



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION No. 22 of 2013
IN
COMMERCIAL IP SUIT NO. 23 of 2008

M/s. Siyaram Silk Mills Limited ...Applicant/Plaintiff

Versus

M/s. Stanford Siyaram Fashion Private Limited & Ors. ...Defendants

Mr. Rashmin Khandekar a/w Mr. Minesh Andharia, Mr. Anand Mohan & Mr. Jay Shah i/b Krishna & Saurastri Associates LLP, for the Plaintiff.

Mr. Sandeep Parikh a/w Mr. Vighnesh Kamat a/w Mr. Hemang Engineer, Ms. Chetana Gaikwad i/b M/s. Gordhandas & Fozdar, for the Defendants.

CORAM	: ARIF S. DOCTOR, J.
RESERVED ON	: 18 th DECEMBER 2025
PRONOUNCED ON	: 13 th JANUARY 2026

JUDGMENT

1. The Applicant/Plaintiff has filed the present Suit, *inter alia*, seeking to restrain the Defendants from infringing the Plaintiff's name and registered trade mark "Siyaram" by using the name or mark "Siyaram", or any other deceptively similar name or mark, whether as part of the corporate or trading name of Defendant No. 1 or in relation to textile piece goods, ready-made garments, and other allied goods or services. The Plaintiff also seeks to restrain the Defendants from passing off the business and products of Defendant No. 1 as

being those of the Plaintiff by the use of the name or mark "Siyaram" and/or any other deceptively similar name or mark, whether as part of the Defendants' corporate name or in relation to the goods of Defendant No. 1. The Plaintiff has additionally sought damages and other consequential relief.

The facts in brief.

2. The Plaintiff was incorporated as Siyaram Silk Mills Pvt. Ltd. on 29th June 1978 under the provisions of the Companies Act 1956 and was converted into a public limited company in the year 1980.
3. It is the Plaintiff's case that since the year 1977, that is, even prior to its incorporation, the promoters of the Plaintiff were engaged in the textile trade under the trade mark "Siyaram" and that the Plaintiff and its promoters have, since then, openly, continuously, and extensively used the trade mark as well as the trading and corporate name "Siyaram" in relation to textile goods, including suiting and shirting. The Plaintiff has since then secured the following registrations in respect of the trade mark "Siyaram", the earliest of which dates back to the year 1984.

Trade Mark No.	Class	Trade mark	Date of Application
428690	24	SIYARAMS (Device)	19th October 1984
430202	24	SIYARAMS (Device)	26th November 1984
430780	25	Siyaram Silk Mills Limited (Device)	7th December
465296	24	Siyaram (word mark)	30th December 1986
1338421	24	SIYARAMS (Label)	14th February 2005

4. The Complaint also, *inter alia*, sets out that the Plaintiff is widely known across India by its name and trade mark "Siyaram" and is among the largest producers of blended suiting and shirting fabrics in the country, annually manufacturing over 30 million metres of fabric, all of which is marketed and sold under the name and trade mark "Siyaram". Over the years, the Plaintiff has actively promoted its products and business using the name "Siyaram" through various advertising methods like newspapers, magazines, TV, and other media. The Complaint also sets out that the Plaintiff has organised several high-profile fashion events and contests under the said mark, including 'Siyaram's Star Miss India', which have garnered wide public recognition. The substantial and sustained expenditure incurred by the Plaintiff on publicity and promotion, together with the Plaintiff's extensive sales, establishes the Plaintiff's immense goodwill and reputation.
5. It is the Plaintiff's case that in or about June 2007, the Plaintiff learnt that Defendant No. 1 had been incorporated under the name and style "Stanford Siyaram Fashion Private Limited" and that Defendant No. 1 was using the trade mark "Apricott – a Product of Stanford Siyaram Fashions Pvt. Ltd." in respect of the business and manufacturing of textiles and allied products.
6. The Plaintiff, therefore, on 26th June 2007, sent the Defendants a cease and desist notice, calling upon the Defendants to stop using the name and mark "Siyaram" in any manner whatsoever. The Defendants have, however, denied receipt of this notice and thus not replied.
7. Hence, the Plaintiff filed the present Suit.

Submissions on behalf of Applicant/Plaintiff.

8. Mr. Khandekar, the Learned Counsel appearing on behalf of the Plaintiff at the outset pointed out that the Defendants had opposed the Notice of Motion by raising the following defences: (i) that the Defendants had been using "Siyaram" since 1992 by virtue of the fact that the father of Defendant Nos. 2 and 3 was doing business under the name "Siyaram Fashion Store"; (ii) that the name and mark "Siyaram" had been adopted on the basis that it is the name of a Hindu God; (iii) that by virtue of a circular issued under and the Weights and Measures Act, 1976, the Defendants were required to use the full name of their company on the selvedge; (iv) that since the Defendants are the registered proprietors of a label/device mark "Apricot – a Product of Stanford Siyaram Fashions Pvt. Ltd.", an action for infringement is not maintainable; and (v) that there has been delay and acquiescence on the part of the Plaintiff to the Defendants' use of "Siyaram".
9. Mr. Khandekar submitted that defences identical to those raised by the Defendants in the present Suit had already been advanced and categorically rejected by this Court in *Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd. & Ors.*¹ He therefore submitted that, since the facts of the present case are squarely covered by the aforesaid decision, the present Notice of Motion must likewise be allowed.
10. Mr. Khandekar then, without prejudice to the aforesaid, submitted that the Defendants were in law, not entitled to claim the benefit of any alleged prior use of the trade mark "Siyaram" on the basis of its purported use by the father

¹ [Bombay High Court] Order dt. 17th March 2015 in Notice of Motion No. 3769 of 2011 in Suit No. 2727 of 2011

of Defendant Nos. 2 and 3. He pointed out that Defendant No. 1 was admittedly incorporated only on 17th February 2006, whereas the Defendants' claim of prior user was founded on the assertion that the father of Defendant Nos. 2 and 3 had been operating a family-run store under the name "Siyaram Fashion Store" since 1992. He submitted that this claim was wholly untenable, inasmuch as the Defendants had neither pleaded nor produced a single document evidencing any assignment or transfer of the said name or trade mark, much less an assignment together with the associated goodwill from the father of Defendant Nos. 2 and 3 to Defendant No. 1. He submitted that in the absence of any such pleading or cogent material, the Defendants cannot, as a matter of law, claim the benefit of any alleged prior use.

