

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION (L) NO. 8066 OF 2025  
IN  
COMMERCIAL IP SUIT (L) NO. 3276 OF 2025  
WITH  
COMMERCIAL IP SUIT (L) NO. 3276 OF 2025**

M/s. Merchant Foods and Hospitality Pvt. Ltd. ... Applicant/  
Plaintiff

Versus

Mr. Bharat Ninderwal & Ors. ... Defendants

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Adv. Bavel Singh a/w Janahvi Singh for the Applicant/Plaintiff.

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**CORAM: MANISH PITALE, J.**

**DATE : 8<sup>th</sup> APRIL 2025**

**P.C. :**

. In this application, on 2<sup>nd</sup> April 2025, this Court had directed the applicant/plaintiff to place on record an additional affidavit to give details of sales turnover figures as well as promotional expenses incurred by the applicant from the time the subject trade marks were adopted by the applicant. It was also directed that further relevant documents could be placed on record with the additional affidavit. In compliance thereto, the applicant has indeed placed on record an additional affidavit, which is annexed to the instant applicant.

2. By this application, the applicant is pressing for ad-interim reliefs. At the outset, the learned counsel for the applicant submits

that due to inadvertence and the belief of the applicant that the defendants would remain present since they were served with notice with regard to the present proceedings, a specific prayer for appointment of Court Receiver was not incorporated in the application. Despite service, the defendants have chosen not to appear before this Court and in that light, the applicant seeks permission to amend the prayer clause of the application to incorporate a specific prayer for appointment of Court Receiver of this Court as the receiver in the present matter, to be assisted by certain Additional Special Receivers, to execute the order, if at all, ad-interim reliefs are granted by this Court.

3. In the interest of justice, the applicant/plaintiff is granted leave to amend the prayer clause in the present application to incorporate a specific prayer for appointment of Court Receiver as prayer clause (g). Amendment be carried out within one week from today. Re-verification is dispensed with.

4. In the present proceedings, the applicant/plaintiff is asserting its intellectual property rights in registered trade marks i.e. SHAHI

DURBAR  and ICE CREAM FACTOR SHAHI

DURBAR  with a logo in various classes. It is the case of the applicant that it is engaged in the business of manufacturing and marketing food products for human consumption, including ice-cream, kulfi, falooda and other related items. It is stated that the applicant started its business sometime in

the year 2011 and adopted the said mark. The copies of registration certificates placed on record show that they were issued in favour of the applicant for the aforementioned trade marks w.e.f. 12<sup>th</sup> December 2011 and 16<sup>th</sup> October 2024. The registrations have been obtained in classes 29, 30 and 43 in favour of the applicant. Upon perusal of the copies of the registration certificates placed on record, this Court is satisfied that the applicant is entitled to assert its intellectual property rights in the said trade marks/logos.

5. In the aforementioned additional affidavit filed on behalf of the applicant, it is specifically stated that the applicant has authorized brand promotor M/s. Imperial Foods & Hospitality, which is a partnership firm, the partners of which are the very same persons who are Directors of the applicant/company. It is submitted that through the said sister firm, the applicant engages in appointing franchisees for its products using the said registered marks/logos. In that light, apart from stating the details of the sales turnover figures and expenses incurred towards advertisement in respect of the applicant, such details are also given with regard to the said sister firm M/s. Imperial Foods & Hospitality. A perusal of the details given with regard to the annual sales turnover for the applicant as well as the sister firm, show that for the year 2023-24, the turnover of the applicant was to the tune of about Rs.5.94 crores, while that of the sister firm was to the tune of Rs.1.84 crores. The advertisement expenses for have also been placed on

record, which shows that the applicant has spent a sum of about Rs.78 lakhs for the year 2023-24 for the said purpose. Apart from this, in the additional affidavit in the application, the applicant has placed on record a list of its outlets in various places, including Mumbai, Pune, Bangalore, Indore, Gwalior, Jabalpur and Raipur.

6. Considering the aforementioned material placed on record, which is supported by certificates issued by the Chartered Accountants, this Court is satisfied that the applicant has indeed garnered considerable goodwill over a period of time in respect of its products concerning the aforesaid registered trade marks/logos.

7. As regards the defendants, it is stated that on 12<sup>th</sup> September 2024, the applicant became first aware about the infringing activities of the defendants and therefore, the applicant caused, purchase of the impugned products, in respect of which copy of an invoice is placed on record along with the additional affidavit. It was found that the defendants were using identical/deceptively similar marks in respect of the very same products ice-cream, etc., thereby infringing upon the registered trade marks/logos of the applicant. In that light, the applicant was constrained to send a cease and desist notice dated 19<sup>th</sup> October 2024 to the defendants. Despite service of the said notice, the defendants failed to respond. Even with regard to the present proceedings, the defendants were informed about the listing of the present application, wherein the applicant is pressing for ad-interim reliefs, yet the defendants have chosen not to appear before this

Court.

8. This Court has perused the material on record pertaining to the defendants, particularly the documents filed along with the additional affidavit. A perusal of the same, makes out a strong *prima facie* case in favour of the applicant as regards infringement of its registered trade marks/logos i.e. SHAHI DURBAR



and ICE CREAM FACTOR SHAHI DURBAR

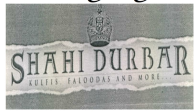


. The defendants appear to be selling similar food products using trade marks that can be said to be almost identical/deceptively similar to the registered trade marks/ logos of the applicant. Since the material placed on record by the applicant, demonstrates a strong *prima facie* case in its favour, this Court is further convinced that unless ad-interim orders as prayed by the applicant are granted, it is likely to suffer grave and irreparable loss, thereby demonstrating that the balance of convenience is also in favour of the applicant.

