

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 9324 OF 2025**

IN

COMMERCIAL IP SUIT NO. 378 OF 2021

ALONG WITH

NOTICE OF MOTION NO. 1269 OF 2016

IN

IN COMMERCIAL IP SUIT NO. 378 OF 2021

Dr. Ashok M. Bhat

... Applicant/Org. Plaintiff

In the matter between:

Dr. Ashok M. Bhat

... Plaintiff

Versus

Harichand Nagpal & Ors.

... Defendants/Respondents

Mr. Hiren Kamod a/w. Ms. Rashi Thakur and Mr. Siddhant Gupta i/b. Vinod A.
Bhagat for the Applicant.

Mr. Alankar Kirpekar i/b. Jaya Manghwani for Respondent No. 1

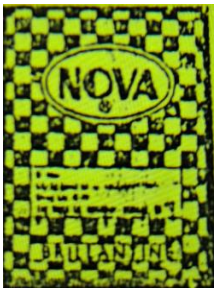
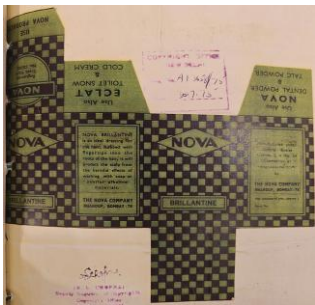
CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 7th MAY 2026

PRONOUNCED ON : 13th JULY 2026

ORDER:

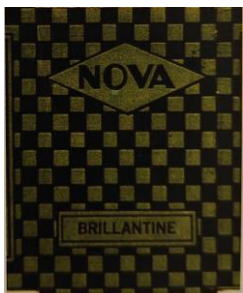
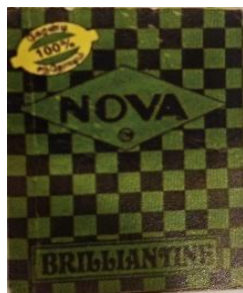
1. At the outset, since both the captioned Notice of Motion No. 1269 of 2016 and Interim Application (L) No. 9324 of 2025 are both filed under the provisions of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, and allege the willful breach and disobedience of the Order dated 24th November 2010, both applications were heard together and are being disposed of by this common order. The parties in this order shall be referred to as they are arrayed in Interim Application (L) No. 9324 of 2025.
2. The short question which arise for determination in the present Interim Application is whether Respondent No. 1, having been injuncted from using the trade mark '**NOVA**' which is the Applicant's registered mark and the artistic work as set out in Table '**A**' below, could have used the trade mark '**NOVA MINI**' and the artistic work depicted in the label which is set out in Table '**B**' below viz.

Table A		Table B	
Trade Mark	Applicant's registered artistic work	Trade Mark	Impugned Label
NOVA	 		

The facts, briefly stated:

- It is not in dispute that the Applicant, i.e., the Plaintiff in the captioned Suit, is the registered proprietor of the trade mark 'NOVA' and the artistic work as set out in table 'A' above. It is also not in dispute that the Applicant's trade mark and artistic work are used for the manufacture and sale of a brilliantine hair cream.

4. It is the Applicant's case that in 2007, the Applicant discovered that Respondent No. 1, who is the sole proprietor of M/s Ravi Industries, was selling counterfeit products of the Applicant's brilliantine hair cream using the counterfeit label set out in Table 'C' alongside the Applicant's 'NOVA' label viz.

Table C	
Applicant's Label	Counterfeit label
	

The Applicant, therefore, filed the captioned Suit for infringement and passing off, impugning the use by Respondent No. 1 and 2 of the trade mark 'NOVA' and the Applicant's registered artistic work.

5. The Applicant took out Notice of Motion (L) No. 323 of 2008 in the captioned Suit in which the Applicant sought the following interim reliefs,

viz.

“(a) that pending the hearing and final disposal of the suit, the defendants by themselves, their proprietor/partners, their servants, assignees, transferees and all those connected with them be restrained by an order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to its cosmetic goods including brillantine cream and other like goods the impugned counterfeit trade mark NOVA or any trade mark deceptively similar thereto being identical to the plaintiff's trade mark NOVA so as to infringe upon the plaintiff's said trade mark registered under Nos. 126501, 126502, 1070856 and 1070857 all in class 03;

(b) that the pending the hearing and final disposal of the suit, the defendants by themselves, their proprietor/partners, their servants, assignees, transferees and all those connected with them be restrained by an order and injunction of this Hon'ble Court from in any manner from in any manner manufacturing, marketing, selling and/or using in relation to its cosmetic goods including brillantine cream and other like goods the impugned counterfeit trade mark NOVA or any trade mark deceptively similar thereto being identical to the plaintiff's distinctive and reputed trade mark NOVA so as to pass off their goods and business or enable others to pass off the defendant's business and goods as and for those of the plaintiff or in some way connected therewith;

(c) that pending the hearing and final disposal of the suit, the defendants by themselves, their proprietor/partners, their servants, assignees, transferees and all those connected with them be restrained by an order and injunction of this Hon'ble Court from in any manner manufacturing,

marketing, selling and/or using in relation to their cosmetic goods including brilliantine cream and other like goods the impugned carton and label of NOVA bearing a colour scheme, font of writing, lay-out, get-up, artwork, style and representation which is identical with and/or is substantially similar to the colour scheme, font of writing, lay-out, get-up, artwork, style and representation of the plaintiff's original artistic carton and label of NOVA so as to infringe upon the plaintiff's copyright registered under Nos. A-13658/75 and A-13659/75 dated 30.07.1975."

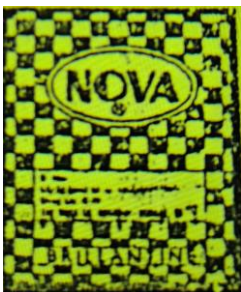
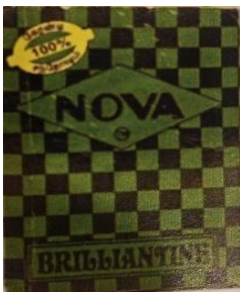
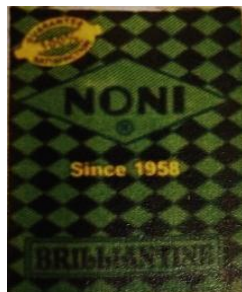
(emphasis supplied)

This Court, by an order dated 24th November 2010 (“**order of injunction**”), granted the Applicant, interim relief in terms of prayer clauses ‘(a)’ to ‘(c)’ of the said Notice of Motion.

6. Hence, by virtue of the order of injunction, it is clear beyond the pale of doubt that the Respondent No. 1 and 2 were restrained not only from using the ‘NOVA’ mark or any trade mark deceptively similar thereto but also from using “the plaintiff's original artistic carton and label of NOVA so as to infringe upon the plaintiff's copyright registered under Nos. A-13658/75 and A-13659/75 dated 30.07.1975.”

7. It is the Applicant’s case that in December 2013, the Applicant became aware that Respondent No. 1 was using the mark ‘NONI’ for the sale of

brilliantine hair cream along with artistic work on the label, which was not only virtually identical to the counterfeit label but also the Applicant's registered artistic work. The 'NONI' label, along with the Applicant's registered artistic work and the counterfeit 'NOVA' label, are set out in Table 'D' below for ease of reference, viz.

Table D		
Applicant's registered artistic work	Counterfeit label	'NONI' Label
		

8. It was thus that the Applicant took out Notice of Motion No. 1269 of 2016 under the provisions of Order XXXIX Rule 2A of the Civil Procedure Code, 1908 (“**the First Contempt Application**”) against Respondent No. 1 and for disobedience and breach of the order of injunction, and the same

is pending before this Court. Though Respondent No. 2 is also a party to this Notice of Motion, there is no specific allegation of contempt against Respondent No. 2.

