



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.01.2026

+ **CS(COMM) 361/2018, IA Nos. 49679/2024, 34537/2024 and 32689/2025**

NADEEM MAJID OOMERBHOYPlaintiff

Versus

SH. GAUTAM TANK & ORS.Defendants

Advocates who appeared in this case

For the Plaintiff : Mr. Tahir Ashraf Siddiqui & Mr. Kartikey Sahai, Advocates.

For the Defendants : Ms. Rajeshwari Hariharan, Mr. Arnav Goyal & Mr. Nihal Singh, Advocates for Defendant Nos. 1 and 2.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

FACTUAL BACKGROUND:

1. This Suit is filed seeking permanent injunction restraining infringement of Trade Mark 'POSTMAN' of Plaintiff No. 1, passing off, damages, rendition of accounts, delivery up, costs etc. The Suit was originally filed by Plaintiff No. 2 in his capacity as the Court Receiver of Plaintiff No.1, a partnership firm being M/s Ahmed Oomerbhoy, vide order



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dated 06.07.2000 in Suit No. 4913 of 2000 titled as **Majid A. Oomerbhoy v. Rashid S. Oomerbhoy & Ors.** by the High Court of Judicature at Bombay.

2. *Vide* order dated 30.07.2001, Plaintiff No. 2 was further directed by the High Court of Judicature at Bombay to take steps that may be necessary to safeguard the Trade Mark of Plaintiff No. 1 and also take action against the persons who may be unauthorizedly using the Trade Mark of Plaintiff No. 1, 'POSTMAN'.

3. It is contended by the Plaintiffs that Trade Mark 'POSTMAN' is a completely arbitrary word chosen as a Trade Mark in respect of refined groundnut oil (edible) by Plaintiff No. 1. The Trade Mark of Plaintiff No. 1 was duly registered and exclusively belongs to Plaintiff No. 1. The details of registration of Trade Mark 'POSTMAN' in respect of refined groundnut oil (edible) in Class 29 in India are as under:

Mark	Regn. No.	Date
Device of a 'Postman'	162666	February 19, 1950
Device of a 'postman' and words POSTMAN brand	213353	January 18, 1963
Device of a 'postman' and words POSTMAN brand	258918	August 21, 1969
Device of a 'postman' and words POSTMAN brand	260538	November 12, 1969
Trademark postman	312898	March 4, 1976
Device of a 'postman' and words POSTMAN brand	415564	January 4, 1984



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4. The above registrations have been duly renewed from time to time and were in force at the time of filing of the Suit. The Trade Mark 'POSTMAN' is also registered in UAE (Dubai) and United Kingdom.

5. Plaintiff No. 1 has also registered the 'POSTMAN' Label variants, each of which are original artistic works and registered with Registrar of Copyrights as under:

Description of Work	Regn. No.	Date
Title of work being Postman	A-39132/83	April 15, 1983
Title of work being Label Postman	A-46241/84	November 1984
Title of work being Postman	A-57347/99	February 8, 2000
Title of work being Label Postman	A-57639/99	April 17, 2000

6. Plaintiff No. 1 has also registered the shape and design of its products with the Controller General of Patents and Designs *vide* Design Registration No. 160845 with effect from 29.03.1989, which expired in 2004. However, the shape of the 'POSTMAN' groundnut oil bottle had become so distinctive that till date, the consumer associates the same with Plaintiff No. 1's product or as originating from a specific source.

7. Plaintiff No. 1's product under the Trade Mark 'POSTMAN' has been in regular household use for over five decades and the said Trade Mark 'POSTMAN' is exclusively and strongly identified in the minds of the consumers and by the members of the trade as the product of Plaintiff No. 1.

8. The Trade Mark and Device of 'POSTMAN' have acquired substantial reputation and goodwill in the market since 1930s, having registrations since 1954. Plaintiff No. 1 had been using the Trade Mark 'POSTMAN' continuously and extensively up to the year 2000, until when the dispute arose between the partners of Plaintiff No. 1. Despite



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discontinuation of the use of Trade Mark 'POSTMAN', it is still exclusively associated and identified with the goods of Plaintiff No. 1 and no one else. As a result of the vested statutory and common law rights, the Plaintiff is exclusively entitled to the Trade Mark 'POSTMAN' and Device first time adopted by Plaintiff No. 1 and no other person has any right to use the Trade Mark 'POSTMAN'.

9. Plaintiff No. 1 has incurred huge expenses in popularizing the Trade Mark 'POSTMAN' and advertised the said Mark extensively and had left no stone unturned in making it a household name in India. The market for 'POSTMAN' branded product was not limited to India alone but also had international market. The annual retail sales of the products having Trade Mark 'POSTMAN' before suspension in December 2000 was as under:

Year	Sales Turnover	
	Quantity (M.T.)	Amount (Rs.)
1990-91	13,630,083	55,59,95,431
1991-92	15,000,541	73,72,83,123
1992-93	16,886,305	74,70,56,042
1993-94	17,880,477	77,10,22,029
1994-95	15,161,262	76,19,60,388
1995-96	15,362,386	84,44,32,713
1996-97	15,557,020	84,04,91,664
1997-98	15,939,307	84,15,57,441
1998-99	15,160,818	98,76,29,430
1999-2000	16,086,688	91,84,86,350

10. Plaintiff No. 2 has been vested with the possession of the complete business and all assets of Plaintiff No. 1 pursuant to the orders passed by the High Court of Judicature at Bombay and has custody of all the statutory and common law proprietorship over the Trade Mark 'POSTMAN' and is entitled and authorized to protect the same.



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11. In December 2004, one of the partners of Plaintiff No. 1, Mr. Rashid S. Oomerbhoy, became aware that Defendant No. 2, Jagdamba Vegetable Products (P) Ltd., had commenced manufacturing, distribution, sale and marketing of refined groundnut oil under the name and device 'SUPER POSTMAN'. Accordingly, *vide* affidavit dated 17.03.2005 Mr. Rashid S. Oomerbhoy, partner of Plaintiff No. 1 brought to the notice of High Court of Judicature at Bombay and sought directions that Plaintiff No. 2 should take action against the said infringement.

12. Even though Plaintiff No. 1 was not manufacturing or selling its products under the Trade Mark 'POSTMAN' since the year 2000, Plaintiff No. 2 was directed by the High Court of Judicature at Bombay to take all appropriate action to maintain and preserve the Trade Mark 'POSTMAN' subsisting in favour of Plaintiff No. 1 and safeguard the same from being infringed.

13. Accordingly, the Plaintiffs filed this Suit originally numbered as CS(OS) 806/2005, now renumbered as CS(COMM) 361/2018 seeking permanent injunction against the Defendants from selling and offering to sell edible groundnut oils or any similar products under the Trade Mark 'SUPER POSTMAN' or any other deceptively similar Marks to Plaintiff No. 1's registered Trade Mark 'POSTMAN'.

14. Before filing of the Suit, Defendant No. 2 had applied for registration of Mark 'SUPER POSTMAN' on 29.04.2004. As on the date of filing of the Suit, the Defendants did not have the registration of the Mark 'SUPER POSTMAN'. Accordingly, it is contended by Plaintiff No. 1 that the use by the Defendants of the Mark 'SUPER POSTMAN' for groundnut oil was willful and *mala fide* being without the consent, authorization or license of



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Plaintiff No. 1 and amounted to infringement of the Trade Marks of Plaintiff No. 1 for identical goods for which Trade Mark 'POSTMAN' is registered and renewed from time to time. It is further claimed by Plaintiff No. 1 that the Defendants also infringed the copyright of Plaintiff No. 1 by using the colour scheme of blue and yellow being the distinctive blue colour of the 'POSTMAN' groundnut oil pack and yellow colour used for the device of 'POSTMAN' in Plaintiff No. 1's product. By virtue of prior adoption, prior use, prior registration and extensive publicity and promotion, the Trade Mark 'POSTMAN' earned substantial goodwill and reputation whereby the members of the trade in public associate the Trade Mark 'POSTMAN' with Plaintiff No. 1's product. It is alleged by Plaintiff No. 1 that the use of the Mark 'SUPER POSTMAN' by the Defendants amounted to taking unlawful advantage of the reputation and goodwill built by Plaintiff No. 1 under the Trade Mark 'POSTMAN' in India and overseas.

15. It is Plaintiff No. 1's case that the prefix 'SUPER' before the Trade Mark 'POSTMAN' belonging to Plaintiff No. 1 is bound to cause confusion and deception in the minds of purchasing public and the trade as the goods of Plaintiff No. 1 and Defendants are identical and used by the same consumers and also have similar channels of trade, thereby the likelihood of confusion occurring is extremely high.

16. It is further contended by Plaintiff No. 1 that the Defendants cannot have any plausible reason for the adoption of the Mark 'SUPER POSTMAN' consisting of Plaintiff No. 1's well-known Mark 'POSTMAN' except to take unlawful advantage of the reputation and goodwill of Plaintiff No. 1 under the Trade Mark 'POSTMAN'.



17. Accordingly, the present Suit was filed seeking an order of permanent injunction restraining Defendant Nos. 1 and 2 from manufacturing, selling and offering for sale of edible groundnut oils or any other cognate products under the Mark ‘SUPER POSTMAN’ under any Mark deceptively similar to Plaintiff No. 1’s Trade Mark / Label ‘POSTMAN’ amounting to infringement of Trade Mark Nos. 162666, 213353, 260538, 258918, 312898 and 415564 in Class 29 and / or in any manner whatsoever doing any other thing as maybe likely to cause confusion or deception amounting to passing off their goods and business as and for those of Plaintiff No. 1. The Suit also prayed for an order for permanent injunction restraining Defendant Nos. 1 and 2 from violating the copyright of Plaintiff No. 1 in packaging, label and colour scheme of the ‘POSTMAN’ product. The Suit also prays for delivery of the infringing goods, rendition of accounts, damages and costs.

PROCEDURAL HISTORY:

18. *Vide* order dated 30.05.2005 this Court granted an *ex-parte ad-interim* injunction as prayed for in terms of Para 11 of I.A. 4575/2005 filed by the Plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”). The said order clarified that the interim injunction shall operate against the Defendants till the said order was vacated or modified. By the same order, this Court had also appointed Local Commissioners to prepare inventory of all products bearing the Mark ‘SUPER POSTMAN’ or any other Mark deceptively similar thereto and to take into custody all counterfeit goods and also the books of accounts of the Defendants.

19. Defendant Nos. 1 and 2 filed I.A. 4820/2005 for vacating / modifying / suspending the *ex-parte ad-interim* order dated 30.05.2005 under Order XXXIX Rule 4 read with Section 151 of the CPC.



