



2025:AHC:170327-DB

Reserved on 05.08.2025
Delivered on 23.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD
COMMERCIAL APPEAL No. - 24 of 2025

Anugya Gupta and
another

.....Petitioners(s)

Versus

I Think Apps Pvt. Ltd.
through its Director Arpit
Seth

.....Respondents(s)

Counsel for Petitioners(s)	: Devansh Misra, Saurabh Pandey, Vareesha Irfan, Anup Shukla, Imon Roy, Saurya Sharma, Shantanu
Counsel for Respondent(s)	: Rahul Agarwal, D.K. Misra, Paritosh Joshi, Ishita Farsaiya, Shailen Bhatia, Deeksha Gulati

With

MATTERS UNDER ARTICLE 227 No. - 5976 of 2025

Anugya Gupta and
another

.....Petitioners(s)

Versus

I Think Apps Pvt Ltd

.....Respondents(s)

Counsel for Petitioners(s)	: Devansh Misra, Saurabh Pandey, Vareesha Irfan, Anup Shukla, Imon Roy, Saurya Sharma, Shantanu
Counsel for Respondent(s)	: Rahul Agarwal, D.K. Misra, Paritosh Joshi, Ishita Farsaiya, Shailen Bhatia, Deeksha Gulati

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per: Kshitij Shailendra, J)

1. Heard Shri Devansh Misra, learned counsel for defendants-appellants and Shri Rahul Agarwal, learned counsel for plaintiff-respondent.
2. The present appeal under Section 13(1A) of the Commercial Courts Act, 2015 (in short 'the Act, 2015') has been filed by the defendants of Original Suit No.2 of 2025 (I Think Apps Pvt. Ltd. vs. Anugya Gupta and others) challenging the order dated 12.06.2025 whereby the Commercial Court, Varanasi has allowed an application seeking temporary injunction restraining the defendants/appellants, its partners, proprietors, employees etc. from using trademark similar and identical to 'SARKARIRESULT' and from causing any interference in the plaintiff/respondent's trademark. Further, defendants have been directed to remove with immediate effect the said trademark from their all websites, mobile applications, social media domain named platforms.
3. For convenience sake, the defendants-appellants in this appeal shall hereinafter be referred to as either "appellants" or "defendants" and the plaintiff-respondent as "respondent" or "plaintiff".
4. The aforesaid suit was filed by the plaintiff under Section 134 read with Section 37(2) of the Trade Marks Act, 1999 read with Section 2 (xvii) of the Act of 2015 with the averments that plaintiff is a Company registered with the Registrar of Companies, having three directors out of whom, Arpit Seth has been authorized by the Board of Directors to institute the suit; main business of the company is to provide information related to employment and career and to offer notes and videos for competitive exam preparation, as well as to provide employment and career-related services; the plaintiff has made a name for itself by offering employment and career-related services through a worldwide internet website benefiting various sections of society that are or may be eligible for employment and career opportunities; the plaintiff's father started a business related to employment and career services in 2009

under the name of ‘Sarkari Result’; which has been expanded to operate under three firms: I Think App Pvt. Ltd., I Think Global Solution, and 1 Net Solution and that the registration of the business is recorded in the municipal corporation's license department under book number 30, serial number 73, dated 21.10.2011.

5. Further case of the plaintiff is that the trade name "Sarkariexam" used by the plaintiff is registered under the website "sarkariresult" with India's Ministry of Information and Broadcasting's National Career Service Portal and is also registered with the Uttar Pradesh government's IT and Electronics Department for excellent employment-related services in Uttar Pradesh; the plaintiff's father purchased a domain named sarkariexam.com on 26.06.2009, which went live as a website on 22.11.2009; the homepage of the website included various pages titled as Sarkariexam, Admit Card, Exam Result, Top Online Form, Sarkariresult, and Answer key; the company has earned huge financial benefits from sarkariexam.com and the keyword Sarkari result used therein, detailed as under:-

Financial Year	Income (INR/Rs.)
2009 to 2010	6,97,201.37
2010 to 2011	7,89,421.37
2011 to 2012	9,20,223.49
2012 to 2013	96,42,730.43
2013 to 2014	84,75,620.95
2014 to 2015	68,71,357.00
2015 to 2016	89,29,247.24
2016 to 2017	54,74,396.38
2017 to 2018	8,89,74,074.77
2018 to 2019	2,55,33,797.83
2019 to 2020	2,40,13,827.13
2020 to 2021	34,88,910.93
2021 to 2022	16,09,795.81
2022 to 2023	65,78,555.84
2023 to 2024	68,64,233.80
2024 to 2025	50,21,695.19

6. Further case of the plaintiff is that it has developed a comprehensive service package to assist in the preparation of government examinations, which has been established as an expansion of Sarkari Result through sarkariexam.com and over a period of time, the

plaintiff's commercial journey has covered various dimensions, which include the following:

- i. Sarkariresult.sarkariexam.com was launched in the year 2011. This platform provides a database of past examination results and offers convenient and user-friendly data to users. The plaintiff has collected important data on examinations conducted throughout the country and incorporated it into this website.
- ii. Sarkariresultsearch.com was launched in the year 2015, which provides students with information related to examinations. The plaintiff, with the help of experts, has made this platform so integrated and specialized that aspirants preparing for competitive exams can easily access relevant information.
- iii. The SarkariexamSarkariresult Mobile App was launched in the year 2015 with a unique vision and a focus on technological expansion to make it easily accessible via mobile devices for students preparing for competitive exams. Papers.sarkariexam.com was launched by the plaintiff in the year 2017 integrating past exam question papers to assist students in preparing for competitive examinations which can be downloaded from sarkariresult.sarkariexam.com and sarkariexam.com.
- iv. Hindi.sarkariexam.com was introduced by the plaintiff in 2017 to facilitate Hindi-speaking and understanding students by providing access through sarkariresult.sarkariexam.com and sarkariexam.com so that they could easily prepare and benefit from services in Hindi. Sarkariresult.club was launched by the plaintiff in the year 2022 and was designed in such a way that it can be easily used by aspirants preparing for competitive examinations. Test.sarkariexam.com was launched by the plaintiff in 2017 to provide test series and quizzes on its website enabling students to easily prepare for exams that involve negative marking. Additionally, more than 30 million students have been helped through the YouTube channel.
- v. Mocles.sarkariexam.com was launched by the plaintiff in 2017, which provides a system for mock exams similar to real examinations, helping students improve their performance. Sarkariresult.tools was

launched by the plaintiff in the year 2023, with the object of offering special benefits to students preparing for competitive examinations. Sarkariresult.com was launched by the plaintiff in 2023 as an excellent portal, keeping in mind the needs of aspirants preparing for government exams making it more user-friendly compared to the earlier websites.

7. The cause of action to institute the suit was stated to have arisen on 12.01.2025, during search on website of Indian Trademarks Registry, when it stood revealed that defendant No.1 had, in order to misuse the website and the trademark of the plaintiff, applied before the Indian Trademark Registry *vide* application No.5569166 under Class 35 and when the plaintiff requested the defendants not to misuse the same, the defendant No.1 sent a notice dated 14.01.2025 to the plaintiff, whereupon the plaintiff came to know that the defendants were illegally using the plaintiff's website and trademark since 2009 (which date was amended under the order dated 05.05.2025 passed by the Commercial Court, as 05.05.2017), and, consequently, gaining wrongfully.

8. The plaintiff also claimed temporary injunction by filing application 6-C under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (C.P.C.). The Commercial Court, by an order dated 11.03.2025, dispensed with the requirement of pre-institution mediation under Section 12-A of the Act and granted *ex-parte* ad-interim injunction.

9. The defendants filed written statement 69-Ka stating that the plaintiff had no case and it uses "Sarkariexam.com" website having no concern with trademark "SARKARIRESULT" and "Sarkariresult.com" website. Both the websites were said to be distinct; knowledge for the first time to the plaintiff having allegedly occurred on 12.01.2025 was seriously disputed in the light of email communications dated 27.01.2016 and 28.02.2023. Regarding the user of website "Sarkariresult.com", it was stated that the same was continuing by the defendants since the year 2012 after purchase of the domain. The

document of Nagar Nigam relied upon by the plaintiff was stated to be forged and fabricated having no legal sanctity and reliance was also placed on proceedings of identical nature pending before the Delhi High Court wherein an injunction order dated 05.07.2022 was passed in Case No.422 of 2020 against one Ajay Kumar and his associates and it was stated that against the injunction order passed by the Single Bench of Delhi High Court, an appeal was preferred by the defendant of the said suit before the Division Bench which was dismissed on 18.07.2022, whereagainst matter was agitated before the Hon'ble Supreme Court where also the appeal was dismissed. Working status of the website was also pleaded in the written statement and it was prayed that suit be dismissed. On the same day when the written statement was filed, objections against injunction application on identical pleas were also filed.

10. The Commercial Court, vide order dated 12.06.2025 has allowed the application for temporary injunction restraining the defendants, its partners, proprietors, employees etc. from using trademark similar and identical to 'SARKARIRESULT' and from causing any interference in the plaintiff's trademark and directing the defendants to remove with immediate effect the said trademark from their all websites, mobile applications, social media domain named platforms.

