

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE – I,
N. PARAVUR**

Present:- Sri. Jayaraj M.P., Additional District Judge – I
Thursday, the 9th day of October, 2025/ 17th Aswina 1947.

I.A. No.03/2024 in O.S. No.2/2024

Petitioner/Plaintiff:-

Vadakkedath Industries Pvt. Ltd. No.10/117, Nadakkal,
Erattupetta, Kottayam District, Kerala - 686 121,
Represented by its Director, V.M.Pareeth, aged 67 years,
S/o.Mohammed, Vadakkedath House, Market Road,
Erattupetta, Kottayam - 686 121.

By Adv.Benoy K.Kadavan.

Respondent/Defendant:-

Abdul Samad, aged 32 years, S/o.Ali, Proprietor,
Kallungal Traders, 359/B, Kallungal House, Aluva
East, Aluva P.O., Ernakulam, Kerala - 683 101.


By Advs. Abraham Cheriyan P.,Dyuthi Kurian
Jaison S.Rozario, Aravind Varghese,
Ajai Babu, Nimmy K. Joseph, Joe Joseph,
and Aashika Anil Ernezhath.

This petition filed under Order 39 Rule 1 of the Code of Civil
Procedure, 1908 to grant an ad-interim injunction.

This petitions having been heard on 20.09.2025 and the Court on
09.10.2025 passed the following:-

ORDER

Petition filed under Order XXXIX Rule 1 of CPC.

2. Petition averments in brief are as follows:- Petitioner is engaged in the business of export and sale of cardamom since 2015. The directors of the petitioner spent intellectual labour and money for identifying a trademark and designing a logo for the sale and export of their high quality cardamom. Their trademark is 'Rabbaana' with the device of a woman in niqab.  The packaging also contained the name RABBAANA in Arabic, also to connect the customers in Middle East. Petitioner is one of the few companies which secured ISO 9001-2015 certificate in re-packing, trading and export of cardamom. It also secured HACCP certificate and organic certificate for processing trade and export of cardamom and other spices by UK Cert Ltd. an international quality certifying entity. The brand has become one of the favourite brands for high quality cardamom in Middle East. Petitioner is actively engaged in promotion of its brand through various international exhibitions including Best of India Expo Bangladesh 2022,

Iran Agro Food 2023, Gulf Food 2022, 2023 and World Spice Congress. Petitioner is promoting and receiving orders through its website. The name 'Rabbaana' and the picture of woman in niqab became distinctive and customers clearly associated it with the petitioner alone. The trademark had garnered irrefutable reputation and goodwill. The Registrar of Trademarks has granted Trademark registration to the petitioner. Petitioner also secured their trademark in Saudi Arabia and United Arab Emirates in respect of cardamom. Petitioner is enjoying the common law rights and statutory rights over the trademark 'Rabbaana'. In the last week of October 2022, customer care department of the petitioner company received complaints regarding the quality of the products and on verifying it, the officials of the petitioner found that the defective products were not belonging to the petitioner and were sold and marketed by the respondent under the deceptively similar trademark 'ROYANA', slavishly copying the logo and misleading the public.



The respondent has malafide used the word 'Royana' and the picture of the woman wearing niqab and the customers mistakenly purchased the products sold by the respondent as the product

of the petitioner. 'Royana' written in Arabic makes the customers to cause confusion as it looks deceptively similar to the trademark 'Rabbaana'. Petitioner caused a notice to the respondent to stop using the mark 'Royana' and the device of a woman in niqab in respect of cardamom. Respondent approached the petitioner and agreed to change the trademark and logo and requested for four months time. In the meanwhile, petitioner noticed the publication of the trademark in the trademark journal as applied by the respondent in March 2023. Petitioner filed notice of opposition against the registration of respondent's trademark. The opposition proceedings are pending before the Registrar of Trademark. Respondent is continuing with the manufacturing, exporting and selling spices including cardamom with deceptively similar mark 'Royana' with the device of a woman in Niqab, which is absolutely illegal and amounts to infringement of the petitioner's trademark. The trademark used by the respondent is phonetically and visually similar to petitioner's trademark. Respondent is promoting the infringing mark through social media and through their website. Respondent is doing misrepresentation to the public to pass off

the cardamom being sold by the respondent as the goods from the petitioner. The average customer will be misled by respondent's adoption of the mark 'Royana' and device of a woman in Niqab. Hence the respondent is to be restrained by an ad-interim injunction from infringing/passing off of the rights of the petitioner over its registered trademark in any manner including manufacturing, exporting, selling, advertising, using in labels, covers, packing pouches, websites, as their trade name or dominion name with or without the picture of a woman in Niqab or in deceptively similar mark to the petitioner's registered trade mark.