11. He further submitted that the Plaintiff is admittedly the registered proprietor of the trade mark "Siyaram", along with several other registrations incorporating the mark "Siyaram", all of which long predate the Defendants' alleged adoption or use of the mark and none of which had even been questioned, much less challenged, by the Defendants. He then pointed out that even on the Defendants' own showing, the purported use by the father of Defendant Nos. 2 and 3 commenced only in the year 1992, well after the Plaintiff's statutory rights in the mark had crystallised.

12. He thus submitted that at the highest, the Defendants could only assert use of the impugned name and mark from the date of incorporation of Defendant No. 1, which was in February 2006, which was long after the registration of the Plaintiff's word mark "Siyaram". This submission, he clarified, was strictly without prejudice to the Plaintiff's contention that any alleged adoption and

use of the trade mark "Siyaram" by the father of the Defendant Nos. 2 and 3 was itself dishonest.

13. Mr. Khandekar then placed reliance on the decision in *Yogi Ayurvedic Products Pvt. Ltd. v. Vaishali Industries*² to submit that a Defendant cannot assert a claim of prior or concurrent use through an alleged predecessor in title unless there is clear, cogent, and reliable documentary evidence establishing a valid assignment of the trade mark together with its goodwill. In the absence of such proof, no benefit of prior user can be claimed as a matter of law. He also placed reliance upon the decision in *Lords Inn Hotels & Developers Pvt. Ltd. v. Vikas Seth, trading as Lords Residency, Manali*³, to point out that this Court had reiterated that, to invoke the protection under Section 34 of the Trade Marks Act, 1999, a Defendant must establish continuous and bona fide prior commercial use by credible and contemporaneous material. He pointed out that the Court further held that the adoption and use of a well-known and distinctive mark as part of a trade or corporate name, with knowledge of the Plaintiff's prior rights and reputation, constitutes a clear act of passing off. He thus submitted that the Defendants' attempt to claim user through a purported predecessor was unsupported by any documentary evidence of assignment or continuity of goodwill was legally untenable and thus must necessarily be rejected.

14. Mr. Khandekar then pointed out from the material appended to the Affidavit in Reply it was clear that the Defendants were fully aware of the Plaintiff's well-known trade mark "Siyaram" and the associated goodwill the Plaintiff

² [Bombay High Court] Order dt. 17th February 2025 in IA No. 1598 of 2023 in COM IP Suit No. 45 of 2023

³ [Bombay High Court] Order dt. 5th March 2025 in IA No. 190 of 2025 In COM IP Suit No. 247 of 2024

had, at the time when the Defendants adopted the same. He then pointed out that the material relied upon by the Defendants itself showed that store allegedly run by the father of Defendants Nos. 2 and 3 was, in fact, under the name "Mangaldeep Showroom", with "Siyaram Fashion Stores" appearing only in brackets, as was evident from the invitation cards and documents annexed as Exhibits A, B, C, and E to the Affidavit in Reply. He further pointed out that the cash memos relied upon by the Defendants listed several other well-known textile brands, including Vimal, Gwalior Digjam, Raymonds and "Siyaram". He submitted that this material established that the Defendants were aware of the Plaintiff's mark and reputation and were selling the Plaintiff's products at the store run by the father of Defendant Nos. 2 and 3, i.e., "Mangaldeep Showroom". He submitted that the Defendants had no justification whatsoever to adopt "Siyaram" as part of their trading name. Such adoption, he submitted, was plainly dishonest and undertaken solely with the intention of trading upon the Plaintiff's goodwill and reputation.

15. Mr. Khandekar then submitted that it was also well settled that once the adoption of a trade mark was found to be dishonest or in bad faith, the grant of an injunction must necessarily follow. In support of his contention, he placed reliance upon the decisions in the case of *Assam Roofing Ltd. v. JSB Cement LLP*⁴, *Aktiebolaget Volvo of Sweden v. Volvo Steels Ltd.*⁵, *Gorbatschow Wodka KG v. John Distilleries Ltd.*⁶, and *Poddar Tyres Ltd. v. Bedrock Sales Corporation Ltd.*⁷ to point out that the Courts had consistently held that a

4 AIR 2016 Cal 41

5 1997 SCC OnLine Bom 578

6 2011 SCC OnLine Bom 557

7 AIR 1997 Bom 237

conscious imitation, calculated appropriation, or adoption of a mark with knowledge of the Plaintiff's prior rights and reputation constitutes dishonesty, and that in such circumstances a Defendant who adopts such a mark cannot be heard to plead equities in its favour. He also pointed out that the Courts had also repeatedly held that when dishonesty is established, questions of delay, minor differences, or alleged concurrent use pale into insignificance, and the balance of convenience must necessarily tilt in favour of the prior user. Applying these principles to the facts of the present case, Mr. Khandekar submitted that the Defendants' adoption of the mark "Siyaram", despite the Defendants' clear knowledge of the Plaintiff's well-known trade mark and reputation, was plainly dishonest and was calculated only to trade upon the Plaintiff's goodwill, and thus warranted the grant of relief in favour of the Plaintiff.

16. He then, in the alternative and without admitting that the Defendants' adoption was honest, submitted that even an honest adoption would make no difference to an action for infringement or passing off. In support of this submission, he placed reliance on the decisions in *F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.*⁸, *Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd.*⁹, and *Laxmikant Patel v. Chetanbhai Shah*¹⁰, which he pointed out held that the honesty of adoption is irrelevant once infringement or passing off is otherwise established. He also placed reliance on the decisions in *Aktiebolaget Volvo, Kirloskar, Poddar Tyres*, and *Siyaram*

8 1969 (2) SCC 716

9 1996 (98) BOMLR 972

10 (2022) 3 SCC 65

*Silk Mills Ltd. v. Sairam Suitings Pvt. Ltd.*¹¹ to submit that it is now trite law that a Defendant cannot adopt or use a corporate or trading name that is identical with, or deceptively similar to, a registered trade mark.

