

Civil Suit No. 14/2022**ORDER BELOW EXH. 5**

The plaintiff has sought temporary injunction to restrain the defendant from interfering, marketing, advertising and selling, etc products or services under the impugned trademark 'ANNA' which would be identical, phonetically, confusingly or deceptively similar to the plaintiff's registered trademark 'ANNA IDLI' and further to restrain the defendant from infringing the plaintiff's trademark or passing off the products and services under impugned trademark.

2] In brief the plaintiff's case is that he is the proprietor of 'ANNA IDLI GRUHA' situated at Bijapur-Karnataka providing services such as manufacturing, marketing and serving various types of Idli, Dosas and other south Indian food products under

the trademark  and 'ANNA IDLI GRUHA'. The plaintiff is dealing in said business since 2011. He is trademark applicant before the trademark registry. He is well known for providing mouthwatering food products, having wide setup and networking in the country and has acquired reputation and goodwill. His business has spread in Maharashtra as well i.e. in Solapur and Pune. The defendant is also engaged in similar business under the name and style 'ANNA' at Pune. The plaintiff is using trademark

'ANNA IDLI' and the same is visibly printed on each of his products and services since 2011, throughout India. The business is uninterruptedly, openly, continuously and extensively being carried out. The Trademark Registry has issued registration

certificates in the plaintiff's favour for trademark . He has spent huge amount in marketing and advertising the trademark. His sale is around Rs.50 lakhs since 2016-17 continuously. The defendant is intending to start business under trademark 'ANNA' which is visually and structurally similar to the plaintiff's registered trademark 'ANNA IDLI'. The defendant's trademark is adopting prominent part of plaintiff's registered trademark i.e. 'ANNA'. The defendant is knowingly using the same with an intention to pass off the goods or services as that of the plaintiff to harass the plaintiff, to destroy his reputation and to create confusion amongst the consumers which would affect the plaintiff's business. If the defendant is not restrained immediately, it would spoil the plaintiff's market, goodwill and reputation. The plaintiff and the defendant both are in the same trade.

3] The defendant has opposed the application vide reply (Exh.18) contending that the plaintiff has intentionally suppressed material facts and has made false statements. The plaintiff has concealed the examination reports regarding his applications bearing no.2216339 and 2216340. The plaintiff's trademark

'ANNA IDLI GRUHA' is subject to use only in Karnataka. The plaintiff did not do any business under the mark 'ANNA IDLI' in the year 2014-15 but has made false statement about continuous business. There is no document to indicate that the plaintiff's business exists in Pune City or other parts of India except Solapur, in the State of Maharashtra. His balance sheets do not disclose spending of any amount on advertisement. The defendant planned to launch business of running a south Indian restaurant in Pune City and thought of adopting the name 'ANNA'. Therefore, he searched regarding title and ownership of said trademark and found that it was owned by Mrs. Namita Shah, resident of Pune. The defendant has approached her, paid her Rs.9,51,000/- and got the trademark assigned to him vide an assignment deed dated 25/05/2022. Thus, the proposed use of trademark 'ANNA' by the defendant is not malafide. The proposed use of trademark 'ANNA' will not result in confusion or deception amongst the average customers since there is large difference between two trademarks. The plaintiff himself has admitted before Trademark Registry that

his service mark  OR 'ANNA IDLI' does not resemble with defendant's trademark 'ANNA'. The proposed use of trademark 'ANNA' by the defendant does not amount to passing off since the plaintiff did not establish that his business possesses goodwill or reputation and that he had sufficiently advertised his

business or trademark. There is no pleading of misrepresentation. There is no likelihood of damage to the plaintiff's business. The word 'ANNA' is not exclusively associated with the plaintiff's trademark since there are numerous hotels and restaurants in Pune City and other parts of Maharashtra using the name or word 'ANNA' in their trademark or trade name. The plaintiff has not added Indrasen Vilasrao Jachak as defendant who is lawful proprietor or assignee of registered trademark 'ANNA'. The grant of injunction will cause irreparable loss to the defendant.