20. Defendant Nos. 1 and 2 filed their Written Statement on 29.07.2005 denying the averments made in the Suit. However, no specific defence was taken with regard to invalidity of registration of Plaintiff No. 1's Trade Mark 'POSTMAN'.

21. *Vide* order dated 20.12.2007, this Court dismissed the I.A. 4820/2005 for vacation of the interim order dated 30.05.2005 and allowed I.A. 4575/2005 while confirming the interim order dated 30.05.2005 restraining Defendant Nos. 1 and 2 from selling or offering for sale edible oils under the Mark 'SUPER POSTMAN' so as to infringe the Trade Mark Nos. 162666, 213353, 260538, 258918, 312898 and 415564 in Class 29 and from passing off their goods and business as of Plaintiff No. 1. Defendant Nos. 1 and 2 were further restrained from violating the copyright of Plaintiff No. 1 in packaging, label, colour and scheme of the 'POSTMAN' product during the pendency of the Suit.

22. On 01.12.2008, this Court framed the following issues:

- (1) Whether the Plaintiff No. 1 is proprietor of Trade Mark 'POSTMAN'? OPP
- (2) Whether the Plaintiff No. 1 is proprietor of artistic work in the label / packaging with the Mark 'POSTMAN'? OPP
- (3) Whether the Defendants are guilty of passing off their goods as those of Plaintiffs'? OPP
- (4) Whether the Defendants have infringed the Plaintiffs' Trade Mark 'POSTMAN' and / or artistic work in the packaging / label? OPP
- (5) Whether the Plaintiffs' claim / Suit is barred by acquiescence and delay and effect thereof? OPD



(6) Whether the Plaintiff is entitled to damages? If so, to what amount? OPP

(7) Whether the Plaintiff is entitled to decree for rendition of accounts and / or damages, if so, what amount? OPP

(8) Whether the Plaintiff is entitled to decree of permanent injunction(s) as prayed for? OPP

(9) Relief.

23. Subsequently, the Parties conducted admission / denial of the documents and time was granted to the Plaintiffs to file their evidence. However, the evidence was not filed despite opportunities having been given on 16.03.2009, 06.05.2009, 06.07.2009, 13.07.2009, 28.10.2009, 14.01.2010. Finally, on 16.12.2010 the right of Plaintiffs to examine witness was closed and the Defendants were directed to file affidavit of evidence.

24. In the meanwhile, the Defendants had challenged the order dated 20.12.2007 by way of an appeal being FAO(OS) 141/ 2008 before the Division Bench of this Court. The Division Bench of this Court *vide* order dated 20.12.2010 observed that in absence of any evidence on part of the Plaintiffs, there was no question of evidence being produced by the Defendants. Accordingly, the learned Division Bench of this Court directed to list the Suit before the learned Single Judge on 23.12.2010.

25. On 23.12.2010, the matter was adjourned to 24.12.2010 by this Court. *Vide* judgment dated 24.12.2010, the Suit was dismissed by this Court on the ground that the Plaintiffs had failed to discharge onus of proof even on a single Issue and, therefore, none of the Issues was proved.

26. The Plaintiffs challenged the judgment dated 24.12.2010 by way of RFA(OS) 19/2011 before the Division Bench of this Court. *Vide* judgment



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dated 27.07.2012, the Appeal was allowed subject to cost of ₹1,00,000/- due to continuous default on part of the Plaintiffs for non-production of evidence in time. Accordingly, the judgment dated 24.12.2010 was set aside and the trial in the Suit was expedited. The Division Bench of this Court also appointed a Court Commissioner to record evidence of the Parties.

27. In view of the judgment dated 27.07.2012, the present Suit was restored and the evidence of the Parties was recorded. During the cross-examination of the Defendants' witness by the Plaintiffs, it was stated that the Defendants were continuing to use the Mark 'SUPER POSTMAN'. Accordingly, the Plaintiffs preferred an Application under Order XXXIX Rule 2A of the CPC being I.A. 13305/2016 alleging violation of interim order dated 20.12.2007. Defendant Nos. 1 and 2 submitted that while restoring the Suit, the Court restored the Application for interim relief and not the interim order dated 20.12.2007. It was further submitted by Defendant Nos. 1 and 2 that an appeal being FAO(OS) 141/2008 against interim injunction granted *vide* order dated 20.12.2007 was preferred, which was withdrawn post the dismissal of the Suit. Accordingly, I.A. 13305/2016 was dismissed *vide* order dated 25.10.2016, while observing that the interim order dated 20.12.2007 disappeared on dismissal of the Suit on merits and was not restored while RFA(OS) 19/2011 was allowed and if the Plaintiffs desired an interim order, the Application for interim injunction would have to be argued afresh.

28. The said order dated 25.10.2016 was challenged by way of FAO(OS) 341/2016 before the Division Bench of this Court. *Vide* order dated 25.10.2018, the appeal being FAO(OS) 341/2016 was disposed of while recording that the interim injunction granted *vide* order dated 20.12.2007



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would stand revived and directed the Defendants to file details and figures of their total turnover while using the Trade Mark / name 'POSTMAN' from the date of restoration of the Suit till the date of passing of the order i.e., 25.10.2018. It was further directed that Defendant Nos. 1 and 2 would continue to file the said statement with affirming affidavits after every two months for the subsequent period.

29. Defendant Nos. 1 and 2 filed a Special Leave Petition ("SLP") before the Supreme Court being SLP(C) 2837/2019. *Vide* order dated 27.09.2019, the Supreme Court disposed of the SLP with the observation that the Suit itself needed to be decided expeditiously, preferably within a period of six months from the date of the order and an additional Issue as to whether the temporary injunction orders could revive on revival of the Suit itself be framed and decided without being influenced by any observations that had been made by the Courts.

30. Accordingly, the Plaintiffs filed I.A. 15369/2019 under Order VI Rule 17 of the CPC for amendment of the Plaint. *Vide* order dated 18.07.2022, I.A. 15369/2019 was disposed of framing an additional Issue as under:

"Whether upon revival of the present suit vide order dated 27.07.2012 passed by the Division Bench of this Court in RFA (OS) No.19/2011, the ad interim injunction order dated 30.05.2005 stood revived and for the usage of the impugned mark by the defendant thereafter, whether the defendant is liable to pay additional damages to the plaintiff? If so, to what amount? OPP"

31. The Parties agreed that they did not wish to lead any further evidence for the additional Issue and as the evidence in the matter was already complete, the Suit was listed for final hearing on 10.11.2022 in view of the order dated 27.09.2019 passed by the Supreme Court directing that the Suit



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be disposed of expeditiously. It was made clear that no adjournment shall be granted on the next date of hearing.

32. On 10.11.2022, the Parties submitted that there was a possibility of amicable settlement between the Parties and they were referred to Delhi High Court Mediation and Conciliation Centre. However, the Mediation was not successful and *vide* order dated 20.03.2023, the Defendants were directed to file their note of submissions and the Suit was listed for final hearing on 31.07.2023. On 31.07.2023, the Suit was listed on 08.08.2023 for hearing and disposal while directing that a short note of their respective submissions shall be filed by both Parties.

33. On 08.08.2023, the Defendants pointed out that the Defendants have obtained registration of the impugned Mark 'SUPER POSTMAN' on 13.02.2023, which was applied on 29.04.2004 and the registration would relate back to the date of application of 29.04.2004 and the Defendants had filed an Application under Order XI Rule 1(10) read with (12) of the CPC as amended by the Commercial Courts Act, 2015 to place the said documents on record. However, the said Application was not listed on that date. The Plaintiffs submitted that Defendants had not pleaded the existence of the application dated 29.04.2004 for the registration of the impugned Mark 'SUPER POSTMAN' in the written statement and had not led any evidence in that regard. The Defendants contended that the fact of an application for registration filed by the Defendants on 29.04.2004 was specifically pleaded and even in the replication filed by the Plaintiffs admits the said fact and there was no need for the Defendants to lead any evidence in that regard. Accordingly, the Suit was adjourned to 22.08.2023.



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34. On 22.08.2023, I.A. 15805/2023 under Order XI Rule 1(10) of the CPC was listed for placing on record the documents relating to the registration obtained by the Defendants for the Mark 'SUPER POSTMAN'. This Court observed that the question of whether the registration is relevant or the effect that the registration would have on the merits of the present matter would be examined after hearing the Parties while deciding the dispute in question.

35. On the said date, Plaintiffs also filed an Application under Section 124(1) of the Trade Marks Act, 1999 ("Act") being I.A. 15906/2023 seeking stay of the Suit under Section 124(1)(b)(ii) of the Act to enable the Plaintiffs to file rectification of the Mark 'SUPER POSTMAN'. However, Defendant Nos. 1 and 2 submitted that the said Application filed by the Plaintiffs under Section 124 of the Act was misconceived as the Defendants had not raised a defence under Section 30(2)(e) of the Act and, therefore, the first condition under Section 124(1)(b) was not satisfied. Accordingly, the Application filed by the Plaintiffs under Section 124 of the Act was disposed of while observing that the said Application did not lie at that point of time.

36. The Suit was finally heard on 28.08.2023, 04.09.2023 and 05.09.2023 and the Suit was listed for pronouncement / dictation of judgment on 11.09.2023.

37. On 06.09.2023, the Suit was listed for directions and it was observed that during the course of study of record, this Court came across an interesting issue that the Defendants' 'SUPER POSTMAN' Mark was not registered at the time when the Suit was filed by the Plaintiffs, however, during the pendency of the Suit, the Defendants' Mark got registered. The Plaintiffs filed I.A. 15906/2023 under Section 124(1) of the Act assailing the



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validity of the Defendants' Mark seeking framing of the issue in that regard and adjournment of the Suit by three months in order to enable the Plaintiffs to challenge the Defendants' Mark by way of rectification proceedings. When the said Application came up for the hearing, the Defendants pleaded that prior to the Plaintiffs challenging the validity of the Mark, Section 124(1)(b) of the Act requires the Defendants to raise a defence under Section 30(2)(e) of the Act by pleading invalidity of the Mark of which the infringement is alleged. As the Defendants had not pleaded the registration of Defendants' Mark as a defence against the Plaintiffs' infringement Suit, but had only raised non-user of the Plaintiffs' Mark as a ground to oppose the Suit, Section 124 of the Act would not apply. In view of the said statement of the Defendants, I.A. 15906/2023 was dismissed *vide* order dated 22.08.2023. Subsequently, the arguments were heard and the Suit was reserved for pronouncement of judgment. However, after reserving the judgment, this Court had doubt as to whether the Court can ignore the fact of registration of the Defendants' Mark, even if the Defendants did not specifically raise a defence under Section 30(2)(e) of the Act, as the fact of registration of the Defendants' Mark was part of the record of this Suit. If the Defendants' registration is to be taken into account, the Court was proscribed under Section 28(3) of the Act from granting an injunction to the Plaintiffs on the ground of infringement. That, however, would result in a situation in which, while the Defendants' registration would act against the Plaintiffs in the matter of obtaining an injunction, the Plaintiffs would stand foreclosed from challenging the Defendants' Mark as the Application under Section 124 of the Act was not maintainable.