17. On the aspect of the alleged delay, Mr. Khandekar submitted that there was, in fact, none. He submitted that immediately upon becoming aware of the existence of Defendant No. 1, the Plaintiff, on 26th June 2007, issued a cease and desist notice to Defendant No. 1, *inter alia*, calling upon the Defendants to forthwith stop using the impugned name and trade mark "Siyaram" in any manner whatsoever, and thereafter promptly instituted the present Suit. He placed reliance on the decisions in *Schering Corporation & Others v. Kilitch Company (Pharma) Pvt. Ltd.*¹² and *Midas Hygiene Industries Pvt. Ltd. & Anr. v. Sudhir Bhatia & Ors.*¹³ to submit that once the Defendants had been put to notice of the Plaintiff's rights in the impugned mark, any continued use thereof was solely at the Defendants' own risk and peril. In such circumstances, the plea of delay is unavailable to defeat the Plaintiff's claim for injunctive relief.

18. Basis the above, he submitted that given the Defendants' adoption and use of the mark "Siyaram" was patently dishonest, the Plaintiff was entitled to relief in terms of prayer clauses (a), (b) and (e) of the Notice of Motion.

Submissions on behalf of the Defendants.

19. Mr. Parikh, learned counsel appearing on behalf of the Defendants, at the outset submitted that, in the facts of the present case, no action for

11 [Bombay High Court] Order dt. 3rd February 2014 in NM (L) No.57 of 2014 in Suit (L) No. 3 of 2014

12 1990 SCC OnLine Bom 425

13 (2004) 3 SCC 90

infringement would lie. He submitted that Defendant No. 1 is the registered proprietor of the mark “Apricott – a Product of Stanford Siyaram Fashions Pvt. Ltd.” in Classes 24 and 42 and that, by virtue of Section 28(3) of the Trade Marks Act, 1999, the Plaintiff is thus statutorily precluded from seeking any relief for infringement against the Defendants. In support of this submission, he placed reliance on the decision of this Court in *Mangalam Organics Ltd. v. N. Ranga Rao and Sons Pvt. Ltd.*¹⁴ and contended that, at the highest, the Plaintiff could maintain only an action for passing off and no claim for infringement. He further pointed out that the Plaintiff has itself filed a rectification petition in respect of the impugned registration and had, therefore, admitted that Defendant No. 1 is the registered proprietor of the impugned mark.

20. Mr. Parikh then placed reliance on the decisions in *Mangalam Organics Ltd., Foodworld v. Foodworld Hospitality*¹⁵, *Reckitt & Colman Products Ltd. v. Borden Inc.*¹⁶, *S. Syed Mohideen v. P. Sulochana Bai*¹⁷, and *Laxmikant Patel v. Chetanbhai Shah*¹⁸ to submit that it is well settled that an action for passing off must satisfy the classical trinity, namely the existence of goodwill, misrepresentation, and damage or likelihood of damage. Mr. Parikh further submitted that goodwill and reputation are pure questions of fact and must, therefore, be established by clear, cogent, and reliable evidence. In support of this submission, he placed reliance on the decision in *Hearst Communications*

14 2025 SCC OnLine Bom 3017

15 2009 SCC OnLine Del 3862

16 (1990) 1 WLR 491

17 (2016) 2 SCC 683

18 (2002) 3 SCC 65

*Inc. v. Dinesh Varyani*¹⁹ to contend that, in an action for passing off, goodwill cannot be presumed and must be strictly proved by the Plaintiff. He submitted that a mere reference to sales figures was not, by itself, determinative of goodwill, particularly where such figures are unsupported by contemporaneous material or independent certification. In this regard, he pointed out that the statements at Exhibits B and C to the Plaint were wholly self-serving, unsupported by any independent evidence, and therefore incapable of establishing goodwill.

21. He also then submitted that the Plaint, as originally filed, was conspicuously bereft of any cogent material demonstrating goodwill or reputation, and that it was only at the stage of the Rejoinder that the Plaintiff had sought to cure this defect by producing a chartered accountant's certificate. According to Mr. Parikh, even this certificate was of no assistance, as it merely certified advertising expenditure and did not substantiate sales figures or market presence. He thus submitted that the Plaintiff had failed to prima facie establish goodwill and reputation. He submitted that since goodwill was the sine qua non for an action of passing off, and that the Plaintiff had failed to establish goodwill, the Plaintiff was not entitled to any relief. In support of this contention, he placed reliance on the Judgment of the Hon'ble Supreme Court in *Brihan Karan Sugar Syndicate (P) Ltd. v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*²⁰.

22. He then also, from the decision in the case of *Mangalam Organics Ltd.* pointed out that the central inquiry in a passing-off action is whether the Defendants'

19 SCC OnLine Del 1138

20 (2024) 2 SCC 577

goods were presented in a manner calculated to lead unsuspecting purchasers to believe that they were the goods of the Plaintiff. On this basis, he submitted that differences in the trade dress, packaging, get-up, and overall presentation were all highly material, and that in the absence of *prima facie* proof of goodwill, deception, and likelihood of confusion, which he submitted the Plaintiff had failed to show, the grant of an injunction would be wholly unwarranted.

23. Mr. Parikh then submitted that the gravamen of the Plaint was the allegation that the Defendants were using the word "Siyaram" as part of their corporate name, namely "Stanford Siyaram Fashion Pvt. Ltd.". He, however, pointed out that the Plaintiff had not pleaded a single instance of use of the impugned mark by Defendant No. 1 in relation to goods, nor has the Plaintiff set out any instance of actual sale or any case of confusion or deception in the market on account of the Defendants' use of the impugned mark. He argued that the Plaintiff had only used the Memorandum of Association of Defendant No. 1 to claim that both parties are in the same industry but had not provided any specific examples of the Defendants using the mark "Siyaram" in their business.

24. Mr. Parikh submitted that, despite the passage of nearly 19 years since the Plaintiff claimed to have become aware of Defendant No. 1's corporate name, the Plaintiff had not placed on record even a single instance of actual confusion or loss. He submitted that, on this ground alone, the Notice of Motion was required to be rejected. Mr. Parikh, also from the decision in the case of *Foodworld v. Foodworld Hospitality* pointed out that where a Suit has

remained pending for several years, and the Plaintiff has failed to place any evidence of actual deception or damage on record, the proper course of action is to refuse an injunction and grant the plaintiff liberty to seek relief if and when actual deception occurs.

25. He further submitted that the Plaintiff's reliance on the alleged use of the mark "Siyaram" by the Defendants on the selva was a clear afterthought, as the Plaintiff contains no averment or pleading whatsoever in this regard. He submitted that the Plaintiff's suggestion that the fabric must be folded in a particular manner so that only the word "Siyaram" is visible, in order to allege confusion, is an argument of desperation rather than deception. He further submitted that it is well settled that a Defendants' trade mark must be considered as a whole and that it is impermissible to dissect a composite mark and fasten liability on the basis of an isolated or extracted element thereof. In support of this submission, he placed reliance on the decision in *Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra*²¹.