4] Perused. Heard. Following points arise for determination against which findings are recorded for the reasons to follow.

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1	Whether the plaintiff has made out a prima facie case in his favour?	In the negative
2	Whether the balance of convenience lies in his favour?	In the negative
3	Whether the plaintiff has made out case of suffering irreparable loss to him in case of refusal of injunction?	In the negative
4	What order?	As per final order.

REASONS

5] The advocate for plaintiff submitted that word 'ANNNA' is prominent part of the plaintiff's trademark. The plaintiff is using the same since 2011 without objection raised by anyone. The plaintiff's trademarks are registered. One Mr. Vinamra Shah had registered trademark 'ANNA' just two months prior to the plaintiff in various classes and categories. The defendant had purchased the trademark from Mr. Shah. Class 43 is relating to hotels and restaurants category, however, Mr. Shah has used trademark 'ANNA' only in class 25 relating to clothing. Thus, the plaintiff is prior user of the trademark which is important in trademark law. He submits that in view of Rule 75 of the Trademark Rules and provisions of section 37 of the Trademark Act, the conditions imposed by or objections raised by the Trademark Registry are irrelevant. As of date, the defendant is not user of trademark 'ANNA' since his business is only proposed business. The purchase of trademark by the defendant reveals that 'ANNA' is not generic. There are online food partners distributing the food under the plaintiff's trade name. Therefore, there is no need to specifically invest on the advertisements. Plaintiff had already challenged registration of defendant's trademark and it is pending. Considering the similarities in the trademarks, common customer will be misled causing irreparable loss to the plaintiff's business. Therefore, he submits that an injunction sought is necessary.

- 6] In support of his submission, he relied upon -
- 1] *Laxmikant V. Patel Vs. Chetanbhat Shah & Anr.*, 2001 0 Supreme (SC) 1633.
 - 2] *Jagdish Gopal Kamath Vs. Lime And Chilli Hospitality Services*, LAWS(BOM)-2015-3-20.
 - 3] *M/s. Medicure Hygiene & Ors. Vs. M/s. Medicare Hygiene Private Limited & Ors.* 2013 0 AIR(SC) 952.
 - 4] Order dated 08/09/2015 of the Honourable Gujarat High Court in Spl. Civil Application No.14290/2015 between *Nishant Construction Private Limited Vs. Ranaakar Estate Developer Private Limited*.
 - 5] *Power Control Appliances Vs. Sumeet Machines Private Limited*, 1994 0 Supreme(SC)185.
 - 6] *Swaran Singh Vs. Usha Industries (India)*, 1986 0 AIR(Del) 342.
 - 7] *Ruston and Hronby Ltd Vs. Zamindara Engineering*, 1969 0 Supreme(SC)348.
 - 8] *P. M. Diesels Vs. S. M. Diesels*, LAWS(DLH)-1994-2-47.
 - 9] *Neon Laboratories Ltd. Vs. Medical Technologies Ltd. & Ors.*, 2015 0 Supreme (SC) 935.
 - 10] Order dated 25/10/2021 of the Honourable Gujarat High Court in R/Appeal from Order No.143/2020 with Civil Application (For Stay) No.1/2020 in R/Appeal from Order No.143/2020 between *Trupti Grover Vs. R G Mir Sanandwala Education Charitable Trust*.

- 11] *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co. Ltd. Hyderabad, 1996 0 AIR(SC) 2275.*
- 12] *Snapdeal Private Limited Vs. Godaddycom Lic, LAWS(DLH)-2022-4-40.*
- 13] *Telecare Network India Pvt Ltd. Vs. Asus Technology Pvt Ltd & Ors., LAWS(DLH)-2019-5-44.*
- 14] *Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. Vs. Sita Chawal Udyog Mill Tolly Vill, LAWS(DLH)-2010-8-277.*
- 15] *Cluett Peabody & Co.Inc. Vs. Arrow Apparals, 1998 1 ArbLR 436; 1997 0 Supreme(Bom) 573.*

