



IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 35022 OF 2024  
IN  
COMMERCIAL IP SUIT NO. 11 OF 2025

Trackon Couriers Private Limited

...Plaintiff

Versus

B. N. Srinivas

...Defendant

Mr. Venkatesh Dhond Sr. Adv. a/w Mr. Anand Mohan, Alhan Kayser, Varsha  
Vasave i/b Avesh Kayser, for the Applicant/Plaintiff.

Dr. Veerendra Tulzapurkar, Sr. Adv. a/w Mr. Ankit Tiwari i/b Shashipal Shankar, for  
Defendant.

CORAM

: ARIF S. DOCTOR, J.

RESERVED ON

: 19<sup>th</sup> DECEMBER 2025

PRONOUNCED ON

: 22<sup>nd</sup> JANUARY 2026

JUDGMENT:

1. The Applicant/Plaintiff has, by way of the present Interim Application, sought the following substantive reliefs:




*“(a) That pending the hearing and final disposal of the Suit, the Defendant by themselves and/or their partners and/or their proprietors and/or directors and/or servants and/or agents and officers and/or subsidiaries, sister concerns and/or dealers and/or any other person claiming through and/or under such Defendant, be restrained by a temporary order and injunction of this Hon'ble Court from in any manner using the Impugned Mark/name at Exhibit B hereto hereto and/or any other name or mark containing the words TRACK-ON or TRACKON and/or mark identical and/or deceptively or confusingly similar, in any manner whatsoever, so as to infringe the Plaintiff registered TRACKON Mark(s) at Exhibits C-1 to C-3 of the Plaint;*

*(b) That pending the hearing and final disposal of the Suit, the Defendant by themselves and/or their partners and/or their proprietors and/or directors and/or servants and/or agents and officers and/or subsidiaries, sister concerns and/or dealers and/or any other person claiming through and/or under such Defendant, be restrained by a temporary order and injunction of this Hon'ble Court from passing off and/or enabling others to pass off their impugned Services and/or business or commercial activities as and for that of the Plaintiff by the use of the Impugned Mark set out at Exhibit B hereto and/or any other name or mark containing the words TRACK-ON or TRACKON and/or packaging identical and/or deceptively or confusingly similar, in any manner whatsoever, set out at Exhibits C-1 to C-3 hereto;*

*(d) For the cost of this suit;"*

### **The Facts in Brief.**

2. The Plaintiff is a company which, since the year 2002, has been engaged in the business of, *inter alia*, domestic courier services, international shipping, e-commerce logistics and supply chain management ("**Plaintiff's Services**"). It is not in dispute that the Plaintiff has obtained registration of the following composite label marks, namely:

Trademark	App. No	Class	DOA	User Claim
	1327667	39	23/12/2004	24/01/2002
	3967565	39	08/10/2018	24/01/2002
	5244253	39	12/12/2021	24/01/2002

The above marks (collectively referred to as the “**TRACKON Marks**”) are all in Class 39, and all the said registrations are valid and subsisting. The Defendant has not assailed any of the aforesaid registrations.

3. It is the Plaintiff’s case that “TRACKON” was coined and adopted by the Plaintiff in the year 2002, and since then, on account of open, continuous, and extensive use of the Trackon Marks in relation to the Plaintiff’s services, the same have acquired substantial goodwill and reputation.

4. In the year 2016, the Plaintiff appointed the Defendant as its business associate for the purpose of offering and promoting the Plaintiff’s services in the regions of Andhra Pradesh and Telangana. Pursuant thereto, on 5<sup>th</sup> May 2016, the Plaintiff addressed a letter to the Defendant *inter alia*, setting out the terms and conditions on which the Defendant was authorised to conduct business under the name “M/S. TRACKON COURIERS & CARGO SERVICES” in the region of Andhra Pradesh and Telangana. It is the Defendant’s case that this letter has been deliberately suppressed by the Plaintiff from the Plaintiff.

5. On 26<sup>th</sup> May 2016, the Defendant and his wife formed a partnership, *inter alia*, for the purpose of carrying on business under the name “TRACKON COURIERS & CARGO SERVICES”. It is not in dispute that the Defendant used TRACKON as part of its business name during the period 2016 to 2023, pursuant to the aforesaid arrangement.

6. In October 2023, the Plaintiff called upon the Defendant to stop using “TRACKON” and to change the Defendant’s name. It is the Plaintiff’s case that in

correspondence which ensued between 28<sup>th</sup> October 2023 to 6<sup>th</sup> November 2023, the Defendant agreed to do so.

7. It is the Plaintiff's case that, in or about September 2024, the Plaintiff came to learn that the Defendant had (i) filed an application seeking registration of the mark "TRACK-ON EXPRESS" (the "**Impugned Mark**") on a "*proposed-to-be-used*" basis and (ii) set up a new partnership firm under the name "TRACK ON EXPRESS LOGISTICS" viz.




8. The Plaintiff, therefore, on 16<sup>th</sup> September 2024, issued a cease-and-desist notice to the Defendant, *inter alia*, calling upon the Defendant to stop using the impugned mark and name. This was followed by a termination notice dated 19<sup>th</sup> September 2024, by which the Plaintiff terminated the business association with the Defendant and formally brought all business relations with the Defendant to an end.

9. It is the Defendant's case that, by a letter dated 10<sup>th</sup> October 2024, the Defendant replied to the said cease-and-desist notice by which the Defendant asserted its right to use the impugned mark and name. It is the Defendant's case that this letter has also been suppressed from the Plaint. The Plaintiff has, however, denied receipt of this letter.

10. The present Suit was then filed.

**Submissions on behalf of the Plaintiff.**

11. Mr. Dhond, Learned Senior Counsel on behalf of the Plaintiff, at the outset submitted that the Plaintiff had coined the word “TRACKON” in the year 2002 and had since then extensively and continuously used “TRACKON”. He submitted that this extensive and continuous use of the TRACKON Marks had resulted in immense goodwill and reputation inuring to the benefit of the Plaintiff.

