

IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS APPELLATE DIVISION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

TEMPAPO-IPD/7/2025
IA NO. GA-COM/1/2025, GA-COM/2/2025
Amara Raja Energy and Mobility Limited
Vs.
Exide Industries Limited

For the Appellant

:Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Siddharth Luthra, Sr. Adv.
Mr. Ankit Virmani, Adv.
Mr. Sarosij Dasgupta, Adv.
Ms. Nandini Khaitan, Adv.
Ms. Shreya Singh, Adv.
Mr. Pratik Shanu, Adv.
Ms. Vasundhara Bakhru, Adv.
Ms. Ruchika Agarwala, Adv.
Mr. Suryaneel Das, Adv.
Ms. Oindrila Ghoshal, Adv.

For the Respondent

:Mr. S.N. Mookherjee, Sr. Adv.
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Sayantan Bose, Sr. Adv.
Mr. Debnath Ghosh, Sr. Adv.
Mr. Rudraman Bhattacharyya, Sr. Adv.
Mr. Sayan Roy Choudhary, Adv.
Mr. Dhruv Chaddha, Adv.
Mr. Sagnik Bose, Adv.
Mr. Paritosh Sinha, Adv.
Mr. K. K. Pandey, Adv.
Ms. Suhrita Majumdar, Adv.
Mr. Kironjit B. Majumder, Adv.
Ms. Sonia Nandy, Adv.

Mr. Dipro Dawn, Adv.
Ms. Sayani De, Adv.
Ms. Mallika Bothra, Adv.

Hearing Concluded on : February 10, 2026
Judgement on : April 02, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgement and order dated July 25, 2025 passed in IA GA (COM) No. 1 of 2025 in I.P. (COM) No. 18 of 2025.
2. By the impugned judgement and order learned Single Judge has granted injunctions in terms of prayers (a) and (b) of the Notice of Motion.
3. Learned Senior Advocate appearing for the appellant submitted that, prayers (a) and (b) of the plaint and the injunction petition are defective. He has referred to such prayers. He has relied upon **2008 Volume 17 Supreme Court Cases 491 (Bachhaj Nahar vs. Nilima Mandal and Anr.)** to contend that, in a civil suit relief can only be granted with reference to the prayers made in the pleadings.
4. Learned Senior Advocate appearing for the appellant has contended that, grant of injunction as done by the learned Single Judge, allows the respondent a monopoly over the entire red colour in all its shades to be used as a trade dress. He has contended that, learned Single Judge has granted

prayer (a) contrary to the findings in the impugned judgement and order.

5. Learned Senior Advocate appearing for the appellant has referred to various portions of the impugned judgement and order. He has submitted that, although the learned Single Judge has held that, respondent does not have monopoly over the colour red, respondent did not claim monopoly over the colour red during hearing and that, cumulative effect of the use of the colour red, “EL” and shattered O all forming a prominent, integral and distinctive part of the trade dress of the respondent taken historically both contribute to a case for grant of protective orders. He has contended that, some of the findings are contrary to the materials available on record.

6. Learned Senior Advocate appearing for the appellant has referred to prayer (b) of the Notice of Motion. He has contended that, the prayer is defective. In any event, respondent neither employs the use of the EL mark nor the shattered O device. He has contended that, at best, the case of the plaintiff was limited to passing off.

7. Learned Senior Advocate appearing for the appellant has contended that there was no pleading with regard to the goodwill or reputation enjoyed by any specific mark. He has

pointed out that, not all the 64 trademarks in annexure S contains the colour red. Only 2 of the 64 trademarks have either the shattered O mark and EL as elements. Only one of the trademarks find mention in the impugned judgement and order. However, learned Single Judge has not found any goodwill or reputation attached to such trademark.

8. Learned Senior Advocate appearing for the appellant has contended that, no person can have a monopoly over a single colour in the industry specially when there is no secondary meaning to the colour as it is used by rival brands. He has referred to documents of such user. Appellant had used other colours apart from red. Therefore, according to him none of the parties can have monopoly on one colour.