26. Mr. Parikh then submitted that "Siyaram" is the name of a Hindu God and that, consistent with Hindu tradition and cultural practice, female names are frequently used as prefixes to male names, such as *Radhekrishna*, *Lakshminarayan*, *Umashankar*, and *Gaurishankar*. He further submitted that expressions such as "Jai Siyaram" are commonly used as greetings, particularly in North India, and that the names of Hindu Gods and Goddesses are routinely adopted as personal, business, and corporate names, over which no person can claim a monopoly.

²¹ 2025 SCC OnLine SC 1701

27. He then invited my attention to Annexures H and I to the Affidavit in Reply to point out that several entities in the textile sector use the name “Siyaram” as part of their trade or business names. In support of his contention that the names of Hindu Gods and Deities are not capable of monopolisation, he placed reliance on the decisions in *Lal Babu Priyadarshi v. Amritpal Singh*²², *Freudenberg Gala Household Products Pvt. Ltd. v. GEBI Products*²³, *Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities (P) Ltd.*²⁴, *S.K. Sachdeva v. Shri Educare Ltd.*²⁵, *OM Logistics Ltd. v. Mahendra Pandey*²⁶, and *Shree Ganesh Besan Mill v. Ganesh Grain*²⁷. Mr. Parikh submitted that none of these decisions were considered by this Court in *Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.*, and that the said Judgment would therefore not apply to the present case. He submitted that the Plaintiff, having adopted the name of a Hindu God, must necessarily bear the risk of others doing so as well, and that such adoption by others cannot, by itself, be characterised as dishonest.
28. Without prejudice to the aforesaid submissions, Mr. Parikh contended that the Plaintiff is, in any event, disentitled to any relief on the grounds of acquiescence and delay. He submitted that from 1992 until December 2005, the father of Defendant Nos. 2 and 3 was carrying on business under the name and style of “Siyaram Fashion Store”, and that during this entire period the Plaintiff took no steps whatsoever to challenge or restrain such use.

22 (2015) 16 SCC 795

23 [Bombay High Court] Order dt. 14th July 2016 in Notice of Motion No. 1530 of 2015 in Suit No. 758 of 2015

24 2011 SCCOnLine 4422

25 2016 SCC OnLine Del 6708

26 2022 SCC OnLine Del 757

27 2021 SCC OnLine Cal 3068

29. He further submitted that in 2006, Defendant Nos. 2 and 3 incorporated Defendant No. 1 under the name “Stanford Siyaram Fashion Private Limited” and, thereafter, in 2007, obtained registration of the impugned mark in Classes 24 and 42. Mr. Parikh submitted that although the Plaintiff claims to have issued a cease and desist notice dated 26th June 2007, no such notice was ever received by the Defendants.

30. He further contended that the Plaintiff initiated rectification proceedings against the Defendants’ registration only after a lapse of five years and subsequently failed to present any evidence in those proceedings, thereby clearly abandoning them. On these grounds alone, he submitted, the Plaintiff is disentitled to any relief on account of acquiescence and delay.

31. Mr. Parikh then submitted that the Plaintiff’s conduct even after the filing of the Suit further disentitled it to any ad interim relief, as the Plaintiff neither prosecuted the Suit diligently nor acted with the urgency expected of a genuinely aggrieved party. He pointed out that although the Suit was filed as far back as 7th January 2008, alleging both infringement and passing off, no leave under Clause XIV of the Letters Patent was either sought or obtained to combine the two causes of action. Despite having filed Notice of Motion No. 1004 of 2008 simultaneously with the Suit, the Plaintiff neither sought ad interim relief nor took steps to cure this fundamental jurisdictional defect by applying for leave under Clause XIV. As a result, the Suit, insofar as both causes of action were concerned, remained pending before this Court for several years without jurisdiction.

32. Mr. Parikh pointed out that the Defendants filed their Written Statement on 11th December 2009, yet the Plaintiff remained entirely supine. It was only on 21st June 2013, when the Notice of Motion was listed for final hearing, that the Plaintiff sought to withdraw the same. He pointed out that the Court, while permitting such withdrawal, expressly recorded that no leave under Clause XIV had been sought or obtained till that date and accordingly granted liberty to the Plaintiff to file a fresh Notice of Motion only after obtaining such leave.
33. He submitted that even thereafter, the Plaintiff's conduct continued to be marked by a lack of diligence. He pointed out that although the Plaintiff filed a rectification petition before the Intellectual Property Appellate Board on 24th April 2013, it failed to lead any evidence therein, effectively abandoning those proceedings. The Clause XIV Petition was filed belatedly on 5th August 2013 and was thereafter withdrawn on 13th July 2016, once again leaving the jurisdictional defect unresolved. In the meantime, the Plaintiff filed the present Notice of Motion on 13th November 2013, yet again did not seek any ad interim relief, and the Suit itself came to be stayed under Section 124 of the Trade Marks Act, 1999, on 11th June 2014, further prolonging the proceedings.
34. Mr. Parikh further pointed out that the Plaintiff filed its Rejoinder only on 11th June 2016, nearly a year after the Defendants' Reply dated 8th June 2015, without any explanation whatsoever for this delay. Even after the Plaintiff was amended pursuant to Chamber Summons No. 1599 of 2016, which was allowed on 21st November 2016, the Plaintiff failed to act with any promptitude and filed a fresh Clause XIV Petition No. 405 of 2016 only on

20th December 2016, which itself came to be allowed much later, on 11th June 2019. Despite the passage of several years thereafter, the Plaintiff had not even filed an Affidavit or a compilation of documents.

35. According to Mr. Parikh, the aforesaid persistent, unexplained, and prolonged inaction spanning over a decade clearly demonstrates indolence and acquiescence on the part of the Plaintiff, thereby disentitling it to any interim relief. In support of his submission that such conduct bars equitable relief, he placed reliance on the decision of the Hon'ble Supreme Court in *Tilokchand & Motichand v. H. B. Munshi*²⁸ He also placed reliance on the decisions in *Essel Propack Ltd. v. Essel Kitchenware Ltd.*²⁹, *Power Control Appliances v. Sumeet Machines*³⁰, and *Unichem Laboratories Ltd. v. Eris Life Sciences Pvt. Ltd.*³¹ to submit that delay and acquiescence are fatal to the grant of interim relief.