12. Mr. Dhond then pointed out that the two prominent, essential, and distinctive features of the Trackon Marks were “” in the Devanagari script and the word “TRACKON”. He submitted that the registration of a composite/label mark confers upon the registered proprietor, Plaintiff in this case, exclusivity over the prominent, essential, and distinctive features of such a composite/label mark even if such component features are not separately registered as individual word marks. He also submitted that it was well settled that a mark can have more than one prominent, leading and essential feature, and that the unauthorised use of any of the prominent, essential and leading features of such composite/label mark would amount to infringement. In support of his contention, he placed reliance upon the decisions in *Pidilite Industries Ltd v. Jubilant Agri & Consumer Products Ltd.*<sup>1</sup>, *Jagdish Gopal Kamath and Others v. Lime and Chilli Hospitality Services*<sup>2</sup> and *Prince Pipes and Fittings Ltd. v. Shree Sai Plast Pvt. Ltd.*<sup>3</sup>

1 2014 SCC OnLine Bom 50

2 2015 SCC OnLine Bom 531

3 2024 SCC OnLine Bom 3743

13. Mr. Dhond submitted that where a word forms part of a composite/label mark which is registered, any spoken or visual representation of such word constitutes infringement of the registered trade mark as per Section 29(9) of the Trade Marks Act, 1999. He submitted that protection is all the more warranted when the word forming part of the composite mark is shown to have acquired goodwill and is recognised as a mark associated with the registered proprietor of the composite label/mark. In support of his contention, he placed reliance upon the decisions in *Hindustan Embroidery Mills Pvt. Ltd. v. K. Ravindra & Co.*<sup>4</sup> and *Himalaya Drug Co. v. SBL Limited*<sup>5</sup>.

14. He further submitted that, in addition to the above composite/label marks, the Plaintiff had also secured registration for the mark "TRACKON COURIERS PRIVATE LIMITED" (word per se) under Registration No. 5238333 in Class 39, applied for on 8<sup>th</sup> December 2021 with a user claim of that date. He, however, submitted that this had inadvertently not been annexed along with the Plaint. He thus submitted that, given the fact that the Plaintiff was the registered proprietor of the TRACKON Marks of which "TRACKON" was a prominent, essential and leading feature, the Plaintiff was entitled to the statutory protection afforded to a registered proprietor of a registered label mark under the provisions of the Trade Marks Act, 1999.

15. In support of his contention that the Plaintiff had immense goodwill and reputation in the TRACKON Marks, Mr. Dhond placed reliance upon (i) the extensive use, promotion and publicity of the TRACKON Marks in relation to the

4 1967 SCC OnLine Bom 123

5 2012 SCC OnLine Del 136

Plaintiff's services through prominent and widely circulated publications such as The Economic Times, Business World and The Times of India; (ii) the continuous use of the TRACKON Marks as part of the Plaintiff's domain name and on the Plaintiff's website "www.trackon.in" since the year 2005, through which the Plaintiff had consistently promoted its services under the said marks; (iii) the active and continuous use of the TRACKON Marks across multiple social media platforms, further reinforcing public recognition and recall; (iv) the substantial investments in advertising and business promotion, including expenditure of approximately INR 1.57 crores towards advertising and INR 5.45 crores towards business promotion, even for the limited period commencing from 2018; and (v) the consistently high and growing turnover figures, with the Plaintiff's turnover for the year 2023–2024 alone exceeding INR 404.28 crores. Mr. Dhond highlighted that the Defendant had not even seriously disputed the Plaintiff's immense reputation and goodwill other than making a vague and general denial.

16. Mr. Dhond then submitted that the Plaintiff was constrained to institute the present Suit as, notwithstanding the termination of the business association with the Defendant and assurances given by the Defendant to change its name, the Defendant was using the impugned mark which was virtually identical and/or deceptively similar to the TRACKON Marks in respect of services identical to those offered by the Plaintiff.

17. Mr. Dhond then pointed out that the Defendant had not even disputed the similarity of the marks or the services. He thus submitted that, given the fact that the

Plaintiff was undeniably the registered proprietor of the TRACKON Marks of which "TRACKON" was the prominent, essential and leading feature, use of the impugned mark by the Defendant would clearly amount to both, infringement and passing off.

18. Mr. Dhond then invited my attention to the chain of correspondence exchanged between the Plaintiff and the Defendant between 28<sup>th</sup> October 2023 to 6<sup>th</sup> November 2023, which, according to him, clearly and unequivocally established that the Defendant had agreed to stop using "TRACKON" and change its name. He pointed out that in an email dated 12<sup>th</sup> October 2023, the subject of which was "*Change of Name*", the Plaintiff had specifically called upon the Defendant to stop using "TRACKON" and change its name and the Defendant had by an email dated 28<sup>th</sup> October 2023, expressly stated that it had no objection to the contents of the said emails while seeking clarification only on certain ancillary issues.

19. Mr. Dhond submitted that the subsequent email exchanges between the parties were confined strictly to operational and commercial issues and did not, in any manner, amount to a withdrawal or rescission of the Defendant's consent to change its name. He further pointed out that the minutes of the meeting held on 3<sup>rd</sup> November 2023 recorded that the Defendant had agreed to change its name. Mr. Dhond pointed out that, the Defendant had, infact replied to the email dated 6<sup>th</sup> November 2023 sent on the same email thread, and had raised only certain commercial and operational concerns, while categorically recording that "*the rest is agreed as per the discussions.*"



20. Mr. Dhond submitted that the aforesaid correspondence clearly established an unequivocal acceptance on the part of the Defendant to stop using “TRACKON”. He further submitted that the Defendant had neither disputed the authenticity of these emails nor meaningfully dealt with the same in the pleadings, except for a bare and evasive denial in the Affidavit in Reply. He pointed out that even this denial was without any reference to, much less any explanation for, the Defendant’s own emails. In these circumstances he submitted that the Defendant’s adoption and use of the impugned mark “TRACK-ON” was plainly dishonest and lacking bona fides.

21. He then pointed out that the defences taken in the Affidavit in Reply were entirely on the basis of an unsubstantiated plea of prior use, unsupported by any evidence, and that the defences raised were illusory, devoid of merit, and failed to dislodge the Plaintiff’s clear case of infringement and passing off. Mr. Dhond pointed out that the Defendant, in the application for registration of the impugned mark, filed on 2<sup>nd</sup> July 2024 the had stated that the same was on a “*proposed-to-be-used*” basis, which itself demonstrated the falsity of the Defendant’s claim of prior use.

22. Mr. Dhond then submitted that although the Defendant had asserted in the Affidavit in Reply that there existed a prior sole proprietorship under the name “TRACK-ON COURIERS & CARGO SERVICES”, which was alleged to have been subsequently converted into the present partnership, there was no reference whatsoever in the Partnership Deed, or in any contemporaneous document, to any such prior sole proprietorship or to its alleged conversion into a partnership.

23. He submitted that this omission was fatal to the Defendant's case since, if, in fact, a sole proprietorship had existed and had been taken over or converted into a partnership, the Partnership Deed would have contained an express recital to that effect. He submitted that the complete absence of any such recital or reference clearly demonstrated the fact that the Defendant's contention regarding an alleged prior sole proprietorship was false, self-serving, and had been conjured up only to fabricate a false claim of prior use.

