



2025:DHC:10363



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

% Judgment delivered on: 24/11/2025

+ **C.A.(COMM.IPD-TM) 57/2024**

+ **C.A.(COMM.IPD-TM) 58/2024**

**HAVELI RESTAURANT AND RESORTS
LIMITED.**

.....Appellant

versus

REGISTRAR OF TRADEMARKS & ANR.

.....Respondents

Advocates who appeared in these cases

For the Appellant : Mr. Shravan Kumar Bansal and Mr. Akash Chaudhary, Advocates.

For the Respondents : Mr. J. Sai Deepak, Senior Advocate with Mr. Anshuman Upadhyay, Mr. Naseem, Mr. R. Abhishek, Mr. Garvit Sharma, Mr. Rahul Singh and Ms. Shubhangi Shashwat, Advocates for R-2.

Mr. R. Venkat Prabhat, SPC with Mr. Daksh Pandit, Ms. Kamna Behrani, Mr. Ansh Kalra and Mr. Siddharth Gautam, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. These Appeals are filed under Section 91 of the Trade Marks Act, 1999 (“Act”) read with Section 151 of the Code of Civil Procedure, 1908



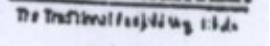
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(“CPC”) read with Rule 6 and Rule 11 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 against the orders dated 21.02.2024 passed by Respondent No. 1 (“**Impugned Orders**”) dismissing the opposition by the Appellant and allowing the applications for registration of the Marks ‘AMRITSAR HAVELI’ in Class 43 *vide* application No. 4263978 filed on 13.08.2019 by Respondent No. 2 in C.A.(COMM.IPD-TM) 57/2024 and ‘THE AMRITSAR HAVELI’ in Class 43 *vide* application No. 3913481 filed on 10.08.2018 by Respondent No. 2 in C.A.(COMM.IPD-TM) 58/2024 (“**Impugned Marks**”).

2. The Appellant has filed the present Appeals being aggrieved by the Impugned Orders on the ground that the rejection of the Appellant’s opposition under the Act has resulted in the Appellant’s registered Trade



Marks being ‘HAVELI’ ‘’, having registration No. 1050588 in Class 30 and ‘HAVELI’ (word mark) having registration No. 1678679 in Class 16 (“**Appellant’s Marks**”) having been diluted and creating confusion in the minds of the users of the established brand of the Appellant.

FACTUAL BACKGROUND

3. The Appellant is a well-known player in hospitality industry and has built a strong brand ‘HAVELI’, which has been safeguarded and protected through the submission of multiple Trade Mark applications before Respondent No. 1. The list of Trade Mark applications filed by the Appellant before Respondent No. 1 along with its status is as under:



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S.No.	Trademark	Application No.	Class	Date of Application	User claimed	Status
1.		1050588	Class 30	08.10.2001	Proposed to be used	Rectification filed
Note: Rectification has been filed by Respondent No. 2 against the application No. 1050588						
2.	HAVELI (Word Mark)	1678679	Class 16	22.04.2008	01.01.2001	Rectification filed
Note: Rectification has been filed by Respondent No. 2 against the application No. 1678679 during the pendency of the instant appeal						
3.		1976126	Class 32	07.06.2010	17.01.2010	Registered
4.		1976125	Class 31	07.06.2010	17.01.2010	Registered
5.	Original Haveli (Word Mark)	6137127	Class 29	05.10.2023	Proposed to be used	Objected
6.	Original Haveli (Word Mark)	6137128	Class 30	05.10.2023	Proposed to be used	Objected



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7.	Original Haveli (Word Mark)	6137129	Class 31	05.10.2023	Proposed to be used	Objected
8.	Original Haveli (Word Mark)	6137130	Class 35	05.10.2023	Proposed to be used	Objected
9.	Original Haveli (Word Mark)	6137131	Class 43	05.10.2023	Proposed to be used	Objected
10	The Original Chain of Haveli Restaurant (Word Mark)	5739105	Class 29	27.12.2022	Proposed to be used	Objected
11	The Original Chain of Haveli Restaurant (Word Mark)	5739106	Class 30	27.12.2022	Proposed to be used	Objected
12	The Original Chain of Haveli Restaurant (Word Mark)	5739107	Class 31	27.12.2022	Proposed to be used	Objected
13	The Original Chain of Haveli Restaurant (Word Mark)	5739108	Class 43	27.12.2022	Proposed to be used	Objected
14	The Original Chain of Haveli Restaurant (Word Mark)	5739114	Class 35	27.12.2022	Proposed to be used	Objected
15	www.haveli.co (Word Mark)	5770356	Class 29	19.01.2023	22.10.2015	Objected
16	www.haveli.co (Word Mark)	5770357	Class 30	19.01.2023	22.10.2015	Opposed

Note: Opposition has been filed by Respondent No. 2 against the application No. 5770357

17	www.haveli.co (Word Mark)	5770358	Class 31	19.01.2023	22.10.2015	Opposed
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Note: Opposition has been filed by Respondent No. 2 against the application No. 5770358

18	www.haveli.co (Word Mark)	5770359	Class 35	19.01.2023	22.10.2015	Opposed
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Note: Opposition has been filed by Respondent No. 2 against the application No. 5770359

19	www.haveli.co (Word Mark)	5770360	Class 43	19.01.2023	22.10.2015	Opposed
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Note: Opposition has been filed by Respondent No. 2 against the application No. 5770360



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20		2384977	Class 43	24.08.2012	13.04.2007	Refused
21		1976127	Class 33	07.06.2010	17.01.2010	Opposed
22		1976124	Class 30	07.06.2010	17.01.2010	Opposed
23		1976128	Class 41	07.06.2010	17.01.2010	Abandoned
24		1976123	Class 29	07.06.2010	17.01.2010	Opposed
25		2742849	Class 29	23.05.2014	Proposed to be used	Refused



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26		2742850	Class 43	23.05.2014	08.10.2001	Refused
27		2742851	Class 30	23.05.2014	Proposed to be used	Refused
28		1706006	Class 43	02.07.2008	08.10.2001	Refused
29		1706007	Class 42	02.07.2008	08.10.2001	Refused



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30		1706008	Class 42	02.07.2008	08.10.2001	Refused
31	HAVELI (Word Mark)	1678680	Class 29	22.04.2008	Proposed to be used	Abandoned
32	HAVELI (Word Mark)	1678681	Class 30	22.04.2008	01.01.2001	Abandoned
33	HAVELI (Word Mark)	1261703	Class 42	19.01.2004	08.10.2001	Abandoned
34	HAVELI (Word Mark)	1678682	Class 42	22.04.2008	01.01.2001	Abandoned
35		3175244	Class 43	02.02.2016	01.01.2001	Refused
36		3175245	Class 43	02.02.2016	01.01.2001	Refused
37		3175246	Class 43	02.02.2016	01.01.2001	Refused

4. The Appellant was incorporated on 03.09.1997 in the name and style as *M/s Asha Builders Private Limited*. On 01.01.2021, the Appellant started the first restaurant by the name of 'HAVELI' at Jalandhar, Punjab. On 08.10.2001, the Appellant filed a Trade Mark application *vide* No. 1050588 which was registered by Respondent No. 1 *vide* certificate No. 833495. In September, 2009, the name of the Appellant was changed from *M/s Asha*



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Builders Private Limited to Haveli Restaurant and Resorts Limited. Since inception, the Appellant's Haveli Restaurant has received accolades and awards from customers in India and abroad including various celebrities and media outlets.