9. Learned Senior Advocate appearing for the appellant has referred to the findings of the learned Single Judge with regard to the use of the colour red by the respondent. He has submitted that, such findings are incorrect. He has contended that, the claim of consistent use of red colour trade dress since 1920 is belied by the documents produced by the respondent itself.

10. Learned Senior Advocate appearing for the appellant has contended that, initially batteries were produced in black

colour. The early 2000 automotive batteries were produced in white colour casing so as to enable determination of the amount of distilled water in the cells of the battery. He has referred to various annexures and contended that, batteries of various trade dresses are not predominantly red. He has referred to the annual report of the respondent for the year March 31, 2020 and contended that, the respondent themselves show that many automotive batteries produced are in white, contrary to the claim of predominant red trade dress. He has pointed out that, the respondent is also making white batteries.

11. Learned Senior Advocate appearing for the appellant has contended that, the learned Single Judge erred in not applying the ratio of **835F.3d 1238 (Forney Indus Versus Daco of Mo)**. According to him, the same principles would apply as the respondent has been inconsistent in the trade dress.

12. Learned Senior Advocate appearing for the appellant has contended that, no sales figures from user of red trade dress was put forth by the respondent before the learned Single Judge. He has referred to various documents relied on

by the respondent in this regard. He has referred to ***Forney Indus (supra)*** in this regard.

13. Learned Senior Advocate appearing for the appellant has relied upon ***2024 Volume 2 Supreme Court Cases 577 (Brihan Karan Sugar Syndicate Private Limited Versus Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana)*** and ***2024 OJ No. 4699 (Biosteel Inc. Versus Cizzle Brands)*** and contended that, materials placed on record do not show that, the respondent had acquired any reputation in the red trade dress.

14. Learned Senior Advocate appearing for the appellant has contended that, learned Single Judge did not find that the colour red in batteries has acquired secondary meaning so as to mean that the respondent could exclusively use it without any relation to their trade mark Exide. He has contended that, respondent employs the use of multiple trade dresses.

15. Learned Senior Advocate appearing for the appellant has relied upon ***Kerly's Law of Trade Marks and Trade Names 17th Edition*** and contended that, the respondent did not prove its reputation on the red trade dress. According to him, the respondent cannot claim that, the goodwill of the respondent rests with the tradename Exide and separately

with the red colour and separately with EL and again separately with the shattered O device mark.

16. Learned Senior Advocate appearing for the appellant has contended that, there is no reasoning as to why EL and shattered O device mark have significant goodwill in the automotive battery segment. He has contended that, there is no finding of goodwill in relation to the registered marks placed on record by the respondent. He has pointed out that, all marks of EL applied to non-products of storage batteries and not automotive batteries. Respondent has styled EL differently.

17. Learned Senior Advocate appearing for the appellant has contended that there is no finding by the learned Single Judge with regard to goodwill qua the registered mark. He has contended that the mark of EL apply to non products of storage batteries and not to automotive batteries. In every battery utilizing EL as shown by the respondent itself, the respondent has used EL on batteries with different style and therefore, the same does not have the ability to generate a goodwill. He has also pointed out that all invoices do not bear the shattered O device mark. In this regard, he has referred to paragraph 14 of ***Brihan Karan Sugar Syndicate Private***

Limited (supra). He has contended that, no material has been placed on record to show considerable sales by the respondent.

18. On the allegations of deception leveled by the respondent before the learned Single Judge, learned Senior Advocate appearing for the appellant has contended that, customers involved do not buy batteries by colours unlike Fast Moving Consumer Goods (FMCG) products. He has contended that the decision to buy battery is based on what is already pre-fixed in the vehicle or what is appropriately available for the vehicle model in question along with the consideration of the price, if any.