24. He also pointed out that, despite asserting use of the impugned mark since 1998, the Defendant had failed to produce a single document in support of such alleged independent or prior use. Mr. Dhond therefore submitted that the plea of prior or independent use was plainly false, a rank afterthought, and must necessarily be rejected as such.

25. He submitted that, in view of the Plaintiff's undisputed prior rights, the identity of the competing marks and services, the Defendant's dishonest adoption with full knowledge of the TRACKON Marks, the admitted permissive use coupled with an express undertaking by the Defendant to change its name, and the complete absence of any equitable defence, the Plaintiff has clearly established a case for the grant of interim relief, both in law and in equity.

**Submissions on behalf of the Defendant.**

26. Dr. Tulzapurkar, learned senior counsel, opposed the present Interim Application essentially on three grounds (A) this Court did not have jurisdiction, (B)

the Plaintiff had pleaded an inconsistent case, and (C) the Plaintiff had suppressed material documents.

**A. This Court does not have jurisdiction .**

27. Mr. Tulzapurkar submitted that the Plaintiff was not entitled to any reliefs since this Hon'ble Court did not have jurisdiction to entertain the present Suit. He pointed out that the Suit was for infringement and passing off and that insofar as the claim for infringement was concerned, the Plaintiff's contention was that the Plaintiff carries on business in Mumbai. He pointed out that the Plaintiff had, in paragraph 30 of the Plaint, *inter alia*, stated as follows:

*"30. .... The cause of action has therefore substantially arisen within the jurisdiction of this Court. However, since the Defendant is located outside Mumbai and since both parties also provide services outside Mumbai, it may be contended that part of the cause of action has also arisen outside Mumbai. Therefore the Plaintiff has filed a separate Petition seeking Leave under Clause XII of the Letters Patent, upon the allowing of which this Court shall have jurisdiction to try, entertain and dispose of the present Suit."*

Mr. Tulzapurkar then pointed out that, in the Petition seeking leave under Clause XII of the Letters Patent, by which the Plaintiff had sought to combine the causes of action for infringement and passing off, the Plaintiff had made the following averments:

- "i. That the Plaintiff has an office within the jurisdiction of this Hon'ble Court at the address mentioned in the cause title, and that the cause of action has substantially arisen within the jurisdiction of this Court;*
- ii. That since the Defendant is located outside Mumbai and both parties provide services outside Mumbai, part of the cause of action has arisen outside the jurisdiction of this Hon'ble Court;*
- iii. That the cause of action insofar as passing off is concerned has arisen outside the jurisdiction of this Hon'ble Court; and*

*iv. That the Plaintiff seeks to combine the reliefs of passing off with infringement to avoid multiplicity of proceedings and that, upon grant of such leave, this Court would have jurisdiction to try the reliefs relating to passing off."*

Basis the above, Dr. Tulzapurkar submitted that it was evident that the Plaintiff had sought to invoke the provisions of Section 134(2) of the Trade Marks Act, 1999, to institute the present Suit for infringement in this Court solely on the ground that the Plaintiff has an office in Mumbai. He, however, pointed out that the Plaintiff's registered office is in Delhi and that the Plaintiff's Mumbai office is neither the corporate office nor the principal place of business. He thus submitted that the jurisdiction of this Court could not be invoked under Section 134 of the Trade Marks Act, 1999.

28. Dr. Tulzapurkar then placed reliance upon the judgment of the Hon'ble Supreme Court in ***Indian Performing Rights Society Limited v. Sanjay Dalia and Another***<sup>6</sup>, to submit that the Supreme Court had categorically held that Section 134(2) must be construed in a manner that prevents the mischief of a Plaintiff dragging a Defendant to a forum which has no real or substantial connection with the dispute, particularly where the cause of action has arisen elsewhere or where the Defendant does not carry on business. He further pointed out that the judgment of the Hon'ble Supreme Court in ***Indian Performing Rights Society Limited*** had been consistently followed, including in the decision of ***Manugraph India Limited v. Simarq Technologies Pvt. Ltd.***<sup>7</sup>

6 (2015) 10 SCC 161

7 2016 SCC Online Bom 5334

29. He then pointed out that the Plaintiff had sought to rely upon a statement appearing on the Defendant's website, which mentioned the names of certain entities, including one based in Mumbai, in an attempt to suggest that the Defendant has an office in Mumbai or otherwise carries on business within the jurisdiction of this Hon'ble Court. He submitted that this contention was wholly untenable and contrary to the Defendant's categorical stand that the said entities were not agents of the Defendant, nor were the offices those of the Defendant. Therefore, he argued that the Plaintiff implicitly accepted that the Defendant does not conduct business within this Court's jurisdiction and had thus sought leave under Clause XII of the Letters Patent.

30. He further submitted that the mere appearance of an individual name or an entity on the website of the Defendant does not, *ipso facto*, render such an individual or entity to be an agent of the Defendant. He submitted that it must be shown that such individual or entity is an exclusive agent, failing which no inference can be drawn that the Defendant carries on business in Mumbai. In support of this contention, he placed reliance upon the decision of the Hon'ble Supreme Court in *Dhodha House v. S.K. Maingi*.<sup>8</sup>

31. Dr. Tulzapurkar then submitted that, on the Plaintiff's own showing, the cause of action for passing off was required to be combined with the cause of action for infringement, and that the Plaintiff had failed to obtain the requisite leave for

doing so as per Clause XIV of the Letter Patent. He submitted that, in the absence of such leave, this Court lacked jurisdiction to entertain the present Suit.

32. Dr. Tulzapurkar thus submitted that the Plaintiff had failed to establish, either in its pleadings or otherwise, that any part of the cause of action had arisen within the jurisdiction of this Hon'ble Court.