Findings Recorded by Commercial Court

11. The Commercial Court, after discussing the case of the parties, has taken into consideration the document dated 21.10.2011, which reflects some licence recorded in the name of M/s Sarkari Result Computer and owned by Sunil Kumar Seth, another document being Paper No. 22 of Municipal Corporation indicating registration in the name of Sarkari Result; another document Paper No. 15C dated 26.06.2009 demonstrates registration of sarkariexam.com for a period of one year. The Commercial Court has further recorded that filing of petition by defendant No. 1 before the High Court of Delhi in the year 2020 reflects that they had previous knowledge about the plaintiff's business.

Referring to Paper No. 111 C, i.e. replica, observation has been made that defendants had tweeted in 2019 that 'they are not Sarkariexam, Beware of fake Sarkari Result site', which shows that defendants had admitted the plaintiff's trade mark as sarkariexam and sarkariresult. It has also been recorded that for the period 2012-25, the defendants had, in their paper No. 72-C, demonstrated their revenue as more than Rs.32 crores, whereas before the Delhi High Court, actual earnings had been shown w.e.f. 2017, which fact dislodges the defendant's statement qua income.

12. Further observation has been made by the Commercial Court based upon plaintiff's income statement for the period 2011-25 (Paper No. 123-C) duly certified by Chartered Accountant, indicating income as Rs. 14,00,00,000/- (Rupees fourteen crores) and expenses to run trade mark 'Sarkari Result' to the tune of Rs. 10,00,00,000/- (Rupees ten crores). The Commercial Court has also considered that when the defendants could not establish their ownership qua trade mark 'Sarkari Result', they moved an application 134-C through one Mukul Gupta, whereas in the objections, no reference of Mukul Gupta and M/s LMC Computers was made, which appears to be an attempt to mislead the Court. As regards prior user, the finding recorded by the Commercial Court is that Registrar had accepted the plaintiff's user of Sarkari Result w.e.f. 22.11.2009, whereas user of defendant Mukul Gupta was accepted w.e.f. 23.04.2014, which is subsequent in point of time. Further reference has been made to application filed by Atul Gupta, i.e. Anugya Gupta before the Registrar Trade Marks where user had been shown as 18.02.2016.

13. The Commercial Court has also recorded that defendants have not filed any document demonstrating registration of trade mark 'Sarkari Result' in their name and in application moved before the Registrar Trade Mark, different user dates have been mentioned. Further observation has been made that no invoice relating to domain registration was brought on record by the defendants, which could

establish their ownership whereas screen shot “WHOIS details” has been annexed, in which defendants' name does not stand reflected which establishes that plaintiff was using 'Sarkari Result' w.e.f. 2009 and is also recorded in Nagar Nigam. The Commercial Court has also recorded findings on three basic ingredients necessary for grant of temporary injunction, i.e. *prima facie* case, balance of convenience and irreparable loss and allowed the injunction application.

14. We have heard learned counsel for the parties and perused the material available on record and also written submissions filed by the parties.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

15. Learned counsel for the appellants has made submissions on wrongful dispensation of statutory requirement of pre-institution mediation and also merits of the order impugned. Submission is that the defendants had taken an objection in their application under Order 39 Rule 4 C.P.C. with respect to the order dated 11.03.2025 being passed without contemplating any urgent interim relief therein which has been recorded in the order impugned but has not been considered. The trial court has failed to consider the contention of the appellants regarding prior knowledge and suppression of facts on part of the plaintiff and, in a mechanical manner, accepted the e-mails to be bulk marketing e-mails sent by an automated software process, on perusal whereof it is evident that the e-mail address of the sender of e-mails in 2016 and 2023 does not feature on the same list rather e-mail ID of sarkariexam.com is only mentioned. The said e-mails were sent via e-mail address arpit29@gmail.com. The documents filed by the plaintiff in support of the plaint mention the said mail to be that of the co-founder of the plaintiff company, which has come into existence in 2021 itself.

16. It is further submitted that false statement made on behalf of the plaintiff in respect of date of knowledge for the purposes of institution of suit is material and relevant for determining the balance of convenience

between the parties and delay in institution of the suit on part of the plaintiff despite sufficient knowledge of the use of its trademark, was required to be taken into consideration prior to granting interim injunction. Further submission is that the plaintiff has acquiesced to the use of the trademark on part of the defendants by expressly giving a tacit approval and encouragement towards the use of the impugned mark. Submission is that email exchange between the plaintiff and defendants amounts to knowledge to the plaintiff for determining acquiescence of the impugned mark by the plaintiff who continued to remain engaged in business dealings with the defendants. It is also contended that interim injunction is an equitable remedy, hence, the claimant of the same must come with clean hands. Thus, when the plaintiff did not disclose an email sent by its representatives to the appellants seeking to enter into a collaborative agreement, the injunction application was liable to be dismissed.

17. Further submission is that the suit is for passing off, for which, misrepresentation, i.e. to pass off the goods as one's own is an essential ingredient, which needs to be fulfilled. Mere deceptive similarity is not sufficient as the same is applicable in cases of infringement. Although the plaintiff seeks trademark right on the use of keyword sarkariresult, the dispute between the parties inter-se is in respect of domain name/website use. The plaintiff has neither brought on record any evidence *prima-facie* to suggest that it has been using the domain name with sarkariresult trademark prior to that of the appellants. The plaintiff has mis-stated in para 13(1) of the plaint that it has been using sub-domain name by www.sarkariresult.sarakariexam.com since 2011. The defendants in their application filed under Order XXXIX Rule 4 CPC specifically brought on record WAY BACK details regarding the digital trace of the said domain name, which appears to have been created only on 17.03.2025 subsequent to the *ex-parte* ad-interim injunction granted in their favour.

18. Further submission (in rejoinder) is that the plaintiff in its arguments had contended that Order XI of the Civil Procedure Code 1908 as amended by the Commercial Courts Act, 2015 bars the consideration of documents filed by the defendants alongwith their application under Order 39 Rule 4 CPC, however, Order XI applies to disclosure of documents alongwith the written statement, the admissibility whereof is to be determined at the stage of trial. Therefore, the bar stipulated in Order XI would not operate at the stage of consideration of interim injunction application. Non-appreciation of documents filed by the defendants along with their Order 39 rule 4 application makes the order impugned patently illegal. It is further submitted that on the basis of some fire registration in the Nagar Nigam, Varanasi in respect of a shop named sarkari result, the plaintiff sought to assert its right for using the same as a keyword trademark in respect of a domain name dispute, wherein the product in respect of which the use of trade name and mark is to be seen, is the website domain name. The trial court has returned a perverse finding that the plaintiff is the prior user of trademark 'sarkariresult' without considering the fact that in a dispute pertaining to domain name, there is no digital evidence or trace on record to suggest that the plaintiff has used the mark 'sarkariresult' prior to that of the defendants.

19. Further contention is that in para 152 of the order, a perverse finding has been recorded regarding the e-mails of 2016 and 2023 being sent via a bulk marketing software, whereas it is self-evident that the e-mails were sent via the personal e-mail ID of the Director and by no stretch of imagination, a software could ascertain the location of the parties and give out the phone number which has not been disputed by the plaintiff. The trial court has also recorded a perverse finding in para 153 of the impugned order as if the plaintiff had carried out a propaganda against similar sarkariresult websites which were infringing its trademark and passing off its website to be their own. The said propaganda also clarified to the general masses and public using the appellants' website in 2019 regarding its distinct identity. The twitter

screenshots weigh in favour of the appellants and make it even more apparent that the appellants have neither misrepresented nor passed off the website of the plaintiff in any manner.

20. Argument is that the trial court has laid much emphasis on the discrepancies and contradictions in the averments contained in the written submissions and Order XXXIX Rule 4 application as certain fresh facts were introduced and even if it is assumed that there are contradictions and discrepancies, merely on the basis of shortcomings in the defendants' stand, an injunction cannot be granted in favour of the plaintiff who has otherwise failed to prove a *prima facie* case. In para 155, the trial court has perversely recorded the revenue of the appellants in 2012 to be Rs. 32 crores, whereas the specific paragraph no. 53 of page 461 and 462 makes it evident that there has been a misreading of the averments made in the written statement by the defendants.

21. It is further contended that the learned Single Judge judgment of Delhi High Court and the Division Bench judgment make it apparent that the appellants had given the revenue figures for a period beginning from 2017 to 2020, which had nothing to do with its prior use since 2012 as the defendants therein had come into existence in mid 2015 itself, therefore, to rebut its identity, data of a particular period had been produced, which should not be misinterpreted to mean that the appellants had been using their website and its mark since 2017, rather it is the plaintiff itself who had sought to advertise on the appellants' website in 2016 vide an e-mail.

22. In support of his submissions, learned counsel for the appellants has placed reliance upon the following judgments: -

(i) Yamini Manohar Vs. PKD (2024) 5 SCC 815,

(ii) M/s Sah Agencies Pvt. Ltd. and 6 others Vs. CINNI Foundation Trust and 6 others (Commercial Appeal No. 08 of 2025).