5. On 13.08.2019, Respondent No. 2 in C.A.(COMM.IPD-TM) 57/2024 filed an application No. 4263978 for the registration of the Mark 'AMRITSAR HAVELI' for services for providing food and drinks in Class 43. The said Mark was advertised in the Trade Mark Journal No. 1940-0 on 10.02.2020. The Appellant filed opposition No. 1030245 on 10.02.2020 on the ground that Respondent No. 2 has adopted the Trade Mark which is deceptively similar / identical to the Appellant's Mark, 'HAVELI'.

6. On 10.08.2018, Respondent No. 2 in C.A.(COMM.IPD-TM) 58/2024 filed an application No. 3913481 for the registration of the Mark 'THE AMRITSAR HAVELI' for services for providing food and drinks in Class 43. The said Mark was advertised in the Trade Mark Journal No. 2001-0 on 24.05.2021. The Appellant filed opposition No. 1109439 on 05.06.2021 on the ground that Respondent No. 2 has adopted the Trade Mark which is deceptively similar / identical to the Appellant's Mark, 'HAVELI'.

7. The Appellant opposed the registration of the Impugned Marks on the ground that:

- a. The Appellant is engaged in well established business of providing food and drinks, temporary accommodation and restaurants using the Appellant's Mark 'HAVELI' since 2001. Prior to the adoption of the Appellant's Mark 'HAVELI' in respect of the services provided by the Appellant, no such similar Mark was in use in respect of the said services.



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- b. The Appellant is sole and exclusive proprietor of the Appellant's Mark 'HAVELI' in respect of goods falling in Classes 29, 30, 31, 32, 35, 42 and 43.
 - c. The Impugned Marks are exactly / deceptively similar to the Appellant's Mark 'HAVELI' and the services to be provided by use of the Impugned Marks are of exactly same description.
 - d. The use of Impugned Marks is likely to create confusion and deception whereby the Appellant's goods / services will be mistaken for the goods and services being provided using the Impugned Marks. The Impugned Marks are incapable of distinguishing as they are similar to the Appellant's Mark 'HAVELI'.
 - e. The Impugned Marks are intended to trade upon the reputation and goodwill accrued by the Appellant by using the Appellant's Marks.
 - f. The registration of the Impugned Marks is contrary to Sections 9, 11, 12 and 18 of the Act.
8. Respondent No. 1 granted opportunity of hearing on 13.02.2024 in both the proceedings and after considering the arguments made on behalf of the Appellant and Respondent No. 2, passed Impugned Orders.
9. Respondent No. 1 has concluded that the Appellant has failed to show the use of the Appellant's Mark 'HAVELI' *per se* for food services under Class 43 since 2001 as the Appellant does not possess any registration for the Appellant's Mark 'HAVELI' and, therefore, the Appellant cannot assert exclusivity over the word 'HAVELI'. It was further held that there are adverse orders passed against the Appellant in the earlier Trade Mark applications for the word 'HAVELI' and in the reply to the examination



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reports in the said applications, the Appellant had relied upon phonetic, structural and visual differences in 'HAVELI' formative Trade Marks to address the objections. Accordingly, the Appellant cannot assert similarity between the Appellant's Mark and the Impugned Marks. Respondent No. 1 also rejected the objection of the Appellant that the word 'AMRITSAR' is the name of a city and functions as an indication of geographical origin for the services applied under the Impugned Marks as the word 'AMRITSAR' lacks any inherent indication of geographical origin for the services for providing food and drinks. It was observed that while a city may be associated with a particular food item, it does not extend to the entirety of food services and the registration of a city name is permissible if it does not function as an indication of geographical origin. Further, there are several Trade Marks, either registered or pending registration in India, which include the term 'HAVELI' and is commonly used for services falling under Class 43. Hence, no one can assert a monopolistic right over such a common term. Having considered the Impugned Marks in its entirety, the same are distinctive and do not serve as an indication of geographical origin.

10. Respondent No. 1 also observed that there was no evidence on record to show that the Impugned Marks have been dishonestly adopted and there is no likelihood of confusion or deception in the public as the Impugned Marks are distinctive.

11. Hence, these Appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. The learned Counsel for the Appellant submitted that the Appellant is a registered proprietor and has obtained the Trade Mark registration of the Appellant's Marks and, therefore, the Appellant is not required to prove the



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use and reputation. In view of the list of the Appellant's Trade Mark registration applications, the Appellant has protected its intellectual property and the Appellant is clearly the prior user of the Appellant's Mark 'HAVELI'.

13. The learned Counsel for the Appellant relied upon the decision of ***American Home Products Corporation v. Mac Laboratories (P) Ltd.***, AIR 1986 SC 137, and ***Fybro's Electric Private Limited v. Vasu Dev Gupta***, Neutral Citation:2023:DHC:3789.

14. The learned Counsel for the Appellant submitted that the Impugned Orders failed to consider the deceptive similarity between the Appellant's Marks and the Impugned Marks and overlooked the clear likelihood of confusion in the public caused by the Impugned Marks as both operate in the hospitality sector under Class 43. It was further submitted that Respondent No. 2's Mark being similar to the earlier registered Trade Mark of the Appellant cannot be registered. The Impugned Marks are not only phonetically and visually similar but also cover the similar nature of goods / services increasing the risk of confusion among the general public. It was submitted that the phonetic and visual similarity, coupled with identical consumer base, significantly increases the likelihood of confusion.

15. The learned Counsel for the Appellant relied upon the following judgments in support of his submissions:

- i. ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***, AIR 2001 SC 1952.
- ii. ***Izuk Chemical Works v. Babu Ram Dharam Prakash***, 2007 (35) PTC 28 (Del).



