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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

CNR No. DLHC010463472024+ CS(COMM) 641/2024, I.A. 35178/2024 & I.A. 1561/2025**MR. SUNIT SHAH****PROPRIETOR OF M/S. SHAH NAMKEEN**

83, INDRA PARK,

NEAR CHANDER NAGAR,

DELHI-110051

.....Plaintiff

(Through: Mr. Umesh Mishra with Mr. Mr. Divyanshu Rai,
Advocates.)

versus

M/S. JABSONS FOODS PVT. LTD.

PLOT NO. A-2, A'2, A'1, A'1, D-3,

D-4 & D-5, BHOLAV UDYOG,

(GUJARAT)

.....Defendant

(Through: Mr. Sandeep Ranjan with Ms. Bhuv Mishra & Mr.
Navin Kumar, Advocates.)

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Reserved on: 14.10.2026

Pronounced on: 28.10.2026

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I.A. 35178/2024 (under Order XXXIX Rules 1 and 2 of CPC) & I.A. 1561/2025 (under Order XXXIX Rule 4 of CPC)

I. FACTS OF THE CASE

By way of I.A. 35178/2024, filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”), plaintiff seeks an interim injunction restraining the defendant from using the mark HOT MIX (“impugned mark”), which, according to plaintiff, is identical with the essential feature of, and deceptively similar to, its registered trade mark SHAH HOT MIX (LABEL). By way of I.A. 1561/2025, filed under Order XXXIX Rule 4 of CPC, the defendant seeks vacation of the *ex parte ad interim* injunction granted in favour of the plaintiff *vide* order dated 02.08.2024. Since both the applications arise out of the same set of facts, hence are being decided by this common judgment.



2. The case set up in the plaint, in brief, is that the plaintiff is the sole proprietor of M/s Shah Namkeen, and is engaged in the business of manufacturing and marketing namkeen, puffs, biscuits, cakes, spices, bread and confectionery goods falling in Class 30. Plaintiff claims to have commenced the said business in Delhi in the year 1977, and to have adopted, in that very year, the trade marks/labels SHAH, SHAH NAMKEEN and SHAH HOT MIX (LABEL), along with the artistic work associated therewith.

3. On 01.07.1982, the plaintiff and his brother constituted a partnership firm under the name M/s Shah Namkeen, which was reduced into writing on 11.03.1983. The partners applied for registration of the trade mark SHAH in Class 30 on 02.02.1984 (application No. 417009), claiming user since 01.04.1977, and the same was registered *vide* Certificate No. 164666 dated 31.08.1989. On 08.06.1995, the partnership was dissolved, and the plaintiff continued the business as its sole proprietor.

4. The plaintiff is also the registered proprietor of the label mark SHAH HOT MIX (LABEL), registered under No. 2309592 in Class 30, in respect of namkeen and other goods, on an application filed on 03.04.2012, claiming user since 01.04.1977. The registration certificate bears No. 1926472 dated 20.07.2018, and the registration is valid till 03.04.2032. The registration is subject to the condition that the plaintiff shall have “no exclusive right over the descriptive matter appearing on label”. The registered label is reproduced as under:



5. The plaintiff has also applied for registration of the word mark HOT MIX (application No. 5363709) and of device marks comprising HOT MIX (application Nos. 5363710, 5363711 and 5363712) in Class 30 on 09.03.2022, claiming user since 01.04.1995. The said applications have been advertised in the Trade Marks Journal No. 2078 dated 14.11.2022 and, as per the record, are under opposition. The plaintiff also holds copyright registration No. A-63634/2003 dated 24.02.2003 in respect of the artistic work SHAH HOT MIX.

6. It is the case of the plaintiff that, on account of the quality of its goods and their long and continuous sale, the mark SHAH HOT MIX/HOT MIX has been exclusively associated with the plaintiff. As per the certificate of the Chartered Accountant and the statement of gross turnover placed on record, the annual sales of plaintiff have grown from ₹1.39 crores in the financial year 2009-10 to ₹9.22 crores in the financial year 2021-22, and stood at ₹8.20 crores in the financial year 2023-24 (pp. 38 and 40 of the plaintiff's documents). The plaintiff claims to have promoted its goods through newspapers, magazines, sponsorships, display boards and online platforms.

7. The plaintiff also asserts that it has been vigilant in protecting its rights, and has instituted proceedings against several third parties who had adopted marks comprising HOT MIX or packaging similar to its



own, namely, CS(COMM) 124/2022 against M/s Trilok Foods Pvt. Ltd., CS(COMM) 345/2022 against Mr. Sanjeev Rajpal, CS(COMM) 392/2022 against v M/s SSG Pharma Pvt. Ltd. and CS(COMM) 439/2023 against Mr. Ashwani Garg before this Court, as also CS (COMM) Nos. 89/2022, 90/2022 and 126/2022 against M/s Sheetla Trading Company, Mr. Pawan Kandoi and M/s Sunshine Food Products, respectively, before the learned District Judge (Commercial Court), East District, Karkardooma Courts, Delhi.

8. According to the plaintiff, in the last week of June, 2024, its salesperson, during a routine market survey in Delhi, came across namkeen packets bearing the mark HOT MIX along with the house mark JABSONS, and on enquiry, it was learnt that the same were being manufactured and sold by the defendant. The present suit came to be instituted thereafter, and *vide* order dated 02.08.2024, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff in the following terms:

“37. Accordingly, till the next date of hearing, the defendant, its proprietor, partners, agents, assigns, representatives, heirs, servants, dealers, distributors, franchisees and/or anyone acting for and on its behalf, are restrained from using the trademark/label HOT MIX or any other mark/label, which is identical or deceptively/confusingly similar to the plaintiff’s trademark/label ‘SHAH HOT MIX’ for the goods i.e. Namkeen etc. included in Class 30, or other similar goods, in any manner whatsoever, so as to result in infringement/passing off, of the registered trademark/label/ artistic work, of the plaintiff.”