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38. This Court observed that one possible solution was that the Plaintiffs could independently challenge the Defendants' registration under Section 57 of the Act. Accordingly, this Court appointed *amici* to assist the Court in that regard and listed the Suit on 11.09.2023.

39. *Vide* judgment dated 11.09.2023, this Court accepted the suggestion of the *amici* to examine the validity of the Defendants' Trade Mark 'SUPER POSTMAN' in exercise of the *suo motu* powers conferred by Section 57(4) of the Act, which is vested independent of Section 124 of the Act. Accordingly, the matter was listed on 31.10.2023 to hear the Parties on the aspect of validity of the registration granted to the Defendants' Trade Mark 'SUPER POSTMAN' on 13.02.2023.

40. The Defendants challenged the order dated 11.09.2023 before the Supreme Court by way of SLP(C) 23071/2023. The Defendants after elaborate arguments withdrew the SLP and submitted that when the stage arises, the Defendants shall take the necessary pleas in the SLP, if required. Accordingly, the SLP was dismissed *vide* order dated 16.10.2023.

41. On 31.10.2023, the Suit was re-notified on 09.11.2023. Thereafter, the Suit was listed on 09.11.2023, 24.11.2023, 15.12.2023, 08.02.2024 and 24.04.2024, however, could not be taken up for hearing. When the Suit came up for hearing on 26.07.2024, Defendant No. 2 filed an Application under Section 124 of the Act, being I.A. 34537/2024, which was adjourned to 26.11.2024. On 26.11.2024, the I.A. 34537/2024 was adjourned to 28.02.2025 after some arguments.

42. On 18.12.2024, the Plaintiffs filed I.A. 49679/2024 under Section 151 of the CPC seeking injunction in terms of order and judgment dated 20.12.2007 in view of the clarification given by the Division Bench in order



dated 20.05.2018 in FAO(OS)(COMM) 361/2018 on account of adjournments and delays caused by Defendant Nos. 1 and 2 in the Suit. *Vide* order dated 24.12.2024, notice was issued in the said Application. On 28.02.2025, the matter was re-notified on 19.05.2025 for completion of pleadings in I.A. 49679/2024. On 19.05.2025, the matter was re-notified on 08.08.2025.

43. On 08.08.2025, the arguments were heard in the Suit, I.A. 34537/2024 and I.A. 49679/2024 as well as on the validity of the registration of the Mark ‘SUPER POSTMAN’ and the order was reserved.

44. Thereafter, the operative part of the order was pronounced on 26.09.2025, however while correcting the order, the Court required certain clarifications with respect to the pendency of the Rectification Petition before the High Court of Judicature at Bombay and also details of sale of the products by Defendant No. 2, which were provided by the learned Counsel for the Parties.

45. Defendant Nos. 1 and 2 have filed an Application being IA No. 32689 / 2025 under Section 151 of the CPC seeking clarification of the order dated 08.08.2025 and correction of the status of the Suit. The arguments were heard in this Application on 23.12.2025 and order was reserved.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

46. The learned counsel for the Plaintiffs submitted that Plaintiff No.1 was engaged in manufacture, distribution and sale of edible oil and particularly groundnut oil under the brand name ‘POSTMAN’. The trade marks are officially registered for refined groundnut oil in Class 29 under Part-A of the Trade Marks Register in India since 1954 and these registrations have been renewed continuously. Plaintiff No. 1 also holds



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exclusive rights to the artistic label of 'POSTMAN', featuring original artistic work with unique layout, colour combination and arrangement under the Copyright Act. Additionally, Plaintiff No. 1 also registered the shape and design of its product pack (No.160845), which expired in 2024, however, the 'POSTMAN' groundnut oil bottles' distinctive shape remain associated with its product in the eyes of consuming public.

47. The Plaintiff No. 1 is the owner of the Trade Mark 'POSTMAN' in common law based on use since 1940's and has statutory rights on the basis of registration since 1954 for the device marks and word marks since 1976. Thus, the Defendants are liable for both infringement and passing off. Plaintiff No.1 is the first user of the Trade Mark 'POSTMAN' and registration of the Mark is evidence of user in Plaintiff No. 1's favour under Section 31 of the Act. The learned Counsel for the Plaintiff No. 1 relied upon *Neon Laboratories v. Medical Technologies* MIPR, 2016 (2) SCC 672, wherein the Supreme Court relying upon Section 34 of the Act held that a proprietor of a Trade Mark does not have the right to prevent the use by another party of an identical or similar mark where the user commenced prior to the user or date of registration of the proprietor. The 'first user' rule is a seminal part of the Act.

48. The rights of a prior user would normally override those of the subsequent user even though it had been accorded registration of its Trade Mark. Passing off action lies even against the registered Trade Mark, if the plaintiff is the first user. In the present case, the user of the Plaintiff No.1's Mark 'POSTMAN' is admitted till 2000, much before the Defendants' adoption of the Mark 'SUPER POSTMAN' in 2004. In support of this



submission, the decision of **S. Syed Mohideen v. P. Sulochana Bai**, (2016) 2 SCC 83 was relied upon.

49. The Trade Mark 'POSTMAN' is arbitrary, fanciful and coined for the purposes of edible oil and is entitled to highest degree of protection and Defendants cannot be allowed to use the Mark 'POSTMAN', which is the essential feature of Plaintiff No. 1's mark along with deceptive packaging and colour combination.

50. The Defendants have been selling groundnut oil under the mark 'SUPER POSTMAN' while the Plaintiff No.1's mark is 'POSTMAN'. A comparison of Plaintiff No.1's as well as Defendants' products show that the container shape, colour scheme and label are similar with only minor differences. The only distinction is the prefix 'SUPER' in extremely tiny font in the Defendants' product.

51. It is a settled law that what is to be seen is similarity and not the minor dissimilarities as held in **Kaviraj Durga Dutt Sharma v. Navratna Pharmaceutical Laboratories**, AIR 1965 SC 980, **Amar Singh Chawal Wala v. M/s Shree Vardhman Rice and Genl. Mills**, 2010 SCC OnLine Del 2933 and **Kirorimal Kashiram v. Shree Sita Chawal Udyog Mill**, 2010 SCC OnLine Del 2933.

52. The adoption of the Mark 'SUPER POSTMAN' itself was dishonest and calculated on riding on the goodwill of the Plaintiff No.1's Mark 'POSTMAN'. During the cross-examination of Defendant No. 2, it was admitted that the Defendants were aware of the ownership of Plaintiff No.1's Mark 'POSTMAN' in 2004, when the Defendants started using the Mark 'SUPER POSTMAN' (Question No.20 of the cross-examination of Defendant No.2).



53. Before filing of the Suit, the Defendants had stealthily applied for registration of Mark 'SUPER POSTMAN' and when the objection was raised by the Trade Marks Registry, the Defendants had given an undertaking dated 12.02.2005 on affidavit to the effect that *"If M/s Ahmed Oomerbhoy, Abdul Sattar Oomerbhoy and / or M/s Bombay Soap Factory All Kept Address at Bombay (Mumbai) will raise any Objection or opposition in future against my applied trademark, I will withdraw my application for registration under trademark "Super Postman" at once and without any cause of delay"*.

54. However, Defendant Nos. 1 and 2 suppressed this undertaking and contested the Suit by filing the Written Statement. The undertaking given before the Registrar of Trade Marks clearly shows that the Defendants were aware about the Trade Mark of Plaintiff No.1 and had undertaken to discontinue the Mark 'SUPER POSTMAN', if Plaintiff No. 1 objected to the same.

55. Plaintiff No. 1 had consistently taken action to protect the exclusive rights over Trade Mark / Device 'POSTMAN' and its conduct had never been inconsistent in enforcing its rights against the Defendants or any other third party. Plaintiff No.1, even during its dissolution, remained vigilant and filed the present Suit and pursued infringement cases against other parties using similar names and obtaining injunction orders as the Court Receiver of Plaintiff No.1 filed following against the Partners of Plaintiff No. 1:

- ***The Court Receiver, High Court, Bombay v. R.R. Oomerbhoy Pvt. Ltd. & Ors.*** 2003 SCC OnLine Bom 430.
- ***R.R. Oomerbhoy Pvt. Ltd. v. Court Receiver, High Court, Bombay & Ors.*** 2003 SCC OnLine Bom 718.



56. The High Court of Judicature at Bombay granted injunction in above cases restraining the use of name ‘POSTIANO’ by one of the partners of Plaintiff No.1, which was held to be similar and deceptive to the Mark ‘POSTMAN’.

57. Accordingly, there was no evidence of any act or endorsement by Plaintiff No.1 that would be construed as acquiescence or non-use. The goodwill of the mark is not destroyed merely because the proprietor of the mark goes into dissolution, if there is no intention to abandon the mark. Despite the dispute between the partners of Plaintiff No.1, the Defendants will not be entitled to claim the right to use a similar Trade Mark. Admittedly, the Mark ‘POSTMAN’ of Plaintiff No. 1 continue to remain on the Register and has not been removed under Section 46 of the Act.

58. A break in the user of Trade Mark does not destroy its reputation, if the mark is distinctive and continued to survive. The following case laws were relied upon in support of this submission:

- ***Garden Perfumes (P) Ltd. v. Anand Soaps and Detergents***, 1993 SCC OnLine Del 655.
- ***Kamal Trading Company v. Gillette U.K. Limited***, 1987 SCC OnLine Bom 754.
- ***Hindustan Embroidery Mills Pvt. Ltd. v. K. Ravindra and Co.***, (1974) 76 BOMLR 146
- ***Kedar Nath v. Monga Perfumery & Floor Mills***, AIR 1974 Delhi 12.