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- iii. ***Bata India Limited v. Chawla Boot House & Anr***, Neutral Citation:2019:DHC:2158.
- iv. ***Amar Singh Chawal Wala v. Shree Vardhman Rice and Genl. Mills***, 2009 (40) PTC 417 (Del.) (DB).
- v. ***Kirorimal Kashiram Mktg. & Agencies Pvt. Ltd. v. Shree Sita Chawal Udyog Mill Tolly Vill***, 2010 (44) PTC 293 (Del.) (DB).

16. It was submitted by the learned Counsel for the Appellant that the Impugned Marks bear a remarkable resemblance to the Appellant's Marks. At the time of applying for the Impugned Marks the same were 'proposed-to-be used', which signifies that the same were for future utilization. The deliberate similarity between the Impugned Marks and the Appellant's Marks pose a direct challenge to the well-established rights of the Appellant and raising significant concerns regarding the infringement and dilution of the Appellant's brand equity.

17. The learned Counsel for the Appellant submitted that the Impugned Orders have caused undue hardship and irreparable loss to the Appellant as Respondent No. 1 has failed to consider that Respondent No. 2 came into existence in 2018 whereas the Appellant has been running its business in the name and style of 'HAVELI' since 2001. Accordingly, Respondent No. 1 has erroneously granted the registration of the Impugned Marks thereby infringing upon the Appellant's rights and interests.

18. It was further submitted that the Impugned Orders were passed on the same day in favour of different applicants i.e., Respondent No. 2 in C.A.(COMM.IPD-TM) 57/2024 and C.A.(COMM.IPD-TM) 58/2024 respectively. This clearly shows that Respondent No. 1 permitted the concurrent use of substantially similar or identical Trade Marks,



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differentiated solely by trivial modifications thereby causing significant confusion and dilution of the Appellant's established brand.

19. It was submitted that the Impugned Orders were passed without granting reasonable opportunity of hearing to the Appellant and the same were passed without considering the most imperative and crucial aspects of the Appellant's case at the time of hearing.

20. It was further submitted that the Appellant is using the term 'HAVELI' as a part of its corporate name, which can also be construed as use as a brand name. In support of this submission, the learned Counsel for the Appellant relied upon the following decisions:

- i. ***B.K. Engineering Company v. U.B.H.I. Enterprises (REGD.) & ANR***, ILR (1985) I Delhi.
- ii. ***Laxmikant V. Patel v. Chetanbhai Shah and Another***, (2002) 3 SCC 65
- iii. ***M/s L'oreal S.A. v. Ravi Gandhi & Anr.***, Order dated 07.12.2023 in FAO (COMM) 116/2023, Delhi High Court.
- iv. ***M/s. Montari Overseas Limited vs. M/s. Montari Industries Limited***, 1995 SCC OnLine Del 864.

21. The learned Counsel for the Appellant also submitted that the Impugned Orders have been passed without adequately considering the Appellant's prior rights over the Appellant's Marks and the use since 2001, which has garnered significant goodwill and recognition in the market. The learned Counsel for the Appellant relied upon the document from the Regional Provident Fund Commissioner dated July, 2002 identifying *M/s Asha Builders* as associated with the use and adoption of the Mark



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‘HAVELI’, which establishes that *M/s Asha Builders Private Limited* became *Haveli Restaurant and Resort Limited* in 2009.

22. The learned Counsel for the Appellant submitted that Respondent No. 1 has erred in disregarding the Appellant’s seniority and by granting undue advantage to Respondent No. 2 in contravention of Section 34 of the Act. The learned Counsel for the Appellant relied upon the following decisions:

- i. ***Devans Modern Breweries Ltd v. Radico Khaitan Ltd.***, Order dated 05.04.2019 in FAO(OS)(COMM) 74/2019, Delhi High Court.
- ii. ***Radico Khaitan Ltd. v. Devans Modern Breweries Ltd.***, Neutral Citation:2019:DHC:1423.

23. The learned Counsel for the Appellant submitted that the Appellant’s Marks have acquired distinctiveness and are well-known. The Appellant’s vast goodwill is corroborated by its large volume of sales which is evident from the year-wise sales figures of the Appellant since the year 2000-2001. The Appellant has attained enviable reputation and famous personalities have visited the Appellant’s restaurant for enriching experience. The Appellant has acquired distinctiveness for the Appellant’s Marks and the same are well-known due to goodwill and reputation. However, Respondent No. 2 has adopted the Impugned Marks in bad faith and with *mala fide* intention to ride on goodwill and reputation of the Appellant. The learned Counsel for the Appellant has relied upon the following decisions:

- i. ***ITC Limited v. Philip Morris Products SA and Ors.***; Neutral Citation:2010:DHC:28.
- ii. ***Exxon Mobil Corporation & Ors. v. PK Sen;*** MANU/WB/1021/2018.



24. The learned Counsel for the Appellant submitted that Respondent No. 1 erred in not appreciating the sufficient and adequate documentary evidence filed in support of its opposition for registration of the Impugned Marks and to substantiate the claim of prior use and adoption of the Appellant's Marks in relation to food services under Class 43. The Appellant had relied upon the documents such as cash memos showing the use of Appellant's Mark 'HAVELI' since 2001, sales promotion expenses from the years 2001-2002 to 2017-2018, newspaper cuttings showing advertisement of the Appellant since 2002-2004, sales details for financial year 2001-2002 to 2013-2014 and invoices for promotion through billboards from 2014 to 2018. The said documents clearly substantiate the Appellant's case of prior use and adoption of the Appellant's Mark 'HAVELI' in relation to food services.

25. It was further submitted that Respondent No. 1 erred in holding that the Mark 'HAVELI' is generic. Respondent No. 1 failed to appreciate that Respondent No. 2 themselves have applied for 'HAVELI' as a Trade Mark and have also opposed one of the pending applications of the Appellant. Hence, Respondent No. 2's assertion that 'HAVELI' is common to trade due to its extensive use by third party is not sustainable.

26. It was further submitted that Respondent No. 2 uses 'HAVELI' as more prominent part of their Trade Mark with large font size and prominent color, whereas 'AMRITSAR' is used in small font as mere prefix. The same clearly shows dishonesty and *mala fide* intent behind using the Appellant's Marks and goodwill. Hence, the assertion that the Mark 'HAVELI' is generic is untenable. The learned Counsel for the Appellant relied upon the following decisions:



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- i. ***The Indian Hotels Company Ltd. and Anr. v. Jiva Institute of Vedic Science & Culture***, 2008 (37) PTC 468 (Del.) (DB).
- ii. ***Under Armour Inc. v. Aditya Birla Fashion & Retail Ltd.***, Neutral Citation:2023:DHC:2711.
- iii. ***Raman Kwatra & Anr. v. Kei Industries Limited***, Neutral Citation: 2023:DHC:83-DB.
- iv. ***Chhattar Extractions Ltd. & Another v. Kochar Oil Mills Ltd.***, (1995) 34 DRJ 668 (DB).
- v. ***Pankaj Goel v. Dabur India Ltd.***, 2008 (38) PTC 49 (Del.) (DB).
- vi. ***Century Traders v. Roshan Lal Duggar & Co.***, AIR 1978 DELHI 250.