36. Lastly, Mr. Parikh submitted that under the provisions of the Standards of Weights and Measures Act, 1976, manufacturers were required to display their name on the selva of textile goods. He submitted that if this requirement had subsequently been done away with under the Legal Metrology regime, as noted in *Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.*, then it further negates any possibility of confusion.

37. In view of the aforesaid submissions, Mr. Parikh submitted that the Notice of Motion was devoid of merit and deserves to be dismissed.

28 (1969) 1 SCC 110

29 2016 SCC OnLine Bom 937

30 (1994) 2 SCC 448

31 [Bombay High Court] Order dt. 7th October 2014 in Notice of Motion (L) No. 1852 of 2014 in Suit (L) No. 775 of 2014

Submissions on behalf of the Applicant/Plaintiff in Rejoinder:

38.Mr. Khandekar submitted that the contentions of the Defendants were *ex facie* untenable, dishonest, and meritless, none of which justify denial of the relief sought by the Plaintiff. He reiterated that all the defences taken by the Defendants had been dealt with and rejected by this Court in the case of ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.***

39.Mr. Khandekar then submitted that the Defendants' attempt to take shelter under the provisions of Section 28(3) of the Trade Marks Act, 1999 by placing reliance upon the Defendants' registration of a composite label/device mark was wholly misconceived. He submitted that such contention was no defence to an action for infringement or passing off since the Defendants admittedly do not hold any registration for the word mark "Siyaram" *per se* but only for a composite label, "Apricott – a Product of Stanford Siyaram Fashions Pvt. Ltd.". He thus submitted that by virtue of Section 17 of the Trade Marks Act, 1999, the Defendants could not claim any exclusivity over the unregistered components of a composite label mark. In any event, he pointed out that this precise argument had already been considered and rejected by this Court in paragraphs 17 to 20 in the case of ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.***

40.Mr. Khandekar then pointed out that the Judgment in ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.*** had been followed by this Court in the case of ***Marico v. Zee Hygiene Products Pvt. Ltd.***³² in which this Court, *inter alia*, held as follows:

32 2025 SCC OnLine Bom 2541

*"21. In **Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.** 13 it is held that Section 29 of the Trademarks Act, 1999 does not prohibit the filing of a suit for infringement merely because Defendant's mark is also registered. The Co-ordinate bench held that since the Defendant was manufacturing and marketing its product on a label different than the registered trade mark and had blatantly copied the registered trade mark of Plaintiff, the Defendant is not entitled to seek any protection of its trade mark having been registered. In the present case, there is no justification for marketing its products under a different trade mark which borders close to the Plaintiff's trade mark. In that view of the matter, the position that prima facie emerges is that the Defendant is not the registered proprietor of the actual trade mark which is used by him."*

41. Mr. Khandekar then submitted that the Defendants' contention that the decision in the case of ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.*** would not apply to the facts of the present case since the Plaintiff in the present case had filed rectification proceedings was entirely misconceived and *ex facie* erroneous. He pointed out that, even in the case of ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.***, rectification proceedings had been filed, as was clear from paragraphs 1, 6, 12 and 26 of the said decision. Mr. Khandekar therefore submitted that nothing whatsoever turned on the fact that the Plaintiff had instituted rectification proceedings against the Defendant's mark. He submitted that once the Plaintiff had made out a clear case of infringement, the grant of an injunction must necessarily follow.
42. Mr. Khandekar then, without prejudice to the above, submitted that Section 28(3) of the Trade Marks Act, 1999, does not afford protection against an action for passing off and is irrelevant to the Court's inquiry in a passing-off action. He submitted that every form of the impugned use, including use of the mark even in its registered form, is liable to be restrained where a case of passing off is made out.

43. Mr. Khandekar then submitted that the Defendants' contention that the Plaintiff had failed to establish goodwill and reputation and was therefore not entitled to maintain an action for passing off was wholly misconceived, entirely without merit, and demonstrably false. He submitted that the Plaintiff had, through continuous, open, and extensive use of the mark "Siyaram" since 1978, statutory registration of the mark since 1986, and its long-standing and widespread commercial exploitation, clearly established substantial goodwill and reputation in the mark. He further submitted that this Court had, on multiple occasions, granted protection to the Plaintiff's trade mark on the basis of its established goodwill and reputation, which itself demonstrated the considerable goodwill and reputation that the Plaintiff had in the mark "Siyaram".

44. Mr. Khandekar further submitted that the Plaintiff had placed on record sales figures as well as promotion and advertisement figures clearly evidencing the Plaintiff's goodwill and reputation. He pointed out that the certificate of the chartered accountant produced by the Plaintiff also contained a detailed tabulation of gross sales figures, in addition to advertising and promotional expenditure incurred by the Plaintiff. He submitted that the Defendants' contention that the chartered accountant had not certified sales figures was therefore factually incorrect and amounted to technical nitpicking of an isolated phrase divorced from its context. He submitted that, in any event, such objections could at best be urged at trial when the chartered accountant steps into the witness box at the stage of trial and not at the interim stage. He also submitted that the substantial and sustained expenditure on advertising

and promotion incurred by the Plaintiff and certified by the chartered accountant alone was a sufficient indicator of goodwill and reputation.

45. He further pointed out that the Defendants, in their Affidavit in Reply, had themselves relied upon an invoice/memo dated 2nd July 1992, which reflected that the showroom allegedly run by the father of Defendant Nos. 2 and 3 advertised itself as an “authorised dealer” of several well-known clothing brands, including Vimal, Digjam, Raymond, and Siyaram. He submitted that this material unequivocally demonstrated that the Defendants’ predecessor had acknowledged the Plaintiff’s goodwill and reputation as early as 1992 and had consciously sought to attract customers by trading upon the Plaintiff’s goodwill and reputation. Having relied on such material, he contended that the Defendants can no longer argue that the Plaintiff’s mark lacked goodwill or reputation. He submitted that, in any event, it is well settled that where one party asserts proprietorship and goodwill in a mark, and the opposing party asserts a right to use the same mark as part of its own name or trade mark, the Court is entitled, particularly at the interlocutory stage, to presume the existence of sufficient goodwill. In support of his contention, he placed reliance upon the decision in *Anil Madhavdas Ahuja v. Marvel Fragrances Pvt. Ltd. & Ors.*³³