(iii) Kewal Ashokbhai Vasoya and another vs. Saurasbhakti Goods Pvt. Ltd : AIR 2023 Bom 94

(iv) Atyati Technologies Private Limited vs Cognizant Technology Solutions U.S. 2024 SCC OnLine Bom 1680

(v) Kewal Ashokbhai Vasoya and Anr. Vs. Saurasbhakti Goods PVL Ltd. 2022 SCC OnLine Bom 3335

(vi) Google LLC vs Makemytrip (India) Private Limited & Ors. 2024 SCC OnLine SC 266 (Para 27); Google v. DRS Logistics 2023:DIIC:5615-DB (Para 189)

(vii) United Breweries Ltd vs. Khoday's Breweries and Distilling Industries Limited : (2023) 26 PTC 130

(viii) Patil Automation Private Limited and others vs. Rakeja Engineers Private Limited : (2022) 10 SCC 1,

(ix) Mariyas Soaps and Chemicals, Rep by its Authorised Signatory, Soji Thomas and another vs. Wipro Enterprises Limited, Rep by its General Counsel Mr. Dhaynesh Sabins and another : AIR 2023 Ker 188,

(x) S.P. Chengalvaraya Naidu (Dead) by Lrs. vs. Jagannath (Dead) by Lrs and others : (1994) 1 SCC 1,

(xi) Freebit AS vs. Exotic Mile Private Limited : 2023 SCC Online Del 8213,

(xii) Kishore Samrite vs. State of U.P. and others : 2013 (2) SCC 398,

(xiii) Gujarat Bottling Co. Ltd. and others vs. Coca Cola Co. and others: 1995 (5) SCC 545

(xiv) Ambalal Sarabhai Enterprise Limited and others vs. KS Infraspace LLP Limited and others : (2020) 5 SCC 410

(xv) Makemytrip (India) Private Limited vs. Orbit Corporate Leisure Travels (I) Private Limited : (2018) 73 PTC 198

(xvi) Ashwani Kumar Singh vs. U.P. Public Service Commission and others : (2003) 11 SCC 584

(xvii) Triumphant Institute of Management Education Pvt. Ltd. vs. Aspiring Mind Assessment Pvt. Ltd. and others : (2015) 1 CCC 187

(xviii) M/s Dhanbad Fuels Private Limited vs. Union of India and another : Civil Appeal No. 6846 of 2025 (Special Leave Petition (C) No. 4980 of 2021) decided on 15.05.2025

SUBMISSIONS ON BEHALF OF PLAINTIFF

23. Per contra, it is submitted on behalf of the plaintiff that the possibility of mediation nowhere was a matter of significance for the defendants and wherever they are the plaintiffs, no mediation was sought by them, such as in any of the following cases: CS (COMM) 422 OF 2020 titled as "Anugya Gupta v. Ajay Kumar & Ors.; CS (COMM) 604 of 2025 titled as "Malti Gupta v. Sunil Kumar Seth & Anr." and CS (COMM) 729 OF 2025 titled as "M/s. LMC Computers v. M/s I Think Apps Pvt. Ltd." and it is only when the appellants were impleaded as the defendants, they raised submissions qua the provisions of Section 12A of the Act, 2015 and they cannot blow hot and cold on this aspect. It is a settled position that whenever urgent reliefs are sought by the plaintiff, it is not necessary to exhaust the remedy of pre-institution mediation as mandated by Section 12A.

24. Further contention is that the defendants had issued a Cease and Desist Notice dated 14.01.2025 which shows that they had only given a time period of 24 hours and claimed damages of Rs. 2,00,00,000/- (Rupees Two Crores only). If the defendants were so concerned for conducting a pre-institution mediation, they could have invoked the same by filing a request before the Mediation Centre of the Hon'ble Court instead of giving a 24 hour Notice. In any case, in light of the

short notice given in the Cease and Desist Notice, the plaintiff had no option but to crave for and the Commercial Court has rightly recorded satisfaction for the dispensation from Section 12A.

25. Further submission is that the defendants' contention based upon e-mails purportedly written by the plaintiff to them in 2016 and 2023 to claim that the plaintiff was aware of the defendants since then and, therefore, the dispensation from Section 12-A was wrong, is not acceptable. It is submitted that there is difference between 'entitlement' to urgent interim relief and 'contemplation' of urgent interim relief. Additionally, at most, the plea of knowledge since 2016 or 2023 (disputed by the plaintiff) can only lead to an inference of delay in instituting the proceedings but is, in no manner, fatal to the eligibility for temporary injunction.

26. It is further submitted that the emails were either automated response or chain emails and both the parties gave no value to the said emails because the Appellant No. 1 herself, in her Cease and Desist Notice made the following averments: "5. Recently in the first week of January, 2025, my Client has become aware that you are unauthorizedly and illegally using her trademark "SARKARI RESULT" and passing off your services as of my Client." The defendants have also set up a case that it was only in January, 2025, when they became aware about the plaintiff. In other words, the said emails were considered irrelevant by both the parties, as knowledge of defendants' business by the plaintiff (as evidenced through the sending of these emails would imply an equal knowledge on the part of the defendants through the receipt of these emails). These isolated email communications were not sent by the plaintiff but were a part of a marketing communication, the stand to which effect was specifically taken in the Replication filed before the Commercial Court, when these emails were brought to the notice of the plaintiff.

27. Further submission has been made that the plaintiff was able to prove prior adoption, prior use, and continuous use by bringing following statements and evidence on record:-

(a) It has been engaged in the services of providing information related to government job opportunities and related services since 2009. One of its Directors commenced the use of the trademarks "SARKARI EXAM" and "SARKARI RESULT" in the year 2009, and that the continuous presence and use of "SARKARI RESULT" can be witnessed across multiple platforms such as Twitter, Google News, Google Maps, and Just Dial. It has filed a Registration Certificate issued by the Municipal Corporation of Varanasi issued in the name of SARKARI RESULT in the year 2011.

(b) It has also filed its domain registration email where an email was received wherein the domain sarkariexam.com which was registered completed one year. It has also filed the WHOIS data of the domain name sarkariexam.com wherein the name of Mr. Sunil Kumar Seth is mentioned. It had also filed screenshots of the website sarkariexam.com where the SARKARI RESULT were used as a tab in the year 2009.

(c) It has mentioned in paragraph 13 of the plaint that it got the website sarkariresult.sarkariexam.com launched in 2011 and the same is prior to the appellants/defendants' website and has also mentioned various other websites which were registered in their respective years. The said platforms and applications are widely accessed by millions of users across India. It has also received various accolades and recognition since the year 2009 as mentioned in Para 12 of the Plaint. Platforms such as India Today, Your Story, Nav Bharat Times and Dainik Bhaskar, etc. have described the respondent/plaintiff's achievements in their digital columns.

(d) It has also enclosed Google traffic reports for various years/periods, showing more than 2 crore visits in the year 2013 alone, which indicates continuous use and popularity. It is also registered with Government Departments and the National Career

Service Portal and has received appreciation from NIT Jalandhar for "SARKARI RESULT" and "SARKARI EXAM," which demonstrates the credibility of the respondent/plaintiff's services.

(e). The defendants have not been able to explain the absence of invoices from 2012-2017 from their own documents however, revenue figures of the so called financial year have been mentioned in the Application under Order XXXIX Rule 4.

28. It is further submitted that the defendants, in paragraph 46 of the application under Order XXXIX Rule 4 of the CPC have made the following averments:-

"46. That the plaintiff under paragraph 13(i) of the Plaint has maliciously mentioned that its sub-domain name "sarkariresult.sarkariexam.com" was launched in 2011. It is submitted that the above-mentioned statement is another attempt by the plaintiff to mislead the Court into believing the plaintiff is prior user of the mark "Sarkariresult". Contrary to its submission, the sub-domain name "sarkariresult.sarkariexam.com" was deliberately created on 17.03.2025, after the passing of the impugned order of 11.03.2025, but before service to the defendants on 20.03.2025, so as to substantiate its claims in the plaint, and to create documents after filing of the lawsuit. It is pertinent to note that all other websites of the plaintiff have web pages archived on Way Back since the years of their inception."

Contention is that by this averment, the defendants are trying to dislodge the claim of the plaintiff that it had been using Sarkariresult as a website since 2011 and not merely as a key-word/search word. However, there are multifarious objections to this plea of the defendants:

a) *First*, this objection was taken by the appellants/defendants in their Application under Order XXXIX, Rule 4, which was

filed after the arguments had commenced on the application for temporary injunction.

b) *Secondly*, Way Back Machine documents/data were available to the defendant/appellants at the time of filing of the written statement and reply to the temporary injunction application, hence, there is no reason disclosed as to why this was not presented in April 2025, when the written statement and reply to the temporary injunction application were filed.

c) *Thirdly*, the Way Back Machine itself, in its official disclaimer, expressly states that it makes no warranty or representation regarding the accuracy, currency, completeness, reliability, or usefulness of the archived content. This is indicative of the non-authenticity of the Way Back Machine screenshots.

d) *Fourthly*, the screenshots from the website of Way Back Machine are inadmissible in evidence. In ***Voxson Pty Ltd. v. Telstra Corporation Limited*** [2018] FCA 376 (delivered by the Federal Court of Australia at New South Wales), Wayback Machine data has been held to be inadmissible in evidence.

e) *Fifthly* the appellants/defendants themselves have failed to show their own websites records from the website of Way Back Machine as the same cannot be accessed. The reason why the appellants/defendants' records on Way Back Machine cannot be shown is because they have excluded or blocked their website to be shown on the Way Back Machine website. This itself demonstrates their malicious/*mala fide* intent and/or conduct.

29. Further contention is that the defendants, in their written statement, have setup a case that they have purchased the domain on 01.01.2012, which domain has remained active since then. They have

relied upon the order passed by the Delhi High Court dated 05.07.2022 in CS (COMM) 422/2020 and also upon creation of a YouTube channel on 11.06.2012 and mentioned that they have earned revenue in excess of Rs. 32 crores from 2012 till February, 2025 from the website sarkariresult.com. A perusal of the document indicating the purchase of the domain name sarkariresult.com by the defendants would reflect that though the e-mail is addressed to Anugya Gupta (defendant no.1), no invoice in support of the purchase bearing the name of the defendant no. 1 was brought on record. In the circumstances, the Commercial Court has not found it fit to treat the document as one of unexceptional character in favour of the defendants.