**B. The Plaintiff has pleaded an inconsistent case.**

33. Dr. Tulzapurkar then submitted that the Plaintiff was not entitled to any interim reliefs on account of the inconsistent and contrary pleas taken. He submitted that the Plaintiff had, in the course of oral arguments, advanced a case which was entirely different from and directly contrary to the case pleaded in the Plaint. In particular, he pointed out that while the Plaintiff had argued that the Defendant was permitted to use "TRACKON" as a permissive user, the Plaintiff had in paragraph 13 of the Plaint categorically stated, *"The Plaintiff has at no point expressly or implicitly permitted the Defendant to use the TRACKON Mark or any part thereof."*

34. Dr. Tulzapurkar further submitted that the Plaint proceeded entirely on the footing that the Defendant's use of the impugned mark "TRACK-ON" was illegal and unlawful from its very inception and was completely silent on any case of permissive use. On the contrary, he submitted that the Plaint contained clear and categorical averments expressly negating the grant of any licence or permission by the Plaintiff to the Defendant. He therefore submitted that the Plaintiff cannot be permitted to advance a case that is wholly inconsistent with, and directly contrary to, its

pleadings. In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Bachhaj Nahar v. Nilima Mandal & Another***.<sup>9</sup>

35. Dr. Tulzapurkar also then relied upon the decision of the Hon'ble Supreme Court in ***Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College & Others***<sup>10</sup> to submit that although Courts have cautioned against adopting an unduly technical approach when construing pleadings, no such latitude can be afforded where the argument advanced is directly contrary to the pleadings. He reiterated that paragraph 13 of the Plaint expressly negates any grant of permission or licence to the Defendant. He also placed reliance on the decision of the Hon'ble Supreme Court in ***Commissioner of Central Excise and Customs & Another v. Reliance Industries Limited***<sup>11</sup>, to submit that a party cannot be permitted to argue a case contrary to its pleadings. He submitted that the present case stands on an even stronger footing since the Plaintiff had advanced arguments which were not only absent from the pleadings but are also wholly inconsistent with and directly contrary to the case pleaded in the Plaint.

36. Dr. Tulzapurkar further submitted that the Plaintiff's contention that the Defendant was an agent of the Plaintiff and was, on that basis, permitted to use the expression "TRACKON" had been raised for the first time during arguments. He pointed out that the Plaintiff had, in paragraph 2.2 of the Plaint, merely stated, "*the Defendant is a former business associate of the Plaintiffs, who was doing business in*

9 (2008) 17 SCC 491

10 (1987) 2 SCC 555

11 (2023) 20 SCC 368

*the name of 'TRACK-ON COURIER & CARGO,' and in paragraph 7, "the Defendant is a former business associate/partner of the Plaintiff who was doing business in the name of TRACK-ON COURIER & CARGO".* He therefore reiterated that the Plaintiff's arguments of permissive user were contrary to the pleadings and therefore must be disregarded.

37. Dr. Tulzapurkar then submitted that, had the Plaintiff pleaded a case of permissive user/licence, the Defendant would have had the opportunity to place material on record to demonstrate, *inter alia*, that (i) any such alleged permissive licence was contrary to law, particularly in the absence of a written agreement as contemplated under the Trade Marks Act, 1999; (ii) there was no connection in the course of trade between the Plaintiff and the Defendant; and (iii) no control whatsoever was exercised by the Plaintiff over the Defendant's use of the mark or trade name. He thus submitted that, by failing to plead any case of permissive use, the Plaintiff had deprived the Defendant of an opportunity to meet such a case. He submitted that a party cannot be deprived of a fair opportunity to meet such a case.

38. He then submitted that, even assuming that the Defendant's use of the mark could be regarded as a permissive user, there was admittedly no written agreement between the parties granting such permission. He submitted that, in law, a permissive user or licence can be recognised only when there is a written agreement and such agreement establishes a connection in the course of trade between the licensor and the goods or services in respect of which the trade mark is used. In



support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in *Gujarat Bottling Co. Ltd. & Others v. Coca Cola Co. & Others*<sup>12</sup>.

39. Dr. Tulzapurkar submitted that, in the present case, the Plaintiff had failed to demonstrate any connection in the course of trade between itself and the Defendant, or any quality control exercised by the Plaintiff over the Defendant's use of the mark "TRACK ON". He submitted that the Defendant's use of "TRACK ON" was entirely independent and without any reference to, or control by, the Plaintiff. He submitted that in the absence of these essential requirements, and assuming, while denying that any licence existed, such licence would in any event amount to a "naked licence".

### **C. Suppression of Material Documents.**

40. Dr. Tulzapurkar then submitted that the Plaintiff had suppressed material facts and documents which go to the very root of the matter and completely demolish the Plaintiff's case. He pointed out that it was an admitted position that the Defendant was carrying on a courier business in the States of Andhra Pradesh and Telangana, and that it was precisely because of the Defendant's established network in these States that the Plaintiff had sought to associate itself with the Defendant and chose the Defendant as a "*business associate/partner*".

41. He pointed out that the letter/certificate dated 5<sup>th</sup> May 2016, addressed to the public at large by the Plaintiff, expressly recorded as follows:

*"M/S. TRACKON COURIERS & CARGO SERVICES proprietor B. N. Srinivas is our business associate for Andhra Pradesh & Telangana for booking of documents and parcels and to be taking care of all corporate clients for better services and single window solutions on behalf of our company."*

12 (1995) 5 SCC 545

Dr. Tulzapurkar submitted that this letter/certificate clearly evidenced the fact that the Plaintiff was aware of the Defendant's prior sole proprietorship which was on behalf of "M/S. TRACKON COURIERS & CARGO SERVICES." He then submitted that the letter had been deliberately suppressed by the Plaintiff since it completely destroys the Plaintiff's case that the Defendant's use of the mark "TRACK-ON" was illegal from its inception, as well as the Plaintiff's alternative and unpleaded argument of permissive use.

42. Dr. Tulzapurkar further pointed out that, in the Affidavit in Rejoinder, the Plaintiff had not disputed either the existence or the contents of the said letter but had merely contended that the same was signed by one Mr. Dinesh Rautela, a former Director of the Plaintiff who subsequently resigned, and that the Plaintiff does not have supporting records in relation thereto. He submitted that this explanation was demonstrably false and wholly untenable, as Mr. Rautela was not an ordinary employee but a Director of the Plaintiff at the relevant time.

43. Dr. Tulzapurkar then submitted that the Plaintiff's contention that there was no deliberate suppression of the letter dated 5<sup>th</sup> May 2016 was both factually and legally untenable. He submitted that there was no explanation whatsoever as to why such a vital document was not disclosed in the Plea and that the explanation sought to be offered in the rejoinder was a clear afterthought. He submitted that the purported explanation was wholly unsustainable since (i) the document and its contents are admitted; (ii) the relationship between the Plaintiff and the Defendant is founded upon the said letter; (iii) the letter is directly relevant and completely

undermines the Plaintiff's case that the Defendant's use of the mark was an infringement ab initio, particularly when it evidences express and/or implied consent and a representation to the public at large permitting the Defendant to accept parcels in its own name; and (iv) the explanation that the Director who signed the letter has since resigned is a mere eyewash. He submitted that it was not even the Plaintiff's case that the letter was unknown to it or was not part of its records.