3. Respondent filed objections with the following contentions :-

The petition is not maintainable in law or on facts. Respondent is carrying on business of processing, packaging, marketing and selling spices, curry powder, cereal flour, pulse flour for food, tamarind etc. under the name and style M/s. Kallungal Traders and using the mark 'Royana' in connection with the said goods continuously since the year 2022. The adoption and use of the said mark has been honest and extensive and respondent has spent substantial amount of money for

advertisement and promotion of said goods under the said mark. The petitioner's alleged trademark and respondent's mark are totally distinct and different and there are no common elements between them. The suit is filed by suppressing material facts that the registration granted to the petitioner's alleged trademark is for the device mark 'Rabbaana', with the picture of a woman in niqab. The alleged registration gives extensive right to use the petitioner's trademark under Section 28 of the Trade Marks Act subject to the limitations and restrictions laid down under the other provisions of the Act including Section 17 and 15 of the Act. The alleged registration will not give any exclusive right to use any part thereof which includes the device of a lady in Niqab, a commonly used one on the packaging for cardamom since the cardamom is considered as queen of spices and the word 'Rabaana' which is common laudatory Arabic word meaning 'our lord', which is of non-distinctive character. The inclusion of different device of woman in niqab in the device of the respondent will not give any right to the petitioner to allege infringement of the petitioner's trade mark. The word 'Royana', which is six letter fancy word included in the

respondent's mark is different to that of the word 'Rabbaana', which is an eight letter word. Both the words convey different meanings and ideas and there is no similarity between the said marks phonetically, structurally and visually. The application for registration of trademark 'Royana' was filled in colour and said mark is completely different from petitioner's trademark. Petitioner's trademark is a composite mark with various elements and the coalescence of these various elements make the petitioner's trademark. The registration will not give any right to the petitioner over the individual elements such as a lady in niqab or the word 'Rabbaana'. Petitioner obtained registration for the trademark in particular colour scheme under Section 15(3)(d) of the Act and the claim put forth by the petitioner to the contrary is false. The respondent adopted the trademark with the word 'Royana' depicted in a unique font and the artistic representation of a lady in a Niqab in a unique colour combination as part of the said mark honestly. The adoption of the said mark is not an infringement under Section 30(1) of the Act. Petitioner and respondent are predominantly engaged in the processing, packaging and export of cardamom to Middle Eastern countries from

Kerala. Various depictions of a woman in Niqab has been used by various entities, which are engaged in the same course of business and therefore, the same is common to the trade. The alleged use of petitioner's trademark since the year 2015 is false. The alleged claim of passing off made by the petitioner is not maintainable in law. Mere existence of a trademark in the Register of Trademarks will not constitute use and enable anyone to seek an injunction against another claiming to be prior user of a trademark. The averments that petitioner is engaged in the business of export and sale of cardamom since 2015 and that the directors of the petitioner have spent intellectual labour and money to identifying and designing logo are denied. The averments regarding the quality of the petitioner's goods are denied. It is denied that petitioner has acquired ISO 9001 – 2015 certificate in repacking, trading and export of cardamom and the HACCP certificate (Hazard Analysis & Critical Control Points System) and Organic certificate for processing trade and export of cardamom and other spices by UK Cert Ltd. and an international quality certifying entity. The averment that petitioner is engaged in the promotion of the trademark through various

international exhibitions and that petitioner is promoting and receiving orders through the website and various social media platform is denied. The adoption of the mark by the respondent is not an infringement under Sections 17, 28, 29, 30 and 35 of the Act. Petitioner's claim that name 'Rabbaana' along with the picture of a woman in Niqab has become distinctive and petitioner's customers associated it with the alleged goods of the petitioner is of no relevance. It is denied that petitioner invested effort and resources for the promotion of their goods under trademark and that petitioner's trademark garnered reputation and goodwill. Petitioner's trademark and respondent's trademark are dissimilar. The averments regarding the alleged complaints by customers and inferior quality are false. By no stretch of imagination will an average person of average intelligence when coming across the marks in question be confused. It is denied that the respondent had any intention to cause confusion among the public. The averment that respondent approached the petitioner and he agreed to stop use of the mark is denied. Petitioner has fabricated such a narrative to overcome their acquiescence in the use of the said mark by the respondent. It is

denied that respondent is passing off the reputation and goodwill earned by the petitioner over the trademark. Petitioner has not made out a prima facie case. The petition is to be dismissed.