19. Learned Senior Advocate appearing for the appellant has contended that the contention of the respondent that automotive battery is purchased casually by driver or mechanic who are not educated and may not pay attention to verbal brands and would buy the batteries of red colour is unfounded. The two products, do not have any similarity as to the packaging with the trade origin being mentioned.

20. Learned Senior Advocate appearing for the appellant has relied upon **2004 Volume 6 SCC 145 (Satyam Infoway Ltd. Versus Sifynet Solutions Private Limited)** and

contended that, learned Single Judge has failed to give any reason as to why the dissimilarities and the similarities in the packaging and getup of the rival trade dress would cause consumer confusion. He has contended that, the findings of the learned Single Judge that, the shade of colour red used by the appellant is the exact same shade of red used by the respondent is not correct. He has contended that, the two boxes show that there is no common factor other than the employment of the colour red. According to him, learned Single Judge has failed to take note of the explicit origin identifiers used by both the parties in the packaging.

21. Learned Senior Advocate appearing for the appellant has contended that despite the learned Single Judge noting the relevant law on added matters and deception in passing off, learned Single Judge has not returned any finding with regard thereto. He has contended that, apart from the parties using the colour red, learned Single Judge has not noted any similarity between trade dress employed by both the parties. He has contended that, added matters test has not been applied. According to him, when, the matters are added, the same would be enough to distinguish the origin of the product and that, adding a matter would escape liability of passing off.

22. Learned Senior Advocate appearing for the appellant has contended that, the size of the products are different. He has referred to the distinguishing features between the two products.

23. With regard to the nature of customers, learned Senior Advocate appearing for the appellant has contended that, considering the act of passing off, the learned Single Judge had lost sight of the fact that an average customer purchasing a battery is contrary to actual market practice. Learned Judge had lost sight of the pleadings of the respondent itself. He has referred to various materials on record. He has contended that, the respondent itself claimed that it supplies to global giants and that, vehicles come with pre-fitted batteries. He has contended that, batteries are not bought off the self but with the assistance of a dedicated shop where assistance is rendered by the shopkeepers. The choice of the battery purchased is dependent upon various factors and is not bought solely on the basis of colour. Illiterate population who buy batteries are not misled by the colour. He has contended that, the respondent has claimed goodwill in the market on the basis of the trade mark Exide. Consequently, the two

claims of the goodwill of the respondent have to be read as opposing each other.

24. Learned Senior Advocate appearing for the appellant has contended that, the findings of the learned Single Judge that the appellant was dishonest is incorrect. He has contended that, the reason for adoption of the colour red by the appellant is irrelevant. Secondly, the so called insufficiency of the answer in the affidavit of the marketing officer is also irrelevant. Learned Single Judge, according to the appellant has misunderstood the contention of the appellant. He has contended that the statements of irrelevance of colour red was made in the light of the inability of the respondent to establish goodwill in colour red and also in the addition of distinguishing feature by the appellant on the packaging and trade dress.

25. Learned Senior Advocate appearing for the appellant has contended that, in any event the reason for adoption of the colour red was clear in the affidavit of the marketing officer. Appellant has changed from blue to red since, red was more bright and vibrant colour after receiving feedback that the blue colour was not making the battery stand out.

26. Relying upon **2005 SCC Online Del 1439 (Colgate Palmolive Company Limited & Another Versus Patel & Another)** learned Senior Advocate appearing for the appellant has contended that, colour of packaging plays several roles. Colour makes the product look visually appealing and convey specific emotions. The use of vibrant and bright colour by the appellant does not by itself imply that the appellant believes that a customer would decide to buy an automotive battery based solely or even primarily by looking at the colour of the packaging.

27. Learned Senior Advocate appearing for the appellant has contended that, the learned Single Judge did not give any reason as to why the affidavit of the senior officer of the appellant was considered as self-serving. He has contended that, use of the blue colour abroad and the subsequent use of the colour red has been sufficiently corroborated by significant evidence. He has contended that the appellant was not manufacturing in the colour red and therefore, it became the obvious choice.