9. The defendant has filed its written statement and a reply to the plaintiff’s application, besides I.A. 1561/2025 seeking vacation of the said order. The plaintiff has filed its replication and rejoinder. The issues in the suit have since been framed on 30.03.2026. The parties



have also filed their written submissions pursuant to the order dated 14.11.2025.

II. SUBMISSIONS ON BEHALF OF THE PLAINTIFF

10. Mr. Satish Kumar, learned counsel appearing on behalf of the plaintiff, submits that the plaintiff is the original conceiver, the prior adopter and a continuous user of the mark SHAH HOT MIX/HOT MIX, and is also the registered proprietor of SHAH HOT MIX (LABEL), besides holding copyright in the artistic work SHAH HOT MIX. It is submitted that HOT MIX constitutes the prominent, dominant and essential feature of the plaintiff's label, as it is written in large and bold letters which far exceed the word SHAH in size, and that the essential features of a mark are to be ascertained by the ocular test.

11. It is contended that though the words HOT and MIX, when seen separately, may carry their dictionary meanings, the combination HOT MIX, as used by the plaintiff, has no dictionary meaning and is a product of the plaintiff's own intellect. It is, therefore, a coined expression which deserves the highest degree of protection. It is pointed out that, as per the Trade Marks search report (pp. 354 to 360 of the plaintiff's documents), no person other than the plaintiff holds a subsisting registration or a pending application for HOT MIX in Class 30. It is further submitted that, in any event, by virtue of its long, continuous and extensive use, the mark has acquired distinctiveness and a secondary meaning, and is associated by the consumers with the plaintiff alone.



12. As regards the condition of disclaimer, it is submitted that the registration nowhere specifies that HOT MIX constitutes the descriptive matter appearing on the label. It is further submitted that a disclaimer does not travel to the market place, and that, for the purpose of comparison, the marks are to be considered as a whole, including the disclaimed matter, if any.

13. Learned counsel contends that the defendant has adopted the identical expression HOT MIX for identical goods, and in an identical manner, i.e., in large and bold letters placed at the centre of the pack, with the house mark placed above it in a smaller size. The mere prefixing of the house mark JABSONS does not alter the overall impression, since the defendant has copied the key, dominant and essential part of the plaintiff's mark. The goods, the consumers and the trade channels being identical, the likelihood of confusion is more, and the case falls within Sections 29(2) and 29(6) of the Trade Marks Act, 1999 ("Act"). Reliance is also placed on Section 34 of the Act.

14. It is further submitted that the defendant has offered no explanation for the adoption of the impugned mark, nor has it placed on record any material to show its use prior to that of the plaintiff. It is thus contended that the adoption is dishonest and is calculated to ride upon the goodwill of the plaintiff, and that an injunction must, therefore, follow. As regards I.A. 1561/2025, it is submitted that the defendant has not been able to point out any material fact which was suppressed by the plaintiff.



15. Reliance is placed on *S. Syed Mohideen v. P. Sulochana Bai*,¹ *South India Beverages (P) Ltd. v. General Mills Marketing Inc.*,² *Greaves Cotton Ltd. v. Mohammad Rafi*,³ *Enterprise Holdings Inc. v. Enterprise Auto Rentals*,⁴ *Wow Momo Foods (P) Ltd. v. Wow Burger*,⁵ *Wipro Enterprises (P) Ltd. v. Himalaya Wellness Co.*,⁶ *Under Armour Inc. v. Anish Agarwal*,⁷ *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*,⁸ *Parle Products (P) Ltd. v. J.P. & Co.*⁹ and *ITC Ltd. v. Golden Tobacco Ltd.*¹⁰

III. SUBMISSIONS ON BEHALF OF THE DEFENDANT

16. *Per contra*, Mr. Navin Kumar, learned counsel appearing on behalf of the defendant, submits that the defendant is an established manufacturer of a wide variety of edible snacks, including *roasted nuts, namkeen, bhujia, chikki* and *gajak*, and traces its origin to a family business founded in the year 1910 under the name “*JairamdasBhagchand and Sons*”. The defendant was incorporated in the year 1984 as Jabsons Cottonseed Industries Pvt. Ltd., and its name was changed to Jabsons Foods Pvt. Ltd. on 23.07.2018. The house mark JABSONS, a contraction of the name of the family business, is stated to have been in use since 1994, and the defendant holds several registrations thereof, including Nos. 988553 and 1307361 in Class 29

¹(2016) 2 SCC 683

² 2014 SCC OnLine Del 1953

³ 2011 SCC OnLine Del 2596

⁴ 2014 SCC OnLine del 1096

⁵ 2025 SCC OnLine Del 6545

⁶ 2024 SCC OnLine Del 6859

⁷2025:DHC:4243-DB

⁸ (2004) 3 SCC 90

⁹ (1972) 1 SCC 618

¹⁰ 2018 SCC OnLine Mad 2437



and Nos. 1924816 and 1924817 in Class 30. It is submitted that the defendant offers more than 270 snacking options, is HACCP certified since the year 2008, and has received several awards and recognitions.

17. It is contended that the plaintiff obtained the *ex parte ad interim* order dated 02.08.2024 by making misrepresentations and by suppressing material facts, and is, therefore, not entitled to any equitable relief.

18. On merits, learned counsel submits that the registration of SHAH HOT MIX (LABEL) is subject to an express condition that no exclusive right shall vest in the plaintiff over the descriptive matter appearing on the label, and HOT MIX, being such descriptive matter, does not enjoy any statutory exclusivity. In terms of Section 17(2)(b) of the Act, the registration of a composite mark does not confer any exclusive right in a part thereof which is common to the trade or is otherwise non-distinctive. It is urged that HOT MIX describes the kind and characteristics of a spicy namkeen or bhujia on account of its red chilli content, and that its *bona fide* use in that sense is protected by Section 30(2)(a) of the Act. It is also pointed out that the plaintiff's applications for registration of HOT MIX are under opposition, and that the plaintiff has made inconsistent claims of user, i.e., since 1977 and since 1995.