9. Thereafter, in February 2025, when the Court Receiver was executing an Order passed in another Suit filed against Respondent No. 1, the Court Receiver came across goods bearing the mark ‘**NOVA MINI**’ as well as the ‘**NONI**’ label at the premises of Respondent No. 1. Crucially, the Report of the Court Receiver records that Respondent No. 3, i.e., Mr. Kamlesh Nagpal, who is the son of Respondent No. 1, introduced himself as the proprietor of M/s. Ravi Industries. It was thus that the Applicant filed Interim Application (L) No. 9324 of 2025 (“**the Second Contempt Application**”) under the provisions of Order XXXIX Rule 2A of the Civil Procedure Code, 1908 (“**CPC**”), in which the Applicant also joined Mr. Kamlesh Nagpal as Respondent No. 3. Thus, Respondents Nos. 1 and 3 shall be jointly referred to as the Respondents.

10. The Applicant has in the Second Contempt Application sought the following reliefs, viz.

“(a) this Hon’ble Court be pleased to pass an order holding that the Respondent Nos. 1 and 3 are guilty of having committed contempt of this Hon’ble Court by willfully, deliberately, knowingly and contemptuously disobeying the order passed by this Hon’ble Court dated 24.11.2010, as per the charge based on documents annexed and more particularly set out in para 15 hereinabove, by continuing to use the impugned mark NOVA mini and the impugned label mark NONI depicted under a pirated artwork in relation to their brilliantine hair and skin cream, cosmetic goods and any like preparations being in gross and contumacious breach and violation of the orders passed by this Hon’ble Court;

(b) the Respondent Nos. 1 and 3 by themselves, their proprietor, legal heirs, servants, agents, assignees, stockists, distributors, their representatives and all other persons claiming under or through them be directed to comply with the said order dated 24.11.2010 passed by this Hon’ble Court by stopping their use of:

(i) the impugned trade mark NOVA mini / NOVA and / or any other trade mark which is identical with and / or deceptively similar to the Applicant’s trade mark NOVA in respect of goods same/similar/allied/ complimentary to the goods covered by the Applicant’s NOVA trade mark registrations; and

(ii) the impugned label / artwork bearing the mark NONI as shown at Exhibit C to the present Interim Application and / or any other label which is a reproduction / substantial reproduction of and / or deceptively similar to the Applicant’s NOVA label mark / artwork as shown at Exhibit D to the present Interim Application;

(c) the Respondent Nos. 1 and 3 and such other person/s in charge of the day-to-day business/affairs of Respondent No. 1, be punished with simple imprisonment for the maximum period as prescribed by law or for such other period as this Hon’ble Court may deem appropriate and the said Respondents and such other persons in charge of Respondent No. 1’s day-to-day business/affairs, be punished with an appropriate fine as this Hon’ble Court

may deem appropriate or otherwise be appropriately dealt with in such manner as this Hon'ble Court may deem it proper in the circumstances of the case;

(d) the Respondent Nos. 1 and 3 be required to disclose all their properties, assets and such properties be ordered to be attached due to the disobedience and breach of the said order dated 24.11.2010 passed by this Hon'ble Court;

(e) Strike off the entire defense of the Respondent No. 1/Original Defendant No. 1 in the Suit;

(f) pending the hearing and final disposal of the present Interim Application, the Respondents by themselves, their proprietor, servants, agents, assignees, stockists, distributors, their representatives and all other persons claiming under them be directed to comply with the said order dated 24.11.2010 passed by this Hon'ble Court by stopping their use of:

(i) the impugned trade mark NOVA mini / NOVA and / or any other trade mark which is identical with and/or deceptively similar to the Applicant's trade mark NOVA in respect of goods same/similar/allied/complimentary to the goods covered by the Applicant's NOVA trade mark registrations; and

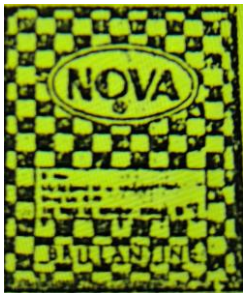
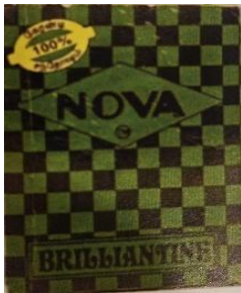
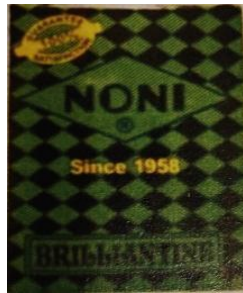
(ii) the impugned label/artwork bearing the mark NONI as shown at Exhibit C to the present Interim Application and / or any other label which is a reproduction / substantial reproduction of and / or deceptively similar to the Applicant's NOVA label mark / artwork as shown at Exhibit D to the present Interim Application;"

Submissions on behalf of the Applicant:

11.Mr. Kamod, Learned Counsel appearing on behalf of the Applicant at the outset, submitted that the limited scope of the inquiry by this Court in the

present Interim Applications was to only determine whether Respondents, by using the '**NONI**' label and '**NOVA MINI**' mark, have acted in disobedience and breach of the order of injunction and nothing more.

12.He submitted that a plain reading of the prayer clauses '**(a)**' to '**(c)**' of Notice of Motion No. 323 of 2008 left no manner of doubt that Respondent No. 1 was specifically restrained from using not only the '**NOVA**' mark or any other deceptively similar mark but was also restrained from using the Applicant's registered artistic work, which was registered under Nos A-13658/75 and A-13659/75. He therefore submitted that all that had to be done was to compare the '**NONI**' label with the Applicant's registered artistic work and the counterfeit label viz.

Applicant's Registered Artistic Work	Counterfeit Label	'NONI' Label
		

From the above, Mr. Kamod submitted that there could be no manner of doubt that the '**NONI**' label was not only deceptively similar to the counterfeit label but was also virtually identical to the Applicant's registered artistic work, which Respondent No. 1 had been specifically enjoined from using. He thus submitted that by using the Applicant's registered artistic work on the '**NONI**' label, Respondent No. 1 had plainly disobeyed and breached the order of injunction.

13. Mr. Kamod submitted that the entire defence of Respondent No. 1 in the present contempt proceedings continued as if Respondent No. 1 were replying to, or defending, an application for the grant of interim relief under

the provisions of Order XXXIX Rules 1 and 2 of the CPC and not an Application for breach of an order of injunction. He submitted that it was well settled that, in contempt proceedings, the only question which arises for determination is whether the party against whom contempt is alleged has committed a wilful breach of the order of which contempt is alleged and nothing more.

14.Mr. Kamod submitted that, as long as the order of which contempt is alleged remains operational, i.e., has not been vacated or modified, it must be obeyed. He submitted that it is well settled that a party against whom contempt is alleged cannot take the defence of justification to explain any breach. He submitted that even if the legality of the order, which was the basis for the alleged contempt, was in question, it was wholly irrelevant to defend against an action of contempt as long as the order remained in force. In support of his contention, he placed reliance upon the decision of the Delhi High Court in the case of *M/s. Indo-Kenyan Industrial Enterprises*

v. Metal Forgings (P) Ltd.¹ in particular, paragraph 33 thereof, which read thus:

“33. As for the contention of the respondents that the original compromise as also the order of the Court based upon it is vitiated and rendered illegal on account of suppression of factum of partnership by the petitioner, suffice it to say, that it is totally irrelevant so far contempt proceedings are concerned. It is open to the respondents to challenge the original order on this ground and seek appropriate relief from the concerned court, if so, advised. Surely this Court cannot go into this question and cannot ignore the fact of the respondents committing breach of the undertaking given to the Court. As observed by Tek Chand, J. in Narain Singh v. S. Hardayal Singh Jarika, AIR 1958 Punjab 180 : 1958 Cri LJ 970

“So long as the injunction order has not been vacated or modified by the Court granting it, or has not been reversed on appeal, no matter how unreasonable and unjust the injunction may be, the order must be obeyed. Violation of the order of injunction cannot be excused on the ground that though the Court acted within its jurisdiction but the order that it passed was erroneous.