28. Learned Senior Advocate appearing for the appellant has contended that, finding of the learned Single Judge that the appellant has imitated the product of the respondent is

erroneous. Learned Single Judge came to such a conclusion without comparing the two products visually or phonetically. In this regard, he has relied upon **2001 Volume 5 Supreme Court Cases 73 (Cadila Healthcare Limited Versus Cadila Pharmaceuticals Limited)**.

29. Learned Senior Advocate appearing for the respondent has contended that, the respondent filed the suit for infringement and passing off. He has contended that, the appellant has infringed the word mark EL, the registered trade mark shattered O of the respondent. Appellant has passed off Exide's prior adopted, prior used and registered trade mark EL and shattered O and brand name of Exide. Appellant has also infringed the copyright of the respondent in the artistic work of, shattered O and Exide. He has contended that, the distinguishing features of the appellant in the registered trade mark have been adopted by the appellant in similar shape and sized batteries and battery packaging in pre-dominantly red colour trade dress, as used by the respondent. He has contended that Elito is a five letter word similar to Exide and is depicted in a white colour font on a red battery identical to Exide. Elito has further adopted the shattered O devise and the trade mark EL belonging to Exide.

30. Learned Senior Advocate appearing for the respondent has contended that, respondent was using red colour for its battery since 1920. In this regard, he has referred to various documents on record. He has contended that, manner and mode of extensive use by Exide of the colour red in the industry related to storage batteries and more specifically of red batteries/automotive batteries. According to the respondent, this had led to the colour red functioning as the source identifier for the product of the respondent.

31. Learned Senior Advocate appearing for the respondent has contended that the colour red and white combination has become distinguishing feature of the brand Exide. He has relied upon **2003 27 ETC 478 (Colgate Palmolive Company and Another Versus Anchor Health and Beauty Care Private Limited)** and **2009 SCC Online Calcutta 1991 (Euro-Solo Energy Systems Limited Versus Eveready Industries India Limited)** in support of his contentions.

32. Learned Senior Advocate appearing for the respondent has contended that, the appellant identified itself with the colour green, while the respondent identified itself with the colour red. Infact, appellant had always distinguished itself from the colour red and never used any product in the colour

red prior to the launch of Elito. He has referred to the advertisements made by the appellant to demean and denigrate the colour red on May 13, 2020, May 15, 2020, May 20, 2020, and February 14, 2025. He has referred to the general comments made by the public in this regard. He has contended that appellant has referred to colour green as its signature colour in its annual report.

33. Learned Senior Advocate appearing for the respondent has contended that, appellant is a shareholder of the respondent and was privy to material information of the respondent. He has contended that, appellant adopted the impugned mark “Elito”  in order to deceive. Appellant had initially adopted LIT with two decisive elements including greek alphabet χ (i.e., “Ξ”) as “Elito”  . Appellant had applied for registration of such mark in India on June 27, 2022 as proposed to be used. Appellant had filed the affidavit that χ (i.e., “Ξ”) is difficult to read and that it received feedback in some meetings in December 2021 and September 2022, that blue did not stand out in the clutter. According to him, appellant has admitted that colour was important in the sale of batteries.

34. Learned Senior Advocate appearing for the respondent has submitted that on December 20, 2022 appellant had filed another application for registration of the mark “Elito”



. He has pointed out that, although the feedback was purportedly for foreign market in 2022 the appellant did not make any change in the foreign market. Appellant had continued to sell blue batteries in the foreign market till May 2024. Appellant has claimed to have launched the colour red in India in 2023. He has referred to the multiple similarities used by the appellant namely alteration of χ (i.e., “Ξ”) to E to become EL, use of shattered O at the end of “Elito” , pre-dominantly red colour packaging trade dress, red and white colour combination, adoption of brand new white on a red background and use of five letters in Elito in order to match that of Exide.