7] On the other hand, the advocate for defendant submits that vide pursis (Exh.16), name of proprietor was disclosed by the defendant, however, the proprietor is not made party to the suit. M/s. ANNA is not an entity and therefore any order passed against it would be futile. The user of trademark is Mr. Jachak since March 2022. Before purchasing the trademark, he had searched the Trademark Registry records. There is list of trademarks including 'ANNA' being used by many people. The defendant has got the trademark assigned by paying valuable consideration. Such assignment is valid and legal and therefore the defendant is owner of said trademark. The plaintiff had applied for the registration of his trademarks. Objections were raised by the Trademark Registry

to which the plaintiff had replied that the trademark would not collide with other trademarks since those were not similar. The plaintiff has not disclosed such examination reports in the plaint and thus has suppressed material facts from the Court. The plaintiff has made various false statements in the plaint. There is no document to show the plaintiff's countrywide presence in the market or even existence of his shop in Pune. The documents do not show expenses on advertisement made by the plaintiff. The plaintiff's registration of trademark is only for the State of Karnataka. He has suppressed the same. If both the trademarks are registered, then there is no infringement. Since the plaintiff has no goodwill as alleged, there is no injury to his business. There is no pleading of misrepresentation and so the plaintiff is not entitled to the relief. The plaintiff's products are not unique. On these counts, the plaintiff cannot claim injunction. In support of his submissions, he relied upon -

- 1] *Sun Pharmaceuticals Industries Limited Vs. Cipla Limited, 2009 (108) DRJ 207.*
- 2] *Order dated 15/03/2017 of the Honourable Delhi High Court in CS(COMM) 1433/2016 between Ramaiah Life Style Cafe Vs. Eminent Entertainment & Ors.*
- 3] *S. K. Sachdeva & Anr. Vs. Shri Educare Limited & anr., 2016 SCC Online Del 6708.]*
- 4] *Ramjas Foundation & Anr. Vs. Union of India & Ors., 2010 AIR SCW 7091.*

- 5] ***Cadila Healthcare Limited Vs. Dabur India Limited, 2008 SCC OnLine Del 1730.***
- 6] ***Thukral Mechanical Workds Vs. P. M. Diesels Pvt. Ltd. & Anr., (2009) 2 Supreme Court Cases 768.***

8] Before going to assess the facts and circumstances in this case, it will be fruitful to consider the legal position emerging from the authorities cited by the parties to suit.

9] In ***Laxmikant V. Patel's*** case, the Honourable Supreme Court has observed that -

“8- It is common in the trade and business for a trader or a businessman to adopt a name and/or mark under which he would carry on his trade or business. According to Kerly (Law of Trade Marks and Trade Names, Twelfth Edition, para 16.49), the name under which a business trades will almost always be a trade mark (or if the business provides services, a service mark, or both). Independently of questions of trade or service mark, however, the name of a business (a trading business or any other) will normally have attached to it a goodwill that the courts will protect. An action for passing-off will then lie wherever the defendant company’s name, or its intended name, is calculated to deceive, and so to divert business from the plaintiff, or to occasion a confusion between the two businesses. If this is not made out there is no case. The ground is not to be limited to the date of the proceedings; the court will have regard to the way in which the business may be carried on in the future, and to its not being carried on precisely as carried on at the date of the proceedings. Where there is probability of confusion in

business, an injunction will be granted even though the defendants adopted the name innocently.”

“13- In an action for passing off it is usual, rather essential, to seek an injunction temporary or ad-interim. The principles for the grant of such injunction are the same as in the case of any other action against injury complained of. The plaintiff must prove a prima facie case, availability of balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction.-----”.

10] In **Jagdish Gopal Kamath's** case, the Honourable Bombay High Court has observed that -

“18. It is, I believe, too well settled to require further discussion that in comparing rival marks one must look at the mark as a whole. Persons recall marks in generalities and by an overall recollection of an impression of it. We do not distinguish marks on the basis of niggling detail: whether a device or a mark uses, for instance, one feather or leaf or two, or whether a mark uses an accented letter or an apostrophe is hardly the matter that embeds in common memory.