59. The use of the Trade Mark need not be physical on the goods. Even the advertising of the marks, licensing etc., amounts to use and the injunction can be refused only in such cases where the non-use is such that the same has led to the “death” of the mark. In the present case, there is



clearly no death of the mark, when the same was being advertised for licensing and Plaintiff No. 1 has been pursuing remedies against infringers. An intention to use does not necessarily mean that proprietor of the Trade Mark has to establish marketing of the goods. The intention to use would also include the intention to permit the user of the registered user. Such an inference is also inevitable on reading of Section 46(1) and Section 48(2) of the Act. The following case laws were relied upon in support of this submission:

- ***Hardie Trading v. Addison***, (2003) 11 SCC 92
- ***Burger King Corporation v. Ranjan Gupta***, 2023 SCC OnLine Del 1383
- ***Official Liquidator of Ideal Jawa (India) Ltd. v. Registrar of Trademarks*** Manu/KA/5795/2022.

60. Even though there was no use of the Trade Mark ‘POSTMAN’ for production of edible oil due to disputes between the partners of Plaintiff No.1 since September 2001, the same was not deliberate, but unforeseen and on account of genuine disputes between the Partners of Plaintiff No. 1, and does not destroy the enormous goodwill through extensive user and registration. There has always been an *inter se* discussion between the erstwhile Partners of Plaintiff No.1 and the Court Receiver appointed by High Court of Judicature at Bombay as to how to use and utilize the property of Plaintiff No.1. *Vide* order dated 09.03.2015, the High Court of Judicature at Bombay allowed Plaintiff No.1 to advertise the Mark ‘POSTMAN’ for licensing in newspapers such as Times of India etc. The said order dated 09.03.2015 was also upheld by the Division Bench of High Court of Judicature at Bombay and the Supreme Court of India showing that even the Supreme Court has recognized the proprietary nature of ownership



of Plaintiff No.1 in the Trade Mark 'POSTMAN'. These orders clearly record that the Mark 'POSTMAN' was advertised for being put to use post 2015.

61. The claim of the Defendants that the Mark 'POSTMAN' and its colour combinations are common to trade is completely false as 'POSTMAN' is a coined word and the Defendants admittedly having filed the application seeking registration of the Trade Mark containing the Mark 'POSTMAN' with a tiny suffix 'SUPER' in India is barred from taking a plea that the Mark 'POSTMAN' is common to the trade, *publici juris* or being used by several third parties as held in the case of **Indian Hotels Company Ltd. v. Jiva Institute of Vedic Science & Culture**, 2008 SCC OnLine Del 1758. Further, the Defendants failed to provide any evidence of third party openly using the Trade Mark 'POSTMAN'. As per the decision of **Pankaj Goel v. Dabur India Ltd.** 2008 (38) PTC 49 (Del), stray third-party use cannot allow a rank usurper to claim rights based on such third-party use.

62. The Plaintiffs are entitled to damages for intangible loss, dilution, loss of confidence, trust of customers and exemplary damages due to disregard of the principle of fair trading under Section 73 of Indian Contract Act, 1872. The Plaintiffs are victims of Defendants' unlawful activities as Plaintiff No. 1's statutory rights have been violated and they have also suffered loss of goodwill and reputation at the hands of the Defendants.

63. The evidence led by the Parties in the present proceedings clearly showcases that the Defendants enjoyed high profits by sale of oil using the impugned Mark 'SUPER POSTMAN' and packaging identical to Plaintiff No.1's Mark 'POSTMAN'.



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64. The figures of turnover of Defendant Nos. 1 and 2 ought to be taken into consideration while quantifying the aggravated damages. The Plaintiffs are also entitled to damages / loss of profits / rendition of accounts in terms of law laid down in ***Hindustan Unilever Ltd. v. Reckitt Benckiser India Ltd.***, 2014 SCC Online Del 490 and ***Inter Ikea System BV v. Sham Murari & Ors.***, 2018 SCC OnLine 11221. The Plaintiffs are entitled to 20% of the turnover as loss of profits towards the entire sales made by the Defendants on the basis of “rough and ready calculations” for award of damages as the Defendants have neither filed the figures in a timely manner nor in a proper format by disclosing the appropriate accounts despite the order dated 25.10.2018 passed by the Division bench of this Court in FAO(OS)(COMM) 341/2016 and order dated 18.07.2022 in this Suit. Hence, the decree of rendition of accounts is also required to be passed.

65. The interim injunction granted *vide* order dated 20.12.2007 was revived upon revival of the present Suit *vide* order dated 27.07.2012 passed by the Division Bench of this Court in RFA (OS) No.19/2011. Accordingly, the Defendants were not entitled to start using the Mark ‘SUPER POSTMAN’ once the Suit was dismissed regardless of the reasons for the dismissal of the Suit. In ***Vareed Jacob v. Sosamma Geevarghese***, (2004) 6 SCC 378 it is held that on restoration of the suit, all interim orders are automatically revived.

66. Even assuming that the interim injunction was not revived at the time of restoration of the Suit and only the interim application being IA No.4575/2005 was restored, the *ex parte ad-interim injunction* dated 30.05.2005 granted at the first hearing of the Suit expressly stated that “*till the present order is vacated or modified*” and it shall operate against the



Defendants, which was confirmed *vide* order dated 20.12.2007. In view of the same, the Defendants are liable to pay aggravated damages of ₹50 lacs, in addition to the percentage of profits for rendition of accounts for violation of the interim injunction granted by this Court as well as for earning extra profits.

67. The learned Counsel for the Plaintiffs submitted that IA No. 34537/2024 filed by the Defendants under Section 124 of the Act is not maintainable as no issue has been framed on invalidity of Plaintiff No.1's Mark despite filing of Rectification Applications in 2005 soon after filing of the Suit. It was further submitted that IA No.34537/2024 under Section 124 of the Act has been filed only at the time of final hearing and the same cannot be filed without this Court framing an issue regarding the validity of Trade Mark of Plaintiff No.1 in this Suit. The Application under Section 124 of the Act being IA No.34537/2024 was filed after the evidence was complete and during final hearing of the Suit, which shows that it was a complete afterthought. The following case laws were relied upon in support of this submission:

- ***Patel Field Marshal Agencies & Anr. v. P.M. Diesels Ltd.***, (2018) 2 SCC 112
- ***Resilient Innovations Pvt. Ltd. v. Phonepe Private Limited & Anr.***, 2021 SCC OnLine Del 4941
- ***Abbott Healthcare Pvt. Ltd. v. Raj Kumar Prasad & Ors.***, 2017 SCC OnLine Del 12372

68. IA No.34537/2024 is not maintainable as there was no defence in the Written Statement regarding invalidity of the registration of Plaintiff No.1's Trade Mark, which is *sine qua non* for filing the application under Section



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124 of the Act. Since there is no plea in the Written Statement as regards the invalidity of Plaintiff No.1's Mark 'POSTMAN' and the same has already resulted in dismissal of Plaintiffs' Application under Section 124 of the Act, there cannot be any exercise of jurisdiction by this Court to stay the present Suit in an application filed by the Defendants and that too when the validity of its own Trade Mark 'SUPER POSTMAN' is being examined by this Court under Section 57(4) of the Act.

69. Even otherwise, there is no *prima facie* case of invalidity of the Plaintiff No.1's registration of Trade Mark 'POSTMAN' and on the contrary, there is a *prima facie* case of invalidity of Defendants' Mark 'SUPER POSTMAN' for which registration was granted in 2023 due to which this Court is examining the correctness of the same in terms of order dated 11.09.2024.

70. Any direction with respect to stay of the Suit will be contrary to the directions of the Supreme Court to expeditiously decide this Suit as there is no basis for the Defendants to suggest that the registration of the Plaintiff No.1's Mark is *prima facie* untenable. To fall within the ambit of Section 124(1)(b)(ii) of the Act, this Court has to be satisfied that the "plea regarding invalidity" of the registration of a Trade Mark is "*prima facie* tenable" to "raise an issue regarding the same". Thus, for raising an issue qua invalidity of a Trade Mark, defendant has to convince/establish that the issue qua maintainability of trade mark is justifiable as held in the case of **Steel Case INC v. K.J. Bhuta & Anr.**, 2025 SCC OnLine Del 4160.

71. As the Defendants have not been able to satisfy with regard to the *prima facie* invalidity of the Plaintiff No.1's Mark 'POSTMAN', the Application being IA No.34537/2024 deserves to be dismissed.



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72. The Defendants' conduct in the entire proceedings is replete with *mala fide* and false averments. The Defendants used the opportunity of the *inter se* disputes between the partners of Plaintiff No.1 to exploit the intellectual property of Plaintiff No.1 and goodwill in a mischievous manner solely for the purpose of earning illegal profits. The Defendants also filed false affidavit before the Trade Marks Registry and suppressed the same from this Court. Accordingly, the Defendants are liable to pay exemplary costs.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS:

73. The learned Counsel for the Defendant Nos.1 and 2 submitted that the Defendants adopted the Trade Mark 'SUPER POSTMAN' in early 2004, with commercial use commencing from 14.04.2004. This adoption was honest, *bona fide* and based on prevailing market conditions at the time as there were no goods under Trade Mark 'POSTMAN' in existence in the market for previous 6-7 years at the time of adoption of mark 'SUPER POSTMAN'.

74. Plaintiff No. 1 had ceased manufacturing and selling its 'POSTMAN' brand edible oil since 1997. As Plaintiff No.1 was in liquidation, leading to appointment of a Court Receiver, no efforts were made by the Court Receiver or any other member / Partner of Plaintiff No.1 to continue with the use of Mark 'POSTMAN'. Despite the High Court of Judicature at Bombay suggesting that the Mark 'POSTMAN' be either used by any member / Partner of Plaintiff No.1 or may be given on royalty basis, none of the Partners showed any interest to use the Mark 'POSTMAN' for edible oil. The non-use was a matter of public knowledge and persisted for 7 years before the Defendants adoption of 'SUPER POSTMAN'.



75. The advertisement in newspaper on 09.03.2015, pursuant to an order of High Court of Judicature at Bombay, cannot be considered as use of the Trade Mark and, in fact, such advertisement clearly shows that the Mark was not in use at least till 2015 and as no one showed interest in use of the Mark 'POSTMAN', the same was not even in use after 2015.

76. During the cross-examination of Plaintiffs' Witness (PW2 - Mr. Nadeem Majid Omerbhoy) various self-contradictory statements of existence of Plaintiff No.1 Firm and use of the Mark 'POSTMAN' by Plaintiff No.1 was made. PW2 also failed to produce relevant original documents before the Court. Although, PW2 exhibited few invoices in support of the use of the Mark 'POSTMAN', the first invoice being dated 25.08.1977 and the last dated 31.03.1997, the said invoices were self-serving in nature, and the authenticity of the invoices was highly doubtful.