The order granting injunction might have been erroneous, or granted improvidently, or obtained irregularly, that will not excuse the person violating it. The only questions open for consideration in proceedings for contempt for violating an injunction are, whether the Court had jurisdiction to award the injunction, and whether it had in fact been violated. Further, inquiry as to its advisability or legality is not called for. The Court, in contempt proceedings, will not inquire into the merits of the case in which the injunction was issued.

¹ 1986 SCC OnLine Del 136.

That is the function of the Court granting the injunction and if that order is challenged in appeal, then of the Court of appeal. If the question has been determined wrongly by the trial Court, it can be re-examined only on appeal. So long as the Court has an authority to determine the issue, its order has to be obeyed, no matter how clearly it may be erroneous.”

(emphasis supplied)

15. Mr. Kamod then submitted that the contention of Respondent No. 1 that the order of injunction did not cover the ‘**NONI**’ label and was confined only to the mark ‘**NOVA**’ was not only factually incorrect but was also patently dishonest. He submitted that, in order to demonstrate the dishonesty on the part of Respondents, it was necessary to first examine the facts leading to the institution of the present Suit which would clearly establish that Respondents were, at all material times, fully aware that the order of injunction squarely applied to the ‘**NONI**’ label as well. He then invited my attention to the Plaint and took pains to point out that the Applicant had, specifically, pleaded *inter alia* in paragraphs 11 and 12 therein that the Applicant, though aware of the trade mark registration No. 235004 in Class 3 for the mark ‘**NONI**’, had not come across actual use of

the mark in the market, and it was thus that the Applicant had not sought a specific prayer to restrain the Respondents from using the '**NONI**' mark.

16.He, however, took pains to point out that prayer clause '(c)' of the Notice of Motion specifically sought an injunction to restrain Respondent No. 1 from using the Applicant's registered artistic work, which clearly appeared on both the counterfeit label and the '**NONI**' label. He submitted that the order of injunction, having been passed in terms of prayer clauses '**(a)**' to '**(c)**', therefore plainly covered the '**NONI**' label, since Respondent No. 1 had, on the '**NONI**' label, plainly used the Applicant's registered artistic work.

17.He then submitted that the Applicant had, in the Complaint, made it abundantly clear that the use of the Applicant's registered artistic work, as shown on the counterfeit label, formed a substantial part of the cause of action for the filing of the present Suit. He pointed out that this Court had taken judicial notice of the fact that there was a difference between coming across a trade mark on the Register of Trade Marks and coming across actual use of the trade mark in the market. He also submitted that it was well settled that the

registration of a mark does not, by itself, predicate an intention to use such mark. In support of his contention, he placed reliance upon the decisions of this Court in the case of *Skol Breweries Limited v. Jagpin Breweries Limited*²; and *Sun Pharmaceutical Industries Ltd. v. Emcure Pharmaceuticals Ltd.*³ which he pointed out inter alia held that knowledge of adoption of a mark and knowledge of the actual use of a mark are distinct from each other, since there could be adoption without actual use.

18. Mr. Kamod, thus, submitted that in the absence of any evidence of actual use by Respondent No. 1 of the ‘**NONI**’ mark, there was no occasion for the Applicant to seek a specific injunction restraining Respondent No. 1 from using the ‘**NONI**’ mark. He submitted that the Applicant had taken the necessary steps to expunge/cancel the registration of the ‘**NONI**’ mark, bearing the registered No. 235004, for which purpose the Applicant had filed a rectification application before the Intellectual Property Appellate Board (“**IPAB**”).

² Order dated 7th February 2012 in Notice of Motion No. 92 of 2012 in Suit No. 56 of 2012 passed by Bombay High Court.

³ 2012 SCC OnLine Bom 24.

19. He then submitted that the IPAB, vide its order dated 4th May 2012, while acknowledging that the rival marks and colour get-up were almost the same, had dismissed the Applicant's rectification application solely on the basis that '**NONI**' had been on record for a long time. He pointed out that the decision of the IPAB was challenged by the Applicant in Writ Petition No. 8419 of 2012, which was pending before this Court. Mr. Kamod, however, submitted that the IPAB order was wholly irrelevant since, subsequent to that, this Court had passed the order of injunction restraining Respondent No. 1 from using the Applicant's registered artistic work which was virtually identical and/or deceptively similar to the '**NONI**' label.

20. He then took pains to point out that Respondent No. 1 had, in the Written Statement, consistently referred to the '**NONI**' label to defend the use of the counterfeit '**NOVA**' label and that the entire defence of Respondent No. 1 to resist the order of injunction was predicated on Respondent No. 1's alleged use of the '**NONI**' label. He submitted that Respondent No. 1 had claimed to have been using the Applicant's registered artistic work in

respect of both the labels, i.e., ‘NOVA’ and ‘NONI’, since the year 1958, as more particularly set out in the Written Statement⁴. He therefore submitted that, from a plain reading of the Written Statement, it was apparent that Respondent No. 1 understood the case exactly as the Applicant was now stating it in the present Interim Application, i.e., the order of injunction clearly restrained the use of the Applicant’s registered artistic work on the ‘NONI’ label.

21. Mr. Kamod then invited my attention to the order of injunction to point out that the same was passed after considering all the contentions raised by Respondent No. 1 in the Affidavit in Reply/Written Statement, including Respondent No. 1’s claim of alleged user in respect of the ‘NONI’ label. He submitted that it was only after these claims were considered and rejected that this Court had proceeded to pass the order of injunction restraining Respondent No. 1 from, *inter alia*, using the counterfeit label

⁴ Paragraphs 3, 15, 17 and 21 of the Written Statement filed by Respondent No. 1.

and from using the Applicant's registered artistic work which was used on the '**NONI**' label.

22. Mr. Kamod was therefore at pains to point out that the defences now taken by Respondent No. 1 had been considered during the course of the hearing of Notice of Motion No. 323 of 2008 and before passing the order of injunction. He further submitted that there could be no manner of doubt that the order of injunction operated against Respondent No. 1's use of the '**NONI**' label, since, even according to Respondent No. 1, the same artistic work had been used by Respondent No. 1 in respect of the '**NONI**' label since the year 1958.

23. He then submitted that it was only as a counterblast to the First Contempt Application that Respondent No. 1 filed Notice of Motion (L) No. 67 of 2014 in Appeal (L) No. 619 of 2011, seeking a clarification/modification of the order of injunction to the extent of exempting the mark '**NONI**'. He pointed out that in the Affidavit filed in support of the Notice of Motion, Respondent No. 1 had specifically stated that in the absence of a clarification, Respondent No. 1 would be held in contempt of the order of

injunction. He thus submitted that there could be no manner of doubt that Respondent No. 1 was conscious and aware that the order of injunction restrained Respondent No. 1 from using the artistic work used on both labels, i.e., ‘**NONI**’ and ‘**NOVA**’.

24. He then pointed out that the Division Bench of this Court had, vide an order dated 16th January 2014, disposed of the Appeal (L) No. 619 of 2011, *inter alia*, by recording as follows:

“4. The appellant's mark is a label mark comprising inter alia of the word mark and device which includes the artistic work.

