approach adopted by the learned Single Judge is alien to the vast jurisprudence of Order VII Rule 11(a) CPC, as reiterated in ***Madanuri Sri Rama Chandra Murthy (supra)***. The principle emerging from ***Ponniamman Educational Trust (supra)*** is that when a document is relied upon in the plaint, but not filed along with it or its contents are not set out in the plaint, it becomes incorporated in the plaint by reference. This principle, however, does not permit the court to rely on documents

furnished by the defendant at the Order VII Rule 11(a) stage. Further, the expression *"gets incorporated by reference"* pertains to a document "sued upon", i.e., forming the very foundation of the cause of action. The DA in the present case is not a document "sued upon" or the source of the Plaintiff's claim but is invoked to defeat it. Its legal effect, scope and *inter se* consequences between the parties are disputed and require adjudication, therefore, cannot be considered at the threshold. Thus, incorporation by reference cannot be stretched to permit rejection of the plaint based on material furnished by a defendant.

62. The learned Single Judge held that no cause of action arose for copyright infringement on the premise that the Copyright Assignment Deed dated 04.04.2006 was silent as to its duration, and thus, by virtue of Section 19(5) of the Copyright Act, 1957, it must be deemed to have expired after five years.

63. The Deed placed on record pertains to artwork used for "PADAN 4G" (Cartap Hydrochlorside 4% Granule), whereas the present dispute purportedly concerns other trademarks "PADAN" and "PADAN 50SP" as well. The Deed, therefore, does not *ex facie* cover all works involved in the dispute. Additionally, while the Deed refers to annexed artwork, this annexure does not form part of the record, making its precise scope unclear. It is well-settled that registration is not a pre-requisite for the existence of copyright under the Copyright Act, 1957. Even assuming that the Deed has expired, such expiry does not, *ipso facto,* extinguish the copyright but may result in the reversion of rights to the assignor. Thus, the effect of the Deed is

essentially a triable issue.

64. The plaint in the present case specifically avers the Plaintiff's authorship in 2006, its continuous use thereafter, and the adoption of deceptively similar packaging for identical goods by Defendant No. 2 for identical goods. The legal effect of the Deed, including whether the rights reverted or whether the Plaintiff retained ownership, requires evidentiary inquiry and cannot be conclusively determined at this stage. Hence, the learned Judge erred in undertaking an evaluation beyond the limited ambit of Order VII Rule 11(a) CPC.

65. The learned Single Judge also held that no cause of action arose for passing off by citing the Plaintiff's failure to prove goodwill and the sales and promotional expenses of its sister concerns, as opposed to its own. We agree with the submission of Mr. J. Sai Deepak that a conclusive finding on goodwill is unwarranted at the Order VII Rule 11(a) stage, especially considering the averment that CAPL is the sister concern and licensee of the Plaintiff. At this stage, the Court is required to examine only whether the plaint discloses the essential ingredients of passing off, including goodwill, misrepresentation, and damage or likelihood thereof to the plaintiff, rather than determining whether goodwill has been conclusively proven.

66. It is well-settled that confusion is to be assessed from the perspective of a consumer with average intelligence and imperfect recollection, and that actual proof of confusion is not required; the

likelihood of such confusion suffices[49]. In light of the decision in ***Westend Green Farms Society (supra)***, it is sufficient if the plaint discloses material facts constituting the allegation of passing off.

67. In the present case, the plaint alleges adoption of deceptively similar packaging by Defendant No. 2 in respect of identical goods, thereby increasing the likelihood of confusion. The plaint contains categorical averments of continuous use and goodwill in relation to the impugned mark, the Agreement dated 29.01.2000 for CAPL undertaking Plaintiff's marketing, and the royalty-based license deed dated 06.12.2004 granted in favour of CAPL by the Plaintiff. In view of the aforesaid license deed and the Plaintiff being the parent company of Agrimas and CAPL, assuming these averments to be true at face value at the Order VII Rule 11(a) stage, it can be reasonably inferred that the use by CAPL as the licensee and Agrimas as the sister concern may inure to the benefit of the Plaintiff. The existence of the license agreement suggests that the Plaintiff was entitled to sue in its own right and could not be non-suited merely because CAPL is under liquidation.

68. Moreover, the questions such as whether group of companies doctrine applies or whether only the Resolution Professional could sue on behalf of CAPL, are triable issues requiring evidence to be led and cannot be conclusively decided at this stage.

[49] ***Reckitt & Colman Products Ltd v. Borden Inc.,*** **(1990) 1 All ER 873 (HL);** ***Satyam Infoway Ltd v. Siffynet Solutions Pvt. Ltd.,*** **(2004) 6 SCC 145;** ***Brihan Karan Sugar Syndicate Pvt Ltd v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana,*** **(2024) 2 SCC 577**

69. The learned Single Judge opined that Defendant No. 1 was the registered proprietor, as also conceded in the plaint, and that it was the prior user of the impugned mark on the strength of the Formulation Guideline dated 23.05.1983, and that the impugned packaging, by mentioning Sumitomo JV, functioned as a source identifier for the Defendants. In our opinion, these findings are misplaced. As per settled principles, this Court must proceed on the assumption that the averments in the plaint are true. The mere existence of a registration does not extinguish the Plaintiff's common law remedies or benefits arising from the license agreements. These are triable issues, including the effect of 'Sumitomo JV' on the impugned packaging, which require evidentiary consideration and are impermissible at the Order VII Rule 11(a) CPC stage. Further, the finding in the learned Single Judge's decision regarding the Agreement dated 06.12.2004 being fabricated and that the Plaintiff falsely claimed to be the registered proprietor of "PADAN 4G" and "PADAN 50SP", followed by the overall rejection of the plaint based on these grounds is premature and erroneous. Such a conclusion necessitates an adjudication of disputed questions of fact and evidentiary inquiry; the validity of documents cannot be determined at this stage, as held in ***Inspiration Clothes (supra)*.** The questions of validity and ownership under the agreement, as well as the Plaintiff's right to describe itself as the proprietor of the mark "PADAN 4G" and "PADAN 50SP", are manifestly triable issues and their resolution cannot be prematurely foreclosed under Order VII Rule 11(a).