19. Placing reliance on ***Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra***,¹¹ it is submitted that the marks have to be compared as a whole, and that a common descriptive element cannot form the basis of the comparison. Applying the dominant feature test, SHAH, in

¹¹ 2025 SCC OnLine SC 1701



the case of the plaintiff, and JABSONS, in the case of the defendant, are the dominant and source-identifying features, whereas HOT MIX merely denotes the product type. It is submitted that the rival packaging, colour scheme, font, logo and the overall get-up are entirely different. Learned counsel draws an analogy with large manufacturers such as Haldiram, Bikaji, Britannia and Bikano, which describe their products as “Aloo Bhujia”, “Moong Dal Mix”, “Bourbon” and “Navratan Mix”, and contends that, in this trade, products are purchased by reference to the brand and not the description.

20. It is further contended that a descriptive mark is inherently weak and can be protected only upon proof of a secondary meaning, which the plaintiff has failed to establish. HOT MIX, it is urged, is an expression which every manufacturer of namkeen requires in order to describe a spicy snack mixture, and is used by several other manufacturers, as is evident from the packaging of third parties placed on record (pp. 564 to 574 of the defendant’s documents). The plaintiff, therefore, cannot monopolize the same.

21. Lastly, it is submitted that the house marks SHAH and JABSONS, being distinct, rule out any possibility of confusion, and that the balance of convenience lies in favour of the defendant, which has suffered loss on account of the *ex parte* injunction. Reliance is placed on **Godfrey Phillips India Ltd. v. Girnar Food & Beverages (P) Ltd.**,¹² **Sanjha Chulha v. Sanjha Chulha**,¹³ **Soothe Healthcare (P) Ltd. v. Dabur India Ltd.**,¹⁴ **Bhole Baba Milk Food Industries Ltd. v.**

¹² (2004) 5 SCC 257

¹³ FAO (COMM) 128/2022, decided on 02.11.2022

¹⁴ 2022:DHC:2550-DB



Parul Food Specialities (P) Ltd.,¹⁵ *Yatra Online Ltd. v. Mach Conferences and Events Ltd.*,¹⁶ *Capital Food (P) Ltd. v. Radiant Indus Chem (P) Ltd.*¹⁷ and *L.T. Overseas North America Inc. v. KRBL Ltd.*¹⁸

IV. ANALYSIS

a. *The objection of suppression*

22. Since the defendant has, by way of I.A. 1561/2025, assailed the order dated 02.08.2024 on the ground of misrepresentation and suppression, it would be apposite to deal with the said objection at the outset. There can be no quarrel with the proposition that a party which seeks a discretionary relief must approach the Court with clean hands. At the same time, the suppression, in order to disentitle a party to relief, must be of a material fact. The Supreme Court in *Arunima Baruah v. Union of India*¹⁹ has held as under:

“12. It is trite law that so as to enable the Court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the Court may not refuse to exercise its discretionary jurisdiction. ...”

23. The defendant, both in its application and in its written submissions, has made only a general allegation of suppression,

¹⁵2011:DHC:5334-DB

¹⁶2025:DHC:7167

¹⁷2023 SCC OnLine Del 118

¹⁸2023 SCC OnLine Del 1121

¹⁹(2007) 6 SCC 120



without specifying the material fact which the plaintiff is said to have withheld. A perusal of the plaint shows that the plaintiff had disclosed that its registration for SHAH HOT MIX (LABEL) was subject to a disclaimer in respect of the descriptive matter appearing on the label (para 7 of the plaint), and had also tabulated the status of its applications for HOT MIX as pending. The said table was, in fact, reproduced in the order dated 02.08.2024. The general averment that some of the applications of the plaintiff had proceeded to registration could not, therefore, have misled the Court as to the status of the applications for HOT MIX.

24. The plaint also disclosed the proceedings initiated by the plaintiff against third parties, including CS (COMM) No. 126/2022 against M/s Sunshine Food Products, the status of which was shown as pending. The said suit came to be dismissed by the District Judge (Commercial Court), East District, Karkardooma Courts, Delhi on 12.08.2024, i.e., after the institution of the present suit and the passing of the order dated 02.08.2024. The plaintiff has assailed the said judgment in RFA(COMM) 457/2024, which is pending before the Division Bench of our Court, and has itself referred to the said decision in its list of witnesses. No case of suppression of a material fact is, therefore, made out. Even otherwise, the plaintiff's application has now been heard afresh, with the pleadings and the documents of both the parties on record, and is being decided on its merits.

b. The rights of the plaintiff

25. On the aspect of merits, the plaintiff is admittedly the registered proprietor of SHAH HOT MIX (LABEL) under No. 2309592 in Class



30. The registration subsists, and in terms of Section 31(1) of the Act, the registration of a trade mark is *prima facie* evidence of its validity. Nothing has been brought to the notice of this Court to show that the said registration has been assailed by the defendant.

26. A bare perusal of the registered label, shows that the expression HOT MIX, written in large, bold and stylised letters across two lines, occupies the greater part of the label and is its most prominent and memorable feature. The word SHAH, along with the words SINCE 1977 and NAMKEEN, appears in a comparatively small box at the top. Judged by its visual and phonetic prominence as well as its placement, HOT MIX is the essential and dominant feature of the registered label. This is also borne out by the manner in which the plaintiff uses its mark on its packaging, where SHAH appears at the top as a house mark, and HOT MIX constitutes the name by which the product is identified and asked for.