5. It is not necessary for us to consider the appellant's contention qua the mark NONI and whether he has committed a breach copyright by using the cartons in which his products are sold under the mark NONI. Whether the same are deceptively similar and infringe the Respondent's copyright, and are therefore, in violation of the impugned order, are issues which the learned single Judge hearing the application under Order XXXIX Rule 24 of the Code, must decide. It is not necessary for the appellate court to decide whether the marks which were not the basis of the suit, also infringe the Plaintiffs mark.

6. The appeal is therefore dismissed with the above clarification. The Notice of motion is, accordingly disposed of.”

Basis the above, he submitted that it was evident that the ‘**NONI**’ label includes the Applicant’s registered artistic work, which was the subject

matter of the First Contempt Application. He also took pains to point out that the Appellate Court had refused to clarify that the order of injunction did not apply to the '**NONI**' label.

25. In the aforesaid facts, Mr. Kamod submitted that it was evident that Respondents were always aware and conscious of the fact that the order of injunction applied equally to the artistic work used in the '**NONI**' label. He submitted that, despite this, the Respondents brazenly continued to use the said artistic work on the '**NONI**' label and were therefore acting in clear breach and disobedience of the order of injunction. He reiterated that Respondent No. 1's contention that the injunction order did not apply to the '**NONI**' label was plainly dishonest and an afterthought.

26. Mr. Kamod then submitted that the dishonesty of Respondents was also plainly evident from the fact that Respondent No. 1 had, in the Affidavit in Reply, suppressed the stand taken in the Appeal proceedings and that Respondent No. 3 had not even chosen to file any Reply much less deny the allegations of contempt against him. He submitted that had it not been for the Applicant pointing out the fact that Respondent No. 1 had, in the

Appeal proceedings, specifically sought exemption of the '**NONI**' mark from the effect of the order of injunction, that would have gone completely unnoticed. He also pointed out that Respondents had failed to provide any justification for continuing to use the '**NONI**' label, despite being well aware that the order of injunction applied to it.

27. Without prejudice to the above, he submitted that even assuming, while denying, that the order of injunction did not specifically refer to the '**NONI**' label, the order of injunction nonetheless clearly restrained the Respondents from using Applicant's registered artistic work, and therefore not only was Respondent No. 1 restrained from using the Applicant's registered artistic work but also from using any artistic work which was similar to the Applicant's registered artistic work. He then invoked the 'Safe Distance Rule' to point out that once a party infringes on another's trade mark or trade dress, the confusion sown is not magically remedied by *de minimis* fixes, and such a party is required to maintain a 'safe distance' from the mark or the artistic work to which the injunction pertains. In support of his contention, he placed reliance upon the decision in the case

of *Pidilite Industries Ltd. v. Raghunath Chemicals & Ors.*⁵; and *Aventisub LLC and Another v. Healing Pharma India Pvt. Ltd. and ors.*⁶.

28. Mr. Kamod submitted that Respondent No. 1's contention that the mark 'NOVA MINI' was mistakenly used by an employee of Ravi Industries, which is a proprietary concern of Respondent No. 1, was as preposterous as it was untenable. He submitted that Respondents were evidently a habitual infringer who had no qualms about violating the law and had no regard for the Orders passed by this Court. He submitted that a bare perusal of the present Interim Application (L) No. 9324 of 2025, along with the documents at Exhibits "D" and "E" to the Interim Application demonstrated the manner in which Respondents had been systematically manufacturing and selling the infringing products, which violate the intellectual property rights of not only the Applicant but also those of other third parties. He submitted that the contention of Respondent No. 1, namely

⁵ Order dated 30th June 2023 in Contempt Petition (L) No. 30589 of 2021 in Suit No. 729 of 2015 passed by Bombay High Court.

⁶ Order dated 3rd February 2025 in Contempt Petition (L) No. 21571 of 2022 in Commercial IP Suit No. 139 of 2021 passed by Bombay High Court.

that a new employee unilaterally decided to open a box containing labels bearing the mark 'NOVA' and then proceeded to affix these labels to the cartons, as shown at Exhibit "D" to the present Interim Application, was hardly believable.

29. He submitted that the mala fides of Respondent No. 1 were also evident from the fact that Respondent No. 1 had, not only breached and disobeyed the order of injunction but had also made statements on oath which were *ex facie* false to the knowledge of Respondent No. 1. He thus submitted that it was plainly clear that the order of injunction passed by this Court had been deliberately, wilfully and craftily disobeyed by Respondent No. 1.

30. Mr. Kamod then submitted that the Suit being a Commercial Suit, is governed by the provisions of the Commercial Courts Act, 2015 ("**Commercial Courts Act**"), according to which this Court, under Section 35 of the CPC, as amended by the Commercial Courts Act, had the discretionary power to direct the Respondents to pay costs to the Applicant, including legal fees and any other expenses incurred in connection with the

proceedings. He pointed out that Section 35(3) of the Commercial Courts Act specifically stipulates that when granting costs, the Court shall have regard to, *inter alia*, the conduct of the parties.

31.Mr. Kamod submitted that the material placed on record by the Applicant, coupled with Respondents' own documents, makes unequivocally clear that Respondents had wilfully disobeyed and breached the order of injunction. He submitted that the conduct of Respondents shows that they have scant regard for the authority and dignity of this Court. He submitted that, notwithstanding their contumacious conduct, the Respondents had not even tendered an apology to this Court. He further submitted that the material on record also established that Respondents had been economical with the truth in their pleadings and affidavits before this Court and could therefore claim no equities.

32.Mr. Kamod further submitted that from the incomplete statement produced by the Respondent No. 1 during the hearing held on 7th May 2026, it is evident, even on Respondent No. 1's own showing, that Respondent No. 1

had sold the impugned products, amounting to approximately Rs. 83.46 lakhs during the past seven years, i.e., from 2019 onwards. He submitted that when this admitted figure is viewed in the context of the order of injunction and the fact that the Respondents had continued to use the artistic work deceptively similar to the Applicant's registered artistic work despite the injunction, it necessarily follows that the Respondents must have effected sales worth several crores over the last seventeen years in deliberate and conscious violation of this Court's order. He submitted that the quantum of sales made in breach of an injunction is a relevant and significant factor to be considered by this Court in adjudicating an application under Order XXXIX Rule 2A of the CPC. In support of this contention, he placed reliance upon the decision in *Pfizer Inc. & Ors. v. Triveni Interchem Private Limited & Ors.*⁷.

33.Mr. Kamod then submitted that it was an admitted position that Respondents had continued to use the artistic work identical to the

⁷ 2023 SCC OnLine Del 363.

Applicant's registered artistic work for all these years despite having been restrained by the order of injunction from doing so. He submitted that apart from constituting a clear breach and disobedience of the injunction Order, such continued use of both the counterfeit mark and the Applicant's registered artistic work has caused serious loss and irreparable injury to the goodwill, reputation and distinctiveness associated with the Applicant's registered artistic work, in which the Applicant enjoys statutory as well as common law rights.

34. He further submitted that the Applicant had incurred expenses of approximately Rs. 32,42,868/- in prosecuting the present proceedings. He, therefore, submitted that the present case was eminently fit for this Court to exercise powers under Section 35 of the CPC, as amended by the Commercial Courts Act, as well as under Section 151 of the CPC, and to direct the Respondents to disclose on oath the complete accounts of sales of the infringing goods bearing the artistic work deceptively similar to the Applicant's registered artistic work and to thereafter award appropriate compensatory and punitive costs to the Applicant.

35.Mr. Kamod further submitted that apart from the statutory regime relating to costs under the Commercial Courts Act, this Court also possesses inherent powers under Section 151 of the CPC to impose exemplary costs in appropriate cases. He submitted that the Court should exercise such powers in the present case, as Respondents had acted contumaciously, deliberately violated the orders of this Court, and sought to mislead the Court by filing false pleadings and affidavits. He submitted that it was also a well-settled principle of law that in cases involving mala fides and contumacious conduct, the Court ought to exercise its inherent jurisdiction to impose exemplary costs in order to discourage parties from attempting to play a fraud upon the Court.