4. The following points arise for consideration :-

- 1) Whether the petitioner has made out a prima facie case?
- 2) Whether the aspect of balance of convenience and irreparable injury are in favour of the petitioner?
- 3) Whether the petitioner is entitled to temporary injunction as prayed for?

5. Heard both sides.

6. **Points 1 to 3** :- According to the petitioner, petitioner is engaged in the export and sale of cardamom and petitioner has obtained registration of trademark with the word 'Rabbaana' with the picture of a woman in Niqab. Petitioner has produced the certificate of registration issued to the petitioner. Respondent has not disputed the fact that the trademark with the word 'Rabbaana' and the picture of a woman in Niqab belongs to the petitioner.

7. Respondent also is engaged in export and sale of cardamom

in addition to the other products. Respondent is using the mark having the word 'Royana' and the picture of a woman in Niqab. According to the respondent, the mark being used by the respondent is not similar with the petitioner's trademark.

8. One of the contentions raised by the learned counsel for the respondent is that there is delay in filing the suit and the petitioner has acquiesced to the use of the mark by respondent. Learned counsel for the petitioner cited **Midas Hygiene Industries Private Ltd. and another Vs. Sudhir Bhatia and others (2004 KHC 467)**, wherein it was held that mere delay in bringing action is not sufficient to defeat grant of injunction in case of infringement of trade mark and if prima facie case is made out the injunction is to be granted. There is no material to show that petitioner had knowledge regarding the user of the mark by the respondent earlier. Considering the said fact and also the above said judgment of Hon'ble Supreme Court, it cannot be held that petitioner is not entitled to the relief on account of the delay.

9. According to the petitioner use of petitioner's trademark amounts to infringement of Section 29(2) of Trademarks Act. Section

2(zb) of the Trademark Act defines the trademark as follows :-

(zb) — “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark

whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark”.

Section 29 (2) of Trademarks Act is as follows :-

“A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the

registered trade mark”.

Following aspects are to be considered to decide whether there is infringement to Sections 27 and 29 of Trademarks Act :

- (a) Identity of trademark and similarity of the goods or services,
- (b) Similarity to the trademark and identity or similarity of the goods or services,
- (c) Identity with the trademark and identity of goods or services
- (d) Likelihood to cause confusion on the part of the public.

The goods of both the petitioner and respondent is cardamom. There is identity of goods as to the products of the parties. Whether the marks being used by the parties are similar and whether the same is likely to cause confusion on the part of the public are to be considered.

10. Petitioner is using the word ‘Rabbaana’ and respondent is using the word ‘Royana’. According to the petitioner, there is similarity in the said words and phonetics also is similar. There is picture of woman in niqab in both the marks. Learned counsel for the petitioner

cited *Corn Products Refining Company vs. Shangrila Food Products (1960 KHC 568)*, wherein the test for determining similarity of the marks have been discussed. In the said case the Hon'ble Supreme Court held that the word 'Gluvita' used with reference to biscuits and 'Glovocita' with reference to glucose were likely to cause deception or confusion. It was held by Hon'ble Supreme Court in paragraphs 19 and 20 of the said judgment as follows :-

“19. It was then said that the goods were not of the same description and that therefore in spite of the similarity of the two marks there would be no risk of confusion or deception. We are unable to accept this contention. It is true that we have to proceed on the basis that the goods are not of the same description for the purposes of S.10(1) of the Act. But there is evidence that glucose is used in the manufacture of biscuits. That would establish a trade connection between the two commodities, namely, glucose manufactured by the appellant and the biscuits produced by the respondent.

An average purchaser would therefore be likely to think that the respondent's 'Gluvita Biscuits' were made with the appellant's 'Glucovita' glucose. This was the kind of trade connection between different goods which in the "Black Magic" case (In re: an Application by Edward Hack) 1940 (58) RPC 91 was taken into consideration in arriving at the conclusion that there was likelihood of confusion or deception. The goods in this case were chocolates and laxatives and it was proved that laxatives were often made with chocolate coatings. We may also refer to the "Panda" case (In re: an application by Ladislav Jelinek) 1946 (63) RPC 59. The goods there concerned were shoes and shoe polishes. It was observed that shoe polishes being used for shoes, there was trade connection between them and that this might lead to confusion or deception though the goods were different. The application for registration was however refused under that section of the English Act which

corresponds to Section 8 of our Act on the ground that the opponents, the manufacturers of shoes, had not established a reputation for their trademark among the public.