27. The plaintiff has also placed on record material to show its use of the mark over a long period. This includes its invoices (pp. 71 to 167 of the plaintiff's documents), which reflect the sale of HOT MIX by the plaintiff over the years, including in the years 2006 and 2008 and thereafter, and an advertisement published in the March, 1997 issue of the magazine "Business Star", which depicts the HOT MIX packet of the plaintiff amongst its varieties of namkeen (p. 253 of the plaintiff's documents), besides the figures of its sales noticed hereinabove. Whether the use of the mark by the plaintiff commenced in 1977, as claimed in respect of the label, or in 1995, as claimed in the subsequent applications, is a matter for trial. Even on the later of the two dates, the



use of HOT MIX by the plaintiff precedes that of the defendant by nearly three decades.

28. On the other hand, the defendant has not claimed any user of the impugned mark prior to that of the plaintiff. The invoices filed by the defendant itself (pp. 153 to 325 of its documents), which span from the year 2007 onwards and record the sale of several namkeen “mix” variants of the defendant, such as Rajwadi Mix, Sabudana Mix, Navratan Mix, Gujarati Mix and Garlic Mix, refer to “Hot Mix” only from October, 2023 onwards. The defendant is, thus, a recent entrant so far as the impugned mark is concerned.

c. The condition of disclaimer

29. The defendant has laid considerable emphasis on the condition subject to which the plaintiff’s label stands registered. The condition, however, does not identify HOT MIX as the descriptive matter appearing on the label. It is couched in general terms, and the label also contains the words NAMKEEN and SINCE 1977, which are, on the face of it, descriptive of the goods and of the year of adoption. It is pertinent to note that, in CS (COMM) No. 126/2022, the official of the Trade Marks Registry, examined as PW-1, is recorded to have deposed that the restriction was imposed on the words “Namkeen” and “since 1977”, which were found to be descriptive, and that the other parts of the mark were approved (para 11 of the judgment dated 12.08.2024 in that suit). The plaintiff’s applications for HOT MIX *per se* have also been advertised in the Trade Marks Journal. *Prima facie*, therefore, the condition cannot be read as a disclaimer of HOT MIX.



30. Even otherwise, a disclaimer operates only to limit the rights which flow from the registration, and does not detract from the rights which the proprietor may have acquired by user. The Supreme Court in **Registrar of Trade Marks v. Ashok Chandra Rakhit Ltd.**²⁰ explained the purpose and effect of a disclaimer as under:

“13.The real purpose of requiring a disclaimer is to define the rights of the proprietor under the registration so as to minimise, even if it cannot wholly eliminate, the possibility of extravagant and unauthorised claims being made on the score of registration of the trade marks.

14. The last feature of Section 13 is its proviso. That proviso preserves intact any right which the proprietor may otherwise under any other law have in relation to the mark or any part thereof. The disclaimer is only for the purposes of the Act. It does not affect the rights of the proprietor except such as arise out of registration. That is to say, the special advantages which the Act gives to the proprietor by reason of the registration of his trade mark do not extend to the parts or matters which he disclaims. In short, the disclaimed parts or matters are not within the protection of the statute. That circumstance, however, does not mean that the proprietor's rights, if any, with respect to those parts or matters would not be protected otherwise than under the Act. If the proprietor has acquired any right by long user of those parts or matters in connection with goods manufactured or sold by him or otherwise in relation to his trade, he may, on proof of the necessary facts, prevent an infringement of his rights by a passing off action or a prosecution under the Penal Code. Disclaimer does not affect those rights in any way.”

31. Further, a disclaimer does not bear upon the question whether the impugned mark, compared with the registered mark as a whole, is deceptively similar thereto. In **Wow Momo Foods (P) Ltd.** (supra), the Division Bench of our Court has held as under:

“52. The learned Single Judge has also referred to the fact that some of the marks registered in favour of the appellant carried a disclaimer that the appellant would not seek any exclusivity in respect of the individual words used in the mark. The finding is, with respect, tangential to the issue at hand. The disclaimer

²⁰(1955) 1 SCC 655



cannot affect the issue of whether, seen as whole marks, the respondent's WOW BURGER mark does, or does not, infringe the appellant's registered trade marks."

32. For the same reasons, Section 17 of the Act does not come to the aid of the defendant. The plaintiff does not claim exclusivity over the word HOT or the word MIX in isolation. Its claim is to the composite expression HOT MIX, which is the essential feature of its registered label and the name under which its goods have been sold for decades. Section 17(2)(b) would preclude such a claim only if the expression were shown to be common to the trade or otherwise non-distinctive, which, as discussed hereinafter, the defendant has not been able to show even *prima facie*.

d. Whether HOT MIX is a coined expression or a descriptive one?

33. The principal contention of the defendant is that HOT MIX is a descriptive expression which merely denotes a spicy namkeen, and that the plaintiff cannot claim exclusivity thereon. The plaintiff, on the other hand, asserts that the expression was coined by it. The question, therefore, merits a closer examination.

34. It is trite that the distinctiveness of a mark lies on a spectrum. At one end lie invented or coined marks, which are inherently distinctive and command the highest degree of protection, and at the other lie generic and descriptive expressions, which can be protected only upon proof of acquired distinctiveness. The Supreme Court in **Pernod Ricard** (supra), on which the defendant itself relies, has observed as under:

"31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks – such as Kodak or Solio – are



inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks – such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI – are not inherently distinctive and must acquire secondary meaning in the minds of the public to qualify for protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark – whether inherently or through acquired reputation – the stronger its position in infringement or passing off actions.”

35. Between the two ends of the spectrum lie suggestive marks, which only indirectly suggest a quality of the goods, and are regarded as inherently distinctive. The tests for distinguishing a suggestive mark from a descriptive one were noticed by this Court in **Capital Food (P) Ltd.** (supra), also relied upon by the defendant, in the following terms:

“40. In McCarthy on Trademarks, the learned author explains the spectrum of distinctiveness of marks as: ‘inherently distinctive’; ‘non-inherently distinctive’; and marks with ‘no distinctiveness’. The learned author further states that the most popular test with the Court is the ‘Imagination Test’. The more imagination that is required on the customer’s part to get some direct description of the product from the term, the more likely the term is ‘suggestive’, not ‘descriptive’. A descriptive term directly and clearly conveys information about the ingredients, qualities or characteristics of the product or service, whereas the ‘suggestive’ term only indirectly suggests these things. Thus, if one must exercise a reasoning process to determine attributes of the product or service, the term is suggestive not descriptive. If the mental link between the word and the product’s attributes is not almost instantaneous, this strongly indicates suggestive and not direct descriptiveness. The second test suggested by the learned author is “The Competitors’ Need Test”, that is, is the word or words likely to be needed by the competitive sellers to describe their goods? If the answer is in the positive, then the word/words are descriptive, otherwise they may just be suggestive.”



