



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:28.08.2023

+ **FAO(OS) (COMM) 168/2019, CM APPL. 32083/2019 & CM APPL. 44128/2022**

ROYAL COUNTY OF BERKSHIRE POLO CLUB LTD & ORS

..... Appellants

versus

LIFESTYLE EQUITIES C V & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mrs. Anjali Jha Manish, Mr. Priyadarshi Manish & Mr. Ritaj Kacker, Advs.

For the Respondents : Mr. J. Sai Deepak, Mr. Mohit Goel, Mr. Sidhant Goel, Mr. Deepankar Mishra, Mr. Karmanya Devsharma & Mr. Abhishek Kotnala, Advs.

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HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The appellants, Royal County of Berkshire Polo Club Ltd. & Ors. (hereafter '**Berkshire**') have filed the present appeal under Section 13 of the Commercial Courts Act challenging the order / judgment dated 06.05.2019, passed by the learned Single Judge of this Court in Suit bearing No. C.S. (COMM) 1031/2018 (hereafter '**impugned judgment**').



2. The learned Single Judge has decided the application bearing IA No. 9511/2018 filed by the respondents, Lifestyle Equities CV & Ors. (hereafter '**BHPC**'), under Order 39 Rule 1 & 2 of the Civil Procedure Code (CPC) and has restrained Berkshire from selling or advertising



any product using the Logo Mark or any other mark which is deceptively similar to the plaintiff's Logo Mark.

3. The learned Single Judge has held that the Logo Mark of



Berkshire being

is deceptively similar to BHPC's



Logo Mark being

Brief facts

4. BHPC claims that its predecessor-in-interest applied for the registration of its logo mark in class 3 & 25 in France in the year 1986. It claims that registration of the said logo mark was thereafter applied in India in class 25 in the year 1992, and the products were thereafter launched in the year 2007 under the said Trademark. BHPC entered into various retail agreements for distribution and sale of the products under the said logo mark.




5. Another company was incorporated by BHPC in the year 2012 for conducting fragrance business in India. BHPC claims that the said products bearing the same logo mark have been marketed since then.

6. On coming to know that Berkshire was using the impugned logo mark, BHPC sent a legal notice on 27.11.2017. BHPC is also stated to have filed an opposition against Berkshire's application for registration of the impugned Logo Mark in India in class 3, which also covers fragrance products.

7. It is claimed that BHPC in the month of May, 2018 came to know that Berkshire is about to launch their fragrance product bearing the infringing Logo Mark and infringing trade dress. The legal notice dated 27.11.2017 sent by BHPC was replied by Berkshire denying the allegations of infringement, which led BHPC to file the suit alongwith an application under Order 39 Rule 1 & 2 CPC seeking interim injunction against Berkshire.



8. BHPC claimed that their Logo Mark  is a well-known mark and was registered in India way back in the year 1992. The mark is also registered in class 3 since November, 2006. The Logo Mark is also stated to be registered in around 91 countries across the globe. It was submitted that the mark is invented and an inherently distinctive trademark having a dominant feature, that is, the image of "charging polo pony, the rider and the polo stick of mallet" (polo player device). It claimed that the composite use of distinctive polo player



device and the distinctive word mark “Beverly Hills Polo Club” written in a stylized manner makes its Logo Mark unique and highly artistic / distinctive. It was pleaded that BHPC alongwith the registered Logo Mark was also using the polo player device in other variants such as



. The said variants are also stated to have been registered in favour of BHPC.

9. BHPC stated that the most dominant, essential and indispensable component for the purpose of consuming public is the polo player device, which has been used by them from past many years. BHPC also claims that its sales turnover for the year 2016-2017 was approximately ₹400 crores, and its brand value was approximately 1.7 billion dollars. It claims that Berkshire has dishonestly adopted the deceptively similar Logo for their business activities. It was further submitted that the Appellant No. 2 is a subsidiary of AIR - VAL International SA who were the prior licensees of BHPC. It was further stated that the appellant No. 3 was also at some stage stakeholder in the Indian subsidiary of BHPC and was responsible for manufacturing BHPC’s fragrance products till 2014 – 2015. It was submitted that the appellant No. 2 & 3 being aware of the goodwill of BHPC have launched Berkshire products in order to create confusion amongst consumers. It was claimed that the essential features of Berkshire Logo Mark, that is, the polo player device was depicted in the same way and is deceptively



similar. BHPC also relied upon the instance of the actual confusion being caused in the mind of public.

