

KAUP010018802020



**IN THE COURT OF THE II ADDITIONAL
DISTRICT/COMMERCIAL COURT JUDGE AT UDUPI**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**II Addl. District & Sessions Judge,
Udupi.**

Dated: 20th Day of August 2025

OS.No.1 of 2020

PLAINTIFF:

M/s Sumukha Surgicals India Pvt. Ltd.,
(By Sri.KSH)

Versus

DEFENDANT:

M/s Dhrithi Surgical India Pvt. Ltd.,
(By Sri.KSB)

IA.No.V

Applicant/Defendant; M/s Dhrithi Surgical India Pvt.
Ltd.,

Versus

Opponent/Plaintiff; M/s Sumukha Surgicals
India Pvt. Ltd.,



Provision under which IA is filed	Under Order XIV Rule 5 & Section 151 of CPC
Relief sought for	Framing additional issues & recast of issue-1
Date of filing of application	22.03.2025
Application No.	V
Date of filing objection	02.05.2025
Date of order	20.08.2025

ORDER ON IA.No.V

Defendant moved this application under Order XIV Rule 5 of CPC seeking to frame additional issues & recast of issue-1 as follows;

Additional issues to be framed:-

1) *Whether the plaintiff proves that this Court having territorial jurisdiction to adjudicate the subject matter of the suit?*

2) *Whether plaintiff proves that the defendant's registered company name 'Dhrithi Surgical Solution Pvt. Ltd.' is infringed registered trade mark of the plaintiff?*

3) *Whether the plaintiff proves that the defendant Trade Mark is similar to plaintiff's*



trade mark. Therefore the defendant is guilt of infringement/passing off action?

Recast of issue-1:-

1) Whether the plaintiff proves that is has obtained the registered 'Dhatri' for their business under the Trade Mark Act?

2. Plaintiff resist the application by filing statement of objections.

3. Heard both side; Perused records.

4. Following point arises for consideration;

Whether defendant has made out a case to allow the application as prayed?

5. Answer to the above point is in **negative** for the following:

REASONS

6. At the outset, suit is filed for mandatory injunction to restrain the defendant from infringing the plaintiff's registered trademark



DHATRI using offending mark DHRITHI or any other trademark which are no way deceptively similar to plaintiff's trademark DHATRI for surgical gowns etc.

7. Defendant resisted the suit by filing written statement and additional written statement.

8. On the basis of rival pleadings this Court framed 12 issues.

9. When the matter is set down for cross-examination of Pw1, the defendant filed the application at hand for the relief stated *supra* by stating that the plaintiff got amended the plaint and defendant filed additional written statement, as such framing of additional issues and recasting of issue-1 is necessary.



10. *Per contra*, plaintiff objected the application contending that the additional issues are already framed and there is no need of framing additional issues or recasting of issue-1.

11. On careful scrutiny of rival pleadings put forth by the parties to lis, the issues and additional issues framed herein on the basis of said pleadings covers all the contentious issues involved in the lis. Likewise, recasting of issue-1 is also not required. Hence, above point is answered in negative and proceed to pass the following;

ORDER

IA.No.V filed by the defendant under Order XIV Rule 5 CPC is rejected.



No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected and signed by me and then pronounced in open court on this the 20th day of August, 2025.)

(A.Samiulla)
II Addl. District Judge/PO,
Commercial Court, Udupi.