9. This Court is also of the opinion that in the light of the material placed on record as regards the goodwill earned by the applicant in respect of its products, the defendants by using the impugned marks on their products, are *prima facie* seeking to pass off their products as those of the applicant. This is likely to damage the reputation of the applicant and therefore, a *prima facie* case is made out in respect of passing off also.

10. In view of the above, there shall be ad-interim order in terms of prayer clauses (a), (b) and (g), which read as follows :

*“(a) That pending the hearing and final disposal of the Suit, restrain the Defendants No. 1, 2 & 3, their directors, employees, agents, servants, representatives or any person(s) acting on their behalf, by way of a temporary injunction, from infringing upon the trademark **“SHAHI DURBAR”***

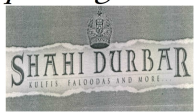


*and **“ICE CREAM FACTORY SHAHI DURBAR”***



*identified in Paragraph 4.20 of the plaint r/w EXHIBIT-E COLLY of the plaint and other material in which Plaintiff has intellectual property ownership or any other like or deceptively similar mark in any manner whatsoever, including in Defendants' name, correspondence, letterhead, stamp, website and/ or other documents, in relation to its business, so as to pass of their services as and for that of the Plaintiffs' identified in Paragraph 4.6 of the Plaint r/w Exhibit B1 to B7 of the plaint;*

*(b) That pending the hearing and final disposal of the Suit, restrain the Defendants No. 1, 2 & 3, their directors, employees, agents, servants, representatives or any person(s) acting on their behalf, by way of a temporary injunction, from passing off upon the trademark **“SHAHI DURBAR”***



*and **“ICE CREAM FACTORY SHAHI DURBAR”***



*identified in Paragraph 4.20 of the plaint r/w EXHIBIT-E COLLY of the plaint and other material in which Plaintiff has intellectual property ownership or any other like or deceptively similar mark in any manner whatsoever, including in Defendants' name, correspondence, letterhead, stamp, website and/ or other documents, in relation to its business, so as to pass of their services as and for that of the Plaintiffs' identified in Paragraph 4.6 of the Plaint r/w Exhibit B1 to B7 of the plaint;*

*(g) Pending the hearing and final disposal of the suit, Court receiver be appointed, Receiver, for delivery up of all the defendant impugned goods and business bearing the impugned trademark/logo including packing material, boxes, carry bags, finished and unfinished goods, boxes, stickers, blocks, dies or any other incriminating material including display boards and sign boards and trade literature to be sealed above with all powers under order 40 Rule 1 of Code of Civil Procedure, 1908 including power to take physical possession thereof.”*

11. The Court Receiver, High Court, Bombay is appointed with the following powers and directions viz.-

- i) All powers under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure;
- ii) A direction to visit and search all premises of defendants, forcibly breaking open locks if necessary, and also where necessary, with police assistance.
- iii) A direction to seize, take possession, custody, and control of the impugned product of all infringing marks, drawings, copies and materials including products manufactured by the defendants.
- iv) A direction to make an inventory of all the material, equipment, etc.

12. Accordingly, Advocates Mr. Vinay Pratap Singh, is appointed as Additional Special Receiver to execute the order. Fees of Additional Special Receivers is fixed at Rs.25,000/- per day. The plaintiff shall pay the fees, but it will be at liberty to seek the same as costs at the final hearing of the suit.

13. The Additional Special Receiver shall submit his report to

the Court Receiver, High Court, Bombay on the following email id:

[crcvr-bhc@nic.in](mailto:crcvr-bhc@nic.in)

14. Contact details of the Additional Special Receiver are as follows :

**Adv. Vinay Pratap Singh**  
101, Modi Tower MTH Compound Indore,  
Madhya Pradesh – 452002.  
Mobile No. 9479797929  
Email: [vinay.p.singh@pyramidslegal.com](mailto:vinay.p.singh@pyramidslegal.com)

15. Execution and implementation of the order:

- i) The Additional Special Receiver is empowered and authorized, acting on an authenticated copy of this order, to take the assistance of the local police authorities in the execution of this commission.
- ii) The police authorities concerned are directed to act on production of a digitally signed copy of this order.
- iii) The Court Receiver will issue the necessary letters of authority to enable the local police to act.
- iv) The Additional Special Receiver is directed to seize and seal all infringing goods bearing the pirated artworks and make an inventory of such seized goods.
- v) The Additional Special Receiver may, if necessary, break open any locks with the assistance of the police.
- vi) The Additional Special Receiver may visit each of the locations of the defendants and is to seize and seal all

infringing products of the defendants.

- vii) These products will be retained in the premises to be provided by the defendants, initially at their costs, which are recoverable with interest.

16. The Additional Special Receiver shall submit his report to the Court Receiver of this Court by email on or before 22<sup>nd</sup> May 2025. The Court Receiver shall in turn submit report before this Court by 5<sup>th</sup> June 2025.

17. In the facts and circumstances of the case, the Court Receiver, High Court, Bombay will not insist upon production of a hard copy of this order, but will act on production of a soft copy digitally signed.

18. The plaintiffs will comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 within 14 days of the Court Receiver executing his commission.

19. Liberty to the defendants to apply for variation, modification or recall of this order after at least 7 clear working days' notice to the Advocates for the plaintiff.

20. List this application for further consideration on 12<sup>th</sup> June 2025 and *ex-parte* ad-interim reliefs granted hereinabove shall continue to operate till 16<sup>th</sup> June 2025.

**MANISH PITALE, J.**