27. In view of the above, the learned Counsel for the Appellant submitted that the Impugned Orders are liable to be set-aside and the Trade Mark application No. 4263978 filed on 13.08.2019 by Respondent No. 2 in C.A.(COMM.IPD-TM) 57/2024 and application No. 3913481 filed on 10.08.2018 by Respondent No. 2 in C.A.(COMM.IPD-TM) 58/2024 are liable to be set-aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2

28. The learned Senior Counsel for Respondent No. 2 submitted that the Impugned Orders do not deserve to be interfered with due to suppression and misrepresentation by the Appellant as the Appellant had mischievously tried to file the additional documents which do not form part of the record before Respondent No. 1. Furthermore, the said documents were fabricated, which is evident from the fact that some of the invoices sought to be produced were pertaining to period prior to 2005 and mentioned Value



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Added Tax (“VAT”), whereas VAT was implemented in Punjab in 2005. Respondent No. 2 had filed applications under Section 379 of Bhartiya Nagarik Suraksha Sanhita, 2023 (“BNSS”) seeking enquiry against the Appellant under Section 215(1)(b)(i) of Bhartiya Nyaya Sanhita, 2023 (“BNS”) being CRL.MA. 35256/2024 and CRL.MA. 35255/2024 before this Court. In view of the same the Appellant withdrew the applications for bringing on record the additional documents and, therefore, *vide* orders dated 27.03.2025 passed by this Court, the applications under Section 379 of BNSS were dismissed having become infructuous while granting liberty to Respondent No. 2 to initiate action *qua* the additional documents in accordance with law.

29. The learned Senior Counsel for Respondent No. 2 submitted that the Appellant had also suppressed the orders passed by Respondent No. 1 in previous applications filed by the Appellant by showing the status as opposed when in fact the said applications had been dismissed. The Appellant had also filed frivolous complaints against Respondent No. 1 only because the Impugned Orders were passed in favour of Respondent No. 2. This shows the dishonest conduct of the Appellant.

30. The learned Senior Counsel for Respondent No. 2 submitted that the word ‘HAVELI’ on a stand-alone basis has no Trade Mark value and is not capable of distinguishing the goods and services. There are several Trade Marks bearing the word ‘HAVELI’ which are available on the records maintained by Respondent No. 1. Many such Marks are being used for restaurants / hospitality industry in several states of India. The Mark ‘HAVELI’ is non-distinctive in nature as described under Section 9(1)(a) of the Act.



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31. The Appellant has not been able to secure any registration for the Mark 'HAVELI' and Respondent No. 1 has passed several orders against the Appellant holding that 'HAVELI' is non-distinctive in nature. Additionally, various oppositions have been filed against the applications filed by the Appellant for the registration of the Mark 'HAVELI' and the same have been accepted by Respondent No. 1 while rejecting the applications filed by the Appellant. The Appellant is aware of weakness in its case on merits and has not challenged any of the orders rejecting such applications by Respondent No. 1 before this Court.

32. The learned Senior Counsel for Respondent No. 2 submitted that the Appellant has been blowing hot and cold by taking inconsistent and untenable stands before Respondent No. 1 and this Court. The Appellant has relied on phonetic, structural and visual differences in 'HAVELI' formative Marks to oppose the objections raised by Respondent No. 1 against the applications for registration of various Trade Marks of the Appellant which contained the word 'HAVELI'. Hence, the Appellant has no right to now oppose the registration of the Impugned Marks.

33. The learned Senior Counsel for Respondent No. 2 further submitted that the Appellant poses danger to the rights of other proprietors using the Mark 'HAVELI' by filing baseless and unnecessary opposition against the use of Trade Marks containing 'HAVELI' by such businesses.

34. Respondent No. 2 is the owner, creator and registered proprietor of the copyrights as per Copyright Act, 1957 in the artistic works in relation to



the Labels 'AMRITSAR HAVELI' and 'AMRITSARI HAVELI'. In addition,





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Respondent No. 2 is the adopter, proprietor and user of Trade Mark

‘AMRITSAR HAVELI’ and Device Mark ‘’, which were coined by Respondent No. 2. The details of Respondent No. 2’s registered Trade Marks are as under:

Reg No.	Class	Trademarks	Status	Validity
5753825	20		Registered	Not challenged by anyone including the Appellant
5393658	28		Registered	Not challenged by anyone including the Appellant
5583851	41		Registered	Not challenged by anyone including the Appellant
5915325	42		Registered	Not challenged by anyone including the Appellant
4263979	43	Amritsari Haveli	Registered	Opposition filed by Appellant Dismissed <i>vide</i> order dated 05.09.2024. The said order was never challenged till date.
3913481	43	The Amritsar Haveli	Registered	Challenged in the present appeals – C.A. (COMM.IPD-TM) 57/2024 & C.A. (COMM.IPD-TM) 58/2024
4263978	43	Amritsar Haveli	Registered	



35. The learned Senior Counsel for Respondent No. 2 submitted that the Appellant claims to have the reputation and business only in Punjab, whereas Respondent No. 2 has expanded its business to multiple parts of India and has accumulated immense goodwill of its customers by providing authentic and scrumptious Punjab cuisine. Respondent No. 2 runs 32 well reputed restaurants all over India and is in process of opening 25 more such restaurants. By adhering to the highest quality standards and garnering excellent reviews for its delicious Punjabi food, Respondent No. 2 has acquired secondary meaning and distinctiveness for the Impugned Marks.

36. The learned Senior Counsel for Respondent No. 2 submitted that Respondent No. 2 holds better rights in view of the fact that word 'HAVELI' is descriptive in nature having a dictionary meaning in Hindi language, which is non-distinctive in terms of Section 9(1)(a) of the Act.

37. The learned Senior Counsel for Respondent No. 2 submitted that the Impugned Marks have to be considered as a whole and the Appellant has no right over the word 'HAVELI' as no one can be permitted to monopolize the same. The word 'HAVELI' is common to trade and has become *publici juris*.

38. The learned Senior Counsel for Respondent No. 2 relied upon the decision of ***Vasundhara Jewellers Private Limited v. Kirat Vinodbhai Jadvani & Anr.***, 2022:DHC:4255-DB, which held that word 'Vasundhara' is a generic word and there were several registered Trade Marks which include the word 'Vasundhara' and intrinsically it would be a weak Trade Mark. Although it is possible for a proprietor to claim exclusive rights in respect of the word 'Vasundhara', however, for that it would be necessary to establish on account of extensive use, the said common word has been identified



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exclusively with the business of the proprietor and no other and since, the appellant had single store, it did not meet the said threshold.