10. The learned Single Judge by its impugned judgment held that the Logo being used by Berkshire is structurally similar to that of the plaintiff's. The Court held that the comparison of the two marks would make it manifest that Berkshire's Logo is deceptively similar to that of BHPC and as it relates to the same goods, it is likely to cause confusion. It was held as under:

“14. It is clear that the rival marks have to be compared as a whole. The two marks have to be compared keeping in mind an unwary purchaser of an average intelligence and imperfect recollection. The marks have not to be placed side by side to find out if there are material differences in design and get up. In the present case, in my opinion prima facie, the impugned logo mark has broad similarities with that of the plaintiffs. An average consumer with imperfect recollection is likely to get confused and is likely to be deceived into accepting the impugned mark as that of the plaintiffs. The manner of depiction of the impugned logo mark is strikingly similar to that of the plaintiffs and is bound to lead to confusion. Further the parties are using the said mark for the same product, i.e. Fragrances.”

11. The learned Single Judge, however, held that there were no objections in case Berkshire uses its name, that is, Royal County or Berkshire Polo Club while marketing / selling its products. The Learned Single Judge also did not find merit in BHPC's contention that there are striking similarities in the impugned trade dress used by Berkshire when compared to the trade dress used by BHPC.



Arguments

12. Learned counsel for the appellants / Berkshire vehemently contended that the respondents cannot be allowed to claim exclusivity on the use of a Polo Player as a device mark. She submitted that the respondent on the one hand has no objection on use of the phrase “Royal County of Berkshire Polo Club”, but has objected to the use of the Logo containing the picture of a Polo Player. She submitted that the appellant has been honest and *bona fide* user and is liable for protection in terms of Section 17(B) of the Trademarks Act, 1999 (hereafter ‘**the Act**’). Berkshire was formed in the year 1985, and is associated with the Polo Player Club since then, whereas the respondent on the other hand is not associated with any Polo Club. She further submitted that the use of a polo player device is not restricted to Berkshire or BHPC alone, but is in fact is used throughout the world by various parties, Ralph Lauren being the earliest adopter and user of polo player device logo throughout the world.

13. Learned counsel further relied upon the search from the Indian Trade Mark Registry as well as from the US Patent Office, in order to show that various Polo Clubs and companies have been using the device of a polo player for their products. It was further submitted that Berkshire has got its Mark registered in more than 20 countries, and that various brands have been co-existing alongwith each other by using the polo player device in their product. She submitted that Berkshire was granted registration of the impugned mark in the year 2011 in relation



to class 9, 18 & 25. However, in relation to class 3, the registration was objected to by BHPC.

14. She submitted that even though BHPC is the registered proprietor



of the logo Mark, , the injunction, however is sought for



in relation to a different logo which is . She submitted that the same clearly shows that BHPC is not using its registered device Mark, but in fact is using some other variant which is not registered. She submitted that Berkshire has been co-existing alongwith the respondents in various other countries such as United Kingdom, Europe, Switzerland, Mexico and America.

15. She further submitted that the device of a Polo Player on a horse back is descriptive of Polo Game, and cannot be monopolized by a company which has no relation to a Polo Club. Berkshire, on the other hand, is a registered Polo Club since the year 1985. She relied on the judgment passed by the Singapore High Court in *The Polo/Lauren Co, LP v Shop In Department Store Pte Ltd* : [2005] SGHC 175, wherein the injunction was refused to Polo / Lauren holding that the word “Polo” is commonly used in everyday language either as a reference to the sport, or to particular style of T-shirts. It was held that the Courts are wary of allowing companies to monopolize words that are either purely descriptive or used in everyday parlance. She submitted that the



injunctions have been denied by various Courts where one company using the polo player device has sought to injunct the other company using the logo mark containing a Polo Player on a horse.

16. She further submitted that the respondents themselves in order to get registration, have claimed that no one can claim exclusive right over the word Polo. She averred that one seller cannot be allowed to appropriate a previously used generic name and claim exclusive right in it as a trademark.