In an infringement action, the rival mark need not be an exact replica or clone. Trivial and non-distinctive matters what one might describe as mere sideshows do not sufficiently distinguish a competing mark.-----”

“48- ---- It is possible, I think, to use these facets to derive a simple principle: a plaintiff's mark's reputation, goodwill and prior use may be supplemented with Internet-based material. Where such material exists, a rival user is expected to know of it and a defendant may even be deemed to be aware of it. The burden must then lie on the defendant to show that the rival use of the mark is such as

would have no effect on the plaintiff's continued use of that mark. The fact that a defendant's mark or goods or service bearing that mark are not easily traceable on such Internet-based material is not enough to discharge that burden; for, evidently, any person adopts a mark only with a view to foster and build a reputation. In addition, where there is sufficient globally-accessible Internet material to show damage or to raise a presumption of damage to the plaintiff by the defendant's use of the mark, the defendant's burden is that much greater.-----”

11] In **M/s. Medicure Hygiene & Ors.'s** case, the Honourable Gujarat High Court has observed that -

“31- It is true that the word “Medicare” is not registered. However, the plaintiff has been using the same name since 1995 in their products and earned reputation and goodwill in the market and, therefore, although the said name is not registered, however, when the court is convinced that the plaintiff is able to prove its prima facie case, then it is entitled to injunction by restraining the defendants from using the name “Medicare”.”

12] In **Power Control Appliances's** case, the Honourable Supreme Court has observed that -

“41. It is a settled principle of law relating to trade mark that there can be only one mark, one source and one proprietor. It cannot have two origins. Where, therefore, the first defendant-respondent has proclaimed himself as a rival of the plaintiffs and as joint owner it is impermissible in law. Even then. the joint proprietors must use the trade mark jointly for the benefit of all. It cannot be used in rivalry and in competition with each other.”

13] In **Swaran Singh's** case, the Honourable Delhi High Court has observed that -

“7- ----An exclusive right is granted by the registration to the holder of a registered trade mark. We do not think statutory rights can be lost by delay. The effect of a registered mark is so clearly defined in the statute as to be not capable of being misunderstood. Even if there is some delay, the exclusive right cannot be lost. The registered mark cannot be reduced to a nullity.-----”

14] In **Ruston and Hronby Ltd's** case, the Honourable Supreme Court has observed that -

“6- The action for infringement is a statutory right. It is dependent upon the validity of the registration and subject to other restrictions laid down in Sections 30, 34 and 35 of the Act. On the other hand, the gist of a passing off action is that A is not entitled to represent his goods as the goods of B but it is not necessary for B to prove that A did this knowingly on with any intent to deceive. It is enough that the get-up of B's goods has become distinctive of them and that there is a probability of confusion between them and the goods of A. No case of actual deception nor any actual damage need be proved.-----”

15] In **P. M. Diesels's** case, the Honourable Delhi High Court has observed that -

“In this connection it is sufficient to say that under the law it is the right of two parties before the court which has to be determined and the court has not to examine the right of other parties. If some other manufacturers are using or suffixing the word Marshal on their diesel engines, it is of no consequence. Furthermore, if the plaintiff has not taken

any action against several other infringements, this does not mean that the plaintiff has abandoned its trade mark and cannot challenge the action of the defendant.”

16] In **Neon Laboratories Ltd's** case, the Honourable Supreme Court has observed that -

“The ‘first in the market’ test has always enjoyed pre-eminence.”

17] In **Trupti Grover's** case, the Honourable Gujarat High Court has observed that -

“C- In a suit for passing off action, what is primarily required to be considered is the question as regards the prior use of the trademark.-----”

“D- ---The fundamental question on this tort turns upon the defendant's conduct is such as it would deceive or misled the general public at large to confuse between the activities of the two. Further in a passing off claim, it is necessary to verify that the use of the trademark by the defendant is expect to cause injury or damage to the plaintiff's goodwill.----”

18] In **Vishnudas Trading as Vishnudas Kishendas's** case, the Honourable Supreme Court has observed that -

“If registration has been given generally in respect of all the articles coming under the broad classification and if it is established that the trader or manufacturer who got such registration had not intended to use any other article except the articles being used by such trader or manufacturer enjoying the registration made in his favour.”