77. Except for the said invoices and a few invoices of advertisements, no other relevant document was exhibited / produced by PW2 before this Court. The documents produced by the Plaintiffs cannot be treated as conclusive proof of user as claimed since 1949. The Plaintiffs have failed to produce mandatory documents such as third-party invoices for purchase of raw material, bilti, test reports, tax registrations, bank account statements, audit reports, statement of accounts of parties, state tax, central tax etc.

78. Since 2004, the Defendants have continuously, extensively and openly used 'SUPER POSTMAN' in the course of the trade. The Defendants have invested substantial resources in building the brand and protecting it from infringers, resulting in significant sales and market recognition for their products under the Mark 'SUPER POSTMAN'. The Defendants' Application for 'SUPER POSTMAN' was filed on 29.04.2004 and,



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subsequently, Plaintiff No. 1 initiated the opposition proceedings *vide* Opposition No. 202112 dated 03.08.2005, which was served upon the Defendants on 21.12.2005. The Defendants filed their counter statement on 31.01.2006 and the same was duly served upon Plaintiff No.1 on 12.04.2006. Plaintiff No.1 had limitation to file affidavit under Rule 50 of the Trade Marks Rules, 2002 till 12.06.2006, however, Plaintiff No.1 failed to file the same. Accordingly, after due hearing before the learned Registrar of Trade Marks on 24.01.2023, wherein the learned Registrar of Trade Marks abandoned the opposition filed by Plaintiff No. 1 and proceeded with the registration of Defendants' Trade Mark 'SUPER POSTMAN'.

79. The Defendants adopted 'SUPER POSTMAN' Mark after being affirmed that the Plaintiffs 'POSTMAN' Mark was not in active commercial use and had been abandoned in the marketplace. The Plaintiffs own admission of non-use from the year 2000 support this and no documentary evidence subsequent to the year 1997 has been placed on record to prove the user of the Mark 'POSTMAN'.

80. The rights in a trade mark can be lost due to abandonment or non-use. There was no intention to trade upon any alleged goodwill of the Plaintiff No.1's dormant 'POSTMAN' Mark. At the time of adoption by the Defendants, any goodwill associated with Plaintiffs 'POSTMAN' Mark had extinguished due to prolonged market absence. It is settled law that a proprietor, who has allowed its mark to fall into disuse, creates a vacuum in the market, and which is filled by another party acting in good faith, will not be protected by the Courts.

81. The addition of prefix 'SUPER' to 'POSTMAN' along with a totally different artistic work creates a lexical and conceptual distinction. The



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undertaking given by Defendant No.1 to the Trade Mark Registry was at a very nascent stage of the application process and prior to the institution of this Suit. The undertaking was conditional upon an objection being raised by “*M/s Ahmed Umar Oomerbhoy, Abdul Sattar Oomerbhoy and/or M/s Bombay Soap Factory*”. The subsequent actions or prolonged inaction and internal transposition within the Plaintiffs coupled with Defendants building sufficient goodwill over nearly two decades diluted the immediate enforceability or overriding nature of this early undertaking.

82. The fact that the Mark ‘SUPER POSTMAN’ was eventually registered by the Trade Mark Registry despite the undertaking being part of the record implied that the Registrar was satisfied and found sufficient grounds to grant the registration after considering all aspects, including potential acquiescence, delay by the Plaintiffs and Defendants’ established use.

83. Through merely two decades of continuous, extensive and uninterrupted commercial use, substantial sales, and significant commercial expenditure, the Trade Mark ‘SUPER POSTMAN’ has acquired considerable distinctiveness and has developed its own goodwill and reputation in the market. The Mark can acquire distinctiveness through use even if it was initially descriptive or shared elements with another Mark. Consumers of edible oils now exclusively associate ‘SUPER POSTMAN’ brand with the Defendants and their products. This acquired distinctiveness is a crucial factor in assessing the Trade Mark’s validity and rights.

84. Admittedly, Plaintiff No.1 had not used the Mark ‘POSTMAN’ for its oil products from 1997 until well after the Defendants had established ‘SUPER POSTMAN’ in the market. The non-use spanned over 6-7 years



before the Defendants’ adoption and continued use for many years. A registered Trade Mark is not an absolute right and can be lost by abandonment, which may be inferred from prolonged non-use for a continuous period of five years and three months as provided under Section 47 of the Act as a ground for removal of a Trade Mark from the Register of Trade Marks.

85. While the Plaintiffs pleaded “special circumstances” for non-use, the Defendants contended that such circumstances cannot be indefinite and must be weighed against the rights acquired by a subsequent *bona fide* user.

86. In the decision of ***Hardie Trading Ltd. & Anr. v. Eddisons Paint & Chemicals Ltd.*** (2003) 11 SCC 92, the Supreme Court discussed the concept of “use” of a Trade Mark. While “use” can include actions other than actual physical sale, the intention to abandon can be inferred from a long period of unexplained non-use. Plaintiff No.1’s prolonged absence from the market despite the passage of years since internal disputes arose between the Partners of Plaintiff No.1 points towards a *de facto* abandonment in the eyes of the trade and public creating an opportunity for others to adopt similar marks *bona fide*.

87. IA No.34537/2024 was maintainable as the Defendants, before filing the Written Statement in this Suit, filed Rectification Petition before the erstwhile IPAB, Chennai against all the registered Trade Marks of Plaintiff No.1 *vide* ORA/44-49/2005/TM/MUM/8607. Out of the said Petitions, ORA Nos. 46 and 48 /2005 against registration Nos. 258198 and 312869 were decided *vide* order dated 18.10.2012 and the said Trade Marks were rectified on account of non-renewal. Subsequently, the said Trade Marks were renewed, however, the Rectification Petitions were not restored. The other



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Rectification Petitions are pending before the High Court of Judicature at Bombay. The law regarding Section 124 of the Act is well-settled and no permission under the provisions of Section 124 of the Act is required by the Defendants before filing such Rectification Petitions before the concerned authority. Accordingly, the Rectification Petitions filed by the Defendants in the year 2005 are valid and, accordingly, the present Suit cannot be finally decided pending final adjudication of the Rectification Petitions before the High Court of Judicature at Bombay.

88. Issue Nos. 1 and 2 framed by this Court in the Suit *vide* order dated 01.12.2008 relate to the proprietorship rights of Plaintiff No.1 in the Trade Mark 'POSTMAN'. Accordingly, the issue with regard to the validity of Trade Mark cannot be decided by this Court in the Suit and can only be decided by the High Court of Judicature at Bombay, where the issue of validity of Plaintiff No.1's Trade Mark 'POSTMAN' is *sub-judice*.

89. The only grievance raised by Plaintiff No.1 is that the Defendants have not made any pleading as regards the invalidity of Plaintiff No.1's Mark in the Written Statement. However, in fact, in Paragraph No. 8 of the Written Statement, it is clearly and specifically pleaded that the registration of Trade Mark 'POSTMAN' in the name of Plaintiff No.1 was invalid and unlawful and the said registrations wrongly remain on the Register of Trade Marks. It is also pleaded that Plaintiff No.1 has not used the Trade Mark 'POSTMAN' since the year 2000 and there has been a complete non-use by Plaintiff No. 1. It is also disclosed that the Defendants had already filed Petitions for cancellation / rectification of the said registrations and the same were pending consideration before the erstwhile IPAB, Chennai and now before the High Court of Judicature at Bombay.



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90. Further, it was admitted by the Plaintiffs that the Rectification Application, whether instituted before or after filing of the Suit, shall have no consequence on the maintainability of IA No.34537/2024. The Full bench of this Court in **Data Infosys Ltd. & Ors. v. Infosys Technologies Ltd.** (2016) 65 PTC 209 (FB) has held that Section 124 of the Act does not control the choice of a litigant to seek rectification of a registered Trade Mark. In **Societe Des Produits Nestle S.A. & Anr. v. Shree Shankareshwar Utensils & Appliances Pvt. Ltd.**, 2018 (250) DLT 443, this Court has held that there is no requirement in Section 124 of the Act for permission to be obtained of the Court before approaching IPAB for rectification even if a suit has been pending prior thereto. Accordingly, the suit in that case was adjourned *sine die* with a liberty to the Counsel to apply revival thereof after the disposal of the rectification petition. Similar proposition of law was held by this Court in **Abbott Healthcare Pvt. Ltd. v. Raj Kumar Prasad & Anr.**, 2018 (73) PTC 541 and **Arun Chopra v. Kaka-Ka Da Dhaba Pvt. Ltd.**, 2019 (80) PTC 540.

91. In the case of **Anubhav Jain v. Satish Kumar Jain**, 2023 SCC OnLine Del 424, this Court has held that the right to seek cancellation of a mark and rectification of the Register, conferred by Section 57 and by Clause (2) of the Second Part of Section 124 of the Act are independent rights, which are both available for invocation by an interested party.

92. In view of the above, the Defendants' Application under Section 124 of the Act is *bona fide* and the same may be allowed in terms of the prayers made therein.



ANALYSIS AND FINDINGS:

93. The Issues framed *vide* order dated 01.12.2008 are as under:
- (1) Whether the Plaintiff No. 1 is proprietor of Trade Mark 'POSTMAN'? OPP
 - (2) Whether the Plaintiff No. 1 is proprietor of artistic work in the label / packaging with the Mark 'POSTMAN'? OPP
 - (3) Whether the Defendants are guilty of passing off their goods as those of Plaintiffs'? OPP
 - (4) Whether the Defendants have infringed the Plaintiffs' Trade Mark 'POSTMAN' and / or artistic work in the packaging / label? OPP
 - (5) Whether the Plaintiffs' claim / Suit is barred by acquiescence and delay and effect thereof? OPD
 - (6) Whether the Plaintiff is entitled to damages? If so, to what amount? OPP
 - (7) Whether the Plaintiff is entitled to decree for rendition of accounts and / or damages, if so, what amount? OPP
 - (8) Whether the Plaintiff is entitled to decree of permanent injunction(s) as prayed for? OPP
 - (9) Relief.
94. *Vide* order 18.07.2022, the following additional Issue was framed:
- (10) Whether upon revival of the present Suit *vide* order dated 27.07.2012 passed by the Division Bench of this Court in RFA (OS) No.19/2011, the *ad interim* injunction order dated 30.05.2005 stood revived and for the usage of the impugned mark by the defendant



thereafter, whether the defendant is liable to pay additional damages to the plaintiff? If so, to what amount? OPP

Issue Nos. (1) and (2)

WHETHER PLAINTIFF NO.1 IS THE PROPRIETOR OF TRADE MARK POSTMAN AND ARTISTIC WORK IN THE LABEL / PACKAGING WITH THE MARK POSTMAN

95. Admittedly, Plaintiff No.1 was engaged in manufacture, distribution and sale of edible oils particularly groundnut oil under the Mark ‘POSTMAN’ and have registration of the following Trade Marks and Copyright in its favour:

Mark	Regn. No.	Date
Device of a ‘Postman’	162666	February 19, 1950
Device of a ‘postman’ and words POSTMAN brand	213353	January 18, 1963
Device of a ‘postman’ and words POSTMAN brand	258918	August 21, 1969
Device of a ‘postman’ and words POSTMAN brand	260538	November 12, 1969
Trademark postman	312898	March 4, 1976
Device of a ‘postman’ and words POSTMAN brand	415564	January 4, 1984

96. Plaintiff No. 1 has been using the Mark ‘POSTMAN’ since 1949 and has registrations since 1954 in the device mark and word marks since 1976 in Class 29. The Mark ‘POSTMAN’ appears to be an arbitrary and a coined term for the purpose of edible oil. The Mark ‘POSTMAN’ is the essential feature of the Plaintiff No.1’s device mark. Additionally, Plaintiff No. 1 also



registered the shape and design of its product pack, which expired in 2004, however, it is claimed that the distinctive shape remained associated with Plaintiff No.1's product in the eyes of the consumer.