17. Lastly, she contended that the two competing marks even otherwise are different. The appellant uses the Logo on top, whereas the respondent in its registered logo mark uses the Logo in between the words encircling it. The competing pictures are also different to the extent that the horses depicted in the pictures are shown to be going in different directions. The horse shown in BHPC's Logo is a full horse, whereas Berkshire has only shown a half horse in its logo mark. It is contended that the essential features are not deceptively similar.

18. Learned counsel for the respondent, on the other hand, supported the impugned judgment passed by the learned Single Judge. He submitted that in terms of the principles laid down in *Wander Ltd. v. Antox India (P) Ltd. : 1990 Supp SCC 727*, this Court sitting in an appeal ought not to disturb the prima facie findings of the learned Single Judge.

19. He submits that the Appellate Court cannot reassess the material and seek to reach a conclusion different from the one reached by the court of first instance.



20. He relied upon the judgment passed by this Court in *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd. : 2015 SCC OnLine Del 10164* to contend that the appellants have imitated the idea of the respondents 'Polo player' device mark. He submits that BHPC's logo mark has acquired the status of a well-known mark.

21. The Respondent heavily relies upon the judgment in the case of *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd. (supra)*, and *Corn Products Refining Co. v. Shangrila Food Products Ltd. : (1960) 1 SCR 968* to contend that prima-facie the appellant's label is a substantial reproduction of the respondent's label.

22. Learned counsel for the respondent further relies upon the judgment of coordinate bench of this court in the case of *South India Beverages Pvt. Ltd. v. General Mills Marketing : 2014 SCC OnLine Del 1953*, to buttress its submission that the principle of anti-dissection does not impose any bar on considering the essential and dominant feature of a composite logo mark.

23. He further submits that the appellants have not produced any document in support of their claim that they have been using the infringing logo mark since 1985.

24. The appellants, in fact, have filed the application for registration of their infringing logo mark on the basis of '*proposed to be used*' basis.

Analysis

25. The injunction in the present case is sought under Section 29(1) of the Act. In terms thereof, the plaintiff alleging infringement has to



establish that the mark used by the defendant is identical or similar to the registered trademark, and is being used on the goods or services which are also identical or similar. The principle being the use of identical or similar mark on identical or similar goods is likely to cause confusion on the part of the public. In the present case, it is not in dispute that the competing marks are used in the similar product, that is, fragrances. The very fact that the marks are identical or similar and are being used in the similar goods is sufficient to presume the existence of a likelihood of confusion.

26. It is settled that in any action for the infringement of the trademarks, the question of similarity of the two marks is to be addressed first. The Hon'ble Apex Court, in the case of ***Amritdhara Pharmacy v. Satya Deo Gupta*** : AIR 1963 SC 449, has held as under:

“You must take the two words. You must judge them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade-marks is used in a normal way as a trade mark for the goods of the respective owners of the marks.”

27. In relation to the infringement actions where the competing marks are composite logos, it has been held that the mark has to be seen as a whole. The overall mark without minutely comparing the similarities or dissimilarities has to be considered. The test, therefore, when the competing marks are words, is to some extent different when the marks are logos. In the case of logos, the test is that the rival mark



should bear a very close resemblance when seen as a whole. Therefore, the test is not that one feature of the logo is similar or identical to one feature of the competing mark but the mark as a whole should be similar or identical. The Court has to be concerned with the overall presentation of the two marks.

28. It has also been held in several decisions that it is not right to take a portion of the mark and compare it with the corresponding portion of the competing mark. The true test is whether the totality of the alleged infringing trademark is such, that it is likely to cause deception or confusion in the minds of the persons accustomed to the existing trademark.

29. It is settled that the question whether there is any deceptive similarity between the two marks is to be determined by examining the marks as a whole. The conflicting marks are to be compared by looking at them in its entirety, rather than breaking the marks into parts for a comparison. It is though permissible, to give importance to the dominant feature of the composite mark. The examination of the dominant part of the trademark for the purpose comparing it with the conflicting mark is for determining whether the marks are deceptively similar when viewed as a whole. Therefore, it is not permissible to hold a mark as deceptively similar by examining a portion of the mark and comparing it with the portion of another mark when the composite marks, when viewed as a whole, are dissimilar.