“Looking to the Scheme of the registration of trade mark as envisaged in the Trade Marks Act and the Rules framed thereunder, it appears to us that registration of a trade mark cannot be held to be absolute, perpetual and invariable under all circumstances.

19] In ***Snapdeal Private Limited's*** case, the Honourable Delhi High Court has observed that -

“94. That, however, can only be in respect of marks which are known to be prospectively infringing. In other words, if a plaintiff is legitimately aware of the fact that a defendant is likely to launch an infringing product or use an infringing mark then, even before such product is launched or mark is used, the plaintiff can initiate a quia timet action to prevent for an injunction against such use, instead of waiting for the use to take place and damage to follow.”

20] In ***Telecare Network India Pvt Ltd.'s*** case, the Honourable Delhi High Court has observed that -

“39. Further, just because defendant’s application for cancellation of plaintiff’s registered trade mark is pending consideration, does not mean that this Court is denuded of the power either to decide this application or grant an injunction. (See: Patel Field Marshal Agencies Vs. P.M. Diesels Limited &Ors, (2018) 2 SCC 112).”

“41. In any event, as there is no estoppel against statute, the stand taken by plaintiff in reply to the examination report is not relevant.

There is no suppression or misrepresentation that registered marks zen and zenmobile are word marks as the

plaintiffs had placed on record the registration certificates. Furthermore, the plaintiff had not suppressed its reply to the examination report dated 01st may, 2010 as the same is available in the public domain. ”

21] In *Kirorimal Kashiram Marketing & Agencies Pvt. Ltd.*'s case, the Honourable Delhi High Court has observed that -

“10. ----There is no question of acquiescence in the facts of the present case, more so, because the adoption of the respondent is not honest and the defence that the mark "Deer" was common to the trade is clearly misconceived. It is in the light of this, we are convinced that the respondent does not have any strength in its case as compared to the case set up on the registered trademark of the appellant.”

22] In *Cluett Peabody & Co.Inc. Vs. Arrow Apparals's* case, the Honourable Supreme Court has observed that -

“37(g) Registration enables the registered proprietor to sue for infringement of registered trade mark irrespective of the fact whether it is used or not used. Registration confers on the proprietor a monopoly right over the use of the mark. But, proprietary rights in a trade mark acquired by use are superior to rights obtained by registration under the Act. This is the main defence put up on behalf of the defendants in this Notice of Motion. Therefore, prior user of the marks should be protected against monopoly rights conferred by the Act. (Pages 5 & 6 of Narayanan). A trade mark has no meaning even if it is registered unless it is used in relation to goods. Otherwise, its non-use may lead to its death. A trade mark which drops out of the use dies. Where there are no goods offered for sale, there is no use of trade mark.”

23] In ***Sun Pharmaceuticals Industries Limited's*** case, the Honourable Delhi High Court has observed that -

“13. The next question which arises is, if title in registered trade mark vests in assignee, after assignment and before registration, who is entitled to exercise rights under Section 28 as registered proprietor. If the interpretation canvassed by defendant herein is to be adopted it will amount to allowing a person who is divested by assignment of title to registered trade mark to nevertheless continue exercising such rights; it would play havoc with assignability and trading in trade marks, expressly permitted under the Act. If the person in whom title has vested by assignment, is held to be not entitled to exercise such rights owing to non registration, the same result will follow, besides giving a premium to third parties. In that situation, in the interregnum there will be none to enforce rights in the registered trade mark. "Registered proprietor" in Section 28, rather than adopting a pedantic interpretation has to be interpreted as including a person having title as registered proprietor by way of assignment or transmission.”