36. It is also trite that the distinctiveness of a composite expression has to be judged with reference to the expression as a whole, as conceived and used by the plaintiff, and not by splitting it into its constituent words and examining whether each of them, standing alone, is a dictionary word. In **Wow Momo Foods (P) Ltd.** (supra), the Division Bench of our Court, while dealing with the marks WOW MOMO and WOW DIMSUMS, held as under:

“39. The idea of combining an exclamation with the mundane reference to the food item is inventive and, consequently, distinctive. To our mind, the learned Single Judge has concentrated on whether WOW, seen as a standalone expression, is, or is not, distinctive, and has, in the process, overlooked the fact that, when used in conjunction with the name of the food item, the combined mark becomes distinctive in nature.

42. ... The aspect of distinctiveness, in any expression has to be assessed not by seeing the expression “standalone” but keeping in mind the manner in which the expression has been used by the plaintiff. WOW as a standalone expression may not be distinctive. When, however, it is used in combination with the name of a food item, so as to convey the quality of that food item, it acquires distinctiveness.”

37. Tested on the aforesaid touchstone, the Court finds merit in the submission of the plaintiff. The expression HOT MIX is not to be found in any dictionary as the name of a namkeen, nor has the defendant placed on record any material, be it a dictionary, culinary literature or trade literature, to show that, when the plaintiff adopted it, HOT MIX was the recognised name of any particular variety of namkeen. In this respect, HOT MIX stands on a footing entirely different from expressions such as “Aloo Bhujia”, “Moong Dal” or “Navratan Mix”, cited by the defendant, which are names by which



traditional preparations have been known for generations, and which identify the ingredients or the nature of the preparation.

38. The individual words HOT and MIX are each capable of several meanings. The word HOT may denote temperature, pungency or even popularity, whereas MIX may refer to a mixture of any conceivable kind. The combination does not, by itself, convey to a purchaser what the product is, what it is a mixture of, or how it is prepared. Its application to a packet of namkeen requires a degree of imagination. At the highest, therefore, HOT MIX is suggestive, and not descriptive, of the plaintiff's goods. The juxtaposition of the two words, for use as the name of a namkeen, was the plaintiff's own idea, much like the combination of WOW with the name of a food item in **Wow Momo Foods (P) Ltd.** (supra).

39. The material on record also supports the claim of the plaintiff to be the originator of the expression in the trade. The defendant has not shown the use of HOT MIX by any person prior to the plaintiff. The Trade Marks search report on record (pp. 354 to 360 of the plaintiff's documents) shows that the only third-party applications for marks comprising HOT MIX in Class 30, filed in the years 2003, 2011 and 2019, stand removed or abandoned, and that the plaintiff alone holds a subsisting registration of which HOT MIX is the essential feature.

40. The "competitors' need test" also yields an answer in favour of the plaintiff. As noticed hereinabove, the defendant itself sold a large number of namkeen "mix" variants for over fifteen years without ever having used the expression HOT MIX, and adopted it only in October, 2023. The packaging filed by the defendant itself shows a spicy



namkeen marketed under its house mark as “HOT N’ SPICY” (p. 575 of the defendant’s documents). Several traders who had adopted HOT MIX formative marks and were sued by the plaintiff, chose to sell their goods under other names. In the settlement dated 27.01.2023 arrived at in CS(COMM) 124/2022, M/s Trilok Foods Pvt. Ltd. acknowledged the plaintiff to be the owner of all intellectual property pertaining to HOT MIX/SHAH HOT MIX (LABEL), and agreed to use the mark HOTKING MIXTURE. Likewise, in CS(COMM) 439/2023, the defendant therein agreed to use the mark MOTA MIXTURE, and this Court, while decreeing the suit on 11.12.2023, recorded that “*the Defendant has acknowledged the rights of the Plaintiff pertaining to the marks ‘HOT MIX’/ ‘SHAH HOT MIX’*”.

41. These settlements though do not bind the defendant herein. They do, however, demonstrate that a trader desirous of conveying that its namkeen is spicy has numerous expressions available to it, and does not need to appropriate the expression HOT MIX. These circumstances demerits the contention that HOT MIX is a common descriptive expression which every trader in namkeen necessarily requires to describe its goods.

42. Even if it were to be assumed that HOT MIX has some descriptive connotation, the same would not, by itself, disentitle the plaintiff to protection. The Supreme Court in **Godfrey Phillips India Ltd.** (supra), relied upon by the defendant, held as under:

“4. ... A descriptive trade mark may be entitled to protection if it has assumed a secondary meaning which identifies it with a particular product or as being from a particular source. ...”



43. In the present case, the plaintiff has used HOT MIX as the name of its namkeen at least since the mid-1990s, continuously and on a considerable scale, as is reflected from its sales figures, invoices and advertisements. The expression has been consistently asserted by the plaintiff against others, and the plaintiff alone holds a registration of which it forms the essential feature. The plaintiff has also placed on record a web story of a news portal, featuring HOT MIX and the founder of Shah Namkeen (p. 242 of the plaintiff's documents), which indicates the association of the expression with the plaintiff in public perception. *Prima facie*, therefore, HOT MIX, as applied to namkeen, has come to denote the goods of the plaintiff. The final determination of the question of acquired distinctiveness shall, of course, abide by the evidence led at the trial.