30. Further, joining date of 11.06.2012 of the YouTube channel allegedly created by the defendants reflects that the first video was posted on the YouTube channel in the year 2017, even though the channel itself was allegedly created in the year 2012 by them. Even the documents from page 518-539 (filed by the defendants) reflect a strange dichotomy; they appear to be posts from sarkariresult.com but in each of these documents, the number of 'people reached' is 0 (zero) and even the number of times the post was either clicked, viewed or shared is 0 (zero). A rather small number seems to have liked, commented or shared the post, but in absence of a reach or a click on the post, it is not clear as to how the post could be liked, commented or shared.

31. Additionally, a bare perusal of the order of the Delhi High Court relied upon by the defendants would indicate that even there the defendant no. 1 has only given details of its followers on various channels (YouTube, Facebook, Twitter etc.) only from 2017 onwards, in which the Facebook followers, as in 2017, are reflected as 'NA' even when the defendant no. 1 claims to have launched the Facebook page on 23.08.2013 itself. Additionally, defendant no. 1 has only given her revenue figures from the period beginning 30.09.2017.

32. Further submission is that the Commercial Court has considered these dates and figures mentioned in the order of the learned Single

Judge of the Delhi High Court to return a finding that the plea of the defendants is inconsistent and there is not enough material to indicate continuous use of the domain name sarkariresult.com by the defendants from 2012, as claimed by them. Even assuming without admitting the case setup by the defendants that they purchased the domain name sarkariresult.com on 01.01.2012, the plaintiff has been using Sarkari Result since 2009 and in 2011 used sarkariresult as part of a domain name. As found by the Commercial Court on the strength of various documents presented by the plaintiff, there is continuous use of 'sarkari result' by the plaintiff since 2009 and there is nothing on record to dislodge the prior user of the mark 'sarkari result', both as a website and as a search/key word by the plaintiff and, therefore, the findings returned by the Commercial Court in the order impugned cannot be said to be contrary to the evidence on record or against the settled principles of law.

33. Further submission is that order of the Commercial Court passes the test of perversity as emphasized in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others:** (2024) 1 SCR 1343, para 27. The finding returned by the Commercial Court, Varanasi that the plaintiff is the prior user, cannot be said to be perverse in any manner and, therefore, interfering with the order would amount to substituting own view by this Hon'ble Court, a course which is impermissible in law.

34. It is also submitted that the present Appeal has been filed by Anugya Gupta w/o Atul Gupta (Appellant No.1) and Atul Gupta (Appellant No.2) and the registration of the mark at Page 1008 is in the name of one Mr. Mukul Gupta who is not a party to the present suit nor has he applied for impleadment before the Commercial Court. Hence, any reference to Mr. Mukul Gupta in the present Appeal is irrelevant. The appellants have no right in the trade mark registration no. 4531613 in class 35 as the same is registered in the name of Mr. Mukul Gupta only. Section 28 of the Trade Marks Act, 1999 confers rights only on the proprietor of the mark. Neither Ms. Anugya Gupta nor Mr. Atul Gupta

are the proprietors of the trade mark SARKARI RESULT. Hence, they have no right to use the trade mark on the basis of registration of a third party. To overcome this *lacuna*, the appellants, post passing of the Order dated 12.06.2025, have prepared a new document dated 19.06.2025 filed at Page 857 wherein Mr. Mukul Gupta has given permission to the defendants to use the trade mark SARKARI RESULT. This document has been executed subsequent to the grant of injunction by the Commercial Court and its contents and form make it a document of doubtful validity.

35. As to the plea of acquiescence, submission is that the factum of partnership mentioned in the emails of 2023 can, in no manner, be considered as an active encouragement by the plaintiff that its trademark be used by the defendants. In the emails, there is no permission, or consent, shown by the plaintiff to the use of its mark by the defendants. The emails of 2016 and 2023 cannot be construed as acquiescence by the plaintiff to the use of its mark by the defendants; neither can the emails be read to mean a waiver of the rights in the trademark of/by the plaintiff. Partnership can also be understood in various ways, such as giving rise to a license, franchisee or agency relationship and not necessarily a joint venture between the parties as is contemplated under the Partnership Act. In matters of infringement/passing off of trademark, it is the prior user of the mark who has the first right to make use of the marks; even subsequent registration of the mark is not a defence.

36. Learned counsel for the plaintiff, during the course of arguments, also produced before us photostat copy of certified copy of order sheet of the suit in question (which is otherwise also on record) and it was pointed out that arguments on application seeking temporary injunction were heard by the Commercial Court on 28.05.2025 and the matter was posted for 31.05.2025 to facilitate hearing the defendants. On 31.05.2025, objections under Order XXXIX Rule 4 of C.P.C. were filed by the defendants and the order was reserved to be delivered on 09.06.2025, on which date the Presiding Officer was on leave and date

of delivery of judgment of order was postponed to 12.06.2025, on which date the order impugned was passed. It is, therefore, contended that by the time the application seeking temporary injunction was heard, the defendants had not even objected to the same by filing written objections and, therefore, whatever stand was taken by the defendants after conclusion of hearing the application for injunction, the same could not be given any consideration. Opposing the said submission, learned counsel for the appellants, in rejoinder, submitted that objections dated 11.04.2025 against the injunction application were filed along with written statement, which fact is noted in the order sheet of the said date itself and, therefore, the submission made by plaintiff has no substance.

37. During the course of hearing, plaint of a suit filed on 21.07.2025 by **M/s LMC Computers** (supra) against the plaintiff, before the High Court of Delhi, has also been placed before the Court. The said suit has been filed for permanent injunction restraining infringement of trade mark, copyright, redress, passing off, misappropriation, unfair competition, copyright infringement, delivery up, damages, etc. under Trade Marks Act, 1999 and Copyright Act, 1957 and Code of Civil Procedure.

38. In support of his submissions, learned counsel for the plaintiff has placed reliance upon the following judgments: -

(i) Yamini Manohar vs. TKD Keerthi : (2024) 5 SCC 815

(ii) Chandra Kishore Chaurasia vs. R A Perfumery Works Private Ltd. : (2023) 93 PTC 445

(iii) Patil Automation Private Limited and others vs. Rakeja Engineers Private Limited : (2022) 10 SCC 1,

(iv) Wander Ltd. and another vs. Antox India (P) Ltd. : 1990 (Supp) SCC 727

(v) Laxmikant V. Patel vs. Chetanbhai Shah and another : (2002) 3 SCC 65

**(vi) Century Traders vs. Roshan Lal Duggar & Co. :
AIR 1978 Del 250**

**(vii) S. Syed Mohideen vs. P. Sulochana Bai : (2016) 2
SCC 683**

**(viii) FDC Limited vs. Faraway Foods Pvt. Ltd. : 2021
SCC Online Del 1539**

**(ix) Neon Laboratories Limited vs. Medical
Technologies Limited and others : 2016 (2) SCC 672**

**(x) Midas Hygiene Industries (P) Ltd. and another vs.
Sudhir Bhatia and others : 2004 (3) SCC 90**

**(xi) Y-Not Films LLP and another vs. Ultra Media and
Entertainment (P) Ltd. : 2024 SCC OnLine Bom 3085**

**(xii) S. Narendra Kumar & Co. vs. Everest Beverages
and Foods Industries : (2008) 37 PTC 497**

**(xiii) Make My Trip (India) Private Limited vs. Make
My Travel (India) Private Limited : 2019 DHC 5353**

**(xiv) M/s Hindustan Pencils Private Limited vs. M/s
India Stationary Products Co. & another : AIR 1990
Del 19**

**(xv) Mex Switchgears Pvs. Ltd. vs. Max Switchgears
Pvt. Ltd. : (2014) 3 AIR Del R 232**

**(xvi) Rajendra Vardichand Jagetia and another vs.
Modern Mold Plast Private Limited : 2024 SCC
OnLine Del 8322**

**(xvii) Shantapa alias Shantesh S. Kalasgond vs. M/s
Anna : Appeal From Order No. 915 of 2023 with
Interim Application No. 17040 of 2023 decided on
30.11.2023.**

**(xviii) Indian Oil Corporation Ltd. through its General
Manager Engineering Department, Lucknow vs.
Commercial Court-I, Lko and another : Matter under
Article 227 No. 1524 of 2023, decided on 12.05.2023.**

DISCUSSION AND FINDINGS

39. We have heard learned counsel for the parties and perused the material available on record.

General principles governing grant of temporary injunction

40. Since this appeal has arisen from an order granting temporary injunction pending suit, first of all we deem it appropriate to state general principles governing grant of such injunctions as we cannot go beyond the scope of our interference in the matter. It is well settled that at the stage of considering an application for temporary injunction, a 'mini trial' of the suit itself is not to be conducted, rather the adjudication is made based upon three basic ingredients, i.e. *prima facie* case, balance of convenience and irreparable loss. The principles for grant of interim injunctions have been well stated by Hon'ble Supreme Court in **Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors.**, AIR 2001 SC 2367, **State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha** (2009) 5 SCC 694, **S.M.Dyechem Ltd. v. M/s Cadbury (India) Ltd.**, 2000 AIR (SC) 2114, **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**, 1999 AIR (SC) 3105.