39. Accordingly, the learned Senior Counsel for Respondent No. 2 submitted that the Appellant had only one restaurant in Punjab and the use of Appellant's Marks have not acquired secondary meaning which can be identified exclusively with the business of the Appellant.

40. The learned Senior Counsel for Respondent No. 2 relied upon the decision of the Division Bench of this Court in **Jain Shikanji Private Limited v. Satish Kumar Jain**, 2023 SCC OnLine Del 1241, which held that the words 'Jain' and 'Shikanji' separately are commonly used words but once joined / used together 'singularly' are distinctive and unique, capable of being a mark in itself. The respondent therein had also opened several outlets under the name and style of 'Jain Shikanji' from time to time after obtaining the registration for the trade mark 'Jain Shikanji' and, therefore, found to having exclusive rights to use the mark 'Jain Shikanji'. The learned Senior Counsel for Respondent No. 2 submitted that the Impugned Marks are distinct and capable of being a mark in itself.

41. The learned Senior Counsel for Respondent No. 2 relied upon the decision of High Court of Bombay in **People Interactive (India) Private Limited v. Vivek Pahwa & Ors.**, 2016 SCC OnLine Bom 7351, which holds as under:

"15. That takes us directly to the question of 'secondary meaning' or 'secondary significance'. When does an expression acquire a 'secondary meaning' and how does it acquire it? Again, this is a phrase much bandied about, and I do believe we need to pause to consider what is meant by all this. What do we mean when we say that an expression has 'acquired a secondary meaning'? This must necessarily mean that the



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primary meaning of the expression, the one with which it began, has been lost. It is left behind. The expression no longer means what it once did. It has assumed a new avatar. It has transcended its original connotation and now references exclusively in the public mind the claimant's products, goods or services, i.e., that there is an identification of the mark with the claimant rather than with the goods or services in and of themselves. The claim of a 'secondary meaning' posits a priori that the expression once had a more commonplace, ordinary meaning — this is the meaning that is now lost. In its first iteration, the expression found place lower on the Indchemie/Miller Brewing scale. It has since moved upward by acquiring a secondary meaning. That is the claim.

16. How is the acquisition of a secondary meaning to be shown or established? Does commercial success, even a high degree of success, always result in the acquisition of a 'secondary meaning'? I do not believe this can be so. There is no presumption of secondary meaning acquisition. That needs proof; and the proof must be of uninterrupted use of considerable longevity without a competitor attempting to use it. When a person uses a common phrase, he runs the risk that others might also use the same expression or another very like it. In *British Vacuum Cleaner Company Limited v. New Vacuum Cleaner Company Limited*, on which Dr. Tulzapurkar relies, Parker J held that there is a distinction between ordinary descriptive words and a 'fancy word', one that does not primarily relate to the article, but perhaps to the person manufacturing it. There can be no restraint against the use of general words. The decision in *Office Cleaning Services Ltd. v. Westminster Window and General Cleaners Ltd.*, too, supports Dr. Tulzapurkar's contention. The expression in dispute was 'office cleaning'. The appellants claimed the expression was identified with their business to such an extent that any other traders who wished to use the expression as part of their trade name would have to differentiate it. Simons J held that where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run, or else the first user would be allowed to unfairly monopolise the



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words. In matters of this nature, courts accept even the smallest differences sufficient to avert confusion.

17. As to this question of risk of similar use by others, the material on record is, in my view, against the Plaintiff. Annexed to the Affidavit in Reply is a very long list of rival or competing marks, at various stages. All use the word shaadi in some form or the other. Many are opposed by the Plaintiff. Several use the name of a community before the word shaadi (agarwalshaadi, konkanishaadi, patelshaadi and so on). I do not think Mr. Khandekar's response is of much use; he says that the Plaintiff has obtained domain name registrations for a very large number of variants. This is hardly evidence of exclusivity. In fact, it points to the contrary, viz., that others have, and continue to, use the word shaadi almost at will. The Affidavit in Rejoinder does not further matters when it says that many of these users have been issued cease-and-desist notices by the Plaintiff. The fact is that there are many ventures, including online ones, that use the word 'shaadi' as part of their corporate or trading name or as their domain names. Paragraph 12 of the Affidavit in Rejoinder tabulates companies that use the word 'shaadi' in their names. I do not think it is at all possible for a claimant to say that there are no competitors or rival users because the claimant has moved against or restricted virtually every rival user. The test in such cases must be whether rivals have attempted to use the same commonly descriptive or generic (class 1) expression. If it is shown that they have, then the claims to exclusivity and to a secondary meaning must both fail. This is axiomatic : these rival uses show non exclusivity, and establish that there are indeed many who use the word. This is precisely the risk the law says an adopter of a generic or commonly descriptive expression must expect to suffer. The test of exclusivity, an essential ingredient of the claim based on a 'secondary meaning' can hardly be said to be satisfied."

42. In view of the above the learned Senior Counsel for Respondent No. 2 submitted that there is no material on record to show that the Appellant's



Mark 'HAVELI' has acquired a secondary meaning by way of acquisition of reputation and goodwill to show the popularity of the said Mark. Mere use of and the statements of sales do not on their own establish the acquisition of a secondary meaning.

43. The learned Senior Counsel for Respondent No. 2 relied upon the decision of **Cadila Healthcare Limited v. Gujarat Cooperative Milk Marketing Federation Limited & Ors.**, 2008 (36) PTC 168 (Del), which holds as under:

“35. The question that now arises for consideration is whether or not the trade mark 'Sugar Free', as a matter of fact, has acquired a secondary meaning in consumer and trade parlance and thereby assumed distinctiveness in relation to the plaintiff's products.