44. Dr. Tulzapurkar then pointed out that the Plaintiff had also suppressed the Defendant's reply dated 10<sup>th</sup> October 2024 to the Plaintiff's cease and desist notice, wherein the aforesaid letter dated 5<sup>th</sup> May 2016 was specifically referred to and in which the Defendant had categorically stated as follows:

*".....Our Client further asserts that Your client is also aware that apart from working together on terms/understandings entered between parties, our client and your client have also continued to run their services independently in the name of their registered firms..."*

45. He submitted that the suppression of the aforesaid letter constitutes a fraud played by the Plaintiff on this Hon'ble Court and that on this ground alone the Plaintiff is disentitled to any relief. He submitted that this is a fit case for dismissal of the Suit itself since the Plaintiff had approached this Court with unclean hands. In support of his contention that such conduct on the part of the Plaintiff would by itself disentitle the Plaintiff to any relief, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu v. Jagannath and ors.***<sup>13</sup>

13 (1994) 1 SCC 1

46. Dr. Tulzapurkar submitted that non-disclosure of such material documents cannot be brushed aside as an inadvertent error once the same are brought to light. He submitted that suppression of a document which goes to the root of the matter is fatal to any plea contrary thereto and disentitles the Plaintiff from any interlocutory reliefs, as held in ***S.P. Chengalvaraya Naidu***. He submitted that the Plaintiff cannot be permitted to gain any advantage by suppressing material documents to the serious prejudice of the Defendant.

47. Dr. Tulzapurkar submitted that the Defendant's continued use of its trading name containing the expression "TRACK-ON" was with the full knowledge and express consent of the Plaintiff and was entirely independent and not on behalf of the Plaintiff. He pointed out that Exhibit A to the Affidavit in Reply clearly demonstrated that the Defendant's use of "TRACK-ON" was on its behalf as a business associate and not as a licensee or agent of the Plaintiff. He therefore submitted that the Plaintiff was precluded from making any claim for infringement or passing off in view of Section 30(2)(c) of the Trade Marks Act, 1999. He further submitted that, where there is such consent, the Plaintiff cannot claim any common law rights, as observed in ***Northern & Shell PLC v. Conde Nast & National Magazines Distributors Ltd.***<sup>14</sup>.

48. Dr. Tulzapurkar also submitted that the Plaintiff was guilty of acquiescence. He submitted that the Defendant had been using "TRACKON" as a business name at least since 2016, to the knowledge of the Plaintiff, and that the Plaintiff had

14 1995 RPC 117

admittedly taken no steps whatsoever to prevent such use. On the contrary, the Plaintiff had encouraged such use by representing to members of the public and trade to deal with the Defendant in its own name. In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Power Control Appliances & Ors. v. Sumeet Machines Pvt. Ltd.***<sup>15</sup>, to submit that the Plaintiff's conduct clearly amounts to acquiescence. He therefore submitted that the Plaintiff cannot claim any relief against a Defendant who had developed its business in the name, now sought to be restrained.

49. Dr. Tulzapurkar lastly submitted that the Plaintiff had given no answer to the Defendant's plea that the use of "TRACKON" was with the Plaintiff's knowledge, consent, and encouragement, as evidenced by the suppressed letter dated 5<sup>th</sup> May 2016. He pointed out that the Plaintiff's contention that the Defendant's use of "TRACKON" amounted to the Plaintiff's own use, was liable to be rejected, particularly since there was no plea of permissive use in the Plaint and that such a plea was contrary to law. He also submitted that the Plaintiff had failed to answer the Defendant's specific pleas regarding (i) invalidity of the alleged permissive licence; (ii) absence of any connection in the course of trade; (iii) encouragement and representation to the public at large; and (iv) acquiescence.

50. Dr. Tulzapurkar thus submitted that the Interim Application ought to be dismissed with compensatory cost.

<sup>15</sup> (1994) 2 SCC 448

**Plaintiff's Submissions in Rejoinder.**

51. Mr. Dhond, in rejoinder, submitted that the Defendant's contention that this Court lacked jurisdiction was wholly without merit and liable to be rejected at the threshold. He submitted that the Defendant's objection to jurisdiction was based on a fundamental misunderstanding of how the Plaintiff had invoked the jurisdiction of this Court and a deliberate misreading of the Plaint. He submitted that the Defendant had erroneously proceeded on the basis that the Plaintiff had invoked the jurisdiction of this Court on the basis that the Plaintiff was carrying on business in Mumbai. This premise, he submitted, was entirely incorrect.

52. He pointed out that the Defendant had not even addressed the actual basis pleaded by the Plaintiff for invoking the jurisdiction of this Hon'ble Court and for seeking leave under Clause XII of the Letters Patent, namely that part of the cause of action had arisen within the jurisdiction of this Hon'ble Court and part outside it. He submitted that, in these circumstances, the question of where the Plaintiff carries on business was wholly irrelevant.

53. Mr. Dhond further pointed out that, in paragraph 30 of the Plaint, the Plaintiff had clearly pleaded, *inter alia*, that this Hon'ble Court had jurisdiction on the basis that (i) the rival services were being offered in Mumbai, (ii) the Plaintiff was suffering loss and injury in Mumbai, and (iii) a substantial part of the cause of action had therefore arisen within the jurisdiction of this Hon'ble Court. He submitted that, since the rival services were also being offered outside Mumbai, the Plaintiff had accordingly filed a Petition seeking leave under Clause XII of the Letters

Patent. He pointed out that, by the order dated 18<sup>th</sup> December 2024, which made specific reference to paragraph 30 of the Plaint, this Court had granted leave.

54. Mr. Dhond submitted that the law on this issue stands settled by the judgment of the Hon'ble Supreme Court in *Isha Distribution House (P) Ltd. v. Aditya Birla Nuvo Ltd.*<sup>16</sup>, which holds that once leave under Clause XII of the Letters Patent has been granted, a Defendant cannot seek revocation of such leave by way of an interlocutory application and that territorial jurisdiction being a mixed question of fact and law, the plea of jurisdiction must necessarily be raised in the written statement, whereupon an issue of jurisdiction would have to be framed and decided at trial. In the present case, he pointed out that the Defendant had not even filed a written statement and that the time for doing so had lapsed.

55. Mr. Dhond submitted that the decision in *Manugraph*, relied upon by the Defendant, was in fact against the Defendant since in that case an attempt to invoke jurisdiction was made before a Court which did not have any real or substantial connection with the dispute, unlike the facts of the present case, where a part of the cause of action had arisen within this Court. Similarly he pointed out that the decisions in *Sanjay Dalia* and *Dhodha House* would also not apply since in both those cases the invocation of jurisdiction was solely on the basis of the Plaintiff's place of residence or the place where the Plaintiff carried on business and not where part of the cause of action had arisen.