44. The reliance placed by the defendant on **Pernod Ricard** (supra) does not advance its case. In that case, the only element common to BLENDERS PRIDE and LONDON PRIDE was the word PRIDE, which the Supreme Court found to be a laudatory expression extensively used in the liquor trade, as evidenced by marks such as McDowell's Pride, Highland Pride, Royal Pride and Pride of India, and the leading words of the rival marks were entirely different. The Supreme Court, at the same time, clarified that the dominant feature of a mark may be accorded greater weight where it overshadows the rest of the mark, and that the imitation of even a component lacking inherent distinctiveness may amount to infringement where it constitutes an essential feature of the mark. The relevant observations read as under:



“33.1. The principles of the anti-dissection rule and the dominant feature test, though seemingly in tension, are not mutually exclusive. Identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks. In certain cases, an infringing component may overshadow the remainder of the mark to such an extent that confusion or deception becomes virtually inevitable. In such instances, courts – while maintaining a contextual and fact-specific inquiry – may justifiably assign greater weight to the dominant element. ...

42. While comparing rival marks, Courts must assess the marks in their entirety, rather than dissecting composite trademarks into isolated components. The dominant feature of a mark may assist in crossing the preliminary threshold of analysis, but the ultimate inquiry must focus on the overall impression created by the mark – especially in the context of the relevant goods, trade channels, and target consumers. The proper test is not to place the two marks side by side to identify dissimilarities, but to determine whether the impugned mark, when viewed independently, is likely to create an impression of association or common origin in the mind of the average consumer. Even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement if it constitutes an essential and distinctive feature of the composite mark as a whole.”

45. The other decisions relied upon by the defendant are also distinguishable on facts. In ***Soothe Healthcare (P) Ltd.*** (supra), the expression SUPER was found to be a laudatory word in wide use; in ***Bhole Baba Milk Food Industries Ltd.*** (supra), the mark KRISHNA was the name of a deity associated with milk and milk products; in ***Yatra Online Ltd.*** (supra), the word YATRA was a generic word which stood specifically disclaimed in the registrations of the plaintiff therein; and in ***Capital Food (P) Ltd.*** (supra), the expression SCHEZWAN CHUTNEY was found to describe a known style of preparation. None of these decisions is an authority for the proposition that an expression adopted by a trader decades ago, not shown to have been in use by anyone else at the time of its adoption, and associated



with that trader ever since, can be freely appropriated by a later entrant. In ***Sanjha Chulha*** (supra), the Division Bench declined to accept the user claimed by the appellant therein in the absence of documentary support, whereas, in the present case, the documents on record *prima facie* establish the use of the mark by the plaintiff for nearly three decades. The plaintiff, therefore, satisfies the test of *prima facie* case in its favour.

e. The plea of use of HOT MIX by third parties

46. The defendant has next contended that HOT MIX is used by several other manufacturers. In support thereof, the defendant has placed on record the photographs of the packaging of certain third parties, bearing the names SATMOLA, Anshul, Dakshyn, Deep, Kemchho, Thakkar Bros., Wah, Thakar, Kolis, Snack Rack and Samrat (pp. 564 to 574 of the defendant's documents). Apart from the packaging, nothing has been placed on record to show when these parties commenced the use of the expression, the extent of their sales, or their presence in the Indian market. The plaintiff, on the other hand, has shown that it has taken action against several users of HOT MIX formative marks, including the user of SATMOLA HOT MIX, which finds mention in the defendant's own list.

47. The law on the subject is well settled. The Supreme Court in ***Corn Products Refining Co. v. Shangrila Food Products Ltd.***²¹ held as under:

“16. The series of marks containing the common element or elements therefore only assist the applicant when those marks

²¹ 1959 SCC OnLine SC 11



are in extensive use in the market. The onus of proving such user is of course on the applicant, who wants to rely on those marks. ... Now of course the presence of a mark in the register does not prove its user at all. It is possible that the mark may have been registered but not used. It is not permissible to draw any inference as to their user from the presence of the marks on the register. ...”

48. A Division Bench of our Court in **Pankaj Goel v. Dabur India Ltd.**,²² while repelling a similar plea that the mark MOLA was common to the trade, held as under:

“21. As far as the Appellant’s argument that the word MOLA is common to the trade and that variants of MOLA are available in the market, we find that the Appellant has not been able to prima facie prove that the said ‘infringers’ had significant business turnover or they posed a threat to Plaintiff’s distinctiveness. In fact, we are of the view that the Respondent/Plaintiff is not expected to sue all small type infringers who may not be affecting Respondent/Plaintiff business. The Supreme Court in National Bell v. Metal Goods,(1970) 3 SCC 665 : AIR 1971 SC 898 has held that a proprietor of a trademark need not take action against infringement which do not cause prejudice to its distinctiveness. ...

22. In fact, in Dr. Reddy Laboratories v. Reddy Pharmaceuticals, (2004) 29 PTC 435 a Single Judge of this Court has held as under:--

‘...the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of “Taj Hotel”, the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interest and starts misleading and confusing their customers.’”

²² (2008) 38 PTC 49 (DB)



49. Relying upon the aforesaid decision, coordinate Bench of our Court in ***Glaxosmithkline Pharmaceuticals Ltd. v. Horizon Bioceuticals Pvt. Ltd.***²³ has held as under:

“30.....On the defendant, pleading that the part of the brand name, common to the product of the plaintiff and the defendant, is publici juris, is cast the onus to establish the assertion. This, according to Express Bottlers Services and Pankaj Goel, requires the defendant to show (i) substantial use, by the proprietors of the marks cited by it, (ii) the extent of trade in products bearing the said marks and (iii) that the said marks pose a threat to the distinctiveness of the mark asserted by the plaintiff. Else, would not be possible for this Court to return a finding that the mark of the plaintiff, or the part thereof which, according to the defendant, is common to the trade, is indeed so.”