35. Relying upon **1889 RPC 531-538 (Slazenger & Sons vs. Feltham & Co.), [1882] 7 App. Cas. 219 (R. Johnston & Co. vs. Archibald Orr Ewing & Co.), [1981] 26 RPC 429-497 (Cadbury Schweppes Pty Ltd and Others vs. Pub Squash Co Pty Ltd.)** and **809 F.2d 1378 (First Brands Corporation Versus Fred Meyer, Inc.)** learned Senior

Advocate appearing for the respondent has contended that, multiple similarities point to the calculated efforts in bad faith to sail as close as possible to Exide and the same is unfair.

36. Relying upon **1897 RPC Volume XIV page 225-238 (Jones vs. Hallworth)**, learned Senior Advocate appearing for the respondent has contended that, the use and adoption of the colour red, which the appellant never did and that such colour was used extensively by the respondent, is unfair and amounts to passing off.

37. Learned Senior Advocate appearing for the respondent has contended that, by reason of the pre-dominantly red colour packaging used by the respondent, the same deserves protection owing to its long use. The single distinctive colour merits protection and such protection have been allowed in various instances in India and abroad. In this regard, he has relied upon **2016 SCC Online Bom 7712 (Sapat International Private Limited Versus Sanwal Chand Babulal and Another), 2021 (87) PTC 185 (Bom) (Sanjay Soya Private Limited vs. Narayani Trading Company), 1995 SCC Online US SC 28 (Qualitex Co. vs. Jacobson Production Co., Inc.), 774 E 2D 1116 (Owens-**

Corning Fiberglas Corporation) 1987 SCC Online US CA FC 1.

38. Relying upon ***R. Johnshon and Company (supra)*** and ***2023 SCC Online Mad 6972 (ITC Limited vs, Britannia Industries Ltd.)*** learned Senior Advocate appearing for the respondent has contended that, while considering the change getup of the appellant, the same needs to be considered as a whole. If on an wholesome analysis the getup is found similar then the injunction must be granted.

39. Learned Senior Advocate appearing for the respondent has contended that, the battery is placed on a shelf on the store, side by side. He has referred to the quality of the buyers of the batteries. He has contended that, the trade dress of the appellant is such that it will confuse the buyer. According to him, a buyer of an automotive battery is not so well educated in the remote corner of the country so as to distinguish between the two brands given the present nature of the trade dress of the appellant and the respondent.

40. Learned Senior Advocate appearing for the respondent has contended that, appellant has not explained the use of the colour red. According to him, as a competitor of the respondent, the appellant was obliged to avoid copying the

trade dress and get up of Exide. In this regard, he has relied upon ***R. Johnshon & Co. (supra)***. Appellant should not have used the trade mark of the respondent nor should it have done anything which might allow a buyer to think that the case of the appellant was that of the respondent. Appellant should not have done anything so as to obtain the benefit of the reputation of the respondent. Appellant was bound to be careful of not adding anything to its product which would have otherwise resembled the product with the respondent. Having done so, it shows a deliberate decision by a competitor in adopting the leading prominent and essential component of trade rival, which should not be disregarded.

41. Learned Senior Advocate appearing for the respondent has contended that, the appellant after knowing the character and circumstances of the market, and with the direct objective of competing and underselling the respondent with a lower priced product has tried to approach the trade dress of the respondent as nearly as possible. The same according to him, is impermissible. He has referred to the affidavit affirmed by the appellant and contended that, the stand of the appellant that it was not required to offer any explanation demonstrate the lack of bonafides. In this regard, he has relied upon **2004**

Volume 6 Supreme Court Cases (Satyam Infoway Ltd. Vs. Sifynet Solutions (P) Ltd.), 2023 SCC OnLine Mad 6972 (ITC Britannia Industries Ltd. Vs. Britannia Industries Ltd.) and Cadbury Schweppes Pty Ltd (supra) and First Brands Corporation (supra) learned Senior Advocate appearing for the respondent has contended that, the appellant had launched Elito in blue colour in overseas market in 2020. Later, on the basis of feedback from the overseas dealers made in December 2021 and September 2022 that the blue colour did not stand out in the clutter, it had decided to change. He has contended that, there is no affidavit or the letter from the overseas dealer in support of the claim that, E in “Elito”  was confusing.