<sup>16</sup> (2019) 12 SCC 205

56. In any event, and without prejudice, Mr. Dhond pointed out that the Plaintiff had also placed material on record to demonstrate that the Defendant's own website indicates that the Defendant offers its services in Mumbai. He therefore submitted that the objection to the territorial jurisdiction of this Hon'ble Court was wholly devoid of merit.

57. Mr. Dhond then submitted that the Defendant's contention of any inconsistency in the Plaintiff's case on permissive use was also misconceived. He submitted that it was well settled that a Complaint must be read as a whole, meaningfully and in context, and not in a myopic manner. He further submitted that when the Complaint is so read, it is clear that there was no inconsistency whatsoever in the Plaintiff's case. He submitted that the Defendant's attempt to isolate a single sentence from paragraph 13 and read it out of context was impermissible and contrary to the settled law laid down by the Hon'ble Supreme Court, including in ***Popat & Kotecha Property v. State Bank of India Staff Association***<sup>17</sup>.

58. He then pointed out that the Defendant's entire argument of pleading an inconsistent case rested on a single sentence in paragraph 13 of the Complaint, namely that "*the Plaintiff has at no point expressly or implicitly permitted the Defendant to use the TRACKON Mark or any part thereof*". He submitted that by doing so the Defendant was completely ignoring the context in which the statement appears in the context of the Complaint read as a whole. Mr. Dhond submitted that, in the Complaint, the

<sup>17</sup> 2005 (7) SCC 510



Plaintiff had unequivocally asserted proprietorship and exclusivity over the TRACKON Marks as was evident from paragraph 1.2 and 5.3 of the Plaintiff.

59. He then pointed out that at paragraph 2.2 of the Plaintiff, the Plaintiff had stated that the Defendant was a former business associate who was doing business in the name "TRACK-ON COURIER & CARGO". Mr. Dhond submitted that this necessarily implies permissive use, since the Plaintiff was the admitted owner and proprietor of the Trackon Marks. He pointed out that the same paragraph further records that the Defendant had agreed to stop using the name/mark when called upon to do so, and that despite this, the Plaintiff later discovered that the Defendant had recommenced use, leading to the filing of the present Suit.

60. Mr. Dhond emphasised that the past business relationship between the Plaintiff and the Defendant was pleaded only by way of background to demonstrate that (i) the Defendant's use was permissive; (ii) the Defendant was expressly asked to stop using the mark in October 2023; and (iii) the Defendant agreed in writing to stop, without asserting any independent right or prior use. He then reiterated that the Defendant had neither denied nor explained any of the email exchanges under the subject line "Change of Name" from 12<sup>th</sup> October 2023 to 6<sup>th</sup> November 2023.

61. Mr. Dhond submitted that paragraphs 9 and 10 of the Plaintiff specifically recorded that the Plaintiff had, in September 2024, discovered that the Defendant had recommenced use of the mark, including by filing a trade mark application on a "*proposed to be used*" basis, contrary to its express undertaking. He submitted that it was in this precise context that paragraph 13 of the Plaintiff *inter alia* set out that the

Plaintiff had not permitted such use. He submitted that, read contextually, the averment in paragraph 13 of the Plaint was clearly referable to the Defendant's adoption and use of "TRACK-ON" post-2023 and not the earlier permissive use of "TRACKON" during the subsistence of the relationship. He submitted that this interpretation was further reinforced by paragraph 31 of the Plaint, where the Plaintiff stated that the Plaintiff had first discovered in September 2024 that the Defendant was using the impugned mark TRACK-ON, after having agreed to stop using the same.

62. Mr. Dhond reiterated that there was nothing on record to demonstrate any independent or prior use of the impugned mark "TRACKON" by the Defendant, notwithstanding the claim of use since 1997 made in the Affidavit in Reply. He pointed out that, during the course of arguments, the Defendant abandoned the plea of prior use without any explanation, which itself underscores the falsity of that plea.

63. He further submitted that the Defendant's contention of having suffered prejudice or being taken by surprise was demonstrably untenable. He pointed out that, in paragraph 3 of the Affidavit in Reply, the Defendant had expressly pleaded prior use since 1997 and had also categorically denied any permissive use. He submitted that, despite clearly understanding the Plaintiff's case, the Defendant failed to place on record a single document evidencing independent use of the mark outside the subsistence of the business association.

64. Mr. Dhond then submitted that the plea of acquiescence was also wholly misconceived. He submitted that once the Plaintiff had expressly called upon the

Defendant to cease use of the mark in October 2023, and the Defendant had unequivocally agreed in writing to do so in November 2023, and hence the question of acquiescence does not arise.

65. He further submitted that the Defendant's reliance on the letter dated 5<sup>th</sup> May 2016 was entirely misplaced. He pointed out that the said letter merely evidences the commencement of permissive use by the Defendant of the mark "TRACKON" during the subsistence of the business relationship and expressly records that the Defendant was acting "*on behalf of*" the Plaintiff, with the Plaintiff assuming responsibility for the parcels booked. He therefore submitted that, far from supporting any plea of acquiescence, the said letter in fact reinforces and strengthens the Plaintiff's case. He submitted that, in any event, the Defendant had failed to satisfy the test laid down in *Power Control Appliances*, since acquiescence cannot be pleaded by a dishonest adopter who was fully aware of the Plaintiff's prior and subsisting rights.

66. Mr. Dhond then submitted that the allegations of fraud and suppression were wholly baseless and devoid of merit. In support of this submission, he pointed out that (i) the alleged reply dated 10<sup>th</sup> October 2024 to the cease-and-desist notice was never received by the Plaintiff, as confirmed on oath by the Plaintiff's Advocate in an Affidavit dated 19<sup>th</sup> December 2025; (ii) the Defendant had produced no proof of delivery of the said letter; and (iii) mere postal dispatch slips, in any event, have no probative value, as held by this Hon'ble Court in *Dharmil Bodani v. Manju Meadows Pvt. Ltd.*<sup>18</sup>

18 2024 SCC OnLine Bom 1684

67. He submitted that the Plaintiff's failure to annex the letter dated 5<sup>th</sup> May 2016 had been adequately explained and, in any event, would not amount to suppression since the letter, in fact, supports the Plaintiffs case. He further pointed out that the Plaintiff had not gained any advantage by not annexing the said letter, and hence in facts of the present case, the decision of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu*** would not apply. On the contrary he pointed out that the facts of the present case were squarely governed by the decisions of the Hon'ble Supreme Court in ***Apollo Tyres Ltd. v. J.V. Abhay***<sup>19</sup> and ***Govt. of NCT of Delhi v. BSK Realtors LLP***<sup>20</sup>, which held that a high threshold had to be met for establishing allegations of suppression or fraud, which in the present case the Defendant had not been met.