50. Tested on the aforesaid principles to the facts of the present case, the defendant has failed to discharge the onus which lay upon it. The mere filing of photographs of the packaging of a few third parties, without any material as to the extent of their use or their position in the market, is insufficient to hold that HOT MIX is common to the trade. The existence of other infringers, if any, is no defence available to the defendant. The defendant, on its own showing, is a large manufacturer offering more than 270 products and supplying its goods across several States, and its adoption of the impugned mark poses a far greater threat to the distinctiveness of the plaintiff's mark than that posed by other users.

f. Comparison of the rival marks and infringement

51. That brings this Court to the comparison of the rival marks. The rival products and marks may be compared as under:

²³ 2023 SCC OnLine Del 2065



	Plaintiff	Defendant
Product		
Mark	SHAH HOT MIX (LABEL)	JABSONS HOT MIX
House mark and its placement	SHAH, within a box at the top of the pack, in comparatively small size	JABSONS, within its logo at the top of the pack, in comparatively small size
Presentation of HOT MIX	At the centre of the pack, in large and bold capital letters, in two lines, HOT above MIX	At the centre of the pack, in large and bold capital letters, in two lines, HOT above MIX
Other features	Namkeen depicted in the lower half, with green chillies	Namkeen depicted in the lower half, with red chillies
Background colour	Red	Dark (black and maroon)
Registration	No. 2309592 in Class 30 for SHAH HOT MIX (LABEL); application Nos. 5363709 to 5363712 for HOT MIX	None for the impugned mark
User	Claimed since 1977; documents on record since the 1990s	Since October, 2023
Goods	Namkeen	Namkeen

52. A bare perusal of the above would show that the defendant has adopted the expression HOT MIX in its entirety, and uses it as the most prominent feature of its pack, in the same manner in which it appears on the pack of the plaintiff, i.e., in large and bold letters across



two lines at the centre of the pack, with the house mark placed above it in a comparatively smaller size, and the namkeen depicted below. Phonetically, the expressions are identical. The goods in question are identical, and are sold to the same class of consumers through the same trade channels.

53. The nature of the goods and the class of purchasers are also relevant considerations, as held by the Supreme Court in para 35 of ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***²⁴ Namkeen is an item of everyday consumption, purchased by persons of all strata of society, including children, often over the counter in small grocery shops, and usually by asking for the product by its name. The defendant's own invoices show the impugned product being sold in 30-gram packs bearing a maximum retail price of ₹10. A purchaser of such goods does not pause to study the get-up of the pack, and would ordinarily ask for "Hot Mix". In such circumstances, the likelihood of confusion is real. The Supreme Court in ***Parle Products (P) Ltd.*** (supra) held as under:

"9. It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. ... After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. ..."

[Emphasis supplied]

²⁴ (2001) 5 SCC 73



54. The defendant's contention that the comparison must be confined to SHAH and JABSONS, by excising HOT MIX from both the marks, cannot be accepted. While the marks are to be compared as a whole, the principle of anti-dissection does not preclude the Court from according greater weight to the dominant feature of a mark. A Division Bench of our Court in **South India Beverages (P) Ltd.** (supra) held as under:

“19. Though it bears no reiteration that while a mark is to be considered in entirety, yet it is permissible to accord more or less importance or ‘dominance’ to a particular portion or element of a mark in cases of composite marks. Thus, a particular element of a composite mark which enjoys greater prominence vis-a-vis other constituent elements, may be termed as a ‘dominant mark’.

23. It is also settled that while a trademark is supposed to be looked at in entirety, yet the consideration of a trademark as a whole does not condone infringement where less than the entire trademark is appropriated. It is therefore not improper to identify elements or features of the marks that are more or less important for purpose of analysis in cases of composite marks.”

55. In **Under Armour Inc.** (supra), the Division Bench of our Court, while setting aside an order which had excised the common word ARMOUR from the rival marks for the purposes of comparison, held as under:

“50. ... If it is found that much of the similarities between the competing marks stem from the word ‘ARMOUR’ being a part of the competing marks, the same cannot be disregarded. It would be erroneous to ignore the similarity of the overall commercial impressions of the competing marks, viewed as a whole, merely because the similarity may be attributable to the fact that parts of the competing marks are identical or lend similarity to the trademarks when viewed as a whole.

51. ... In our view, this is clearly contrary to the anti-dissection rule, which compels us to evaluate the composite competing marks as a whole, but at the same time does not restrict us from taking into account the portions of the marks, which contribute to



the overall similarities between the competing trademarks when viewed as a whole. A strong registered mark with a distinctive portion, may be infringed if a part of the later mark, which dominates the commercial impression of the said mark is identical to the distinctive portion of the earlier mark. ...”

56. In the present case, HOT MIX dominates the commercial impression of both the marks. The essential feature of the plaintiff’s registered label has been reproduced in its entirety by the defendant. In such a situation, the differences in the colour scheme and the get-up of the packs, and the addition of the house mark JABSONS, are of no consequence in an action for infringement. The Supreme Court in **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories**²⁵ held as under:

“28. ... In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant’s mark is likely to deceive, but where the similarity between the plaintiff’s and the defendant’s mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff’s rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.”

57. Similarly, in **Ruston & Hornsby Ltd. v. Zamindara Engineering Co.**,²⁶ the Supreme Court held that the addition of the word INDIA to the mark RUSTAM made no difference, in the following words:

²⁵ AIR 1965 SC 980

²⁶ (1969) 2 SCC 727



“8. In the present case the High Court has found that there is a deceptive resemblance between the word ‘RUSTON’ and the word ‘RUSTAM’ and therefore the use of the bare word ‘RUSTAM’ constituted infringement of the plaintiff’s trade mark ‘RUSTON’. The respondent has not brought an appeal against the judgment of the High Court on this point and it is, therefore, not open to him to challenge that finding. If the respondent’s trade mark is deceptively similar to that of the appellant the fact that the word ‘INDIA’ is added to the respondent’s trade mark is of no consequence and the appellant is entitled to succeed in its action for infringement of its trade mark.”