30. This Court in a recent decision in the case of *Vasundhra Jewellers Pvt. Ltd. v. Kirat Vinodbhai Jadvani & Anr.*; 2022:Delhi High Court:4255-DB, has held as under:



31. In **Pinto v. Badman: (8) RPC (181)**, Lord Esher had observed that “the truth is that the label does not consist of each particular part of it, but consists of the combination of them all”. In **Registrar of Trade Marks v. Ashok Chandra Rakhit Ltd: AIR 1955 SC 558**, the Supreme Court had referred to the aforesaid observation and held as under:-

“14. It is true that where a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole.....”

32. It is well settled that a composite trademark or label trademark is not required to be dissected to determine whether there is any deceptive similarity with another trademark. The question whether there is any deceptive similarity between two trademarks has to be ascertained by examining the marks in question as a whole. In **South India Beverages India Private Limited v. General Mills Marketing Inc: 2014 SCC OnLine Del 1953**, the Division Bench of this Court had explained the ‘anti-dissection rule’ in some detail. The Court reiterated that “conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their components parts for comparison”. However, the Court had also observed that “while a mark is to be considered in entirety, yet it is impermissible to accord more or less importance or ‘dominance’ to a particular portion or element of a mark in cases of composite marks”.

33. Having stated the above, it is also necessary to bear in mind that examining the dominant part of the trademark for comparing it with the conflicting mark is solely for the purpose of determining whether competing marks are deceptively similar when viewed as a whole. It is, thus, not permissible to hold that two competing marks are deceptively similar by examining a portion of one mark and comparing it with the portion of another mark, if the composite marks viewed as a whole are dissimilar. It is relevant to refer to



the text from *McCarthy on Trademarks and Unfair Competition*, which explains the said principle as under:-

“23.15 Comparing Marks : Differences v. Similarities

[1] The Anti-Dissection Rule

[a] Compare composites as a Whole : Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the “anti dissection” rule. The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. However, it is not a violation of the anti- dissection rule to view the component parts of conflicting composite marks as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, conflicting marks must be compared in their entirety. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: “The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” The anti-dissection rule is based upon a common sense observation of customer behavior : the typical shopper does not retain all of the individual details of a composite mark in his or her mind, but retains only an overall, general impression created by the composite as a whole. It is the overall impression created by the mark from the ordinary shopper's cursory observation in the marketplace that will or will not lead to a likelihood of confusion, not the impression created from a meticulous comparison as expressed in carefully weighed analysis in legal briefs. In litigation over the alleged similarity of marks, the owner will emphasize the similarities and the alleged infringer will emphasize the differences. The point is that the



two marks should not be examined with a microscope to find the differences, for this is not the way the average purchaser views the marks. To the average buyer, the points of similarity are more important than minor points of difference. A court should not engage in “technical gymnastics” in an attempt to find some minor differences between conflicting marks. However, where there are both similarities and differences in the marks, there must be weighed against one another to see which predominate. The rationale of the anti-dissection rule is based upon this assumption: “An average purchaser does not retain all the details of a mark, but rather the mental impression of the mark creates in its totality. It has been held to be a violation of the antidissection rule to focus upon the “prominent” feature of a mark and decide likely confusion solely upon that feature, ignoring all other elements of the mark. Similarly, it is improper to find that one portion of a composite mark has no trademark significance, leading to a direct comparison between only that which remains.”

[Underlined for Emphasis]

31. The question is to be approached from the point of view of a man of average intelligence and imperfect recollection for whom the overall structural and phonetic similarity of the two marks is likely to cause confusion.

32. At the same time, it is permissible to determine a prominent/essential feature of the mark and see whether the same is deceptively similar to the prominent/essential feature of the competing mark. The learned Single Judge, in the present case, rightly held that the ‘Polo Player’ device is an essential and significant feature of the mark of the plaintiffs. However, in our opinion, erred in holding that the mark of the defendant is deceptively similar to the essential feature of the plaintiff’s logo mark. As can be observed from the two marks,



and




, the word, 'polo club', in both the marks

is identical. However, the plaintiff has admitted that he does not have any objection if the defendant keeps using the words 'polo club'. The same has also been recorded in the order passed by the learned Single Judge.

33. The learned Single Judge has found the similarity in both the marks, not on account of the use of the words, 'polo club' but on account of the use of picture of a horse with a player. It is not a case that the images are identical but they have been held to be, *prima facie*, similar because of the presence of a horse and a player. In our opinion, the prominent features of the mark, if seen as a whole, are not similar.