42. Learned Senior Advocate appearing for the respondent has submitted that the contention of the appellant that colour blue did not stand out in the clutter and hence red was adopted is contradicted by the argument that colour is not relevant when it comes to batteries. The claim of the appellant for the change of colour is unbelievable and is not of from any credible documents. He has contended that there is no affidavit or letter from the dealer in support of such claim. No

explanation has been given as to why the blue did not stand out. He has claimed that there are several examples of blue batteries being successful globally. Appellant has not explained why it continued with blue battery in the overseas market while it claimed to have adopted the colour red in India.

43. Learned Senior Advocate appearing for the respondent has contended that, appellant itself acknowledged that colour/colour scheme is important to identify the source of the product. He has contended that the adoption of so many features of the same product cannot be co-incidence nor is the same being done by purported effort using the colour red. He has contended that, trade dress used by the appellant is calculated to deceive.

44. Learned Senior Advocate appearing for the respondent has contended that, appellant has acted in bad faith. Appellant has introduced its product and packaging with the essential features of the trade dress and getup of the respondent and the same cannot be mere co-incidence as, too many features have been copied. Appellant is direct competitor of the respondent. Rival batteries are sold in the

same store side by side. Appellant had disparaged the respondent product in the earlier.

45. Learned Senior Advocate appearing for the respondent has contended that, the claim of the appellant that it started using colour red from April 2023 in India is false. He has referred to the documents in support of such contention. He has also contended that, the claim of the appellant with regard to the entity named Unifieder is also false. He has pointed out that, appellant sought to remove the disparaging materials made as against the colour red.

46. Learned Senior Advocate appearing for the respondent has contended that, the order impugned being discretionary in nature and since it has not been established to perverse no interference be called for.

47. The respondent as the plaintiff had filed a suit for relief regarding alleged infringement of registered trademark and passing off against the appellant. In such suit, plaintiff had applied for urgent interim relief. Such interim relief application has been disposed of by the impugned judgement and order.

48. The parties to the suit are involved in the manufacture and sale of automotive batteries, amongst others. Subject

matter of the suit primarily relates to and revolves around allegations of infringement of registered trade mark and passing off in respect of trade dress automotive batteries.

49. It has been admitted at the Bar that, the parties before Court are the only major players in the field of manufacture and sale of automotive batteries in India. The parties are therefore competing with each other in such field.

50. The respondent has been marketing and selling automotive batteries packaging the same in red colour dress. The body of the battery as well as the packaging contains the red colour dress. That the respondent has been marketing and selling automotive batteries in red colour dress prior to the appellant doing so is established.

51. The respondent has a registered trademark EL with user claimed since 1987. The respondent has a registered trademark of shattered O  with user claimed since 1996.

52. The respondent has used the word Exide in the colour red. The respondent has disclosed advertisements of batteries manufactured by it in predominantly in red colour. It has used the colour red as part of various marks. It has used the colour red in shop hoardings and stores. It has sponsored

cricket teams in the Indian Premier League. These materials that the respondent has placed on record allows a prima facie finding that the respondent had been using the colour red as a distinctive feature of its product. Respondent has been able to establish, at least on a prima facie level, of user of the colour red in its trade dress much prior to user of such colour as a part of trade dress by the appellant. In fact, the campaign led by the appellant in the colour red and green also establishes prior user by the respondent.

53. Materials on record suggest that the appellant had chosen the colour green as its source identifier. The appellant had during the covid period run a campaign in the social Media trying to demean and denigrate the colour red as against the colour green. The appellant had in such campaign identified itself with the colour green and sought to convey a message to the public in general that, the colour green was better than the colour red.