24] In ***Ramaiah Life Style Cafe's*** case, the Honourable Delhi High Court has observed that -

“(vi) that assignment under Section 2(b) is an assignment in writing by an act of parties concerned and does not require registration; (vii) that for assignment to be complete, the Registrar is not involved; (viii) that from the language of Section 45(1) of the Trade Marks Act also, the assignee acquires title to the registered trade mark on assignment and not by registration; (ix) that registration is of title acquired by assignment;”

“(xi) that thus the assignee immediately on assignment acquires title to the registered trade mark and title to the

registered trade mark exists in assignee even before registration under Section 45(1);”

25] In **S. K. Sachdeva & Anr.**'s case, the Honourable Delhi High Court has observed that -

“18. We are of the view that the interim injunction is liable to be vacated in view of various factors. First of all, the respondents themselves have taken a categorical stand that the word 'SHRI RAM' is the name of a popular figure and deity in Hinduism and no one proprietor can claim exclusive rights on the mark 'SHRI RAM'. Secondly, their stand that the mark 'SHRI RAM' is common to trade and several 'SHRI RAM' formulative marks are peacefully co-existing on the register of trademark. Thirdly, the appellants have prima facie shown that there were several schools in existence using the name 'SHRI RAM' in existence even prior to the adoption of the mark by the respondents. Fourthly, the respondents are guilty of concealment and misrepresentation and, lastly, discretion should not be exercised in favour of a person who approaches the court with unclean hands. ”

26] In **Ramjas Foundation & Anr.**'s case, the Honourable Supreme Court has observed that -

“14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect

for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.-----”

27] In **Cadila Healthcare Limited's** case, the Honourable Delhi High Court has observed that -

“18. Before concluding, it would be relevant to indicate that the modern tort of passing off, as per Lord Diplock in Erven Warnink BV v. J. Townend & Sons: (1979) 2 All ER 927 and as approved in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Limited: 2001 (5) SCC 73 and reiterated in Heinz Italia and Another v. Dabur India Limited: 2007 (6) SCC 1, has five elements, i.e., (1) a misrepresentation, (2) made by a trader in the course of trade, (3) to prospective customers of his or ultimate consumers of goods or services supplied by him, (4) which is calculated to injure the business or goodwill of another trade (in the sense that this is a reasonably foreseeable consequence), and (5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a quia timet action) will probably do so. ”

28] In **Thukral Mechanical Works's** case, the Honourable Supreme Court has observed that -

“22. There cannot be any doubt or dispute that the registration of a trade mark confers a very valuable right. The person in whose name the trade mark has been registered may take action against any person for passing off the goods as that of the registered owner. It confers an exclusive right of use of the trade mark in relation to the goods in which the trade mark is registered. The same is an assignable right in terms of Section 36 of the Act, whereas

an unregistered trade mark is not.”

29] In *Nishant Construction Private Ltd.'s* case, it was held in the facts therein that a prima facie case was made out.

30] In the light of authorities cited supra, the legal position emerges that, a goodwill is attached to the name of a business which the Courts have to protect. The principles of grant of injunction are applicable to the cases under the Trademark Act. The rival mark, in an infringement action, need not be an exact replica of the other. A person using the trademark at earlier point of time can bring an action for its infringement and rival user is expected to know of such earlier user. There can only be one mark, one source and one proprietor. It cannot have two origins. Exclusive right is granted by the registration of the trademark and such statutory rights cannot be lost by delay. It is not necessary for the plaintiff to prove that the defendant intentionally passed off the goods with an intent to deceive. It has only to show that there is probability of confusion between them. Even if there are more manufacturers or businesses using a trade name similar to that of the plaintiff and the plaintiff does not take action against several other infringements, that does not mean that the plaintiff cannot challenge the action of the defendant. The 'first in the market' test has always enjoyed preeminence. If registration in respect of an article coming under particular classification covering

various products and if it is established that the trader or manufacturer who got such registration had not intended to use it for any other article except articles being produced by him, the registration of such trader is liable to be rectified by limiting his user of registration. The plaintiff can initiate an action even before the defendant launches his product or mark. The use of prominent part of trademark can also be enough to initiate an action of passing off.

31] In this case, before going to other grounds raised by the plaintiff and the defendant, it will be necessary to consider the ground raised by the defendant that the plaintiff has not come with clean hands before this Court.