46. Mr. Khandekar then submitted that the decision of the Delhi High Court in *Foodworld* is of no assistance to the Defendants, as it merely reiterates the well-settled trinity test governing actions for passing off, with which the Plaintiff had no quarrel. He further submitted that, far from advancing the

33 2011 Sc Online Bom 1108

Defendants' case, the said decision in fact supports the Plaintiff. He pointed out that in paragraph 47 of the Judgment, the Court, on the facts before it, found sufficient goodwill to subsist on the basis of a representative sample, together with other supporting material, and expressly rejected the contention that goodwill had not been established. Mr. Khandekar also pointed out that in the case of ***Foodworld***, the Court had clearly distinguished between the standard of evidence required at the interlocutory stage and that applicable at the stage of final hearing after trial by observing that evidence of actual deception would be relevant only at the trial stage and not at the interlocutory stage. He submitted that, accordingly, the reliance placed by the Defendants on the decision in the case of ***Foodworld*** was wholly misplaced.

47. Similarly, Mr. Khandekar submitted that the Defendants' reliance on the decision of the Hon'ble Supreme Court in ***Brihan Sugar Syndicate*** was wholly misplaced. He submitted that the Supreme Court in that case had itself drawn a clear distinction between the evidentiary standards applicable at the interlocutory stage and those applicable at the stage of final adjudication after trial. In this regard, he invited my attention to paragraph 13 of the Judgment, wherein the Supreme Court categorically held that statements of accounts certified by a Chartered Accountant, indicating sales figures and expenditure on advertisement and promotion, may constitute material sufficient for the purpose of examining whether a *prima facie* case is made out. However, the Court clarified that the requirement to prove such figures in accordance with law would apply at the final hearing stage. He thus submitted that the Defendants' reliance on ***Brihan Sugar Syndicate*** was entirely misconceived

and the said decision was wholly inapplicable at this stage to the facts of the present case.

48. Mr. Khandekar submitted that the Defendants' contention, that there is no misrepresentation, confusion or deception in the absence of evidence of actual confusion, was contrary to settled law. He submitted that, in an action for passing off, proof of actual deception or confusion is not required, as misrepresentation, confusion and deception are matters of judicial assessment that are to be determined on the basis of the overall facts and circumstances. He further submitted that this contention is, in fact, contrary even to the Judgements relied upon by the Defendants themselves.

49. Mr. Khandekar pointed out that the Defendants had incorporated and subsumed the Plaintiff's mark "Siyaram" in its entirety, both in the Defendants' corporate name and the Defendants' trade mark, and that it was an admitted position that the Plaintiff and the Defendants deal in the same and/or similar goods. In such circumstances, he submitted that confusion must necessarily be presumed. He further submitted that the Defendants, on their own showing, were fully aware of the Plaintiff's mark, "Siyaram", and the goodwill and reputation associated with it. He thus reiterated that the adoption and use of the impugned mark and name by the Defendants was clearly calculated only to ride upon and trade off that goodwill. While dishonesty was not a mandatory requirement to establish passing off, he submitted that the present case clearly demonstrated dishonest adoption and use.

50. Mr. Khandekar further submitted that the Defendants' reliance on *Mangalam Organics* was also equally misplaced. He pointed out that in that case, the

competing marks were “CAMPURE” and “KARPURE”, which the Court found to be sufficiently distinct after considering the specific facts and the labels involved, as noted in paragraphs 35 and 37 of the Judgment. In stark contrast, in the present case, the Defendants have lifted and incorporated the entirety of the Plaintiff’s “Siyaram” wordmark as-is, both as part of their name and as a mark in relation to their goods. He therefore submitted that the conclusions reached in ***Mangalam Organics*** were wholly inapplicable to the present case.

51. Mr. Khandekar then submitted that the Defendants’ contention that “Siyaram” is the name of a Hindu God or Deity and, cannot be restrained from use is *ex facie* untenable. First, he pointed out that this very issue has already been considered and conclusively decided by this Court in ***Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.***, and is no longer *res integra*. Secondly, he emphasised that the Plaintiff is admittedly the registered proprietor of the trade mark “Siyaram” since the year 1986, and that the said registration has not even been challenged by the Defendants. He submitted that the Plaintiff is, therefore, entitled to the statutory protections, conferred upon a registered proprietor under the provisions of the Trade Marks Act, 1999. He also then placed reliance upon the decision of the Full Bench of this Court in ***Lupin Ltd. v. Johnson & Johnson***³⁴ to submit that a strong presumption of validity attaches to a registered trade mark. He pointed out that the Full Bench had categorically held that the validity of a registered mark can be questioned at the interlocutory stage only in exceptional circumstances, namely where the registration is shown to be *ex facie* illegal, vitiated by fraud, or of such a

³⁴ 2015 1 MhLJ 501

nature as to shock the conscience of the Court. Mr. Khandekar submitted that the Defendants had neither challenged the Plaintiff's registration nor even pleaded that the same is invalid, much less *ex facie* illegal or fraudulent. In these circumstances, he submitted that the Defendants' contention that the Plaintiff is disentitled to relief merely because "Siyaram" is the name of a Hindu God is wholly unsustainable.

52. Mr. Khandekar further submitted that none of the decisions relied upon by the Defendants to contend that the Plaintiff could not restrain the use of the name of a Hindu God had either considered, much less in any manner diluted, the decision of the Full Bench in *Lupin*. In any event, Mr. Khandekar submitted that the Defendants were estopped from contending that the mark "Siyaram" is non-distinctive. He pointed out that the Defendants themselves had sought and obtained registration of a mark incorporating the word "Siyaram" and had further relied upon material expressly acknowledging the use of "Siyaram" as the Plaintiff's trade mark. He then placed reliance upon the decision in *Ultra Tech Cement v. Alaknanda Cement*³⁵, from which he pointed out that, in terms of Section 17 of the Trade Marks Act, 1999, where a trade mark consists of several elements, the registration confers exclusive rights upon the proprietor in respect of the trade mark taken as a whole. He further submitted that while comparing competing marks, the Court must consider their essential features, and if such essential features are similar, the likelihood of confusion necessarily arises.