41. In **Zenit Mataplast P. Ltd. v. State of Maharashtra and others**, JT 2009 (12) SC 240, the Hon'ble Supreme Court considered the principles for grant of interim relief and held as under:

"23. Interim order is passed on the basis of *prima facie* findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide **Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors.** [JT 2001 (Suppl. 1) SC 139: AIR 2001 SC 2367]; and **Barak Upatyaka D.U. Karmachari Sansthan** (supra).

24. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down. There may be a situation wherein the defendant/ respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide **M. Gurudas & Ors. v. Rasaranjan & Ors.** (JT 2006 (12) SC 447: AIR 2006 SC 3275]; and **Shridevi & Anr. v. Muralidhar & Anr.** (2007(14) SCC 721).

25. Grant of temporary injunction is governed by three basic principles, ie. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide **S.M. Dyechem Ltd. v. M/s Cadbury (India) Ltd.** [JT 2000(7) SC 151: AIR 2000 SC 2114), and **Anand Prasad Agarwalla** (supra)."

42. Very recently the Hon'ble Supreme Court, in **Pernod Ricard India Private Limited and another vs. Karanveer Singh Chhabra : Civil Appeal No. 10638 of 2025 [arising out of SLP (C) No. 28489 of 2023], decided on 14.08.2025**, again summarized the law governing grant of injunction in suits filed for infringement of intellectual property rights and, in paragraph Nos. 36, 36.2 and 36.3, observed as under:-

"36. The Trade Marks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion. **Each case must necessarily be decided on its own facts and circumstances, with judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate outcomes.**

* * * * *

36.2. The grant of injunction whether for infringement or passing off is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify Injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, *"the life of a trademark depends upon the promptitude with which it is vindicated."*

36.3. The principles laid down in *American Cyanamid Co. v. Ethicon Ltd.* (1975) AC 396 continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:

(i) **Serious question to be tried/triable issue**: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.

(ii) **Likelihood of confusion/deception**: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.

(iii) **Balance of convenience**: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.

(iv) **Irreparable harm**: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public -harms which are inherently difficult to quantify the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.

(v) **Public interest**: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the market place.”

(emphasis supplied)

43. We are conscious of the fact that since we are dealing only with appeal arising out of an order granting temporary injunction pending suit and not an appeal against final decision in the suit, any finding either recorded by the Commercial Court or by us may not be treated as expression of final opinion on merits of the rival claims. The entire suit is yet to be contested on merits in the light of issues to be framed by the Commercial Court and oral and documentary evidence to be led by the parties.

44. We may also observe that though both the parties have relied upon various documents on record so as to establish their respective cases before us, however, the overall record position at this stage, based upon the settled principles of law, leads us to observe that more the findings we record on every document, more the Commercial Court would be

prejudiced by our observations during the course of trial of the suit and, hence, we would exercise our limited jurisdiction to test validity of the order granting temporary injunction on applicable principles.

45. We may also mention that certain documents on record before us were not before the Commercial Court and some of them are even subsequent to passing of the order impugned and during the course of arguments, though objections were raised by learned counsel for both sides in that regard, however, we, at the insistence of parties' counsel, perused even those documents which were not there before the Commercial Court in order to develop a clearer understanding of the controversy and in the interest of justice. Further, although in the compilation of case laws, many judgments have been compiled by both sides, we are only dealing with judgments which were referred to by the counsel during the course of arguments and which are relevant for deciding the appeal.

On Section 12-A of the Act, 2015

46. In so far as the compliance/non-compliance of the provisions contained under Section 12-A of the Act is concerned, we may observe that on 11.03.2025, the Commercial Court considered an application 8-C filed by the plaintiff under Section 12-A whereby exemption from pre-institution mediation was sought. The Commercial Court observed that the matter was of urgent nature and allowed the application relieving the plaintiff of requirement of pre-institution mediation and, thereafter, proceeded to consider the injunction application.

47. The Hon'ble Supreme Court, in **Yamini Manohar** (supra) has, while discussing Section 80(2) C.P.C., observed that unlike Section 80(2), even an application is not a pre-condition under Section 12-A of the Act and when a prayer is made for an urgent interim relief, the Commercial Court should examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief and the facts and circumstances have to be considered holistically from the standpoint of

the plaintiff. A check on the prayer for interim relief to be exercised by the Commercial Court has also been emphasized. Earlier also similar view was taken by the Hon'ble Supreme Court in **S. Patil Automation** (supra), which judgment has been referred in **Yamini Manohar** (supra).

48. In view of the above, although there is no necessity of moving an application under Section 12-A, in any case, if the same was moved by the plaintiff and the Commercial Court, after considering the nature of the dispute and the prayer to grant interim injunction, accorded exemption from pre-institution mediation and also allowed the application on merits, it has not fallen into any error of law in so far as the procedure adopted by it is concerned. After all, it was a suit for infringement of intellectual property rights in which an urgent interim relief was prayed for and the Court should focus on the legislative intent and distinction between words 'entitlement' to urgent interim relief and 'contemplation' of urgent interim relief. We also note that the defendants also filed few suits alleging same/similar rights and no mediation was sought by them. On perusal of order dated 11.03.2025, we find that granting exemption from pre-institution mediation cannot be said to be unwarranted or illegal.

49. Recently, the Hon'ble Supreme Court, in the case of **M/s Dhanbad Fuels Private Limited** (supra) has approved the ratio laid down in **Yamini Manohar** (supra) and **M/s S. Patil Automation Private Limited** (supra), with a clarification regarding the date from which declaration of the mandatory nature of Section 12 A would relate back and it has been held that such a declaration would apply prospectively to the suits instituted on or after 20.08.2022. As regards leave of the Court, it has been held that unlike Section 80(2) of the C.P.C., leave of the Court is not required to be obtained before filing a suit without complying with Section 12-A and as far as test for "urgent interim relief", it has been held that if on examination of the nature and the subject matter of the suit and the cause of action, the prayer in that regard should be seen from the stand point of the plaintiff and the Court

must also be vary of the fact that urgent interim relief must not be merely an unfounded excuse by the plaintiff by-passing mandatory requirement of Section 12-A.

50. As far as judgment of this Court in **M/s Sah Agencies Private Limited** (supra), relied upon on behalf of the defendants, the same was passed in an appeal against a composite order passed by the Commercial Court on the same day, which was in three parts; the first part had dispensed with statutory requirement of pre-institution mediation, the second part granted *ex-parte* interim injunction and the third part related to appointment of Amin/Advocate Commissioner to conduct some investigation. In that case also, an application under Section 12-A of the Act, 2015 was filed by the plaintiff and was allowed and this Court, after placing reliance upon the judgements in **Yamini Manohar** (supra) and **M/s Dhanbad Fuels Private Limited** (supra) had set aside the said order on the peculiar facts of that case and the nature of the order passed therein and remitted the matter back to the Commercial Court.

51. We may also observe here that whenever a suit is instituted before a Commercial Court and it contemplates an urgent interim relief, i.e., in the facts of the case, the plaintiff requests the Court for grant of an urgent interim relief and presses the circumstances under which such grant is necessary, the Commercial Court is required to apply its mind as to whether such grant is necessary and whether the requirement of pre-institution mediation under Section 12-A of the Act should be dispensed with. Once the Commercial Court, after due consideration of the frame and nature of the suit and claim for urgent interim relief, dispenses with requirement of pre-institution mediation and registers the case, the jurisdiction so exercised cannot normally be interfered with on a challenge made at a later stage when the suit or the injunction application is contested by the defendants. Even in a case where the suit is registered after dispensing with requirement of pre-institution mediation and no ad-interim injunction is granted but simply notices are issued to the defendants on the application seeking interim injunction,

the registration of the suit and dispensation of requirement of pre-institution mediation cannot be normally interfered with later. In a given case, if, at the instance of the defendants, the order granting ex-parte interim injunction is sought to be vacated, the legislative scheme of the C.C. Act, 2015 read with the provisions of CPC, does not provide for a mechanism to undo the dispensation of requirement under Section 12-A. There may be a case where, on facts being brought to the notice of the Commercial Court by the defendants, a belated claim for injunction may be taken as a justifiable reason to vacate the ad-interim injunction but, in absence of any provision, either in C.C. Act, 2015 or in CPC, providing recall/setting aside of the initial order dispensing with requirement of pre-institution mediation, it is not open for the Commercial Court to recall/set aside the said order. Such exercise, if done, will push back the matter to its initial stage leading the litigants to nowhere. Legislative intent and the procedure of law has to be understood and applied in a pragmatic manner and not in a way which frustrates the very purpose of law.

52. Consequently, we do not find any reason to interfere with the order impugned on the alleged non-compliance of provisions of Section 12-A of the Act, 2015 and for the same reasons, the connected petition filed by the appellant questioning the validity of the order dated 11.03.2025 also is devoid of any merit.

Rival claims on merits

53. On merits of the claim of rival parties, we note that in paragraph 13 of the plaint, launching of the website/domain name 'sarkariresult.sarkariexam.com' in the year 2011 is pleaded and the same is prior to the appellants/defendants' website. Various other websites were also registered in their respective years. Platforms such as India Today, Your Story, Nav Bharat Times and Dainik Bhaskar, etc. have described the plaintiff's achievements in their digital columns. The plaintiff has also enclosed Google traffic reports for various years/periods, showing more than 2 crore visits in the year 2013 alone,

indicating continuous use and popularity. It is also registered with Government Departments and the National Career Service Portal, and has received appreciation from NIT Jalandhar for "SARKARI RESULT" and "SARKARI EXAM."