32] It is not in dispute that Mr. Vinamra Shah had registered the trademark 'ANNA'. After his death, his wife Mrs. Namita Shah has inherited said trademark and she has assigned the same to the defendant more particularly Mr. Jachak. The plaintiff is using the trademark 'ANNA IDLI' and 'ANNA IDLI GRUHA' and running the eateries serving south Indian food. The defendant has started a restaurant named 'ANNA' and is providing the south Indian food. The plaintiff has got his trademarks registered i.e. 'ANNA IDLI' and 'ANNA IDLI GRUHA'.

33] The defendant has produced on record documents with list Exh.19. It appears that on 25/09/2011, the plaintiff had applied for trademark 'ANNA IDLI GRUHA'. On 27/11/2012, the Trademark Registry has raised certain objections. One of the objections was that said trademark was identical with earlier trademarks. List of such trademarks was given by the Trademark Registry along with objections which includes the trademark 'ANNA' registered in the name of Mr. Shah. To such objections, the plaintiff has replied on 15/04/2016 that the trademark 'ANNA IDLI GRUHA' does not resemble with other marks cited in the search report of the Trademark Registry and so the plaintiff's trademark is not likely to deceive or cause confusion. It was not deceptively similar to the other marks included in the search report and so there was no question of conflict. Similarly, the

plaintiff had also applied for the trademark  and similar objections were raised by Trademark Registry. Registry has again given a list of trademarks in support of its objections which has also covered trademark 'ANNA' registered in the name of Mr. Vinamra Shah. Similar reply was given by the plaintiff to the Trademark Registry on this occasion also.

34] It needs to be mentioned that despite being aware of these facts, the plaintiff has not brought these circumstances on

the record of present case. This is a willful suppression of material fact by the plaintiff.

35] In similar circumstances, in *S. K. Sachdeva & Anr.'s* case, the Honourable Delhi High Court has rejected injunction while observing that once a person has taken a categorical stand that a trademark does not resemble with other trademarks, he cannot reprobate.

36] In this case also the plaintiff has represented the Trademark Registry that its trademarks are not similar to the trademarks registered earlier with the Trademark Registry and so there was no case of deception or confusion. Thus, now the plaintiff cannot say before the Court that the trademarks are deceptively similar or would create confusion amongst the common men.

37] Advocate for the plaintiff submitted that *Telecare Network India Pvt Ltd.'s* has considered *S. K. Sachdeva & Anr.'s* case and held that since the examination reports are available in public domain, there was no suppression.

38] Here it needs to be mentioned that despite noticing that the examination reports were available in public domain, in *S. K. Sachdeva's* case, the Honourable Delhi High Court has

observed that the respondents therein were guilty of suppression of material facts. In view of this, considering the view taken by the Honourable Division Bench of the Honourable Delhi High Court, in this case also it has to be held that the plaintiff has suppressed material fact which amounts to playing fraud upon the Court. Thus, the plaintiff's conduct is such that he is not entitled to the equitable and discretionary relief of injunction as sought.

39] When it is crystal clear that the plaintiff has attempted to play fraud upon this Court and so is not entitled to injunction, other grounds raised need not be gone into. Consequently, I hold that no prima facie case exists in the plaintiff's favour. The balance of convenience does not lie in his favour and that he has failed to make out a case of suffering irreparable loss in case injunction is refused. Hence, I answer points no.1 to 3 in the negative and in response to point no.4, I pass following order.

ORDER

- 1] Application (Exh.5) is rejected.
- 2] Costs in cause.

Date : 30/01/2023
Pune

sd/--
(Ajit N. Mare)
District Judge - 4, Pune

I affirm that the contents of this PDF file Order are same word for word as per original Order.

Name of Stenographer	Pranjali Prasad Bokil (Stenographer – Grade-I)
Court Name	Shri. Ajit N. Mare District Judge – 4 & Additional Sessions Judge, Pune
Date of Order	30/01/2023
Order signed by Presiding Officer on	30/01/2023
Order uploaded on	24/02/2023