36.He therefore concluded by submitting that from the record it was evident that Respondents had, despite knowing fully well that the order of injunction covered even the use of the Applicant's registered artistic work, wilfully used the Applicant's registered artistic work on the 'NONI' label and continued to use both the 'NONI' label and the 'NOVA' mark. He submitted that the conduct of the Respondents was mala fide and dishonest

and that the Respondents had made substantial sales of the brilliantine hair cream for the last 16 years in the teeth of the order of injunction. He thus submitted that the Applicant had made out a clear case for this Court to exercise its powers and discretion under Order XXXIX Rule 2A read with Section 35 of the CPC as amended by Commercial Courts Act and Section 151 of the CPC and to grant relief under prayer clauses ‘(a)’ to ‘(e)’ of the present Interim Application, along with exemplary costs.

37.Mr. Kamod then pointed out that by the email dated 11th April 2026, Respondent No. 1 had undertaken to abstain from using the green colour, the diamond device and the geometric design on the ‘**NONI**’ label, and such undertaking was specifically recorded by this Court on 15th April 2026. He also pointed out that this Court had, vide the Order dated 15th April 2026, directed Respondent No. 1 to place on record, by way of an affidavit, the chartered accountant-certified sales figures from 2009 till date in respect of the impugned ‘**NONI**’ products. However, on 6th May 2026, instead of complying with the specific directions of this Court, Respondent No. 1 had merely produced a purported statement of sales

figures only from financial years 2019-20 till 2025-26; and that too, not on affidavit. He submitted that only on 7th May 2026, Respondent No. 1 placed on record an affidavit containing alleged sales figures only from 2019-20 till 2025-26 with a frivolous justification that Respondent No. 1 does not maintain accounts for more than the past seven years.

38.Mr. Kamod submitted that in the opposition proceedings relating to Respondent No. 1's application No. 1247935 for registration of the label mark 'NOVA', Respondent No. 1 had placed on record the sales figures for the financial years 1993-94 till 2005-06, viz., for more than seven years. He submitted that the total sales disclosed therein amounted to approximately Rs. 1,31,67,485/- and that in the aforesaid facts and circumstances, Respondent No. 1's failure to fully disclose the sales figures, despite repeated opportunities and directions by this Court, was clearly deliberate, dishonest and mala fide, with the sole intent of concealing the same from this Court.

Submissions on behalf of the Respondent No. 1:

39. Mr. Kirpekar, learned Counsel appearing on behalf of the Respondent No.

1, at the outset submitted that the entire foundation of the Applicant's case was fundamentally misconceived. He submitted that the present proceedings, filed under the provisions of Order XXXIX Rule 2A of the CPC, proceeded on the erroneous assumption that the order of injunction extended to the '**NONI**' label, which was plainly misconceived. He submitted that a plain reading of the Complaint, the Notice of Motion, and the order of injunction made clear that the order of injunction was confined only to the impugned '**NOVA**' label, i.e., Exhibits "I" and "I-1" to the Complaint, and did not extend to Respondent No. 1's registered label mark '**NONI**', bearing Registration No. 235004 dated 29th April 1966.

40. Mr. Kirpekar, in the context of the above, submitted that the following questions would arise for determination in the present proceedings:

- i. Whether the Order of injunction is only in relation to the impugned label mark '**NOVA**' or it also covers the '**NONI**' label, which is specifically excluded from the Complaint?

- ii. Whether by using Respondent No. 1's registered mark of '**NONI**' under Trade Mark No. 235004 dated 29th April 1966, Respondent No. 1 is committing the act of wilful disobedience of the Order injunction?
- iii. Whether Applicant is entitled to claim that use of registered label mark '**NONI**' is infringement of Copyright, Trade Mark or passing off, having regard to specific provisions of Sections 28(3), 29 and 30(2)(e) of the Trade Marks Act, 1999?
- iv. Whether the Applicant is estopped from alleging that the use of the registered label mark '**NONI**' amounts to infringement, as order of IPAB dated 4th May 2012 is binding on the Applicant and also on this Hon'ble Court having regard to Section 124 (4) of the Trade Marks Act, 1999?
- v. Whether the rights under the Copyrights Act, 1957 are to be read *de hors* the Trade Marks Act, 1999, and binding Orders of IPAB, despite there being a clear intention of the legislature under Section 45 of the Copyright Act, 1957, to harmonise the two acts and grant registration of copyright only to those labels that receive "No Objection" from the Registrar of Trade Marks?

41.Mr. Kirpekar then submitted that it was an admitted position that the present Suit was instituted in respect of the label mark ‘**NOVA**’ and the products depicted at Exhibits “I” and “I-1” to the Complaint and not in respect of the ‘**NONI**’ label. He therefore submitted that the Applicant, while expressly acknowledging the existence of the ‘**NONI**’ registration, had consciously not sought any relief in respect of the ‘**NONI**’ mark. He submitted that the Applicant, having elected not to challenge the actual use of the ‘**NONI**’ mark, could not now seek to expand the scope of the injunction order and that too, in contempt proceedings.

42.Mr. Kirperkar, then also from paragraph 11 of the Complaint pointed out that the Applicant had specifically pleaded that although the Applicant had come across Registration No. 235004 for ‘**NONI**’, and because the Applicant was unable to locate products bearing the ‘**NONI**’ mark in the market, the Applicant had filed rectification proceedings before the IPAB. He submitted that this pleading was crucial since it demonstrated that the Applicant had consciously excluded the ‘**NONI**’ label from the scope of the Suit. He submitted that what was excluded from the Complaint could not be

covered by the order of injunction and could not form the basis of contempt proceedings.

43.Mr. Kirpekar submitted that the Applicant's assertion that the Applicant first became aware of use of the '**NONI**' label in November 2013 was also demonstrably false. He pointed out that Respondent No. 1's registration of '**NONI**' itself has claimed user since 1958 and that the same was registered on 29th April 1966 under Registration No. 235004 by the Trade Marks Registry. He also submitted that there were advertisements, invoices, manufacturing licences and other contemporaneous documents, all of which evidenced continuous use of the '**NONI**' label over several decades. He submitted that the invoices and licences produced by Respondent No. 1 showed use of the '**NONI**' label well before the institution of the Suit and even during the year 2008.

44.Mr. Kirpekar then submitted that the IPAB had, vide the Order dated 4th May 2012, dismissed the rectification application filed by the Applicant after considering the rival contentions and had expressly recognised that (i) the '**NONI**' label had been in existence and had been used over a long

period of time; (ii) both parties had concurrently traded in Maharashtra under their respective labels; and (iii) notwithstanding such prolonged concurrent use, there was no evidence of confusion or deception in the marketplace. He submitted that, having regard to these findings, the IPAB, in exercise of its discretion under Section 12 of the Trade Marks Act, 1999, had permitted Respondent No. 1's registration to remain on the Register as a special circumstance. He submitted that the said Order of the IPAB would continue to bind the parties and cannot be disregarded in the present collateral contempt proceedings.

45. Mr. Kirpekar, then in dealing with the order of injunction, submitted that prayer clause '(a)' was confined only to the infringement of the Applicant's registered trade mark '**NOVA**'. He submitted that the statutory scheme under Sections 28(3), 29 and 30(2)(e) of the Trade Marks Act, 1999, makes it abundantly clear that use by one registered proprietor of its own registered trade mark cannot ordinarily constitute infringement vis-à-vis another registered proprietor. He therefore submitted that since the '**NONI**' label enjoys a subsisting registration, Respondent No. 1 is entitled to the

protection afforded under Section 29 of the Trade Marks Act, 1999. He therefore submitted that any use of the '**NONI**' label cannot amount to contempt.