54. The defendants have setup a case in their written statement that they have purchased the domain on 01.01.2012, which domain has remained active since then. They have relied upon the order dated 05.07.2022 passed by the Delhi High Court in CS (COMM) 422/2020 and also upon creation of a YouTube channel on 11.06.2012 and mentioned that they have earned revenue in excess of Rs. 32 crores from 2012 till February, 2025 from the website sarkariresult.com. The purchase of the domain name sarkariresult.com by the defendants reflects that though the e-mail is addressed to defendant no.1, no invoice in support of the purchase bearing the name of the defendant no.1 was brought on record.

55. Further, joining date of 11.06.2012 of the YouTube channel created by the defendants reflects that the first video was posted on the YouTube channel in the year 2017. The documents reflect that the number of 'people reached' is 0 (zero) and the number of times the post was either clicked, viewed or shared is also 0 (zero). Further, the order of the Delhi High Court indicates that the defendant no. 1 had given details of its followers on various channels (YouTube, Facebook, Twitter etc.) only from 2017 onwards in which the Facebook followers, as in 2017, are reflected as 'NA' though the defendant no.1 claims to have launched the Facebook page on 23.08.2013 itself. Additionally, defendant no. 1 has only given her revenue figures from the period beginning 30.09.2017.

56. The defendants have laid much emphasis before us on the email communications dated 27.01.2016 and 28.02.2023, both sent by plaintiff to the defendants and it is urged that the plaintiff was itself looking forward to not only advertise on the website of the defendants but also

looked for partnership with the defendants company. The said emails are reproduced herein under:-

“Wed, Jan 27, 2016 at 12:33 PM

Hi,

We are looking to advertise on your website www.sarkariresult.com Kindly please share the contact details.”

“Tue, Feb 28, 2023 at 2:30 PM

Hi,

This is Aprit founder of sarkariexam.com and looking for partnership with your company. If you are interested please let me know.”

“Tue, Feb 28, 2023 at 4:38 PM

Thanks for your email.

Please send us the complete details of any type of partnership you want to do.”

“Tue, Feb 28, 2023 at 4:53 PM

This is my number 9935340555 you can call me any time so that we can talk and if you want I can come to Allahabad as I am from Varanasi.”

57. Much emphasis has been laid on behalf of the defendants that the plaintiff being guilty of suppression of material facts, more particularly, sending of aforesaid e-mails in the years 2016 and 2023 to the defendants in relation to their website/domain business and, in this regard, reliance was placed on the judgment of Hon’ble Apex Court in **Makemytrip (India) Private Limited** (supra), however, we are not inclined to dislodge the claim for injunction on the plea of alleged concealment or suppression about sending of e-mails for the reasons sated hereinafter.

58. We find that the defendants, in their Cease and Desist Notice, set up a case that it was only in January, 2025, when they became aware about the plaintiff. It infers that the emails of 2016 and 2023 were not even considered by the defendants as that of significant importance qua claiming of rights in website/domain name etc. These email communications, according to plaintiff, were not sent by it but were a

part of a marketing communication, the stand to which effect was taken in the replication filed before the Commercial Court. In view of peculiar nature of the e-mail communications as well as the rival stands taken by the parties in relation thereto, we do not find non-disclosure of e-mails in the plaint as a ground to dis-entitle the plaintiff to claim injunction. In the light of voluminous documents on record before us, we cannot confine our adjudication only to emails of 2016 and 2023 so as to arrive at a conclusion that the plaintiff has no case for grant of temporary injunction. The rival stands taken to that effect may fall for consideration during the course of trial and based upon oral and documentary evidence to be led at that stage but, at this stage, we may only make a prima facie observation that the emails of 2016 and 2023, in itself, cannot be construed as acquiescence by the plaintiff to the use of its mark by the defendants nor do the e-mails amount to waiver of the rights asserted by the plaintiff as the matter has to be seen and examined in its entirety.

59. We also find that the plaintiff, along with replica, filed various documents along with list Paper No. 114-C. Paper No. 122-C is a disclosure by electronic mode whereby the defendants disclosed that they are not sarkariexam.com but sarkarirresult.com, allegedly the number one website for exam. The disclosure made is reproduced herein under:-

“We Are Not a SarkariExam We Are SarkariResult.Com No.1 Education Website and Beware of Fake Website with Sarkari Result Similar Names Always Types.Com After # SarkariResult.”

60. On perusal of Paper No. 124-C/1 forming part of replica filed by the plaintiff, it reflects that YouTube channel referred to by the defendants, indicated oldest video of Sarkari Result uploaded seven years ago. The same related to the SSC CGL 2017 having 63000 views. Similarly, Paper No. 124-C/2 reflected that same figure with more specific particulars, i.e. 63770 views on May 21, 2017. The Court, therefore, finds sufficient force in the submissions made by learned counsel for the plaintiff that once the defendant's YouTube channel

reflects the oldest video of the year 2017, the same belies their case that they were prior user of the trademark/website/domain name or that they, much-much prior to the plaintiff, had developed/created their YouTube channel.

61. We find from record that one of the Directors of the plaintiff commenced the use of the trademarks "SARKARI EXAM" and "SARKARI RESULT" in the year 2009 and continuous presence and use of "SARKARI RESULT" can be viewed on multiple platforms such as Twitter, Google News, Google Maps, and Just Dial. Plaintiff has also filed a Registration Certificate issued by the Municipal Corporation of Varanasi in the name of SARKARI RESULT in the year 2011. It has also filed its domain registration email indicating an email wherein the domain sarkariexam.com was registered. It has also filed the WHOIS data of the domain name sarkariexam.com wherein the name of Mr. Sunil Kumar Seth is mentioned and also filed screenshots of the website sarkariexam.com where the SARKARI RESULT was used as a tab in the year 2009.

62. We also take judicial notice of filing of a suit on 21.07.2025 by **M/s LMC Computers** (supra) against the plaintiff, before the High Court of Delhi, plaint whereof was placed before us during the course of hearing, as noted above. The said suit has been filed for permanent injunction restraining infringement of trade mark, copyright, redress, passing off, misappropriation, unfair competition, copyright infringement, delivery up, damages, etc. under Trade Marks Act, 1999 and Copyright Act, 1957 and Code of Civil Procedure. There is no order in the said suit in favour of the plaintiff of the said suit.

63. As far as the injunction granted by Delhi High Court in favour of appellant no. 1 in a previous suit, the same was granted against different parties, namely, Mr. Ajay Kumar and another, based upon the prior user pleaded by the defendant no. 1 as 11.06.2012 against the said defendants and Delhi High Court found the case of appellants herein as better placed in comparison to the contesting defendants in those proceedings.

Though the said injunction order dated 05.07.2022 was confirmed by the Division Bench on 18.07.2022 against which Special Leave Petition was also dismissed by the Hon'ble Apex Court on 23.09.2022, the appellants would not get any benefit in so far as their contest with the plaintiff herein is concerned. The reason is that the claim for injunction has to be seen *inter-se* parties to the dispute and orders passed by Delhi High Court cannot be read in isolation and ignoring the plaintiff's claim against the defendants herein.

64. Since arguments were advanced before us in relation to Mukul Gupta and M/s LMC Computers, we may refer certain definitions contained in Trade Marks Act, 1999. Section 2(v) defines "registered proprietor" and Section 2(x) defines "registered user" in the following manner:-

"(v) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the registered as proprietor for the trade mark;

(x) "registered user" means a person who is for the time being registered as such under Section 49;"

65. Further, section 28 (1) of the Act of 1999 is also reproduced hereunder:-

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

66. A conjoint reading of the aforesaid provisions would indicate that changing the stand from original defendants to Mukul Gupta and LMC Computers and entering into a partnership in 2014 and/or granting permission to run the business by Mukul Gupta to the defendants, either by filing objections under Order XXXIX Rule 4 C.P.C. after conclusion of arguments of the plaintiffs' side on the application for temporary injunction or based upon documents that have come into existence after

passing of the order impugned, as produced before us, is a circumstance that would be read against the defendants, inasmuch as not only the name and particular of registered user but also alleged exclusive right to use the trade mark would *prima facie* defeat the defence set up by the appellants regarding user vis-a-vis registration of the trade mark or moving of application by Mukul Gupta and some partnership arrangement qua LMC Computers etc.

67. Reliance was placed by the defendants on a deed of partnership executed on 01.04.2014 in between Anand Dev Gupta, Malti Gupta, Atul Gupta, Anugya Gupta, Mukul Gupta and Prachi Gupta, whereby these persons had agreed to carry on business in particular name and style of LMC Computers having their address 258/12, New Sohbatiya Bagh, Allahabad. Then, reliance was placed on a Trade Mark Licence certificate titled as "To whom it may concern" dated 19.06.2025 (i.e. after passing of the order impugned in this appeal) whereby the aforesaid Mukul Gupta, son of Anand Dev Gupta, had permitted the appellants of this appeal to use the trade mark "SarkariResult" in accordance with the terms and conditions agreed upon between the parties. In the same certificate, words "it is also mentioned that Mukul Gupta ratifies any use of the mark "SARKARIRESULT", which the appellants had done in the past since at least 2012 onwards and that the appellants had Mukul Gupta's consent to use the mark for all purposes since then" were written.