97. The Plaintiffs have produced documentary and oral evidence in support of its registration and use of the Mark 'POSTMAN'. Admittedly, the Plaintiff No. 1 was the prior user and the proprietor of the registered Mark 'POSTMAN'.

98. Accordingly, Plaintiff No. 1 is the proprietor of Trade Mark 'POSTMAN' and artistic work in the label / packaging with the Mark 'POSTMAN'. Plaintiff No.1's Mark is entitled to highest degree of protection, both under the common law right of preventing passing off as well as statutory right of restraining infringement based on the registration since the year 1954.

99. Accordingly, it is held that Plaintiff No. 1 is the Proprietor of Trade Mark 'POSTMAN' and Artistic Work in the Label / Packaging with the Mark 'POSTMAN'.

Issue No. (5)

WHETHER PLAINTIFF NO.1 ABANDONED AND ACQUIRED THE TRADE MARK POSTMAN DUE TO NON-USE

100. This issue deals with whether the Plaintiffs' claim / Suit is barred by acquiescence and delay and effect thereof. The Plaintiffs have submitted that the Plaintiff No.1 was prevented from using the Mark 'POSTMAN' since the year 2000 due to internal dispute between partners of Plaintiff No.1. However, Plaintiff No.1 consistently took action to protect its exclusive rights over the Trade Mark 'POSTMAN' and its conduct was never inconsistent with enforcing its rights.



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101. Plaintiff No.1 also remained vigilant and filed several cases against its own Partners through the Court Receiver appointed by the High Court of Judicature at Bombay, by which the Partners of Plaintiff No.1 were restrained from using the name 'POSTIANO'. The decisions of the High Court of Judicature at Bombay in the Suit filed by the Court Receiver of Plaintiff No.1 as well as Appeal filed by one of the Partners of Plaintiff No.1 against the order of injunction, clearly show that Plaintiff No.1 was vigilant and perused action to protect its rights over the Mark 'POSTMAN'.

102. The Defendants have admitted that Defendants were aware about the prior existence of the Mark 'POSTMAN' and have only pleaded abandonment and non-use of the Mark 'POSTMAN' by Plaintiff No.1 to defend the Suit. However, the non-use was on account of dispute having arisen between the Partners of Plaintiff No.1 and despite the dispute, the Partners were vigilant about protecting the rights over the intellectual property of Plaintiff No.1 by filing the suit against one of its own Partners of Plaintiff No.1 and filing the present Suit against the Defendants. Once the Trade Mark is registered validly, the Defendants had no right to use the said Trade Mark of Plaintiff No.1 in terms of Sections 28 and 29 of the Act. In the facts of the present case, despite there being dispute pending between the Partners of Plaintiff No.1, it cannot be said that the Mark 'POSTMAN' was not used, especially when there was extensive use for more than 50 years prior to the hiatus in using the Mark. Hence, there was no destruction of the reputation of the Mark, as the same was distinctive in nature and the goodwill in the Mark continued to survive.

103. It is well-settled that the use of the Trade Mark is not required to be a physical use on the goods as held in **Hardie Trading** (supra), **Burger King**



(supra) and **Official Liquidator of Ideal Jawa** (supra). The non-use is such that the same has not led to the death of the Mark as Plaintiff No.1 had extensive reputation and goodwill in the Mark ‘POSTMAN’ when it discontinued the use of the Mark in 2000 and even thereafter continued to pursue remedies against the infringers, which is evident from the decision of High Court of Judicature at Bombay in the case of **R.R.Oomerbhoy** (supra) involving a Partner of Plaintiff No. 1 itself.

104. The proprietors’ intention to abandon the Trade Mark is a necessary component of their non-user justifying their removal under Section 47 of the Act. The intent not to resume the use of the Mark has to be proved and the evidence of abandonment must be clear and convincing. The intention to use the Trade Mark by the proprietor would also include the intention to permit the user of Trade Mark by registered user. However, the evidence on record does not support any such intention. The action of Plaintiff No.1 to protect its Trade Mark being infringed by one of its own partners and filing the present Suit within the period of 5 years and 3 months from not using the Mark clearly shows that Plaintiff No.1 had no intention to abandon the Mark and non-use was due to special circumstances of the dispute having arisen between the Partners of Plaintiff No.1. The non-user of the Mark ‘POSTMAN’ was due to disputes between the Partners of Plaintiff No. 1 and not deliberate. Such non-use does not destroy the goodwill through extensive use and registration.

105. Accordingly, the Defendants have not been able to establish that Plaintiff No.1 had abandoned the Trade Mark ‘POSTMAN’ entitling the Defendants to use the deceptively similar Mark ‘SUPER POSTMAN’. Therefore, the present Suit is maintainable.



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Issue No. (10)**WHETHER UPON REVIVAL OF THE SUIT, THE INTERIM INJUNCTION STOOD REVIVED:**

106. *Vide* order dated 30.05.2025, an *ex parte ad interim* injunction was granted restraining Defendant Nos. 1 and 2 from selling or offering for sale, edible oils under the Mark 'SUPER POSTMAN'. The Defendant Nos. 1 and 2 were further restrained for violating the copyright of the Plaintiff in the packaging, label, colour and scheme of the 'POSTMAN' product during the pendency of the Suit.

107. Defendant Nos. 1 and 2 sought vacation of the said order dated 30.05.2005 by filing IA No.4820/2005 which was dismissed *vide* order dated 20.12.2007 and the interim injunction granted *vide* order dated 30.05.2005 passed in IA No.4575/2005 was confirmed and both these IAs were disposed of.

108. Thereafter, *vide* order dated 24.12.2010, the present Suit was dismissed. Being aggrieved by the said order, an Appeal being RFA(OS) No.19/2011 was preferred before the Division Bench of this Court. *Vide* order dated 27.07.2012, the Division Bench of this Court restored the Suit.

109. It is the contention of the Plaintiffs that by virtue of the restoration of the Suit, the interim injunction granted *vide* order dated 30.05.2005 and confirmed *vide* order dated 20.12.2007 stood restored and revived by operation of law. However, during the cross-examination of Defendant No.2, it came to light that Defendant Nos.1 and 2 were continuing to manufacture and sell their product under the Mark 'SUPER POSTMAN' in breach of injunction granted *vide* orders dated 30.05.2005 and 20.12.2007. Accordingly, the Plaintiffs filed IA No.13305/2016 under Order XXXIX



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Rule 2A of CPC, however, the said Application was dismissed *vide* order dated 25.10.2016, observing that the interim orders were not restored upon restoration of the Suit *vide* judgment dated 27.07.2012 passed by the Division Bench in RFA(OS) 19/2011.

110. Being aggrieved by the same, the Plaintiffs filed an Appeal, being FAO(OS)(COMM) 341/2016 before the Division Bench of this Court. *Vide* order dated 25.10.2018, the Division Bench of this Court held that the order dated 25.10.2016 does not require any interference, however, it was directed that the Defendant Nos. 1 and 2 shall file details and figures of the total turnover while using the Trade Mark 'SUPER POSTMAN' from the date of restoration of the Suit till 25.10.2018 and would continue to file the same after every two months for the subsequent period. It was also clarified that the Plaintiffs can approach for revival of the interim injunction, if Defendant Nos. 1 and 2 cause any delay or take any adjournment in the Suit.

111. Being aggrieved by the said order dated 25.10.2018, the Plaintiffs filed a Special Leave Petition ("SLP") before the Supreme Court of India, being SLP(C) 2837/2019. *Vide* order dated 27.09.2019, the Supreme Court disposed of the said SLP with the direction that the Suit shall be decided within a period of six months and an additional Issue shall be framed on the aspect as to whether the temporary injunction order stood revived on revival of the suit itself. Accordingly, *vide* order dated 18.07.2022, IA 15369/2019 seeking framing of additional Issue was disposed of and an additional Issue with regard to the revival of the interim injunction upon restoration of the Suit was framed. The said order also records the statement of learned Counsel for both the Parties that for the additional Issue, they did not wish to lead any further evidence.



112. The Plaintiffs have contended that when the Suit was revived on 27.07.2012, it was directed that the Suit as well as interim Application is restored to the original position. Therefore, the position of the Suit as well as the interim Application as on the date of the dismissal of the Suit on 24.12.2010 was restored. As on 24.12.2010, the interim Application was disposed of *vide* order dated 20.12.2007. Hence, the interim injunction granted *vide* order dated 30.05.2005 and confirmed *vide* order dated 20.12.2007 was restored and continued to operate from 27.07.2012. The Division Bench of this Court in FAO(OS)(COMM) 341/2016 in order dated 25.10.2018, relying upon the decisions by the Supreme Court in ***Vareed Jacob v. Sosamma Geevarghese (2004) 6 SCC 378*** and by this Court in ***Amal Mal Sindhi v. Ram Prakash ILR (1979) 1 Delhi 449***, held that it would be a correct legal position to observe that upon revival of the Suit, the interim injunction also got revived. When a Suit is dismissed on merits or for default, the interim injunction would come to an end as interim injunction subsists only during the pendency of the Suit. However, when such order of dismissal is set aside, it would have an effect of restoring the original interim order.

113. Accordingly, it is held that the interim order granted *vide* order dated 30.05.2005 and confirmed *vide* order dated 20.12.2007 stood revived upon restoration of the Suit by the Division Bench of this Court.

VALIDITY OF DEFENDANTS' REGISTRATION OF SUPER POSTMAN UNDER SECTION 57 OF THE ACT

114. Section 57 of the Act provides as under:

“57. Power to cancel or vary registration and to rectify the register.—(1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or



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varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly."