46. In dealing with prayer clause '**(b)**', Mr. Kirpekar submitted that the relief granted therein concerns passing off arising from use of the mark '**NOVA**' or any deceptively similar mark. He submitted that the prayer was in respect of the word mark and not to the artistic features or trade dress of the '**NONI**' label. He therefore submitted that the injunction granted in terms of prayer clause '**(b)**' cannot be extended to a registered label which was never the subject matter of adjudication.

47. With regard to prayer clause '**(c)**', Mr. Kirpekar submitted that the injunction relates to the impugned carton and label of '**NOVA**' shown at Exhibits "I" and "I-1" to the Plaint. He submitted that the Division Bench of this Court had, by the Order dated 16th January 2014, confined its findings only to the counterfeit label and not the '**NONI**' label. He thus submitted that there was no finding anywhere in the order of injunction that the '**NONI**' label infringes the Applicant's copyright, nor was there any

adjudication that the use of the ‘**NONI**’ label constituted an infringement of the Applicant’s registered mark ‘**NOVA**’.

48.Mr. Kirpekar submitted that what the Applicant was now attempting to do was to read into the order of injunction something which was, in fact, never adjudicated upon and did not form a part of the order. He submitted that the ‘Safe Distance Rule’ cannot be invoked to bring within the sweep of an order of injunction a label or a mark which was specifically known to the Applicant and was consciously kept outside the scope of the Suit. He submitted that the ‘Safe Distance Rule’ applies to post-injunction modifications of an infringing mark and cannot be used to enlarge an injunction to cover an entirely separate registered label which was in the Applicant’s knowledge and had never been adjudicated upon.

49.Mr. Kirpekar further submitted that the Applicant’s own conduct demonstrated that the order of injunction did not operate against the ‘**NONI**’ label. In support of his contention, he invited my attention to the First Contempt Application filed by the Applicant to point out that the Applicant had sought to restrain Respondents from using the ‘**NONI**’ label.

He submitted that if, according to the Applicant, the order of injunction had already restrained the Respondents from using the ‘NONI’ label, there would have been no need for the Applicant to seek the same relief again. He submitted that the very fact that such reliefs were sought made it implicit that the order of injunction did not operate against the ‘NONI’ label. He submitted that the Applicant's conduct in now contending that the order of injunction applied to even the ‘NONI’ label clearly amounted to approbation and reprobation, which was legally impermissible.

50. Mr. Kirperkar then submitted that contempt jurisdiction is quasi-criminal in nature and therefore requires proof beyond reasonable doubt. In support of his contention, he placed reliance upon the decision in *N. Ramadas v. Inspector of Police v. Dr. C. A. Mohamed Abdul Huq*⁸. He submitted that where any order is consciously silent on a subject matter due to express exclusion in the Complaint, contempt cannot arise, and that silence or exclusion in an order cannot be converted into prohibition by interpretative expansion.

⁸ 2015 SCC OnLine Mad 14155.

51.Mr. Kirpekar reiterated that the order of injunction did not contain any express restraint against use of the ‘**NONI**’ label. He submitted that at the highest, the Applicant was attempting to tendentiously construe the order of injunction by contending that the same also operated against Respondent No. 1’s registered mark ‘**NONI**’ and that such an exercise was impermissible in contempt jurisdiction. He submitted that contempt proceedings were intended to enforce orders, not to expand or rewrite them.

52.Mr. Kirpekar then placed reliance upon the decision of the Hon’ble Supreme Court in the case of *State of Uttarakhand and Ors. v. Mandir Sri Laxman Sidh Maharaj*⁹ to submit that Courts can only grant reliefs that are based on the pleadings and that, since the ‘**NONI**’ label was consciously excluded from the Suit, the order of injunction could never have applied to the ‘**NONI**’ label. Consequently, the question of Respondents, having committed contempt of the order of injunction did not arise.

⁹ AIR 2017 SC 4472.

53. In dealing with the contention that the discovery of the products bearing the mark '**RAVI NOVA MINI**' also amounted to a breach of the order of injunction, he submitted that Respondent No. 1 had filed an Affidavit dated 17th April 2025, explaining that a recently appointed employee of Ravi Industries, the proprietary concern of Respondent No. 1, had mistakenly affixed the old printed labels bearing the mark '**NOVA MINI**' on the products. He also pointed out that the Applicant had not produced any evidence of actual sales of the products bearing the '**RAVI NOVA MINI**' mark in the marketplace. He thus submitted that the explanation furnished by Respondent No. 1 in the said Affidavit was clearly bona fide and sufficiently addressed the allegation of any deliberate disobedience by the Respondent of the order of injunction.

54. Mr. Kirpekar further submitted that Respondent No. 3, Mr. Kamlesh Nagpal, had been unnecessarily impleaded as a party to the present Interim Application. He submitted that Mr. Nagpal had no connection whatsoever with the business of Respondent No. 1 and pointed out that Mr. Nagpal neither manages nor controls the affairs of M/s. Ravi Industries nor has he

derived any benefit from the business activities of M/s. Ravi Industries. He then also pointed out there was no evidence establishing any nexus between Mr. Nagpal and the alleged acts of contempt complained of by the Applicant and reiterated that mere allegations were insufficient to sustain proceedings of a quasi-criminal nature.

55. Without prejudice to the above, Mr. Kirpekar submitted that if this Court were to nonetheless arrive at a *prima facie* conclusion that Respondent No. 1 had violated the order of injunction, Respondent No. 1 was willing to (i) stop use of the ‘**NONI**’ label unless permitted by this Court, (ii) change the label to a different label without any similarity to the ‘**NOVA**’ label, and (iii) pay an amount of Rupees 2 lakhs to the Tata Memorial Hospital to purge the contempt. He, however, clarified that the aforesaid submissions made by Respondent No. 1 were to settle the entire Suit.

56. Mr. Kirpekar concluded by submitting that Respondents had throughout acted on the bona fide understanding that the use of the ‘**NONI**’ label fell outside the scope of the order of injunction. He thus submitted that the Applicant had not made out any case of wilful or deliberate disobedience

of the order of injunction, and the Interim Applications therefore must be dismissed.

Submissions in Rejoinder:

57.Mr. Kamod reiterated that the Respondent No. 1 had only pleaded justification as a defence and nothing more and that none of the decisions upon which reliance was placed by Respondent No. 1 would assist in any manner since the same deal with interlocutory injunctions, validity of registrations or the requirement of pleadings. He submitted that none of those decisions would apply to the present proceedings, namely, Interim Application (L) No. 9324 of 2025 and Notice of Motion No. 1269 of 2016, which were filed under Order XXXIX Rule 2A. He also submitted that in the facts of the present case, the principle of extending the benefit of the doubt to Respondents would not apply, as Respondents were fully aware that the order of injunction applied to the artistic work on the ‘**NONI**’ label, and hence, such conduct allows for only one conclusion. He thus submitted

that the decision in the case of *N. Ramadas v. Dr. C.A. Mohamed Abdul Huq* would not apply.

58.Mr. Kamod submitted that Respondent No. 3, was impleaded as a party to the Interim Application since the Site Report annexed at Exhibit “E”, prepared by the Additional Receiver, had mentioned that upon arriving at the premises, Mr. Kamlesh Nagpal introduced himself as the proprietor of M/s. Ravi Industries and had therefore been properly impleaded. Mr. Kamod pointed out that Respondent No. 3 was the son of Respondent No. 1 and had not even chosen to file any Affidavit to oppose the present Interim Application much less deny the allegations of contempt which were made against him. He thus submitted that Respondent No. 3 had been properly impleaded, as he was actively assisting in and facilitating the breach of the order of injunction, as was clear from what had been recorded in the site report.