68. Mr. Dhond therefore submitted that the Defendant's contentions were *ex facie* without merit and liable to be rejected. He submitted that the present case is a fit case not only for the grant of interim reliefs in terms of prayer clauses (a), (b), and (d).

**Defendant's Submissions in Sur-rejoinder:**

69. Dr. Tulzapurkar, in sur-rejoinder, submitted that the Plaintiff's contention that the plea of inconsistent pleadings had been satisfactorily answered in rejoinder was wholly unsustainable and deserves to be rejected. He submitted that the Plaintiff was required to set out, in the Complaint itself, all material pleas necessary for obtaining relief. He submitted that the Plaintiff cannot be permitted to cure fundamental

19 2017 SCC OnLine Del 9825

20 (2024) 7 SCC 370

defects in its pleadings by advancing inconsistent or contradictory cases in rejoinder under the guise of answering the Defendant's submissions.

70. Dr. Tulzapurkar further submitted that there was no question of the Defendant having read the Plaint in a distorted or piecemeal manner. On the contrary, when the Plaint is read as a whole, together with the Petition seeking leave under Clause XII of the Letters Patent, the inherent inconsistencies in the Plaintiff's case stand clearly exposed. He submitted that the Plaintiff's reliance on ***Popat and Kotecha Property***, was entirely misplaced and that a holistic reading of the Plaint itself demonstrates that, on the Plaintiff's own showing, the Defendant does not carry-on business in Mumbai. He further submitted that the Defendant's submissions on suppression of material documents and on the plea of permissive use do not arise from any distorted reading of the Plaint but flow directly from the Plaintiff's own pleadings and omissions.

71. Dr. Tulzapurkar then submitted that the Plaintiff's contention that there was no deliberate suppression was both factually and legally untenable. He submitted that there was no credible explanation as to why such a crucial and foundational document, namely, the letter dated 5<sup>th</sup> May 2016, was not disclosed in the Plaint. He submitted that the explanation sought to be offered in rejoinder was a clear afterthought and is wholly unsustainable if the same were admitted, it gives the Defendant consent to use the mark "TRACKON" and negates the Plaintiff's case that the Defendant is infringing the mark ab initio. He thus submitted that it cannot be the Plaintiff's case that the said letter was unknown to it or not part of its records.

72. Dr. Tulzapurkar further submitted that the Plaintiff had also sought, in rejoinder, to argue a case in response to an alleged plea of prior use, which was not pressed by the Defendant at all. He pointed out that this position was expressly clarified by learned counsel for the Defendant during the course of arguments. In any event, he submitted that the Defendant had not advanced any plea of being a prior user, and therefore the Plaintiff's submissions that no evidence has been produced to establish prior use are wholly irrelevant and do not advance the Plaintiff's case, particularly in light of the other substantive objections raised by the Defendant.

73. In these circumstances, Dr. Tulzapurkar submitted that the Interim Application is liable to be dismissed with compensatory costs.

**Reasons and Conclusions.**

74. After hearing Learned Senior Counsel for the parties and having considered the rival contentions, pleadings and case law upon which reliance was placed, I find that the Plaintiff has made out a case for the grant of interim reliefs. My reasons are as follows.

A. At the outset, it is undisputed that the Plaintiff is the registered proprietor of the TRACKON Marks, each of which contains "TRACKON" as its dominant, essential, and leading feature. It is also not in dispute that all these registrations are valid and subsisting and none of which have even been assailed by the Defendant. Thus, as held in *Pidilite Industries Ltd., Jagdish Gopal Kamath & Ors.*, and *Prince Pipes and*

**Fittings Ltd.**, the Plaintiff would be entitled to protection and exclusivity over “TRACKON”, being the dominant and essential feature of the registered label marks.

B. It is further well settled that where a word constitutes a prominent and essential part of a registered composite/label mark, the unauthorised use of that word would amount to infringement within the meaning of Section 29(9) of the Trade Marks Act, 1999. In the present case, the material on record *prima facie* establishes that the word “TRACKON” has, through long, continuous, and extensive use, acquired substantial goodwill in relation to the Plaintiff’s services. The Defendant has neither disputed nor denied this. Hence, as held in **Hindustan Embroidery Mills Pvt. Ltd.** and **Himalaya Drug Co.**, the Plaintiff would be entitled to protection against the unauthorised use of the word “TRACKON” or any other deceptively similar word/mark.

C. *Crucially*, in the facts of the present case, the Defendant has not asserted any positive case or legal basis for having adopted the impugned mark, “TRACK-ON”, which is plainly virtually identical and/or deceptively similar to “TRACKON”. Although the Defendant has in the Affidavit in Reply taken a plea of prior user, the Defendant has expressly abandoned this plea during the course of oral arguments. Furthermore, the Defendant has also not disputed the deceptive similarity between the impugned mark, i.e., “TRACK-ON”, and the dominant and essential feature of the Plaintiff’s registered label marks, i.e., “TRACKON”. Equally, the Defendant has not disputed that the services offered by the Defendant are the same as the Plaintiff’s

services. In these circumstances, the Defendant's use of the impugned mark would clearly amount to infringement under Section 29 of the Trade Marks Act, 1999.

D. The Defendant has also made no attempt whatsoever to demonstrate that its adoption and use of the mark "TRACK-ON" is either honest or bona fide. On the contrary, the material placed on record leaves no manner of doubt that such adoption is dishonest and entirely lacking in bona fides. This is *prima facie* evident from the fact that (i) the Defendant has not even attempted to demonstrate any legal basis or justification for its adoption and use of "TRACK-ON" (ii) the Defendant has expressly abandoned its pleaded case of prior use (iii) the letter/certificate dated 5<sup>th</sup> May 2016, which the Defendant alleges was suppressed from the Complaint, makes reference to "*M/s. Trackon Couriers Cargo Services*" and not to the impugned mark "TRACK-ON" or "TRACK-ON EXPRESS" the mark and name that the Defendant is now using (iv) the Defendant has not denied or disputed the correspondence by which the Defendant agreed to change its name and (v) the Defendant's application for registration of the impugned mark, filed on 2<sup>nd</sup> July 2024, expressly states that the mark is sought to be registered on a "*proposed to be used*" basis. Thus, in my *prima facie* view, the Defendant's adoption and use of the impugned mark is plainly dishonest and wholly lacking in bona fides.