36. Whilst ascertaining whether the expression 'Sugar Free' has acquired a secondary meaning and thus assumed distinctiveness as a trade mark of the plaintiff, an important aspect that has caught my attention is the specialised nature of the plaintiff's products. Being essentially sweeteners/sugar substitutes, having esoteric or specialised utility, the popularity of the 'Sugar Free' range of products will have to be necessarily measured within a specific or limited class of consumers. Consumers who will be inclined towards purchasing the 'Sugar Free' range of products will perforce be only those who are aware and informed about the characteristic utility of such products as zero calorie sugar substitutes. Such persons may include medical professionals viz. doctors, dieticians, etc., or persons suffering from diabetes, high cholesterol, etc., or simply those who are fashionably health conscious.

xxxxx

38. Having identified the limited consumer base of the plaintiff's products, we shall now ascertain whether it is trade mark 'Sugar Free' has acquired a secondary meaning or distinctiveness in relation to its products within such limited



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consumer base. The usual approach followed by Courts of law, whilst ascertaining whether a particular trade mark has acquired a secondary meaning in relation to the product for which it is used, is to evaluate the trade mark on the anvil of various factors, viz. the extent of its use qua the product, the expenditure incurred by the plaintiff in marketing and promoting its product under the said trade mark, the profits and sales revenue revenue etc. These are valid parameters that objectively reflect the popularity, usage, consumer recognition and market strength of a trademark and thus help in ascertaining whether the trade mark has acquired a secondary meaning or not.

XXXXX

54. It is important to be borne in mind that use of a descriptive expression as a trade mark by a trader, irrespective of the said trade mark having acquired a secondary meaning and distinctiveness in relation to the trader's products, does not entitle such trader from precluding other traders from using the said expression for the purposes of describing the characteristic features of their products. I have no hesitation in stating, albeit without prejudice to the rights and interests of the plaintiff in the present suit, that by adopting such a purely descriptive and laudatory expression 'Sugar Free' as its trade mark, the plaintiff must be prepared to tolerate some degree of confusion which is inevitable owing to the wide spread use of such trade mark by fellow competitors. Simply because the plaintiff claims to be using the expression 'Sugar Free' as a trade mark much prior to the launch of the defendant's product Pro Biotic Frozen Dessert in the market does not give this Court a good ground for imposing a blanket injunction on the defendant from using the expression 'Sugar Free', especially when the defendant intends to use this expression only in its descriptive sense and not as a trade mark, and even otherwise, when the use of this expression is widespread in relation to foods and beverages.

55. To sum up, even though the petitioner has prima facie been successful in establishing the distinctiveness of its trade



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mark 'Sugar Free' in relation to its products, it has not been able to satisfy this Court why an embargo should be placed on the defendant from absolutely using the expression 'Sugar Free', especially when the defendant has prima facie satisfied this Court of its bona fide intention to use the said expression not as a trade mark but only in its descriptive or laudatory sense. However, even as any possibility of the defendant trying to dishonestly pass off its products as those of the plaintiff stands ruled out, I have a predilection that the overwhelming impact of the expression 'Sugar Free' on the packaging of the defendant's product may lead to some confusion. Such confusion, though not rooted in deception or malice on the part of the defendant, and further, such confusion, though less likely to manifest owing to the well-informed consumer base of the plaintiff's products, nevertheless, carries a fair risk of misleading the consumers of the plaintiff into believing that its sweetener has been added as an ingredient in the defendant's Pro Biotic Frozen Dessert.”

44. In view of the above, the learned Senior Counsel for Respondent No. 2 submitted that the Appellant has not been able to satisfy why an embargo should be placed on Respondent No. 2 from using the word 'HAVELI'. Accordingly, the word 'HAVELI' is descriptive in nature and no one can have monopoly over the same. Further there is a widespread use of the 'HAVELI' formative Marks in respect of hotels, restaurants and various other goods and services in India which is evident from the below list:

Registration No.	Trademark	Class	Status
1932365	HAVELIRAM BANSI LAL	2	Registered
4161999	Haveli Drones UAVS / 	12	Registered
1751637	HAVELI	19	Registered
4744230	LalHaveli-Gateway to Indian	24	Registered



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	Décor / 		
634158	 HAVELI /	29	Registered
3611901	LAKHAHAVELI / 	30	Registered
2254614	LALHAVELI	30	Registered
4833366	HAVELIKHAL	31	Registered
1774651	GREWAL'ZHAVELI	32	Registered
1624842	HAVELI	32	Registered
4009131	HAVELICHHAP	34	Registered
4678964	PETSHAVELI	35	Registered
4351802	PARTSHAVELI / 	35	Registered
3843814	PANNA JI'S HAVELI PAN PALACE 	35	Registered



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3377947	 HAVELI /	35	Registered
1774656	HAVELIAMUESEMENT PARKS PVT. LTD.	35	Registered
4821955	HAVELICHRONICLES	35	Registered
1701291	RAJWARA HAVELI / 	36	Registered
1758502	MY HAVELI / 	37	Registered
5604722	MASTERJI KEEHAVELIITOURS	39	Registered
4140544	AavoKaviHaveliPe	41	Registered
3846650	HaveliKaaSaayaa	41	Registered
1857854	LAL'S HAVELI	42	Registered
1671879	SHREE NAVNEET PRABHU HAVELI	42	Registered
1624845	HAVELI GROUP	42	Registered
1624844	HAVELIINN	42	Registered
1436334	GREWAL'Z HAVELI	42	Registered
5669046	THAKUR KI HAVELI	43	Registered
1907827	MANDAWA HAVELI	43	Registered
1940449	DILLI HAVELI	43	Registered
2103448	ROYAL HERITAGE HAVELI	43	Registered
2472816	TRADITIONAL HERITAGE HAVELI	43	Registered
2527737	SONAAR HAVELI	43	Registered



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2922816	HAVELI INN BLU	43	Registered
1990957	ALSISAR HAVELI	43	Registered
3714292	HOTEL JAGAT HAVELI	43	Registered
4121567	NAHAR SINGH HAVELI	43	Registered
5909541	GOSWAMIHAVELI	45	Registered

45. It was submitted that the Appellant has not taken any action against any of the above registered Trade Marks. Therefore, the Appellant's claim over the word 'HAVELI' is devoid of distinctive character and is not distinguishable during the course of trade with others. In view of the contradictory statements made by the Appellant in its reply to the examination reports stating that the cited Marks 'HAVELI' are different in their entirety from the Appellant's Marks, the Appellant cannot challenge the Impugned Marks being deceptively similar and causing confusion in the minds of the public.

ANALYSIS AND FINDINGS:

46. The Impugned Orders have rejected the opposition of the Appellant against the registration of the Marks 'AMRITSAR HAVELI' in Class 43 *vide* application No. 4263978 filed on 13.08.2019 by Respondent No. 2 in C.A.(COMM.IPD-TM) 57/2024 and 'THE AMRITSAR HAVELI' in Class 43 *vide* application No. 3913481 filed on 10.08.2018 by Respondent No. 2 in C.A.(COMM.IPD-TM) 58/2024.

47. The Appellant has challenged the Impugned Orders on the following grounds:

- a. The Impugned Orders are contrary to Sections 9, 11, 12 and 18 of the Act as the Appellant's Marks and Impugned Marks are deceptively similar and operate in the same Class 43.