54. Reactions of the members of the public in the social media platforms are that, members of the public associated the respondent with the colour red while the appellant with the colour green.

55. Appellant had consciously adopted the colour green and wanted it to be developed as a brand and source identifier for itself. It has in its annual reports placed before its shareholders stated that the colour green was its signature colour. Appellant has demarcated and distinguished itself from the rest of the competition on the basis of its colour green.

56. Materials on record therefore allow a plausible prima facie view that, the parties had acknowledged that colour was an important source identifier and worked to build a particular colour association-green in case of appellant and red in case of the respondent to identify themselves. At the very least, the appellant had run a campaign in the media inviting the members of the public to distinguish it from the respondent on the basis of colour. Members of the public in such campaign had associated the appellant with the colour green and the respondent with the colour red.

57. The appellant had initially adopted “LIT” with two divisive elements including the Greek alphabet χ (i.e., “Ξ”) as “Elito”  and applied for registration of such mark in India on June 27, 2022 as proposed to be used. The appellant

had adopted such mark for the foreign market in a blue trade dress. Appellant has claimed to launch automotive batteries in the colour red in India sometime in 2023. Appellant had applied for registration of the mark “Elito”  on December 20, 2022, in India.

58. Appellant had taken the stand that, on receipt of feedback that, the colour blue would not stand out, changed the colour in its automotive batteries and its packaging.

59. In the affidavit used before the learned Single Judge, the appellant has taken the stand that, adoption of the colour red is irrelevant. It has not explained why the appellant has used the colour red when, the colour red was being used by the respondent. This adoption of the colour red by the appellant, subsequent to the appellant running a campaign of distinction between the colour red and the colour green, assume significance in the context of allegation of passing off.

60. On the strength of the materials available on record, it is reasonably possible to infer that, the respondent was using the colour red, appellant associated the respondent with the colour red while associating itself with the colour green and therefore, acknowledging that colour is a source identifier. In

other words, in the facts and circumstances of the present case, between the two parties before Court, a particular colour is taken to be a source identifier. Parties have acknowledged that, appellant is associated with the colour green while the respondent with the colour red on the strength of the campaign run by the appellant.

61. Kerly's Law Trade Marks And Trade Names has observed that, in a case of passing off, the claimant relying upon data must prove his reputation, that is to say that, the get up concerned indicates his goods and no one else's. In the facts and circumstances of the present case, contemporaneously, the appellant had acknowledged that, colour red was associated with the respondent exclusively while, seeking to claim exclusive use of the colour green. In fact, appellant had run a campaign in the social media platform claiming that, green was better than red with the general public reacting and identifying the colour red with the respondent while the colour green with the appellant. Therefore, the colour red, between the two parties before us, stood associated exclusively with the respondent and at least to the exclusion of the appellant. It is the appellant by

running such campaign had excluded itself from the colour red as the source identifier.

62. *Brihan Karan Sugar Syndicate (P) Ltd (supra)* has held that, in a case of passing off which is premised on the rights of the prime user generating goodwill, such reputation or goodwill has to be established. On the failure of such reputation and goodwill being established, other issue need no further examination. In the facts and circumstances of the present case, appellant itself has acknowledged that the colour red was associated with the respondent. Having done so, it would not lie in the mouth of the appellant now to contend that, there is no significance in the user of the colour red.

63. The competing boxes as also batteries have been produced in Court. We have seen that, both the boxes in the batteries predominantly uses the colour red. The packaging and the trade dress of the competing products are sufficiently similar so as to deceive a consumer being a part of the general public.

64. The parties have different views on the quality of the consumer buying the batteries and at least their ability to discern between the two products. According to the appellant,

a buyer of automotive battery proceeds on the basis of the automotive battery already placed in the automobile concerned and that, such buyer proceeds on the basis of brand name rather than the packaging. The contention of the respondent is otherwise. According to the respondent, since, the two batteries are placed on a shelf side-by-side in a shop, given the similarities in the trade dress, the appellant would be able to pass off its product as that of the respondent.