35 2011 SCC OnLine Bom 783

53.Mr. Khandekar then submitted that there was no provision in the Trade Marks Act, 1999 which either prohibits the registration or restricts the enforcement of trade marks comprising the names of Hindu Gods or Deities. He submitted that Section 9 of the Act merely bars registration of marks which are devoid of distinctive character or are incapable of distinguishing the goods or services of one person from those of another. He submitted that the mark “Siyaram” bears no descriptive or direct nexus with textile goods and has acquired distinctiveness solely on account of decades of continuous, extensive, and exclusive use by the Plaintiff. He further submitted that the Defendants have failed to produce any cogent or reliable evidence of actual and substantial third-party use in the market so as to establish that the mark “Siyaram” is *publici juris*.

54.Mr. Khandekar further submitted that the Defendants’ reliance on the decisions in *GEBI*, *OM Logistics*, *Bhole Baba Milk*, and *Shree Ganesh Besan Mills* was entirely misconceived. He pointed out that the facts of each of those cases were materially different and turned on circumstances peculiar to each case, such as the absence of a word mark registration, proof that the mark was common to the trade, or concessions made by the proprietor, none of which arise in the present case. Mr. Khandekar then placed reliance on a recent decision of the Madras High Court in *Sri Ramchandra Educational & Health Trust v. Dr.Babaseheb Ambedkar Vaidyakiya Pratishthan Sanchalit Shri Ramchandra Institute of Medical Sciences*³⁶ and submitted that the said decision clearly reiterates that names of Gods or Deities are capable of

36 [Madras High Court] Judgment dated 9th April 2025 in O.A.Nos.78 & 79 of 2025

acquiring distinctiveness through use and that the burden of proving that such marks are *publici juris* lies squarely on the Defendant who asserts such a plea.

55. On the issue of delay and acquiescence, Mr. Khandekar submitted that the defence was wholly untenable and had already been rejected by this Court in identical circumstances in *Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.* He pointed out that in paragraphs 7, 15 and 23 of the said decision, this Court had categorically held that mere passage of time or the pendency of proceedings does not, by itself, defeat a Plaintiff's entitlement to interim relief, particularly in matters concerning intellectual property rights. In support of his contention, he placed reliance on the decisions in *Charak Pharma Pvt. Ltd. v. Glenmark Pharmaceuticals Ltd.*³⁷, *Sun Pharmaceutical Industries Ltd. v. Wyeth Holdings Corporation & Anr.*³⁸, *Medley Pharmaceuticals Ltd. v. Twilight Mercantile Ltd. & Anr.*³⁹, *Anglo-French Drugs & Industries Ltd. v. Eisen Pharmaceuticals Pvt. Ltd.*⁴⁰ and *Midas Hygiene* to submit that delay is not fatal where infringement or passing off is otherwise established. Mr. Khandekar then pointed out that the doctrine of acquiescence requires a positive act of encouragement or assent on the part of the Plaintiff to the Defendant's use of the impugned mark. He submitted that in the present case the Plaintiff had not even pleaded any such encouragement on the part of the Plaintiff, much less established the same.

37 2014 SCC OnLine Bom 98

38 2004 SCC OnLine Bom 1074

39 2014 SCC OnLine Bom 697

40 1996 SCC OnLine Bom 580

56. In view of the above, Mr. Khandekar submitted that the Defendants' defences are entirely without merit and that the Plaintiff had made out a strong *prima facie* case both in law and equity, and the Plaintiff was therefore entitled to reliefs in terms of prayer clauses (a), (b) and (c) of the Notice of Motion.

Reasons and Conclusions.

57. After having heard Learned Counsel and having considered the case law upon which reliance is placed, I have no hesitation in holding that the Plaintiff has made out a case for the grant of interim relief. My reasons are as follows.

- A. At the outset, there is no dispute that the Plaintiff is the registered proprietor of the word mark "SIYARAM", with registration dating back to 1986. The Plaintiff also admittedly holds multiple registrations incorporating the said "Siyaram", some of which date back to the year 1984. The Defendants have admittedly not impugned any of these registrations by way of rectification proceedings, nor have the Defendants so much as alleged that any of these registrations are *ex facie* illegal, fraudulent, or such as to shock the conscience of the Court. Thus, as held by the Full Bench of this Court in *Lupin Ltd. v. Johnson & Johnson*, a strong presumption of validity attaches to a registered trade mark. Therefore, the Plaintiff is entitled to the statutory protection conferred upon a registered proprietor under the Trade Marks Act, 1999.
- B. The Defendants' entitlement to use the mark "Siyaram" on the basis that the father of Defendant Nos. 2 and 3 was allegedly running a store under the name "Siyaram Fashion Store" is *prima facie* misconceived and legally

untenable. Firstly, the material relied upon by the Defendants indicates that the name of the store was infact “Mangaldeep Showroom”, with the “Siyaram Fashion Store” appearing only in brackets. Secondly, the said store appears to have stocked and sold fabrics from several well-known brands, including Vimal, Digjam, Raymond, and Siyaram, thereby clearly establishing that it was a multi-brand outlet rather than a business identified exclusively with the mark “Siyaram”. Thirdly, Defendant No. 1 was incorporated only in February 2006, and there is neither any pleading nor any documentary evidence whatsoever evidencing an assignment or transfer of the trade mark “Siyaram”, much less an assignment together with the associated goodwill, from the father of Defendant Nos. 2 and 3 to Defendant No. 1.

- C. It is well settled that reliance on prior use by a predecessor is permissible only where there is clear, cogent, and reliable evidence of assignment of the trade mark along with goodwill. In the absence of any such material, the decisions in *Yogi Ayurvedic Products* and *Lords Inn Hotels* would squarely apply, and thus the Defendants would be disentitled from claiming any benefit on the basis of alleged prior user. Equally crucial is the fact that the Defendants’ own case of prior use, if accepted at face value, dates back only to the year 1992, which is subsequent to the Plaintiff’s adoption, continuous use, and statutory registration of the mark “Siyaram”. Therefore, absent any valid assignment at the highest, the Defendants can claim use only from the year 2006, which is well after the Plaintiff had obtained registration of the trade mark “Siyaram”.