20. It is true that in both the above mentioned cases the two competing trade marks were absolutely identical which is not the case here. But that in our opinion makes no difference. The absolute identity of the two competing marks or their close resemblance is only one of the tests for determining the question of likelihood of deception or confusion. Trade connection between different goods is another such test. Ex hypothesi, this latter test applies only when the goods are different. These tests are independent tests. There is no reason why the test of trade connection between different goods should not apply where the competing marks closely resemble each other just as much as it applies, as held in the "Black Magic" and "Panda" cases, where the competing marks were identical. Whether by applying

these tests in a particular case the conclusion that there is likelihood of deception or confusion should be arrived at would depend on all the facts of the case”.

11. Learned counsel for the petitioner also cited **Amritdhara Pharmacy v. Satya Deo Gupta (1963 KHC 501)**, where the words ‘likely to deceive or cause confusion’ were considered. It was held in the said judgment as follows :-

“ Let us apply these tests to the facts of the case under our consideration. It is not disputed before us that the two names 'Amritdhara' and 'Lakshmandhara' are in use in respect of the same description of goods, namely a medicinal preparation for the alleviation of various ailments. Such medicinal preparation will be purchased mostly by people who instead of going to a doctor wish to purchase a medicine for the quick alleviation of their suffering, both villagers and townsfolk, literate as well as illiterate. As we said in **Corn Products Refining Co. v. Shangrila Food Products Ltd., 1960**

(1) SCR 968: (AIR 1960 SC 142) the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity of the two names 'Amritdhara' and 'Lakshmandhara' is, in our opinion, likely to deceive or cause confusion. We must consider the overall similarity of the two composite words 'Amritdhara' and 'Lakshmandhara' We do not think that the learned Judges of the High Court were right in saying that no Indian would mistake one for the other. An unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the composite words as 'current of nectar' or 'current of Lakshman.' He would go more by the overall structural and phonetic similarity and the nature of the medicine he has previously

purchased, or has been told about, or about which has otherwise learnt and which he wants to purchase. Where the trade relates to goods largely sold to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and see the difference between 'current of nectar' and 'current of Lakshman'. 'Current of Lakshman' in a literal sense has no meaning; to give it meaning one must further make the inference that the 'current or stream' is as pure and strong as Lakshman of the Ramayana. An ordinary Indian villager or townsman will perhaps know Lakshman, the story of the Ramayana being familiar to him; but we doubt if he would etymologise to the extent of seeing the so called ideological difference between 'Amritdhara' and 'Lakshmandhara.' He would go more by the similarity of the two names in the context of the widely

known medicinal preparation which he wants for his ailments”.

In the said case the word ‘Amritdhara’ and ‘Lakshmandhara’ were held likely to cause confusion among the public. It was held in the said judgment that critical comparison of the two names may disclose some points of difference, but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the over all similarity of the two names having regard to the nature of the medicine he is looking for with somewhat vague recollection that he had purchased a similar medicine on a previous occasion with a similar name.

12. As against the above said judgment learned counsel for the respondent cited **Superfil Products Ltd. Vs. Sreema Nets (2015 AIR Madras 89)** in support of his contentions. In the said case it was held that there was no similarity between the mark ‘Superline’ and ‘Sreemalines’. In the said case both the parties were manufactures of synthetic fibre products including fishing lines. It was held that use of the word ‘Super’ and ‘Sreema’ cannot be held to be likely to cause confusion among the public. In the said case one of the parties was

using the picture of a single elephant and the other was using the picture of two elephants. There were difference in other words being used in the marks. Facts of the said case are not similar to this case. Further, this court has to follow the judgment of Hon'ble Supreme Court, when it is on the same point.

13. Another judgment cited by learned counsel for the respondent is **Dura Roof Private Limited vs Dyna Roof Private Limited (MANU/GH/0437/ 2017)**, wherein it was held that 'Dura lume' and 'Dyna Lume' cannot be held to be similar. In the said case, Hon'ble Gauhati High Court has noted distinction between the goods, which are in daily use and the goods being purchased for commercial purposes. Hon'ble Gauhati High Court held that as regards the the goods which are of day to day use and sold in packet or carton and also not a costly one, trade dress plays an important role. It was further held that for the goods, which was a costly roofing sheet, the buyer may be an individual for his own use or builders or contractors, who may be buying for commercial purpose. When the builder or contractor is the purchaser, they are obviously professional men and they are unlikely to

purchase such goods without verifying and without being satisfied, what they actually intend to purchase. Said judgment also does not apply to the facts of this case.