58. The defence under Section 30(2)(a) of the Act is also not available to the defendant. The said provision protects the use of a mark which “indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services”. As held by this Court in ***Mankind Consumer Products Private Limited v. Alaina Healthcare Private Limited***,²⁷ the protection under the said provision is available only where an expression is used in its descriptive sense, and not as a trade mark, and whether the defence is attracted must, therefore, be tested on the manner in which the expression is actually used by the defendant.

59. Examined thus, the material on record *prima facie* indicates that the defendant uses HOT MIX to name its product, and not merely to describe it. On the pack, HOT MIX is the largest and the most prominent text, and is the very name of the product. The defendant’s invoices identify the product as “Namkeen-Hot Mix”. Also, the defendant, in para 4 of its reply to the present application, has itself stated that its trade mark is JABSONS HOT MIX. Having so stated, it

²⁷ CS(COMM) 280/2026, decided on 16.10.2026



is not open to the defendant to contend that it uses HOT MIX only to describe the kind or characteristics of its goods. The observations of our Court in ***L.T. Overseas North America Inc.*** (supra), a decision relied upon by the defendant itself, are apposite:

“74. The same, however, cannot be said for the packaging that is currently used by the defendant and was complained of by the plaintiffs in the present suit. The packaging itself would show that the word ‘ROYAL’ has been used prominently in the packaging. The same is not, therefore, merely to depict the quality of the rice of the defendant but also as a trade mark itself. The use of the same would also lead to dilution of the mark of the plaintiffs and, therefore, cannot be permitted in such manner.”

60. In view of the above, this Court is of the *prima facie* view that the use of the impugned mark by the defendant, in relation to goods identical to those for which the plaintiff’s mark is registered, is likely to cause confusion on the part of the public and amounts to infringement of the plaintiff’s registered trade mark within the meaning of Section 29(2)(b) of the Act.

g. Passing off and the adoption of the impugned mark

61. The plaintiff has also made out a *prima facie* case of passing off. The rights of a prior user are superior even to those of a subsequent registrant, as held by the Supreme Court in ***S. Syed Mohideen*** (supra), and the defendant herein does not even hold a registration or an application for the impugned mark. The plaintiff, as noticed hereinabove, has *prima facie* established its goodwill in the mark HOT MIX in relation to namkeen, built over decades. The use of the identical expression, for identical goods, sold to the same class of consumers through the same trade channels, is likely to lead the



consumers to believe that the goods of the defendant emanate from, or is connected with, the plaintiff.

62. The adoption of the impugned mark by the defendant also does not appear to be honest. The defendant is not a newcomer to the trade. It claims to have been in the business of snacks for decades and to offer more than 270 products. It adopted HOT MIX only in October, 2023, by which time the plaintiff's label had remained on the Register of Trade Marks since the year 2018, and the plaintiff's applications for HOT MIX had been advertised in the Trade Marks Journal in November, 2022. A cursory search of the Register would have revealed the plaintiff's rights. The defendant has not offered any explanation as to why, after having sold its namkeen "mix" variants for over fifteen years under other names, it chose to adopt the expression HOT MIX, and that too in a manner which closely resembles the placement and presentation thereof on the plaintiff's pack. The Supreme Court in **Midas Hygiene Industries (P) Ltd.** (supra) has held as under:

"5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest."

63. There is also no delay on the part of the plaintiff. The defendant commenced the use of the impugned mark in October, 2023, and the plaintiff, upon learning of the same in June, 2024, instituted the present suit promptly in July, 2024.



h. Balance of convenience and irreparable injury

64. The balance of convenience also lies in favour of the plaintiff. The plaintiff is the prior user of HOT MIX for decades and the registered proprietor of the label of which it is the essential feature, whereas the defendant adopted the impugned mark only in October, 2023, and, as per the record, has neither the registration nor an application therefor. HOT MIX is but one of the numerous products of the defendant. The injunction does not affect the use by the defendant of its house mark JABSONS, or the sale of its namkeen as such, and requires the defendant only to adopt a different name for the product, a course which is evidently feasible, given that the defendant itself markets a spicy namkeen under the name “HOT N’ SPICY” (p. 575 of its documents). Further, the *ad interim* injunction has been in operation since 02.08.2024, and its continuance would cause no fresh hardship to the defendant.

65. On the other hand, if the injunction is vacated, the plaintiff would suffer irreparable injury. The injury caused by the use of an identical expression by a large manufacturer lies in the erosion of the distinctiveness of the plaintiff’s mark and of the goodwill associated therewith, which cannot be adequately compensated in terms of money. Where the goods are articles of food consumed by the public at large, the public interest in avoiding confusion as to their source is an additional consideration.

V. CONCLUSION

66. Accordingly, the *ad interim* injunction granted *vide* order dated 02.08.2024 is confirmed. Till the final adjudication of the suit, the



defendant, its directors, officers, servants, agents, distributors, dealers, franchisees, and all others acting for and on its behalf, are restrained from manufacturing, selling, offering for sale, advertising or in any manner dealing in namkeen, snacks or any other allied or cognate goods under the mark HOT MIX, or any other mark or label which is identical with or deceptively similar to the plaintiff's registered trade mark SHAH HOT MIX (LABEL), so as to result in infringement or passing off.

67. It is, however, clarified that nothing in this judgment shall restrain the defendant from using its house mark JABSONS, or from using the words "hot" or "mix" individually, in their ordinary dictionary sense, as part of a description of its goods, so long as the expression HOT MIX, or any expression deceptively similar thereto, is not used as a name, mark or label for its goods.

68. I.A. 35178/2024 stands allowed in the aforesaid terms, and I.A. 1561/2025 stands dismissed..

69. It is made clear that the observations made hereinabove are only *prima facie*, for the purpose of deciding the present applications.

70. List before Joint Registrar on 07.12.2026 i.e. the date already fixed.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

OCTOBER 28th, 2026
SA