- D. It is also clear and beyond the pale of doubt that the Defendants' adoption of "Siyaram" was dishonest and with the full knowledge of the Plaintiff's prior use and immense reputation and goodwill. It is unstateable for the Defendants to, at this stage, question the Plaintiff's reputation and goodwill. This is clear from the material upon which the Defendants have themselves placed reliance, which *inter alia* shows that the Defendants' alleged predecessor advertised and sold products of several well-known brands, including "Siyaram", as an authorised dealer, after which the Defendants subsumed the entirety of the Plaintiff mark into the Defendants' corporate name and trade mark. Also, at the relevant time, the Plaintiff's reputation and goodwill was such that the Plaintiff's tagline, "*Come home to Siyaram*" was indelibly etched in public memory. Thus, for someone in an identical trade as the Plaintiff to suggest that the Plaintiff lacked or has failed to establish goodwill is entirely untenable.
- E. In any event, given that both the Plaintiff and the Defendants have asserted proprietorship and goodwill over "Siyaram", as held in ***Anil Ahuja v. Marvel Fragrances***, this Court can at the interlocutory stage assume the existence of such goodwill. In my *prima facie* view, given that the Defendants' adoption of "Siyaram" is clearly conscious and with full knowledge of the Plaintiff's mark and thus plainly dishonest. The Plaintiff's reliance upon the decisions in ***Assam Roofing***, ***Volvo***, ***Gorbatschow***, and ***Poddar Tyres*** is apposite.
- F. Even assuming that the Defendants' adoption of "Siyaram" was honest, the law is well settled that honesty of adoption is irrelevant once infringement

or passing off is otherwise established. The decisions in *F. Hoffmann-La Roche, Kirloskar*, and *Laxmikant Patel* make it clear that honest adoption does not legitimise infringement or passing off. Furthermore, it is trite law that a Defendant cannot use a corporate or trading name that is identical with or deceptively similar to a registered trade mark as held in the decisions of *Volvo, Kirloskar, Poddar Tyres*, and *Siyaram Silk Mills Ltd. v. Sairam Suitings Pvt. Ltd.* In the present case, I have no hesitation in holding that even though the Plaintiff has not set out specific instances of confusion, the likelihood of confusion is imminent. One cannot be unmindful of the fact that the customers would be from a cross section of society, many of whom would, on seeing “Siyaram” in the Defendants’ mark, immediately associate the same with the Plaintiff’s goods, especially given the manner in which the Defendants’ mark appears, i.e., “Apricott – a Product of Stanford Siyaram Fashions Pvt. Ltd.”. This *prima facie* establishes the Defendant’s dishonest adoption and intention to deceive.

- G. The Defendants’ reliance on Section 28(3) of the Trade Marks Act, 1999, is misplaced. *Firstly*, the Defendants do not hold registration for the word mark “SIYARAM”, but only for a composite label “Apricott – a Product of Stanford Siyaram Fashions Pvt. Ltd.”. *Secondly*, Section 17 of the Trade Marks Act, 1999, makes it clear that registration of a composite mark does not confer exclusivity over its individual components. *Thirdly*, Section 28(3) of the Trade Marks Act, 1999, affords no defence to an action for passing off, which remains available notwithstanding registration. *Crucially*, all this has been considered and rejected in *Siyaram Silk Mills*

Ltd. v. Shree Siyaram Fab Pvt. Ltd., which has since been followed in *Marico v. Zee Hygiene*.

- H. In any event, I am satisfied that the Plaintiff has, at this interlocutory stage, amply demonstrated the existence of goodwill and reputation in the mark “Siyaram” by placing on record material evidencing continuous and extensive use of the mark since 1977/1978, long-standing statutory registrations, substantial sales, and significant expenditure on advertising and promotion duly certified by a chartered accountant, coupled with repeated judicial recognition and protection of the mark. This material is more than sufficient to establish a *prima facie* case of goodwill. The Defendants’ reliance on the decisions in *Foodworld* and *Brihan Sugar Syndicate* is wholly misplaced, as both these decisions expressly recognise the distinction between the evidentiary standards applicable at the interlocutory stage and those applicable at trial. Thus, neither of these decisions would assist the Defendants at this interlocutory stage.
- I. The contention that Defendants cannot be enjoined from using “Siyaram” since it is the name of a Hindu God is also entirely misplaced. *Firstly*, this very contention has been expressly dealt with and rejected by this Court in the case of *Siyaram Silk Mills Ltd. v. Shree Siyaram Fab Pvt. Ltd.* and *Sri Ramchandra Educational & Health Trust*. *Secondly*, there is no provision in the Trade Marks Act, 1999, prohibiting registration or enforcement of marks comprising names of the Hindu Gods or Deities. Section 9 of the Trade Marks Act, 1999, bars marks that are devoid of distinctiveness. It is plain that the mark “Siyaram” has no descriptive nexus with textiles and

has acquired distinctiveness through decades of use. The decisions in ***GEBI***, ***OM Logistics***, ***Bhole Baba Milk***, upon which reliance was placed by the Defendants, are all distinguishable on facts, since in those cases either the word mark was not registered, or there was no proof pertaining to mark being common to trade or concessions given by the proprietor. None of those circumstances arise or exist in the facts of the present case. Also, and *crucially*, in none of those cases was the decision of the Full Bench of this Court in ***Lupin*** considered. Additionally, the Defendants are, in any event, estopped from contending the non-distinctiveness of the mark “Siyaram”, having themselves sought registration incorporating “Siyaram”.

- J. The Defendants’ contention that the Plaintiff is not entitled to interim relief on the ground of delay and acquiescence is also entirely misconceived. It is well settled that acquiescence requires a positive act on the part of the Plaintiff by which the Defendant has been encouraged to use the impugned mark. In the facts of the present case, it is not even the case of the Defendants that the Plaintiff has encouraged them to, in any manner, use the mark “Siyaram”. *Additionally*, and as held in ***Charak Pharma***, ***Sun Pharma***, ***Medley***, ***Anglo French Drugs***, and ***Midas Hygiene***, it is more than well settled that in cases of trade mark infringement and passing off where adoption is found to be dishonest, delay pales into insignificance. Thus, considering the Defendant’s adoption of “Siyaram” is *prima facie* dishonest, the delay, if any, on the part of the Plaintiff would by itself not disentitle the Plaintiff to interim relief.

58. For the reasons stated above, 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 since the continued use by the Defendants of the impugned mark would dilute the Plaintiff's well-established mark and cause irreparable injury to the Plaintiff's goodwill and reputation in addition to monetary loss.

59. The Notice of Motion is therefore allowed and disposed of in terms of prayer clauses (a) and (b).

[ARIF S. DOCTOR, J.]