34. It is an admitted case that the logo of a horse and a player is being used by not only the parties in the present case but also by many other companies, the most prominent being 'RALPH LAUREN', which is stated to be the earliest worldwide user of the logo of a polo device.

35. The appellant has produced the list of marks with a polo device which are used in India in different classes. The same is reproduced below for reference:

| App/Reg No. | Mark | Proprietor | Status | Class |
|-------------|---|-------------------------------|------------|---------------|
| 420657 |  | The Polo / Lauren Company L.P | Registered | 9, 11, 20, 35 |






| | | | | |
|---------|--|---|------------|----------------|
| 1504383 |  | United States Polo Association | Registered | 25 |
| 1644691 |  | Santa Barbara Polo & Racquet Club | Registered | 25 |
| 2447210 |  | Continental Shelf 128 Limited | Registered | 9, 14,18,24,25 |
| 1504384 |  | United States Polo Association | Registered | 18 |
| 2205945 |  | Sanjay Mehra trading as Calcutta Belt House | Registered | 18 |

36. The appellant has also produced the list of various countries where its polo device mark has been registered in different classes:

| Mark | Registration No. | Country | Date |
|---|------------------|---------|------------|
|  | 840165 | Mexico | 25.06.2004 |
|  | 925523 | Mexico | 24.03.2006 |



| | | | |
|---|------------|-------------------|------------|
|  <p>10 Royal County of Berkshire POLO CLUB</p> | 1999B13460 | Hong Kong | 04.11.1999 |
|  <p>10 Royal Berkshire POLO CLUB</p> | 2029454 | United Kingdom | 05.01.2001 |
|  <p>Royal Berkshire POLO CLUB</p> | 012127908 | Europe | 23.12.2016 |
| <p>ROYAL COUNTY OF BERKSHIRE POLO CLUB</p> | T1219216H | Singapore | 17.12.2012 |
|  <p>Royal County of Berkshire POLO CLUB</p> | 2132617 | United Kingdom | 22.03.2002 |
|  <p>ROYAL COUNTY OF BERKSHIRE POLO CLUB</p> | 554626 | Europe | 04.09.2006 |






| | | | |
|---|--------------|--------------------|------------|
|  | 133474 | Ecuador | 29.04.2013 |
|  | 8923268 | China | 14.03.2014 |
|  | 620921 | Switzerland | 03.10.2011 |
|  | T1114738Z | Singapore | 20.10.2011 |
|  | IDM000504687 | Indonesia | 18.07.2016 |
|  | 1113544 | Madrid Protocol | 29.11.2011 |



| | | | |
|---|---------|----------|------------|
|  | 1113544 | Turkey | 29.11.2011 |
|  | 10715 | Mongolia | 28.09.2012 |
|  | 243310 | Peru | 08.09.2016 |
|  | 17618 | Curaco | 01.04.2015 |
|  | 177257 | Lebanon | 16.12.2016 |
|  | 229,618 | Honduras | 24.11.2017 |



| | | | |
|--|--------------------|-----------------------|------------|
|  | 30 2016 034 166 | Germany | 25.01.2017 |
|  | 71404 | Jamaica | 05.02.2018 |
|  | 243669 | Dominican Republic | 02.10.2017 |

37. The appellant is not using the standalone polo player device as a mark but the same is accompanied by its name, that is, *Royal County of Berkshire Polo Club*. It is not disputed by the respondent that *Royal County of Berkshire Polo Club* is the actual name of the appellant which is in existence since the year 1985. It is also not disputed that the appellant has been using the same/similar mark in its products in various other countries. The use of the actual name of the appellant in its mark cannot be faulted when the same is used *bona fide*. The same is permissible in terms of Section 35 of the Act. Further, Berkshire has been using the polo player device, as referred above, in many countries and its adoption for the use of products in India, *prima facie*, cannot be held to be *mala fide*.



38. Further, even though the channel of marketing and sale of both the products is same, it, however, cannot be ignored that the products are not bought by the gullible public. If it is an admitted case of the plaintiff that the public is not getting confused with the use of words ‘polo club’ by both plaintiff and defendant, it cannot be presumed that with the addition of a logo which is different in their look with the words, ‘polo club’, would make the composite mark deceptively similar.