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- b. The Impugned Marks are deceptively similar to the earlier registered Trade Marks of the Appellant and are phonetically and visually similar increasing the risk of confusion in general public having identical consumer base.
- c. The Impugned Orders have failed to consider the documentary evidence of extensive prior use, including cash memos, sales records, advertisements, and promotional materials from 2001 onwards and right over the Appellant's Marks showing that the Appellant's Marks have acquired distinctiveness and are well-known due to vast goodwill and reputation.
- d. The Mark 'HAVELI' is not generic and has attained secondary meaning as the same is not common to trade due to use by third party.
- e. The Impugned Orders were passed on the same day for different applicants, permitting concurrent use of substantially similar Trade Marks differentiated only by trivial modifications, causing confusion and brand dilution.
- f. The Impugned Orders were passed without granting reasonable opportunity of hearing to the Appellant and without considering the crucial aspects of the Appellant's case.
- g. The Appellant's use of 'HAVELI' as part of its corporate name constitutes use as a brand name, establishing additional rights over the Mark.
- h. Respondent No. 2's use of 'HAVELI' as the prominent part of their Trade Mark with large font size shows dishonesty and *mala fide* intent, making the assertion of 'HAVELI' being generic untenable.



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- i. The Impugned Orders failed to adequately consider the Appellant's prior rights and continuous use since 2001, which has garnered significant goodwill, market recognition and acquired distinctiveness, while Respondent No. 2 adopted the Impugned Marks in bad faith to ride on the Appellant's reputation
 - j. Respondent No. 1 erred in disregarding the Appellant's seniority and granting undue advantage to Respondent No. 2 in contravention of Section 34 of the Act.
 - k. Respondent No. 1 erroneously held that 'HAVELI' is generic, despite Respondent No. 2 themselves applying for 'HAVELI' as a Trade Mark and opposing the Appellant's applications.
48. Respondent No. 2 has opposed these Appeals on the ground that:
- a. The Appellant has suppressed material facts and attempted to file fabricated documents.
 - b. The word 'HAVELI' lacks Trade Mark value and is non-distinctive under Section 9(1)(a) of the Act.
 - c. Multiple 'HAVELI' formative Marks exists on the Trade Marks Register and are extensively used in hospitality industry across India.
 - d. The Appellant has failed to secure registration of the Word Mark 'HAVELI' with consistent rejections by Respondent No. 1 for non-distinctiveness.
 - e. The Appellant's inconsistent stands on phonetic / visual differences of the Mark 'HAVELI' forfeits its right to oppose the Impugned Marks.



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- f. The Appellant endangers other proprietors' rights to use 'HAVELI' through baseless oppositions.
- g. The Appellant has only one restaurant in Punjab while Respondent No. 2 has a PAN India presence, acquiring superior distinctiveness.
- h. The Impugned Marks must be considered as whole; 'HAVELI' has become *publici juris* and no one can claim monopoly over the same.
- i. There is no material on record to show that the Appellant's Marks 'HAVELI' has acquired a secondary meaning by way of acquisition of reputation and goodwill to show the popularity of the said Mark.

49. Having considered the submissions made by the learned Counsel for the Appellant and the learned Senior Counsel for Respondent No. 2, the following issues arise for determination:

- a. Whether the Appellant has exclusive right over the Mark 'HAVELI' in relation to services for providing food and drinks?
- b. Whether the Mark 'HAVELI' is generic and common to trade?
- c. Whether the Impugned Marks are deceptively similar to the Appellant's Marks causing confusion among the general public?
- d. Whether the Impugned Orders have been passed without adequately considering the Appellant's prior rights over the Appellant's Marks?
- e. Whether the Impugned Orders have been passed contrary to the provisions of the Act?



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Exclusive right over the Mark 'HAVELI' by the Appellant

50. The Appellant has claimed that the Appellant has obtained the Trade Mark registration for the Appellant's Marks and no registration ought to have been granted by Respondent No. 1 for the deceptively similar Impugned Marks. The Appellant has claimed to be a prior user of the Appellant's Marks.

51. The Impugned Orders have held that the Appellant does not have exclusive right over the Mark 'HAVELI' as there are several orders against the Appellant in relation to the Appellant's earlier Trade Marks registration applications seeking registration of the Mark 'HAVELI'. In the examination reports for the said applications, Respondent No. 1 cited prior registered marks containing the term 'HAVELI' and in response to such examination reports the Appellant relied upon phonetic, structural and visual differences in 'HAVELI' formative Trade Marks to address these objections. In previous instances, the Appellant argued that the cited Marks containing the term 'HAVELI' were distinguishable from the Appellant's Marks, which logically follows that the Appellant has no exclusive ownership over the Mark 'HAVELI'.

52. The Appellant has two registrations. First one being



'HAVELI' in Class 30, which includes for food products, tea, coffee, sugar, tapioca, sago, rice, flour, pulses, spices, bread, biscuits, namkeen, confectioner, cake and pastry since 08.10.2001 and the second being 'HAVELI' (word mark) in Class 16. Although the Appellant has applied for various 'HAVELI' formative Word Marks, the same are either



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refused, opposed or abandoned. Hence, the Appellant has only Device Mark in Class 30. The Word Mark 'HAVELI' registered by the Appellant is for Class 16 which pertains to goods such as paper, cardboard, printed matter, stationery, artist's materials and packaging materials. Therefore, it is clear that there is no registration over the Mark 'HAVELI' *per se* in favour of the



Appellant for Class 30. Even though the Device Mark 'HAVELI' has the word 'HAVELI' prominently written as part of the Device, it cannot confirm exclusive right over the word 'HAVELI' given that the Appellant has relied upon the dissimilarities between the Device Mark



'HAVELI' and the other prior registered Marks containing the Mark 'HAVELI'.

53. Accordingly, the Appellant has not been able to establish ownership over the Mark 'HAVELI' in absence of the registration of Word Mark 'HAVELI' or any 'HAVELI' formative Marks in Class 30, which is relevant for examining the deceptive similarity of the Impugned Marks.

54. The Appellant's reliance on the pending applications for the 'HAVELI' formative Marks claiming to be prior user of the Mark 'HAVELI' also cannot be sustained as the Appellant has taken a stand before Respondent No. 1 that the Appellant's Marks are phonetically, structurally and visually different. The Appellant has also not challenged any of the orders passed by Respondent No. 1 dismissing the applications filed by the



Appellant for registration of 'HAVELI' formative Marks. Similarly, the Appellant has also not challenged the various orders passed by Respondent No. 1 dismissing the oppositions filed by the Appellant against other proprietors having 'HAVELI' as part of their registered Trade Marks.