115. *Vide* order dated 11.09.2023, this Court held that the subsequent registration of the Defendants' Trade Mark 'SUPER POSTMAN' shall be examined under Section 57(4) of the Act. It was also observed that prior to returning any finding of infringement, the validity of Defendants' registration has to be examined in exercise of *suo motu* power conferred on this Court by Section 57(4) of the Act, which is independent of Section 124 of the Act. Accordingly, the Defendants were put to notice as envisaged by Section 57(4) of the Act and both Parties were directed to place on record submissions regarding the validity of registration of Defendants' Trade Mark 'SUPER POSTMAN' granted on 13.02.2023.

116. Pursuant to the said order, the Plaintiffs have submitted that the Defendants' registration of 'SUPER POSTMAN' ought to have been refused under Section 11(1)(b) of the Act on the ground of similarity to the earlier



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Trade Mark 'POSTMAN' belonging to Defendant No.1 for the same product of edible groundnut oil under the same Class 29. The Defendants' utilization of the work Mark 'SUPER POSTMAN' constitutes a deliberate resemblance to Plaintiff No.1's Mark 'POSTMAN' for the same class and goods of service. Both the Marks are similar, and the goods are identical having the same consumer base, while traversing similar trade channels. The essential features of the Impugned Mark 'SUPER POSTMAN' is 'POSTMAN', which is identical to Plaintiff No.1's Mark 'POSTMAN' in writing as well as phonetically. Consequently, the probability of confusion is very high. The Mark 'POSTMAN' is arbitrary, fanciful and coined term for the purpose of edible oil and is entitled to highest degree of protection being essential feature of Plaintiff No.1's Mark.

117. Accordingly, the Defendants' Mark 'SUPER POSTMAN' is deceptively similar to the Plaintiff No.1's Mark 'POSTMAN'. As 'POSTMAN' is a common and essential feature of both the marks, the registration of 'SUPER POSTMAN' Mark ought to have been rejected under Section 11(1)(b) of the Act on the ground of deceptive similarity to the earlier Trade Mark 'POSTMAN' in the name of Plaintiff No.1 as the product and the class are identical to maintain purity of the Trade Marks Register.

118. As held in *Fybro's Electric Private Ltd. v. Vasu Dev Gupta Trading*, 2023 SCC OnLine Del 3179, where the asserted Mark consists of a word, and the word which constituted the dominant part of the Defendants' mark was phonetically similar, the presence of the added material in the rival device mark would not derogate from the similarity between the two marks.



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119. In *Alpha Corporation Development (P) Ltd. v. Alpha Integrated Management Services (P) Ltd.*, 2023 SCC OnLine Del 1642, this Court while dealing with the Rectification Petition under Section 57 of the Act held that the marks ‘ALPHA’ and ‘ALPHA INTEGRATED’ for the same services of real estate development were identical and deceptively similar and allowed the rectification of the Mark ‘ALPHA INTEGRATED’ being in contravention of Section 11(1) of the Act.

120. Further, the Defendants’ Mark ‘SUPER POSTMAN’ is also liable to be cancelled in view of Section 10(3) of the Act, which protects the common law rights of Plaintiff No.1 in the Trade Mark ‘POSTMAN’. The Plaintiff No.1 is prior adopter and user of the Mark ‘POSTMAN’ and its associated labels. Through prolonged, uninterrupted and widespread use of the Mark ‘POSTMAN, Plaintiff No.1 has lawfully secured and maintained exclusive rights to the utilization under common law.

121. The goodwill of Plaintiff No.1’s Mark ‘POSTMAN’ is undisputed, and Defendants have admitted that despite being aware of the ownership of the Mark in 2004, the Defendants started using the Mark ‘SUPER POSTMAN’. Since the Defendants admitted that they were aware of the Plaintiffs product till 2000, the Defendants had no justification for applying for the registration of the Mark ‘SUPER POSTMAN’ on 20.09.2004, when the Plaintiff No.1’s Marks were on the Register of Trade Marks.

122. The Defendants have also admitted the reputation and goodwill of Plaintiff No.1’s Mark ‘POSTMAN’ as Defendants had filed an affidavit dated 12.02.2005 before the Registrar of Trade Marks undertaking that: “*If M/s Ahmed Oomerbhoy, Abdul Sattar Oomerbhoy and / or M/s Bombay Soap Factory All Kept Address at Bombay (Mumbai) will raise any*



Objection or opposition in future against my applied trademark, I will withdraw my application for registration under trademark “Super Postman” at once and without any cause of delay”.

123. The above undertaking and admissions during the trial of this Suit clearly shows that Defendants were fully aware about the existence of the Plaintiff No.1’s Mark ‘POSTMAN’ and about its goodwill and reputation thereof.

124. Considering all above aspects, the Defendants’ registration of the Mark ‘SUPER POSTMAN’ ought to have been rejected by the Registrar of Trade Marks. Accordingly, it is directed that the Registrar of Trade Mark shall rectify the Register of Trade Mark by removing / cancelling the Mark ‘SUPER POSTMAN’ from the Register of Trade Marks.

Issue Nos. (4) and (6)

WHETHER THE DEFENDANTS HAVE INFRINGED PLAINTIFF NO.1’S TRADE MARK POSTMAN AND / OR ARTISTIC WORK IN THE PACKAGING / LABEL

125. The use of the Mark ‘SUPER POSTMAN’ by Defendant No.2 on its product of refined groundnut oil with a similar colour scheme, label and container shape clearly shows that the Defendants had the intention to ride upon the goodwill of Plaintiff No.1’s Mark ‘POSTMAN’. The Marks ‘POSTMAN’ and ‘SUPER POSTMAN’ are deceptively similar, having ‘POSTMAN’ as an essential feature in both the Marks.

126. The cross-examination of Defendants’ witness shows that Defendants were clearly aware about the existence of the Mark ‘POSTMAN’ when the Defendants adopted and commenced the use of the Mark ‘SUPER POSTMAN’.



127. The only distinction between the Marks is prefix ‘SUPER’. However, from the photographs on record it shows that the prefix ‘SUPER’ is written in tiny fonts in the Defendants’ product.

128. It is settled law that for determining infringement and passing off, similarities have to be seen and not the minor dissimilarities. Accordingly, the adoption of the Mark ‘SUPER POSTMAN’ appears to be dishonest. The Defendants’ contention that there was an abandonment of the Mark ‘POSTMAN’ by Plaintiff No.1 cannot be accepted as observed above. Further, the claim of the Defendants that the Mark ‘POSTMAN’ and its colour combinations were common to trade also cannot be accepted as the Defendants themselves have applied for registration of Trade Mark ‘SUPER POSTMAN’.

129. Accordingly, the Defendants are barred from taking the plea that the Mark ‘POSTMAN’ was common to trade or *publici juris* or being used by several third parties as held by **Indian Hotels Company Ltd.** (*supra*).

130. It is also trite law that the proprietor of Trade Mark is not required to chase every infringer as held in **Pankaj Goel** (*supra*). In any event, the Defendants have not produced any evidence of third parties using the Mark ‘POSTMAN’ for similar goods. Further, there was no justification given by the Defendants for the adoption of Mark ‘SUPER POSTMAN’, where the Defendants had prior brands for the same groundnut edible oil such as “JAGDAMBA” and “MERA”, as admitted during the cross-examination by Defendants’ witness.

131. Once the Trade Marks are registered in the name of Plaintiff No.1 validly, the Defendants had no right to use the said Trade Mark of Plaintiff



No. 1, especially when the said Marks of Plaintiff No.1 continued to be renewed and were not removed under Section 47 of the Act.

132. The goodwill of the Mark, 'POSTMAN' was not destroyed merely because Plaintiff No.1 was being dissolved. The non-use was not deliberate but was on account of genuine disputes between the Partners of Plaintiff No.1 and cannot be held to have destroyed the goodwill over the years through extensive use and registration.

133. Accordingly, the Defendants have clearly committed infringement of Plaintiff No.1's Mark 'POSTMAN' and artistic work in the packaging / label.

Issue No. (8)

WHETHER THE PLAINTIFFS ARE ENTITLED TO DECREE OF PERMANENT INJUNCTION(S) AS PRAYED FOR

134. In view of above, the Plaintiffs are entitled to a decree of permanent injunction as prayed for in the Suit. Accordingly, Defendant Nos. 1 and 2, their principal officers, partners or proprietor, servants, agents, representatives and anyone acting on their behalf are restrained from manufacturing, selling and offering for sale oil products or any other allied or cognate products:

- (i) Under the Mark 'SUPER POSTMAN' or any other Mark identical to or deceptively similar to Plaintiff No. 1's Mark 'POSTMAN' amounting to the infringement of Plaintiff No. 1's Mark; and
- (ii) Bearing packaging / label having artistic work amounting to infringement of Plaintiff No.1's Copyright in the artistic work in the packaging / label of Plaintiff's No. 1's products under the Mark 'POSTMAN'.



135. Accordingly, IA 49679/2024 filed by the Plaintiff for grant of interim injunction stands disposed of.

Issue No. (7)

WHETHER THE PLAINTIFF IS ENTITLED TO A DECREE OF RENDITION OF ACCOUNTS

136. In the present Suit, *inter alia*, Plaintiff No. 1 seeks a decree of rendition of accounts. It is trite law that a suit for rendition of accounts can be maintained only if the person suing has the right to receive an account from the defendant.

137. As settled in *K.C. Skaria v. Govt. of State of Kerala* (2006) 2 SCC 285, such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee; or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking accounts to satisfactorily assert his legal right.

138. In the present case, it is well-established that Plaintiff No. 1 is the proprietor of Trade Mark 'POSTMAN' and the Artistic Work in the Label / Packaging with the Mark 'POSTMAN'. Plaintiff No. 1 has been using the said Mark since the year 1949.

139. On the other hand, Defendant No. 2's use of the Mark 'SUPER POSTMAN' on its product, i.e., refined groundnut oil, with a similar colour scheme, label and container shape clearly establishes infringement of Plaintiff No. 1's Mark 'POSTMAN'. Further, as highlighted in Issue No. (4) above, the evidence on record establishes that the Defendants were clearly aware of the existence of the Mark 'POSTMAN'. Therefore, a clear case of infringement is made out against the Defendants.



140. As the infringement of the Mark ‘POSTMAN’ by the Defendants is established, and the infringing Mark ‘SUPER POSTMAN’ has been used by the Defendants in relation to their product, i.e., refined groundnut oil, it is imperative to grant the Plaintiff’s prayer for rendition of accounts in order to satisfactorily assert his right to claim damages, if any, and for this Court to effectively decide Issue No. (6), and Issue No. (10) to the extent of additional damages sought by the Plaintiffs.