39. From the perusal of the pleadings, it is apparent that the plaintiff alleged infringement claiming similarity in the pictorial device of the appellant. It is true that in both the marks / pictures, what has been depicted, is a player on a horse, however, the degree of similarity is also an important aspect which cannot be ignored especially when the pictorial device in both the marks is used in conjunction as part of the composite mark.

40. As noted above, the respondent, in our opinion, rightly so, has no objection on the use of the word ‘POLO’. Moreover, pictorial mark of the plaintiff is encircled with the words ‘Beverly Hills Polo Club’ whereas the pictorial mark of the appellant has the name of the appellant, that is, ‘Royal County of Berkshire Polo Club’ mentioned below the picture. The image in the composite mark, even if, held to be the prominent / essential feature, the same cannot be called to be of such similarity to that of the appellant so as to cause any confusion in the mind of the consumer. The only similarity which is seen in the pictures of the competing marks is the photo of a horse and a polo player riding, which is associated with a polo club. As rightly pointed out by the



learned Counsel for the appellant that the horse in the competing pictures are shown to be heading to different directions. The picture in a polo player device used by the appellant is of a half horse where as a full picture of a horse is depicted in the mark used by the respondent. The club held by the player in both the pictures is also shown to be in a different direction. The dissimilarity in the pictures of the competing marks coupled with the fact that the same is used in conjunction with different words, are sufficient to distinguish the composite mark of the respondent from that of the appellant. The marks when seen as a whole, *prima facie*, shows marks belonging to two polo clubs of different origins, one being Royal County of Berkshire and the other being Beverly Hills.

41. It is also not disputed that both the marks, in the present form, are in co-existence in many other countries. It is also not in dispute that the pictorial device of a horse and a Polo player in varied forms, is being used by several companies for their products. One of the most



prominent being

42. The Court cannot be oblivious of the fact that the polo player device finds its association with a very well-known company called ‘Ralph Lauren’, whose trademark also depicts a polo player device *albeit* in a different form. It is claimed by BHPC that they have an arrangement with Ralph Lauren, wherein they have been permitted to use the polo player device. However, it is not disputed that it is not only the parties to the present case but other companies also who have been



using the pictorial device of a horse and a polo player simultaneously with other companies and are in existence together.

43. When the allegation with regard to the infringement is only *vis-à-vis* the pictorial device, the same cannot be held to be *prima facie* similar to the appellant's pictorial device in such a manner so as to violate Section 29 of the Act.

44. There is no cavil as far as the principles laid down by the Hon'ble Courts in the judgments relied upon by the learned Counsel for the respondent. The same, however, in our opinion, are not applicable to the facts of the present case. The judgements are passed in relation to the marks which are in dispute in the said cases, however, it has been categorically held that the trademark is to be looked at its entirety.

45. It is well settled that an Appellate Court would normally not interfere with the *prima facie* view of the learned Trial Court unless it finds that the Trial Court has exercised the jurisdiction arbitrarily, capriciously or in ignorance of the settled principle of law. In this case, we find that the learned Single Judge has erred in finding that the competing marks are similar on the basis of feature (Rider Horse and Mallet) of a part of the mark without considering the overall commercial impression of the two competing marks.

46. It is true that the Court, while hearing an appeal against an interim order ought not to disturb the *prima facie* findings, however, the Appellate Court can substitute its own discretion when it is found that the Trial Court has exercised the jurisdiction arbitrarily, capriciously or in ignorance of settled principles of law relating to grant of injunction. In the present case, the learned Single Judge, in our opinion, has ignored



the settled principles of law relating to the grant of injunction and the law in relation to infringement of trademark when it relates to the logo mark containing a pictorial device.

47. In view of the above, we are of the opinion that the learned Single Judge was not correct in holding that the appellant's mark is deceptively similar to the respondent's mark by comparing features of a part of a device mark (horse, rider and the mallet) without viewing the overall commercial impression of the mark.

48. In view of the above, the impugned judgment is set aside.

49. We make it clear that the observations made in the present order are only, *prima facie*, for the purpose of deciding an application under Section 39 (1) & (2) of the CPC.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

AUGUST 28, 2023

'RS' / "SS" / KDK