55. Additionally, the Appellant has been taking contradictory stands while responding to the examination reports for the applications filed by the Appellant for 'HAVELI' formative Marks and while opposing the registration of the Impugned Marks and other registered Trade Marks having 'HAVELI' as part of the said Trade Marks.

56. Hence, the Appellant cannot claim exclusive ownership over the Mark 'HAVELI' as admittedly there are prior registrations having 'HAVELI' as part of the said registrations which have co-existed with the Appellant's Marks.

57. In view of the above, the Appellant has not been able to establish that the Appellant has exclusive right over the Mark 'HAVELI' as part of the registration of the Appellant's Marks which can prevent the registration of the Impugned Marks. Accordingly, there is no infirmity with the Impugned Orders holding that there is no exclusive ownership of the Mark 'HAVELI' by the Appellant.

Is 'HAVELI' generic word and common to trade?

58. Respondent No. 2 has contended that 'HAVELI' cannot be monopolized by the Appellant as 'HAVELI' is common to the trade and generic word. It is contended by Respondent No. 2 that the Mark 'HAVELI' is commonly used for services falling under Class 43 and the online record of the Trade Marks Office reflects that the word 'HAVELI' in standalone has



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no Trade Mark value and is not capable of distinguishing the goods and services.

59. The public search of the Trade Marks Registry reflects that there are several Trade Marks containing the Mark 'HAVELI' granted to the parties other than the Appellant in various Classes including Class 43 as per the table mentioned in Paragraph No. 44 above. It is evident that 'HAVELI' has been used by various proprietors for providing services of restaurants, dhabas, cafes, hotels and guesthouses using 'HAVELI' formative Marks across India. Respondent No. 1 has passed various orders against the Appellant rejecting the applications filed for the 'HAVELI' formative Marks on the ground of non-distinctiveness and in view of the oppositions filed by prior registered proprietors. Additionally, Respondent No. 1 has also dismissed various oppositions filed by the Appellant opposing the registration of 'HAVELI' formative Marks.

60. The fact that the Appellant has never challenged the orders passed by Respondent No. 1, shows that the Appellant did not believe that 'HAVELI' is having a distinctive character or is distinguishable during the course of trade with others. Accordingly, 'HAVELI' is common to trade and does not have distinctive character that requires protection given that there are several proprietors of registered Trade Marks having 'HAVELI' as a part of the said Trade Marks.

61. The Mark 'HAVELI' is descriptive in nature and has dictionary meaning in Hindi being a traditional townhouse or a mansion having historical and architectural significance. There is a widespread use of the Mark 'HAVELI' for various goods and services across India.



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62. Hence, 'HAVELI' is *publici juris* and common to trade and is not uniquely identifiable with a particular goods or services of the Appellant. The Appellant has also not produced any material to show that the Mark 'HAVELI' has acquired secondary meaning. The Mark 'HAVELI' does not have an exclusive character and, therefore, the Appellant is not entitled to claim exclusive right over the same.

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

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

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

65. As 'HAVELI' is found to be generic and common to the trade, the Appellant cannot claim exclusive ownership over the part of the Impugned



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Marks containing the Mark 'HAVELI' as a part of them. As per Section 17 of the Act when a Trade Mark consists of several matters, its registration shall confer on the proprietor exclusive right to use of the Trade Mark taken as a whole. Considering that the Appellant has no exclusive right over the Mark 'HAVELI', there is no deceptive similarity between the Appellant's Marks and the Impugned Marks.

66. As held in **Vasundhara Jewellers** (*supra*), when a generic mark is part of the composite mark the Appellant cannot oppose registrations of the composite marks including the generic mark by claiming exclusive monopoly over the said generic mark. Further, the Appellant itself has taken inconsistent stands on phonetic / visual differences of the Mark 'HAVELI' and, therefore, is not entitled to oppose the registration of the Impugned Marks on the ground of deceptive similarity between the Appellant's Marks and the Impugned Marks

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



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mark as a whole as the label does not consist of each particular part of it, but consists of the combination of them all.

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

69. In the present case, the Appellant’s Marks and the Impugned Marks if considered as a whole cannot be held to be deceptively similar and are able to be distinguished by the use of word ‘AMRITSAR’. In addition, the descriptive nature of the Mark ‘HAVELI’ commonly used in the hospitality industry shows that there is no deceptive similarity between the Appellant’s Marks and the Impugned Marks.

Analysis of the Impugned Orders

70. The Impugned Orders have examined the submissions by both the Parties and considered all the documents submitted by the Appellant. The Impugned Orders have recorded the submissions of the Appellant and also considered the documents filed by the Appellant before Respondent No. 1. The Impugned Orders also state that upon thorough examination of the documentary evidences it was evident that the said documentary evidence individually or collectively did not satisfactorily substantiate the claim that the Appellant has been using the Mark ‘HAVELI’ since 2001 for food services in Class 43. It is also observed in the Impugned Orders that the documents pertaining to sales promotion expenses are filed on a plain paper



and lacked certification or verification from a Chartered Accountant. Even the newspaper cuttings were pertaining to a Composite Mark and had handwritten dates. Even the invoices from 2014 to 2018 for advertisement on display boards did not indicate that the same pertain to the Appellant's use of the Mark 'HAVELI' for food services. The sales details from financial year 2001-2002 to 2013-2014 also lacked certificate or verification from a Chartered Accountant. Consequently, the Impugned Orders find that the Appellant had failed to show use of the Mark 'HAVELI' *per se* for food services under Class 43 since 2001.

71. Accordingly, the Impugned Orders are well reasoned and contain thorough analysis and examination of the documentary evidence presented before Respondent No. 1. Further, the Impugned Orders have recorded all the submissions made by the Appellant and considered the same while deciding the opposition filed by the Appellant.

72. In view of the above, there is no infirmity with regard to not giving opportunity to the Appellant to present its case as alleged by the Appellant.

73. The Impugned Orders have examined the rights of the Parties in accordance with the provisions of the Act and concluded that there is no merit in the opposition by the Appellant and that the Impugned Marks deserve registration in Class 43.

74. This Court does not find any infirmity with the Impugned Orders requiring any interference in these Appeals.

CONCLUSION

75. Having considered the averments in the pleadings and the submissions made by the Parties, it is found that the Appellant has no exclusive rights over the Mark 'HAVELI' as the same is generic in nature



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and common to the trade. There is no deceptive similarity between the Appellant's Marks and the Impugned Marks and the Impugned Orders have rightly rejected the opposition by the Appellant and proceeded to register the Impugned Marks in favour of the respective Respondent No. 2 in these Appeals.

76. Accordingly, both these Appeals are hereby dismissed. No orders as to costs.

TEJAS KARIA, J

NOVEMBER 24, 2025

ap