59.Mr. Kamod then further submitted that the decision of the Hon’ble Supreme Court in *State of Uttarakhand & Anr. v. Mandir Sri Laxman Sidh Maharaj* was also equally inapplicable since, unlike the facts in that

case, the Applicant in the present proceedings had not sought any relief beyond the scope of the pleadings. He submitted that the continued use of a deceptively similar mark and artistic work by Respondents, despite being specifically restrained from doing so by the Court, constituted a clear and deliberate act of contempt. He therefore urged the Court to take appropriate action against the Respondents for their wilful disobedience of the Court's order.

Reasons and Conclusions:

60. Having heard the learned counsel for the parties and having considered the rival contentions as also the case law upon which reliance is placed, I do not have the slightest hesitation in holding that Respondents have not only acted in breach of the Orders of this Court but have done so in a wilful, deliberate and calculated manner. The conduct of Respondents is as brazen as it is patently dishonest. It is clear that the Respondents are colluding to hoodwink this Court and defeat the Orders of injunction. I say so for the following reasons:

A. It is clear that Respondent No. 1 is a habitual counterfeiter who has scant regards for the orders passed by this Court. This is evident not only from the facts of the present case but also from the order dated 8th January 2025, passed against Respondent No. 1, in Commercial IP Suit No. 2107 of 2025, which found that Respondent No. 1 was also found to have manufactured and sold counterfeit products of “VASELINE”. Crucially, Respondent No. 1 has not even denied this in the Affidavit in Reply. Respondent No. 3 is admittedly the son of Respondent No. 1 and has specifically represented to the Receiver that he is the sole proprietor of Ravi Industries. What is indeed most crucial to note is that Respondent No. 3 has not even denied the allegations of breach and disobedience of the order of injunction. Respondent No. 3 is therefore plainly firing from the shoulders of his ninety-year-old father and is clearly complicit in the breach of the order of injunction.

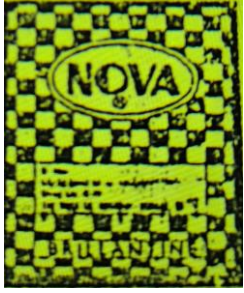
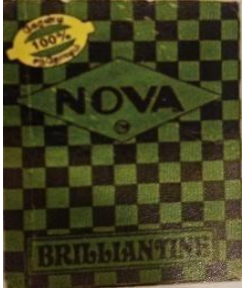
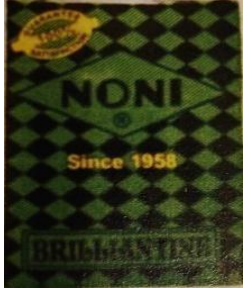
B. It is well settled, and as held in the case of *M/s. Indo-Kenyan Industrial Enterprises v. Metal Forgings (P) Ltd.*, the scope of an

enquiry in an application under the provisions of Order XXXIX Rule 2A of the CPC is limited and confined solely to determining whether there has been any disobedience or breach of an order of injunction. Contentions regarding the correctness of the order of injunction, the merits of the rival claims in the Suit, or the ultimate rights of the parties are all matters which fall wholly outside the limited remit of proceedings under Order XXXIX Rule 2A of the CPC. Simply put, so long as an order of injunction remains in force, it is binding and must be obeyed. Accordingly, the only question that arises for determination in the present Application is whether Respondents have, by using the mark '**NOVA MINI**' and the Applicant's registered artistic work on the '**NONI**' label acted in breach of the order of injunction.

- C. Therefore, all that Respondents were required to do was to satisfy this Court that Respondents had neither used the trade mark '**NOVA**', nor the Applicant's registered artistic work or any label deceptively similar to the Applicant's registered artistic work after the order of

injunction was passed. However, Respondents have not even attempted to do so, and for good reason. All the contentions raised by Respondent No. 1 are in the nature of defences seeking to justify the use of the '**NONI**' label, which, as already noted, are impermissible in proceedings under Order XXXIX Rule 2A of the CPC.

D. In the aforesaid context, it is not in dispute that, by the order of injunction, Respondent No. 1 was specifically restrained from using the counterfeit label and the Applicant's registered artistic work. Despite this, Respondent No. 1 has, in the '**NONI**' label, admittedly used artistic work which is virtually identical to and/or deceptively similar to the Applicant's registered artistic work, as is evident from the following comparison viz.

Applicant's Registered Artistic Work	Counterfeit Label	'NONI' Label
		

From the above, it is clear that Respondents have adopted the same green colour scheme and a geometric design on the '**NONI**' label, which is virtually identical to the Applicant's registered artistic work and also the counterfeit label, both of which Respondents were restrained from using.

- E. It is not in dispute that Respondent No. 1 has neither challenged the order of injunction nor sought its vacation. Crucially, Respondent No. 1 specifically sought a clarification that the order of injunction did not extend to the '**NONI**' label, expressly on the ground that Respondent No. 1 had adopted and obtained registration of the mark '**NONI**' in the year 1958 and its livelihood would be adversely affected if the

injunction were made applicable to the '**NONI**' mark. The Division Bench, however, declined to grant the clarification sought. Thus, the order of injunction was never modified in any manner. It is, therefore, evident that Respondent No. 1 itself understood the injunction as extending to the artistic work used on the '**NONI**' label.

- F. Respondent No. 1's justification for using the '**NONI**' label, namely that the '**NONI**' label was not the subject matter of the Suit and that the IPAB had rejected the Applicant's rectification proceedings, is, in my view, a red herring since both these contentions are not only defences on the merits and pleas of justification but have also already been considered and rejected by this Court. In any event, and as already noted, such defences cannot constitute a valid justification for disobeying an order of injunction. Once the order of injunction was passed, the question of not obeying the same did not arise. The Order of the IPAB cannot be used as a shield to defeat an order of this Court.
- G. Also, the contention that the order of injunction did not apply to the '**NONI**' label is, in my view, as untenable as it is patently dishonest.

First, there can be no manner of doubt that the order of injunction extended to the Applicant's registered artistic work, which, as noted in paragraph (D) above, is virtually identical to the artistic work appearing on the 'NONI' label. Secondly, Respondent No. 1 itself has, in the Written Statement, referred to the impugned mark as the 'NONI' mark and has defended its use of the counterfeit label on the basis that it had adopted and used the 'NONI' mark since 1958. Thirdly, and most significantly, Respondents were fully conscious that the order of injunction extended to the 'NONI' label, as is evident from the fact that it specifically sought a clarification from the Division Bench that the injunction did not apply to the 'NONI' mark. That clarification was expressly refused by the Division Bench of this Court by an order dated 16th January 2014 passed in the Appeal (L) No. 619 of 2011. Had the order of injunction not extended to the 'NONI' label, there would have been no occasion whatsoever to seek such clarification, but more so, because Respondent No. 1 was acutely aware of the fact that the order of injunction applied to the 'NONI'

label, Respondent No. 1 sought a clarification. In these admitted circumstances, there can be no doubt that the order of injunction applied to the '**NONI**' label and that Respondent No. 1 was fully aware of the same.