65. A consumer or a buyer of an automotive battery may proceed to buy the automotive battery on the basis of what is prefixed in the vehicle concerned or the basis of the brand name. However all buyers may not proceed on those two parameters only. Every possibility exists of a buyer seeking to buy an automotive battery making a choice at the shop concerned on the basis of whatever is available on the shelf of such shop. In such an eventuality, if the two products as obtaining today, of the parties before us, are placed on the shelf side-by-side, then, the possibility of a buyer not going by the brand name alone, being deceived by the trade dress and the get up is distinct.

66. In such perspective, the visual test laid down in ***Satyam Infoway Ltd. (supra)*** stands satisfied in favour of

the respondent. The trade dress and the get up presently obtaining is likely to confuse the actual or potential customer of an automotive battery.

67. On the basis of the principle of law acknowledged in ***Sanjay Soya 16 Private Limited (supra)*** and ***Three-N-Products Private Limited (supra)*** that, the eye continues to remain the primary test, with regard to the degree of resemblance between the marks, in an action for passing off, the respondent as the plaintiff has been able to satisfy the same.

68. Having examined the two boxes placed before us of the two products, we have no material before us to disagree with the view taken by the learned Single Judge that, the shade of red used by the appellant is the exact same shade of red used by the respondent.

69. The ratio laid down in ***Kaviraj Pandit Durga Dutt Sharma (supra)*** that, matters added may sufficiently distinguish the two products, is not attracted in the facts and circumstances of the present case. The so-called added matters are not sufficient to distinguish between the two products. The added matters have similarities which are deceptively close to the matter used by the respondent. Elito

and Exide are both 5 letter words. Both have shattered O



at the end. Both are in white with the red background.

There is hardly any material of any distinction in the trade dress of the appellant to qualify as distinguishing the product of the appellant from that of the respondent. Rather, the efforts are such that, appellant has consciously tried to copy and to come as close as possible to the pre-existing trade dress of the respondent as compared to that of the appellant.

70. High Courts have protected user of a colour when it has found that its user was over a period of time leading to such colour assuming distinction vis a vis the user and worked as a source identifier. In this regard reference can be made to the authorities relied on by the respondent, namely, ***Sapat International Private Limited (supra)***, and ***Sanjay Soya 16 Private Limited (supra)***. Such is the position abroad as in ***Qualitex Co. (supra)*** and ***Owens-Corning Fiberglas Corporation***.

71. ***Bachhaj Nahar (supra)*** has considered the issue of grant of relief by a second appeal Court, in a suit. It has observed that, in a civil suit, relief can be granted only with reference to the prayers made in the pleadings. Moreover, in

civil suit, grant of relief is circumscribed by various factors like court fees, limitation, parties to the suit, as also grant of relief like *res judicata*, estoppel, acquiescence non-joinder of cause of action of parties etc. which require pleadings and proof. It has cautioned against grant of relief *de hors* the pleadings and evidence in the suit.

72. In the facts the circumstances of the present case, although, the prayers in the injunction petition are such that just criticism of the same not being happily drafted is available. Nonetheless, the prayers as it stand today do not oust the jurisdiction of the Court to grant a relief with regard to passing off or infringement.

73. Learned Single Judge has taken pains to evaluate the entire materials placed on record while, exercising discretion in granting the interim relief in the favour of the respondent. The respondent as the plaintiff has made out *prima facie* case to go to trial, the balance of convenience and inconvenience lies in favour of the respondent in granting relief as prayed for, and the respondent is likely to suffer injury by non-grant of the interim relief as granted.

74. In view of the discussions above, we find no ground to interfere with the impugned judgment and order.

75. TEMPAPO-IPD/7/2025 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

76. I agree.

[MD. SHABBAR RASHIDI, J.]