141. Accordingly, the present issue stands decided in the affirmative and Defendant Nos. 1 and 2 shall provide rendition of accounts in respect of the goods sold under the Mark ‘SUPER POSTMAN’ from the date to institution of the Suit till the date of submission.

MAINTAINABILITY OF IA 34537/2024 FILED BY THE DEFENDANTS UNDER SECTION 124 OF THE ACT

142. IA No. 34537/2024 has been filed by the Defendants at the stage of final hearing. There has been no Issue framed on invalidity of Plaintiff No. 1’s Mark. When Plaintiff No. 1 had filed a similar Application under Section 124 of the Act, being I.A. 15906/2023 seeking stay of the Suit to enable the Plaintiffs to file rectification of the Mark ‘SUPER POSTMAN’, Defendant Nos. 1 and 2 submitted that the said Application filed by the Plaintiffs under Section 124 of the Act was misconceived as the Defendants had not raised a defence under Section 30(2)(e) of the Act and, therefore, the first condition under Section 124(1)(b) was not satisfied. Accordingly, the Application filed by the Plaintiffs under Section 124 of the Act was disposed of while observing that the said Application did not lie at that point of time.

143. Defendant Nos. 1 and 2 have submitted that IA 34537/2024 is maintainable as the Defendants before filing the Written Statement in this Suit, filed Rectification Petition before the erstwhile IPAB, Chennai against



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the registered Trade Mark of Plaintiff No. 1. The said Rectification Petition is pending before the High Court of Judicature at Bombay and as per Section 124 of the Act, the present Suit is required to be stayed during the pendency of the said Rectification Petition.

144. It is further submitted by Defendant Nos. 1 and 2 that the Written Statement filed by Defendant Nos. 1 and 2 specifically pleaded the invalidity of Plaintiff No.1's registered Trade Mark. It was submitted that the present Suit falls in category of Section 124(1)(a)(i) whereby the present Suit is required to be stayed till the final disposal of the Rectification Petition filed by Defendant Nos. 1 and 2.

145. Despite filing of the Rectification Petition after filing of the Suit and before filing of the Written Statement in the Suit, no Issue has been framed on invalidity of Plaintiff No.1's Trade Mark. In the absence of the Court framing an Issue with regard to the validity of the Plaintiff No.1's registered Trade Mark, an Application under Section 124 of the Act is not maintainable. This Application is a complete afterthought and filed belatedly to delay the final hearing and disposal of the Suit. The Rectification Petition pending before the High Court of Judicature at Bombay is of no consequence as the same was not pending on the date when the present Suit was instituted. Therefore, Section 124(1)(a)(i) of the Act is not applicable in the facts of the present case.

146. In ***Patel Field Marshal Agencies*** (supra), it is held that the Rectification Petition has to be pending on the date of institution of the Suit for requiring the Suit to be stayed as per Section 124 of the Act. Admittedly, in the present case the Rectification was filed after service of summons in



this Suit and before filing of the Written Statement by Defendant Nos. 1 and 2.

147. In ***Resilient Innovation*** (supra), it is held that a *prima facie* finding as to the invalidity of the Plaintiff No.1's registered Trade Mark is necessary to be arrived at before the Suit can be stayed in view of the pending Rectification Petition. As no such Issue has been framed, the Application filed under Section 124 of the Act is not maintainable.

148. In ***Abbott Healthcare Pvt. Ltd.*** (supra), it is held that the Court has to be satisfied that the plea regarding invalidity of the registration of a Trade Mark is *prima facie* tenable to raise an Issue regarding the same. Therefore, Defendant No.1 has to establish that the registration of Plaintiff No.1's Trade Mark is *prima facie* invalid.

149. Merely because the Rectification Petition was filed after filing the Suit and before filing the Written Statement, the Suit ought not be stayed automatically without there being a *prima facie* finding as to the invalidity of Plaintiff No. 1's Mark. In the present case, there is no ground made or Issue framed despite the Rectification Petition being pending.

150. Section 124(1)(a)(i) of the Act will be applicable only when the Rectification Petition is pending prior to the filing of the Suit and not after the service of summons in the Suit and prior to filing the Written Statement. If the interpretation of 124(1)(a)(i) of the Act as per Defendant Nos. 1 and 2 is accepted, all Suit for infringement would be stayed automatically by filing a Rectification Petition immediately upon service of summons. The expression 'pending' must be construed to mean pending on the date of institution of the Suit. That is the reason why Defendant Nos. 1 and 2 never



considered filing the Application under Section 124 of the Act during the pendency of the present Suit.

151. Therefore, the Application being IA 34537/2024 filed by Defendant Nos. 1 and 2 under Section 124 of the Act is not maintainable and is hereby dismissed.

IA 32689/2025 FOR CLARIFICATION OF ORDER DATED 08.08.2025

152. Defendant Nos. 1 and 2 have filed the present Application for clarification of order dated 08.08.2025 and directing the Registry to correct the status of this Suit in its record from “disposed of” to “pending”. The Defendant Nos.1 and 2 have contended that at the hearing held on 08.08.2025, the order was reserved on IA 34537/2024 filed by Defendant Nos. 1 and 2 under Section 124 of the Act and IA 49679/2024 filed by Plaintiffs seeking interim injunction as well as the *suo motu* decision on the validity of the registration of Defendants’ Trade Mark ‘SUPER POSTMAN’ under Section 57 of the Act.

153. Defendant Nos. 1 and 2 have contended that on 08.08.2025, the Defendants specifically made submission only on the jurisdictional bar created by registration of the Trade Mark ‘SUPER POSTMAN’ and staying of the Suit until the validity is determined. It was submitted that the main Suit comprising of voluminous evidence and trial history since 2005 was not heard and the hearing was limited to the IA 34537/2024 and IA 49679/2024 and the enquiry with regard to the validity of registration under Section 57 of the Act. The order dated 08.08.2025 records that arguments were heard and order was reserved, which shows that the main Suit was not finally argued on that date.



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154. Defendant Nos. 1 and 2 have submitted that the written note of arguments filed on 12.08.2025 pursuant to direction on 08.08.2025 was limited to the validity of the registration of the Trade Mark 'SUPER POSTMAN' and maintainability of IA 34537/2024 filed under Section 124 of the Act. Accordingly, it is prayed that order dated 08.08.2025 be clarified to the extent that the order reserved was only with regard to the maintainability of IA 34537/2024, IA 49679/2024 and the validity of the registration of the Trade Mark 'SUPER POSTMAN' under the *suo motu* enquiry as per Section 57 of the Act and direct the Registry to restore the status of the Suit from 'disposed of' to 'pending'.

155. Considering the above submissions, it is clarified that although the hearing held on 08.08.2025 pertained to Plaintiff No. 1's proprietorship of the Mark 'POSTMAN', validity of the registration of the Trade Mark 'SUPER POSTMAN' as per Section 57 of the Act, maintainability of IA 34537/2024 filed under Section 124 of the Act and infringement of Plaintiff No. 1's Mark 'POSTMAN' and grant of injunction as prayed for by the Plaintiffs, the Issues with regard to passing off and the quantification of the damages sought by the Plaintiffs based on the documentary and oral evidence will require further hearing.

156. Accordingly, in the interest of justice, the order dated 08.08.2025 is clarified to the extent that the Issues on passing off and quantification of the damages sought by the Plaintiff are not covered by this Judgement. Accordingly, the pronouncement made on 26.09.2025 is recalled in view of the prayer made in this Application. The Registry is directed to change the status of this Suit as 'pending' from 'disposed of'.



157. Accordingly, the present Application being IA 32689/2025 for clarification is partially allowed to the aforesaid extent and stands disposed of.

CONCLUSION:

158. In view of the above analysis, it is directed that:

- i. Plaintiff No. 1 is the proprietor of Trade Mark 'POSTMAN' in artistic work in the label / packaging with the mark 'POSTMAN'.
- ii. Plaintiff No.1 had not abandoned the Trade Mark 'POSTMAN' entitling the Defendants to use the deceptively similar mark 'SUPER POSTMAN'.
- iii. Upon revival of the Suit, the interim injunction stood revived in terms of order and judgement dated 20.12.2007 in this Suit and in terms of the clarification given by the Division Bench of this Court in Paragraph No. 13 of order dated 25.08.2018 in FAO (OS) (COMM) 361/2018.
- iv. The registration of the Defendants' Trade Mark 'SUPER POSTMAN' is directed to be cancelled / rectified under Section 57 of the Act. Accordingly, the Registrar of Trade Mark shall rectify the Register of Trade Mark by removing / cancelling the Mark 'SUPER POSTMAN' registered *vide* Registration No. 1281470 from the Register of the Trade Marks. A copy of the present judgement shall be sent at: llc-ipo@gov.in for necessary compliance.
- v. Defendant Nos. 1 and 2 shall provide rendition of the accounts in respect of the goods sold under the Trade Mark 'SUPER



POSTMAN' from the date of institution of the Suit till the date of submission, within a period of four weeks from the date.

- vi. Defendant Nos. 1 and 2 have clearly committed infringement of Plaintiff No.1's Trade Mark 'POSTMAN' and artistic work in the packaging / label, the Defendant Nos. 1 and 2 are restrained from using the mark 'SUPER POSTMAN'. Accordingly, the Plaintiff is entitled to a decree of permanent injunction as prayed for in the Suit. Accordingly, IA 49679/2024 filed by the Plaintiff stands disposed of.
- vii. IA 34537/2024 filed by Defendant Nos. 1 and 2 under Section 124 of the Act is not maintainable and is dismissed.
- viii. IA 32689/2025 filed by Defendant Nos. 1 and 2 under Section 151 of CPC for clarification of order dated 08.08.2025 is partially allowed to the extent that the Issues on passing off and quantification of the damages sought by the Plaintiffs are not covered by this Judgment.
- ix. The pronouncement made on 26.09.2025 is hereby recalled and the Registry is directed to change the status of the present Suit to be shown as 'pending' instead of 'disposed of'.
- x. The Parties shall file their respective Written Submissions on Issue Nos. (3), (6), (9) and Issue No. (10) to the extent of determining the grant of additional damages sought by the Plaintiff within four weeks.

159. Accordingly, Issue Nos. (1), (2), (4), (5), (7), (8) and (10) in part are decided in favour of the Plaintiffs and against the Defendants. Let the Preliminary Decree be drawn up accordingly.



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160. List before the Roaster Bench for final hearing on 25.03.2026.

TEJAS KARIA, J

JANUARY 9, 2026

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