68. We also find that a status report regarding registration certificate/examination report as on 15.05.2025 has been annexed, according to which, Mukul Gupta as Proprietor of Sarkari Result moved an application on 15.06.2020 disclosing user detail of the said trademark as 16.06.2013. Another such report refers the name of appellant no. 2 Atul Gupta by whom some application was moved on 18.06.2020 disclosing user detail as 18.02.2016 in relation to trademark Sarkari Result. Another status report relates to Anugya Gupta (defendant no. 1) in relation to application moved on 14.08.2022 disclosing user detail qua some

trademark with effect from 23.04.2013 and somewhere identical status reports disclose such date as 11.06.2016. There is no explanation at this stage as to how these different dates would place the defendants in a better position in comparison to the plaintiff's plea of user since 2009/2011. We also note that a certificate dated 22.05.2025 issued by one Hari Om and Company, Chartered Accountants certifies turnover of M/s LMC Computers from 2014-15 to 2024-25 only.

69. As regards filing of the documents at particular stage meant for the purpose, Schedule contained in the Act of 2015 with special reference to Order XI CPC was referred to by both the parties. We deem it appropriate to refer Rules (7), (9) and (10) thereof. The same read as under:-

“(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(9) The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii), pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the

counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents;

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim;"

(emphasis supplied)

70. Submission has been made that Order XI as it exists in CPC, when applied to the suits filed under Act of 2015, stands substituted and sub-Rules (4),(5), (7), (9) and (10) thereof would preclude the parties to rely upon any documents in their power, possession, control or custody without obtaining leave of the Court. The afore-quoted provisions of Order XI, when read alongwith defence taken by the appellants in opposing the claim for injunction, would establish that initial stand taken by them was changed with reference to Mukul Gupta and M/s. LMC Computers and documents were sought to be relied upon not only before the Commercial Court but also before this Court and, hence, the bar contained in sub-Rules (7), (9) and (10) of Order XI would be attracted against them, as no leave was sought by the defendants to bring the same on record or to place reliance thereupon.

71. As far as filing of objections against the application for temporary injunction is concerned, it would be appropriate to quote relevant order sheet of the case before the Commercial Court, as under:-

"दिनांक 11.04.2025 पत्रावली में पुकार करायी गयी। वादी एवं प्रतिवादी संख्या 1 के विद्वान अधिवक्तागण उपस्थित ।

प्रतिवादी संख्या 1 की तरफ से जवाबदेही / लिखित कथन 69 क मय शपथ-पत्र 70 ग, आपत्ति 71 ग, शपथ-पत्र 72 ग, सबूत फेहरिस्त 73 ग से सबूत कागजात 74 ग, लगायत 83 ग दाखिल किया गया। प्रतिवादी संख्या 2 की तरफ से प्रार्थना-पत्र 84 ग व वकालतनामा 85 ग दाखिल किया गया है।

पत्रावली वास्ते सुनवाई प्रार्थना-पत्र 6 ग दिनांक 17.04 2025 को पेश हो। टी०आई० अग्रिम, नियत तिथि तक अग्रसारित की जाती है।”

72. It appears that on 28.05.2025, the arguments on injunction application were heard whereafter another objections were filed by the appellants under Order XXXIX Rule 4 C.P.C. on 31.05.2025. The order sheet of the said two dates is reproduced as under:-

“28/05/25

वाद पुकारा गया।

उभय पक्ष अधिवक्ता उपस्थित आए।

स्थगन प्रा० पत्र दिया गया।

सुना। अधिवक्ता विपक्षी को Addl WS 6-ग पर तर्क करने हेतु पर्याप्त अवसर प्रदान किया जा चुका है।

अतः स्थगन प्रा० पत्र निरस्त किया।

6-ग पर आवेदक के विद्वान अधिवक्ता को सुना।

तर्क सुनने विपक्षी दिनांक 31.05.2025।

T.I. नियत तिथि तक प्रभावी।

31.05.2025

वाद पुकारा गया।

उभय पक्ष अधिवक्ता उपस्थित आए।

सुना।

प्रा० पत्र अंतर्गत आदेश 39 नियम 4 CPC के तहत विपक्षी की तरफ से प्रस्तुत।

उभय पक्ष को प्रा० पत्र 6-ग व विपक्षी की आपत्ति पर सुना गया।

वास्ते आदेश दिनांक 09.06.2025।

T.I. नियत तिथि तक प्रभावी।”

73. It is, therefore, apparent that after the plaintiff completed its arguments on application for temporary injunction, the defendants preferred their objections under Order XXXIX Rule 4 CPC and took a stand which was not taken at initial stage and we have already discussed the changed stand wherein the defendants initially asserted rights qua the website/domain name in themselves but later on introduced Mukul Gupta and M/s LMC Computers and tried to assert that these two are working with the website/domain name

under some arrangements like partnership etc and as if Mukul Gupta has also granted licence in favour of the defendants.

74. In **Triumphant Institute of Management Education Pvt. Ltd.** (supra) relied upon by the appellants, on the question of delay in bringing the suit, it was held that grant of an injunction is an equitable relief and before a party claims such relief, he must show not only to the Court that he has come with clean hands but also there has to be complete disclosure of fact in the plaint and such a duty is further enhanced on account of the fact where the prayer is made for grant of an *ex-parte* ad-interim injunction. The judgment cited in **Ashwini Kumar Singh** (supra) on behalf of the appellants is a judgment, wherein the Hon'ble Supreme Court held that placing blind reliance on a decision is not proper and that the judgments cannot be interpreted as statues it was sought to be argued that whatever judgments were relied upon on behalf of the respondent, the same being distinguishable on facts of the present case, the respondent would not get any benefit out of the same and, therefore, the same have no application.

75. In **Laxmikant V. Patel** (supra), the Hon'ble Supreme Court, while dealing with a case involving passing off action, in paragraph 13 of the report, observed that the principles for grant of such an injunction are the same as in the case of any other action against injury complained of and that the plaintiff must prove *prima facie* case, availability of balance of convenience in his favour and is suffering an irreparable injury in the absence of grant of injunction. While discussing interference at the early stage in the matters arising out of grant of injunction, the Hon'ble Supreme Court observed as under:-

“17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial court and substitute its own discretion therefor except where

the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the a courts under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion (see *Wander Ltd. v. Antox India (P) Ltd.* and *N.R. Dongre v. Whirlpool Corpn.*). However, the present one is a case falling within the well-accepted exceptions. Neither the trial court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a later stage. The discretion exercised by the trial court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.”

(emphasis supplied)

76. Delhi High Court in the case of **Century Traders** (supra) laid down that distinction between a claim for passing off and a suit for infringement of a registered trademark is immaterial, it was held that:-

“14. Thus, the law is pretty well-settled that in order to succeed at this stage the appellant had to establish user of the aforesaid mark prior in point of time than the impugned user by the respondents. The registration of the said mark or similar mark prior in point of time to user by the appellant is irrelevant in an action passing off and the mere presence of the mark in the register maintained by the trade mark registry did not prove its user by the persons in whose names the mark was registered and was irrelevant for the purposes of deciding the application for interim injunction unless

evidence had been led or was available of user of the registered trade marks. In our opinion, these clear rules of law were not kept in view by the learned Single Judge and led him to commit an error.”

77. Hon’ble Supreme Court, in **S. Syed Mohideen** (supra), drew various conclusions in such matters from paragraph 30 onwards and held that nothing in the Act, 1999 shall entitle the registered proprietor or registered user to interfere with the rights of prior user and a conjoint reading of Sections 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the opening words of Section 28 of the Act which states "Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor...." and also the opening words of Section 34, "Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere....". It was thus observed that the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act. This proposition has also been discussed in **N.R. Dongre v. Whirlpool Corpn: 1995 SCC OnLine Del 310: AIR 1995 Del 300** wherein the Division Bench of the Delhi High Court recognised that the registration is not an indefeasible right and the same is subject to rights of prior user.

78. In **Neon Laboratories Ltd.** (supra), the Hon’ble Supreme Court analysed the scope of interference in the appeals arising out of injunction orders passed in cases relating to intellectual property rights and it was observed as under:-

“5. it is now well-entrenched in our jurisprudence that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or

evidence. We shall restrict ourselves to reference in *Wander Ltd. v. Antox India (P) Ltd.* :1990 Supp SCC 727, wherein it has been adumbrated that the appellate court ought not to "reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal b solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion". (SCC p. 733, para 14)

We shall be careful not to transgress these frontiers.”

(emphasis supplied)

79. In **Midas Hygeine Industries (P) Ltd.** (supra), the Hon’ble Supreme Court held that 'in cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases.' The grant of injunction also becomes necessary if it *prima facie* appears that the adoption of the mark was itself dishonest. A learned Single Judge of the Bombay High Court in **Y-Not Films LLP** (supra), relied upon the judgments in **Midas Hygeine Industries (P) Ltd.** (supra) and **Laxmikant V. Patel** (supra) and held that in Intellectual Property Rights matters, not only the plaintiff’s economic interest but also public interest of safeguarding the members of the public from deception and confusion are required to be considered.

80. In **Wander Ltd. Vs. Antox India Pvt. Ltd.** (1990) Supp. SCC 727, **Laxmikant V. Patel** (supra) and in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others** (2024) 1 SCR 1343 para 27, the Hon'ble Supreme Court has observed that "the emphasis is now more on perversity rather than a mere error of facts or law in the order granting injunction pending the final adjudication of the suit."