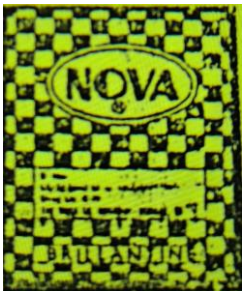
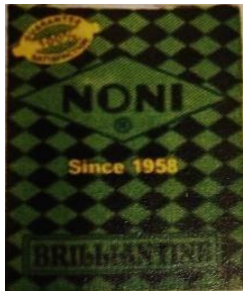
H. Therefore, in the context of what has been noted in paragraph (F) above, the contention that the Applicant had consciously excluded the '**NONI**' mark while seeking interim relief needs only to be stated to be rejected. The Plaint clearly explains why the '**NONI**' mark was not included in the prayer clauses. The Applicant's explanation that products bearing the '**NONI**' mark were not then available in the market is both plausible and consistent with the material on record. In this context, the Applicant's reliance on the decisions in *Skol Breweries Limited* and *Sun Pharmaceutical Industries Ltd.* is entirely apposite.

I. The decision in the *State of Uttarakhand & Ors. v. Mandir Sri Laxman Sidh Maharaj* does not assist Respondent No. 1. Equally, the decision in *N. Ramadas v. Dr. C.A. Mohamed Abdul Huq* would, in

my view, also have no application to the facts of the present case, since the suggestion that the order of injunction was capable of two possible interpretations is wholly untenable and stands belied by the very conduct of Respondents. Therefore, in my view, there can be no manner of doubt that Respondents have, in a deliberate, calculated and wilful manner, disobeyed and breached the order of injunction. The conduct of Respondents is not only dishonest but also plainly intended to undermine the authority of this Court. Such conduct cannot, and will not, be countenanced.

- J. Even otherwise, and assuming that the Applicant had not specifically impugned Respondent No. 1's use of the '**NONI**' label, once the order of injunction was passed, Respondent No. 1 could not have used or even continued to have used a label which was in any manner deceptively similar to the Applicant's registered artistic work, which Respondent No. 1 was specifically restrained from using by virtue of the order of injunction since Respondent No. 1 was required to maintain a 'safe distance' from the Applicant's registered artistic work

as held in the case of *Pidilite Industries Ltd. v. Raghunath Chemicals & Ors.* and *Aventisub LLC and Another v. Healing Pharma India Pvt. Ltd. and Ors.* Plainly, Respondent No. 1 has failed to do so, as is evident from the following comparison:

Applicant's Registered Artistic Work	'NONI' label
	

K. Further, having regard to the conduct of the Respondents as noted above, I am unable to accept the contention that the labels bearing the 'NOVA MINI' were printed by a former employee of Ravi Industries by mistake. Respondent No. 1 has admitted before this Court that products bearing the impugned mark and the Applicant's registered artistic work were sold from the year 2019 onwards to the extent of approximately Rs. 83.46 lakhs. Despite repeated opportunities,

Respondent No. 1 has failed to place on affidavit its sales figures for the financial years 2019-20 to 2025-26. In my view, this omission is deliberate and assumes significance, particularly because Respondent No. 1 had disclosed sales of Rs.1,31,67,485/- in relation to its use of the ‘NOVA’ mark before the Trade Marks Registry. The selective disclosure of material by Respondent No. 1 casts serious doubt on the true extent of the sales effected in breach of the order of injunction and appears to be an attempt to conceal the full extent of its sales of products bearing the ‘NONI’ label and the ‘NOVA MINI’ mark.

L. The Respondents have, therefore, acted with impunity in wilfully breaching and disobeying the order of injunction. Respondents have therefore knowingly violated the order of injunction and commercially exploited the Applicant’s goodwill and intellectual property while doing so. In this context, the Applicant’s reliance upon *Pfizer Inc. & Ors. v. Triveni Interchem Private Limited & Ors.*, which recognises that profits earned through acts committed in breach

of an injunction are relevant considerations in determining the consequences of contempt, is entirely apposite.

M. Also, the fact that Respondent No. 1 is the registered proprietor of the ‘**NONI**’ mark and that the Applicant’s rectification proceedings were dismissed is of no consequence. As already noted in paragraphs (E) and (G) above, once the order of injunction was passed, it was incumbent upon Respondents to obey the order in both letter and spirit. Respondents have plainly failed to do so. There can, therefore, be no gainsaying that the registration of the ‘**NONI**’ mark or label does not, *ipso facto*, entitle Respondents to act in wilful breach of an order of injunction which, by its plain terms and as understood by Respondent No. 1, extended to the ‘**NONI**’ label.

N. As already noted above, the Interim Application contains specific allegations against Respondent No. 3, i.e., Mr. Kamlesh Nagpal. However, Respondent No. 3 has never entered appearance in the present proceedings, nor has he filed any reply to the allegations made against him. In fact, Respondent No. 1 himself has stated in his Reply

that Respondent No. 3 assists him in conducting business. Also as already noted above Respondent No. 3 has held himself out to be the proprietor of M/s. Ravi Industries. This, coupled with Respondent No. 3's failure to enter appearance and defend the allegations against him, can leave no manner of doubt that Respondent No. 3 is complicit in the breach of the order of injunction.

O. Hence, for the aforesaid reasons, I answer the questions framed by Mr. Kirpekar as set out above in paragraph 40 above as follows. Questions (i), (ii) and (iii) are answered in the affirmative. Question (iv) is answered in the negative, as the Applicant is not estopped from taking action against the use of the '**NONI**' label in light of the subsisting order of injunction and given it contains the Applicants registered artistic work mark. Insofar as question (v) is concerned, there can be no doubt that the Copyright Act, 1957, and the Trade Marks Act, 1999, must be interpreted harmoniously. However, the issue of obtaining a 'no objection' under Section 45 of the Copyright Act, 1957, was never raised by Respondent No. 1 in the Affidavit in Reply but more

crucially, even assuming it had been, such contention would not be a relevant consideration or justification for breach of the order of injunction for the reasons already noted in (F) above. Hence, question (v) is answered accordingly.

62. Hence, for the reasons recorded above in (A) to (P), I pass the following

Order:

- i. The Interim Application is allowed in terms of prayer clauses (a), (b) and (d).
- ii. Though Respondent No. 1 has acted in wilful breach and disobedience of the order dated 24th November 2010, I am, for the present, not inclined to pass any order in terms of prayer clause (c), having regard to the age of Respondent No. 1.
- iii. The Applicant shall be entitled to legal costs of Rs. 32,42,868/- (Rupees Thirty-Two Lakhs Forty-Two Thousand Eight Hundred Sixty-Eight only) on details of the same being placed on record, by way of an Affidavit. The same shall be paid by the Respondent No. 1 within a period of four weeks from being furnished with the details on Affidavit.

- iv. In addition to the aforesaid legal costs and for the reasons set out above, given the conduct of Respondent No. 1 in particular and what has been set out in (A), (I) and (K) above, I find that this is a fit case for the grant of exemplary costs under the provisions of Section 35 as well as Section 151 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015. Hence, Respondent No. 1 shall pay the Applicant cost of Rs. 50,00,000/- (Rupees Fifty Lakhs only) within a period of four weeks from today.
- v. Respondent No. 1 shall also disclose, on oath, a complete account of the sales effected in respect of goods sold under the counterfeit label, the '**NONI**' label and the '**NOVA MINI**' mark/label. Such disclosure shall be made within a period of four weeks from today. Upon such disclosure being made, this Court shall determine the amount to be deposited by Respondent No. 1 in this Court pending the hearing and final disposal of the Suit.
- vi. In the event Respondent No. 1 does not comply with what is set out above in (iii) to (v), the Interim Application shall also be allowed in terms of prayer clause (e), and the defence of Respondent No. 1 shall be struck off.

vii. Stand over to **10th August 2026** for further directions.

[ARIF S. DOCTOR J.]

After pronouncement:

63. Mr. Kirpekar at this stage, has prayed that this Order be stayed for a period of six weeks. This request is rejected for two reasons. Firstly, having noted the conduct of Respondents, and secondly, Respondents have already been granted a period of four weeks to comply with the present Order, and no action can be taken before that period expires.

[ARIF S. DOCTOR J.]