14. Learned counsel for the respondent also cited judgment of the Hon'ble Supreme Court in **Pernod Ricard India Private Ltd. Vs. Karanveer Singh Chhabra (MANU/SC/1095/2025)** in support of the contentions. In the said case, The contention therein was that appellant was using the mark 'Blenders pride' and respondent used the word 'London pride' as the mark. Hon'ble Supreme Court held that there was no similarity in the trademark. It was further noted that though the products are similar, the brand, packaging and trade dress of each are materially distinct. In this case it cannot be held that the trade dress are materially distinct as the pictures and words used are similar, though not identical.

15. Learned counsel for the respondent also cited judgment of the Hon'ble High Court of Kerala in **Regal Jewellers Vs. Faris Rahman (MANU/KE/1292/2023)**, wherein it was held that Regal and Regalia cannot be said to be identical or similar, visually or phonetically. In

the said case the dispute was regarding the trademark of a jewellery and not regarding a product of the nature of goods involved in this case. Therefore said case also does not strengthen the respondent's case.

16. In **Pernod Ricard India Private Ltd. Vs. Karanveer Singh Chhabra (MANU/SC/1095/2025)**, the Hon'ble Supreme Court held that likelihood of confusion remains the cornerstone of both infringement and passing off actions. Whether the trademark is likely to deceive or cause confusion is a question of fact. Proof of an intention to deceive is not required and likelihood of confusion is sufficient to establish infringement or passing off. The evaluation must be made from the standpoint of an average consumer with imperfect recollection, emphasizing the overall commercial impression rather than engaging in a minute or mechanical comparison. It was held in the said judgement that in a case of composite marks, those contained multiple elements, such as words and logos – the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Colour combinations are treated similarly to single colours

combined with other distinctive elements. A specific combination of colours may prima facie registerable depending on its manner of presentation. The trade dress encompassing the overall visual appearance of a product, including packaging, layout, colour schemes and graphics also enjoys protection. Indian courts have recognized that a deceptively similar trade dress, even in the absence of a word mark, may mislead consumers and constitute passing off, particularly where visual cues trigger brand association and market confusion.

17. Respondent has taken a contention that petitioner's trade mark is invalid for the reason that the word 'Rabbaana' cannot be used for commercial activities. It is an Arabic word which is the beginning of 40 duas in Quran. It was also contended that the trade mark is devoid of any distinctive character and the petitioner can not claim monopoly over it. Learned counsel for the respondent has not cited any authority indicating that the word 'Rabbaana' cannot be used as a part of trade mark. The contention that the trade mark is devoid of any distinctive character or is customary in nature also not prima facie made out and is not correct. There is an issue raised whether the petitioner's

trade mark is not valid on the basis of the respondent's contentions. The issue was raised casting the burden on the respondent to substantiate the same. There is no material furnished or authority cited to prima facie show that petitioner's trade mark is not valid.

18. In this case, the words 'Rabbaana' and 'Royana' may cause confusion among the consumers as both marks use picture of woman in Niqab. The Arabic letters of the words 'Rabbaana' and 'Royana' have similarity. Considering these facts it is to be held that petitioner has made out a prima facie case.

19. Considering the fact that petitioner started business in the year 2015 and the respondent started the business later, the aspect of balance of convenience and irreparable injury are also in favour of the petitioner.

20. For the above reasons, petitioner is entitled to temporary injunction as prayed for. This petition is to be allowed.

21. In the result, this petition is allowed with costs as follows:

The respondent is restrained by way of a temporary injunction till disposal of the suit, from infringing/passing off the

petitioner's right over the petitioner's Registered Trade mark, in any manner, including by exporting, selling, advertising or using in labels, covers, packing pouches and websites, using the mark Royana with or without the picture of Women in niqab.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court, on this the 9th day of October, 2025.

Jayaraj M.P.
Additional District Judge - I

Appendix:- Nil

Additional District Judge – I

Typed by: Siji
Comp. By: Vijitha

I.A. No.03/2024 in

O.S.No.2/2024

ORDER

Dated: 09.10.2025