E. I am unable to accept the Defendant's contention that the Plaintiff is disentitled to interim relief on the ground of suppression or that the Suit itself is liable to be dismissed on this basis. In my *prima facie* view, a plain reading of the letter dated 5<sup>th</sup> May 2016 does not advance the Defendant's case in any manner. As



already noted, the said letter/certificate makes no reference either to the impugned mark “TRACK-ON” or to “TRACK-ON EXPRESS”, and on the contrary, the letter expressly records that the Defendant was a “*Business Associate*” acting “*on behalf of*” the Plaintiff. Thus far from advancing any independent proprietary right in favour of the Defendant, the said letter *prima facie* supports the Plaintiff’s case of permissive user. It is therefore not surprising that the Defendant, though having pleaded a case of permissive user, abandoned the same. The contention that the letter dated 10th October 2024 was wilfully suppressed is also difficult to accept. I am *prima facie* satisfied that no such letter was received by the Plaintiff since firstly, the Plaintiff’s Advocate, to whom the letter is addressed, has categorically stated on oath that no such letter was received, and secondly, the Defendant has not produced any cogent proof of service of the said letter, apart from dispatch slips which, as held by this Court in the case of ***Dharmil Bodhani***, do not constitute proof of service. Also another crucial fact that I suspect is the Defendant has, in the letter dated 10<sup>th</sup> October 2024 taken a diametrically opposite stand to the one taken by the Defendant in the previous correspondence which ensued between the parties in October–November 2023 without so much as an explanation for such change in stand. In these circumstances, I find no merit in the Defendant’s plea of suppression. Hence, the reliance placed by the Defendant on the decision of the Hon’ble Supreme Court in ***S.P. Chengalvaraya Naidu*** is wholly misplaced and has no application to the facts of the present case.

F. The Defendant's objection on the ground of jurisdiction is also without merit. Firstly, a perusal of the Plaint makes it clear that the Plaintiff has not invoked the jurisdiction of this Court on the basis that the Plaintiff carries on the business within the local limits of the jurisdiction of this Court alone, but on the ground that a substantial part of the cause of action has arisen within the jurisdiction of this Court. Secondly, and more importantly this Court has already granted the Plaintiff leave under clause XII of the Letters Patent. Hence, as held by the Hon'ble Supreme Court in the case of *Isha Distributions House Pvt. Ltd.*, the challenge to jurisdiction being a mixed question of fact and law would now have to be decided at the stage of trial if such an objection is taken by the Defendant in the written statement and an issue is accordingly framed. Crucially, in the facts of the present case, the Defendant has not filed a written statement, and the time for the Defendant to do so has lapsed.

G. The Defendant's reliance on the decisions in *Indian Performing Rights Society Limited* and *Manugraph India Limited* is also misplaced since the facts in both these cases were materially different. In the facts of the present case, the jurisdiction of this Court, as noted above, has been invoked since a part of the cause of action has arisen within the territorial jurisdiction of this Court, on which basis leave under Clause XII of the Letters Patent has already been granted. Likewise, the decisions in *Sanjay Dalia* and *Dhodha House* would also not apply, as in both those cases, the issue of jurisdiction was examined with reference to the place of residence or the place of carrying on business of the Plaintiff. In view of the fact that this Court has already granted leave under Clause XII of the Letters Patent, vide Order of 18<sup>th</sup> December

2024, the Defendant's argument that the Plaintiff has failed to obtain leave under Clause XIV of the Letters Patent becomes irrelevant.

H. The contention that the Plaintiff has taken inconsistent pleas on the ground that the Plaintiff argued a case of permissive user while asserting in paragraph 13 of the Plaint that it never permitted the Defendant to use the "TRACKON" mark is plainly misconceived and founded on a myopic and selective reading of the Plaint. It is well settled that pleadings must be read as a whole, meaningfully and in their proper context, and not by isolating a single sentence or a few averments divorced from the overall pleadings. Viewed in this light, the Plaintiff's reliance on the decision in *Popat & Kotecha Property* is entirely apposite and, the Defendant's reliance on *Bachhaj Nahar, Commissioner of Central Excise* and *Ram Sarup Gupta* is wholly misplaced. When the Plaint is read as a whole, it is, to my mind, clear that the Plaintiff has consistently asserted its proprietorship over the TRACKON Marks, and the averments in paragraph 13 are only in respect of use of the impugned mark by the Defendant after termination or cessation of the business association of the parties.

I. The Defendant's reliance on the decision in *Gujarat Bottling Co. Ltd.* to contend that recognition of the Defendant as a permissive user requires the Plaintiff to establish a written agreement granting permission and a formal trade connection between the parties is wholly misplaced. The decision itself notes that there could be other modes of permissive use which are independent of the provisions of the Trade

Marks Act, 1999. In any event, the Plaintiff has failed to set out any legal basis or justification for use of the impugned mark.

J. The Defendant's plea of acquiescence is also entirely without merit and, in fact dishonest. The Defendant has *prima facie* failed to establish the essential ingredients of acquiescence, namely that the Plaintiff has knowingly encouraged or permitted the Defendant to use the impugned mark. On the contrary, the record bears out that the Plaintiff, immediately upon becoming aware that the Defendant was using the impugned mark "TRACK-ON", issued the Defendant a cease-and-desist notice. Further, as already noted, the Defendant had not in October–November 2023, protested when called upon to change its name and thus had implicitly agreed to do so. The Defendant's stand taken in the letter dated 10<sup>th</sup> October 2024 has already been dealt with in 'E' above. Thus, in the facts of the present case, the Plaintiff's reliance upon the decision in ***Power Control Appliances*** is entirely apposite since the Defendant has failed to show how the Plaintiff had consciously encouraged the Defendant to use the impugned mark.

K. For the aforesaid reasons, I find that the Plaintiff has made out a strong *prima facie* case for the grant of interim relief. The balance of convenience lies clearly in favour of the Plaintiff, and failure to grant the Plaintiff interim relief will, in my view will result in the Plaintiff suffering irreparable injury, which cannot be adequately compensated in monetary terms. On the other hand, the Defendant can claim no legitimate prejudice by being restrained from using a mark to which it has no legal entitlement, particularly after having expressly agreed to cease such use.

Furthermore, the Defendant has not even filed a written statement, and the Defendant's right to do so has since expired. Thus, the case as set out in the Plaintiff is uncontroverted.

75. The Interim Application therefore deserves to be allowed in terms of prayer clauses (a) and (b). Given the Defendant's continued use of the impugned mark despite express undertakings to the contrary, this is also a fit case for costs.

[ARIF S. DOCTOR, J.]

**After pronouncement.**

76. At the request of Learned counsel for the Defendant, this order shall remain stayed for a period of four weeks from today.

[ARIF S. DOCTOR, J.]