(emphasis supplied)

81. In **Rajendra Vardichand Jagetia** (supra), a Co-ordinate Bench of Delhi High Court, entertained a matter where the suit before the Commercial Court was filed after a delay of six years in the year 2021 whereas admittedly, the appellants were in business since 2015. It was argued before the Supreme Court that the plaintiff had acquiesced to the trademark in question as registration was acquired by the defendants in the year 2015 and 2017 whereas the suit was filed in 2021. The Hon'ble Supreme Court, after dealing with the provisions of Section 33 of the Trade Marks Act which deals with "effect of acquiescence", held as under:-

"9.3. The law of acquiescence is well settled. In order for the court to reach a conclusion that a plaintiff has acquiesced to the use by a defendant of the mark, there has to be an active encouragement by the plaintiff and an express assent to the use of such mark by such plaintiff and only then would a defendant be entitled to raise such a defence. This principle has been discussed by the Supreme Court in *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Pater*, where it was held as under (SCC pp. 769-770, paras 103-106)

103. Acquiescence is a facet of delay. The principle of acquiescence would apply where (1) sitting by or allow another to invade the rights and spending money on it; and (ii) it is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc.

104. in *Power Control Appliances v. Sumeet Machines (P) Ltd.* this Court stated: (SCC p. 457, para 26)

26. Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name, etc. It implies positive acts; not merely silence or inaction such as is involved in laches...

105. In an infringement of trade mark, delay by itself may not be a ground for refusing to issue injunction as has been observed by Lahoti,) (as His Lordship then was) in *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia* in the following terms (SCC p. 91, para 5)

'5. The law on the subject is well settled in cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in

bringing an action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.’

106. The defence of acquiescence, thus, would be satisfied when the plaintiff assents to or lay by in relation to the acts of another person and in view of that assent or laying by and consequent acts it would be unjust in all the circumstances to grant the specific relief."

82. In **Mex Switchgears Pvt. Ltd.** (supra), the learned Single Judge of Delhi High Court, after placing reliance on **Midas Hygiene Industries (P) Ltd.** (supra) observed that in case of infringement, either of Trademark or of Copyright, normally an injunction must follow and mere delay in bringing action is not sufficient to defeat grant of injunction.

83. In **M/s. Hindustan Pencils Pvt. Ltd.** (supra), a learned Single Judge of Delhi High Court, held that :

“Where the plaintiff, however, is guilty of acquiescence, there different considerations may apply. As already noted, acquiescence may mean an encouragement by the plaintiff to the defendant to use the infringement mark. It is as if the plaintiff wants the defendant to be under the belief that the plaintiff does not regard the action of the defendant as being violative of the plaintiff's rights. Furthermore, there should be a tacit or an express assent by the plaintiff to the defendant's using the mark and in a way encouraging the defendant to continue with the business. In such a case the infringer acts upon an honest mistaken belief that he is not infringing the trade mark of the plaintiff and if, after a period of time when the infringer has established the business reputation, the plaintiff turns around and brings an action for injunction, the defendant would be entitled to raise the defence of acquiescence. Acquiescence may be a good defence even to the grant of a permanent injunction because the defendants may legitimately contend that the encouragement of the plaintiff to the defendant's use of the mark in effect amounted to the abandonment by the plaintiff of his right in favour of the defendants and, over a period of time, the general public has accepted the goods if the defendant resulting in Increase of its sale. It

may, however, be stated that it will be for the defendant in such cases to prove acquiescence by the plaintiff. Acquiescence cannot be inferred merely by reason of the fact that the plaintiff has not taken any action against the infringement of its rights.”

84. In **Makemytrip (India) Private Limited** (supra), learned Single Judge of Delhi High Court found that plea of acquiescence premised merely on the basis of email communications would not amount to acquiescence and referring to the decision in **Hindustan Pencils Private Limited** (supra), it has been held that in order to claim the defence of acquiescence, there should be a tacit or an express assent by the plaintiff to the defendant's using the mark and in a way encouraging the defendants to continue with the business. It is as if the plaintiff wants the defendant to be under the belief that the plaintiff does not regard the action of the defendant as being violative of the plaintiff's rights.

85. The aforesaid judgment was, however, sought to be distinguished by the learned counsel for the defendants and it was urged that in that case, the e-mail communications were exchanged *inter se* booking customer care executive and conclusion drawn by Delhi High Court was based upon the facts of that case, whereas the situation in the present case is different inasmuch as, the plaintiff had, through email communication of the year 2016, had not only come to know about the website/domain being run by the defendants but also expressed its willingness to join the same as the partner and, therefore, expressed acquiescence of the business of the appellants to the appeal as estoppel against the respondents. We have already made much deliberations on e-mail communications in the present case and reiterate here that the same cannot be said to be fatal to the plaintiff's case.

86. In **Emcure Pharmaceuticals Ltd. v. Corona Remedies Pvt. Ltd.**: 2014 SCC OnLine Bombay 1064, the Bombay High Court extensively discussed the defence of acquiescence as available to an alleged infringer of trademark. It was held that a mere failure to sue without a positive act of encouragement is no defence and is not

acquiescence. Further, examining the concept of "acquiescence", it was observed that acquiescence is a species of estoppel, a rule in equity and a rule of evidence and it is essential to the acquiescence doctrine that it is accompanied by an encouragement or an inducement: he who possesses a legal right must have encouraged the alleged violator of that right in acting to the latter's detriment, confident in the knowledge that the former is not asserting his rights against the violator. Acquiescence is sitting by when another invades your rights and spends money in the doing of it. It is conduct incompatible with claims of exclusivity, but it requires positive acts, not mere silence or inaction (of the stripe involved in the concept of laches). Acquiescence is not mere negligence or oversight. There must be the abandonment of the right to exclusivity. In **Midas Hygiene Industries** (supra) the Hon'ble Apex Court held that mere delay in bringing action is not sufficient to defeat grant of injunction in infringement cases.

87. In view of the above discussion, after having perused the entire case of the parties, relevant material on record, law governing grant of temporary injunction in matters of intellectual property rights and having examined the findings recorded by the Commercial Court in the order impugned, as noticed in paragraph nos. 11, 12 and 13 of this judgment, at this stage, we do not find any perversity in the order impugned so as to call for any interference in the matter. We further find that although much emphasis was laid on behalf of the appellants that while considering application for temporary injunction, the Court has to look at the conduct of the party seeking injunction and may refuse to grant relief unless conduct of that party is free from blame and reliance in this regard was placed on **Gujarat Bottling Co. Ltd. vs. Coca Cola Company**: (1995) 5 SCC 545, which was reconsidered in **Ambalal Sarabhai Enterprise Limited and others vs. KS Infraspace LLP Limited and others**: (2020) 5 SCC 410, we find that in the matters of grant of temporary injunction, though conduct of the plaintiff plays a significant role, however the relief being equitable in nature, when the Court considers the application on the touchstone of three basic ingredients, i.e.

prima facie case, balance of convenience and irreparable loss, cases of respective sides are weighed and conduct of both sides as reflected on record becomes of significance. That is to say that if one of the parties, either plaintiff or defendant, is found entitled or not entitled to relief, may be in terms of grant or non-grant of injunction, the Court would not be precluded from commenting upon the conduct of the said party. Therefore, the submission made that the Commercial Court, in the present case, has emphasised upon the conduct of the defendants instead of conduct of plaintiff, does not appear to be sound enough so as to completely ignore the material on record while testing the order impugned in its entirety.

88. We are also not inclined to accept the submissions made on behalf of the appellants that while considering injunction application, reliance cannot be placed on the pleadings contained in plaint or written statement or replica but only on applications and affidavits. The reason is plain and simple and is implicit in the provisions contained in Order XXXIX itself. Rule (1) of Order XXXIX clearly provides that where in any suit, it is proved by '**affidavit or otherwise**' that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party or the defendant threatens or intends to remove or dispose of his property or otherwise cause injury to the plaintiff in relation thereto, temporary injunction restraining such act may be passed by the Court. Therefore, the grant of injunction is not restricted only to the averments made in affidavit supporting application or objections or the documents appended thereto, rather the Court, while considering an injunction application, can always consider the statements contained in plaint, written statement, replica and also the contents of documents before it. These statements and documents would certainly fall under the category '**or otherwise**'.

89. Consequently, we do not find any good ground to take a view different from the one taken by the Commercial Court and are of the opinion that the order impugned does not call for any interference by this

Court. It is, however, made clear that adjudication made in this appeal is confined to the stage of temporary injunction only and the trial court shall, in its wisdom, decide the suit after conducting full trial and based upon pleadings of the parties and admissible oral and documentary evidence before it.

90. With the aforesaid observations, the appeal is **dismissed**.

MATTER UNDER ARTICLE 227 No. 5976 of 2025

91. Heard Shri Devansh Misra, learned counsel for petitioners and Shri Rahul Agarwal, learned counsel for respondent.

92. This petition is directed against the order dated 11.03.2025, whereby the Commercial Court has allowed an application 8-C under Section 12-A of the Commercial Courts Act, 2015 and has exempted the plaintiff from requirement of pre-institution mediation.

93. This connected Commercial Appeal No. 24 of 2025 filed against the order granting temporary injunction has been decided today by a detailed judgment, wherein we have extensively considered the aspect of pre-institution mediation also, as contemplated under Section 12-A of the Act, 2015 and, based upon the material available on record and the law governing the said aspect, we have already held that the Commercial Court did not err in exempting the plaintiff from pre-institution mediation.

94. In view of the above, there is no need to separately discuss the matter again and, for the reasons indicated in the judgment deciding connected Commercial Appeal, we are not inclined to interfere in the order impugned in this petition.

95. Consequently, the petition is also **dismissed**.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

September 23, 2025

AKShukla/Sazia/Jyotsana