70. The learned Single Judge's conclusion that the cause of action was "illusory" also appears premature, as it is not for the Court at this stage to assess the merits of the Plaintiff's case. Under Order VII Rule 11(a), a court is only concerned with whether the plaint, assuming its averments to be true, discloses a cause of action, i.e., material facts that, if proved, would entitle the Plaintiff to relief. Thus, the enquiry is not about whether the Plaintiff will ultimately succeed but whether the cause of action is pleaded at all.

71. The concept of an "illusory" cause of action, as cautioned in ***T. Arivandandam (supra)***, applies where clever drafting creates a semblance of a right without pleading the material facts constituting that right. In the present case, the Plaintiff has adequately pleaded facts that, if proven, would entitle it to a remedy. Therefore, the learned Single Judge's conclusion that the cause of action is illusory is erroneous.

72. Further, the finding of "illusory" is conceptually akin to the standard under Order XIII-A Rule 3[50] governing summary judgments, which contemplates summary disposal in situations where a party has no real prospect of succeeding in its claim. This assessment involves evaluating the legal effect of documents and competing claims, which is impermissible at the stage of Order VII Rule 11(a) CPC. In the present case, the plaint pleads proprietary rights, prior use, license arrangements, adoption of deceptively similar work by the defendants,

[50] "**3. Grounds for summary judgment.—**The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—
(*a*) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
(*b*) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."

and the resultant injury. These averments, taken to be true, constitute material facts which may entitle the Plaintiff to relief. Thus, the conclusions reached by the learned Single Judge go beyond the limited scope of an Order VII Rule 11(a) enquiry. Therefore, we find that the rejection of the plaint under Order VII Rule 11(a) was not warranted, and the impugned order is liable to be set aside.

73. The contentions of the Defendants regarding the Plaintiff's *locus* and the allegation that the plaint fails to disclose a cause of action have been answered in the above discussion. The contention that even presuming Plaintiff's proprietorship over "PADAN" based on use by its sister concern, no enforceable right exists because the Agreement with CAPL is terminated, overlooks the common law remedies available to the Plaintiff and the fact that copyright may exist even without registration. The specific pleading regarding the License Agreement dated 06.12.2004 between CAPL and the Plaintiff, presumed to be true at this stage, establishes that CAPL's sales and promotional expenses will inure to the benefit of the Plaintiff.

74. The contention that the Plaintiff, on behalf of CAPL, cannot assert proprietary rights in the impugned mark requires interpretation of contractual terms and evidence to be led, which is a matter for trial and cannot be conclusively determined at the Order VII Rule 11(a) stage. The contention that the communications on record are between CAPL and the Defendants, not the Plaintiff, were reasonably explained by the Plaintiff, who submitted that under Agreement dated 27.01.2000, CAPL undertook the marketing of the Plaintiff's products and that under the License Agreement dated 06.12.2004, CAPL acted

as the Plaintiff's licensee. Hence, communications involving CAPL, not the plaintiff, cannot undermine the Plaintiff's pleaded case at this stage.

75. The Defendants' allegation of suppression of the Trademark Agreement dated 15.03.2003 and the DA dated 26.12.2005 by the Plaintiff is not persuasive. A suppressed fact must be material in the sense that its disclosure would effectively alter the Court's decision[51]. In the present case, the aforesaid documents, are invoked to portray CAPL as a mere licensee of Defendant No. 1; it is conceded in the plaint that CAPL was a non-exclusive licensee of Takeda. Further, since these documents do not form part of the plaint, they cannot be considered under Order VII Rule 11(a). Further, the effect of these arrangements is a triable issue and cannot be addressed at this stage.

CONCLUSION

76. It is well settled that a plaint must disclose material facts constituting the foundation of a legal right to sue; in the absence of such facts, no real cause of action arises. In the present case, we find that the plaint contains specific averments regarding the Plaintiff's continuous and exclusive use of the impugned mark in India, the License Agreement between the Plaintiff and Takeda, as well as substantial sales and goodwill acquired by the Plaintiff. The plaint further alleges the adoption of deceptively similar packaging by Defendant No. 2 in relation to the same goods, thereby amounting to copyright infringement and passing off. These averments, which must be presumed true at Order VII Rule 11 (a) stage, disclose the existence

[51] ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, (2004) 7 SCC 166**

of a cause of action.

77. Whether the plaintiff ultimately succeeds is extraneous to the inquiry under Order VII Rule 11(a) and cannot justify the rejection of the plaint at the threshold by characterising the cause of action as "purely illusory".

78. The sequitur of the foregoing discussion is that the learned Single Judge erred in rejecting the plaint at the outset, thereby transgressing the settled parameters of Order VII Rule 11(a) CPC, which require a court to limit its inquiry solely to the averments in the plaint and its annexures.

79. In light of the above, the appeal is accordingly allowed.

80. The suit filed by the Appellant is restored to its original number and shall proceed in accordance with law. The learned Single Judge shall now adjudicate the suit uninfluenced by any observation made in this judgment.

81. Parties are directed to appear before the learned Single Judge (Roster Bench) on 30.03.2026 for further proceedings.

82. Pending applications, if any, are disposed of. No order as to costs.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

MARCH 18, 2026*/gunn/ss/***pa**