

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE**

Ordinary Original Civil Jurisdiction

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IA NO. GA/5/2023
[OLD NO CS/269/2022]
In IP-COM/6/2025

FOX AND MANDAL AND ANR.
Vs
SOMABRATA MANDAL AND ORS

For the petitioners : Mr. Soumya Ray Chowdhury, Advocate
Mr. Debayan Sen, Advocate

For the respondents : Mr. Krishnaraj Thaker, Senior Advocate
Mr. Indranil Munshi, Advocate
Ms. A. Sarkhel, Advocate
Ms. Ahona G. Majumder, Advocate

Hearing on : 22.09.2025

Judgment on : 22.09.2025

Ravi Krishan Kapur, J.:

1. This is an application seeking consolidation and analogous hearing of the instant suit alongwith a writ petition WPO-IPD 1 of 2025 (*Somabrata Mandal vs. Registrar of Trade Marks & Ors.*) and another Commercial Suit IP COM 31 of 2025 (*Somabrata Mandal vs. Arun Kumar Mandal & Ors.*). It is contended on behalf of the petitioner that the above proceedings are pending before the Intellectual Property Rights Division of this Court and the same be consolidated and heard analogously.
2. For convenience, a summary of the reliefs sought for in the above three proceedings is set out below:

WPO-IPD 1 of 2025 (Old Case No. WPO 2705 of 2022 (<i>Somabrata Mandal Versus The Registrar of Trade Marks & Ors</i>) Filed on:- 23 rd September, 2022	CS 269 of 2022 (<i>Fox & Mandal & Ors Versus Somabrata Mandal & Ors</i>) Filed on:- 31 st October, 2022	CS 86 of 2023 (<i>Somabrata Mandal Versus Arun Kumar Mandal & Ors</i>) Filed on:- 10 th May, 2023
a) A writ of and/or Writs in	The plaintiffs therefore pray for leave	The plaintiffs therefore pray for

the nature of CERTIORARI, order or direction quashing and setting aside the impugned communication dated 27.04.2022 passed by the respondent No. 1 and all action/direction acted upon in pursuance thereto, and further a direction on the respondent No. 1 to remove/rectify/expunge the impugned registration under No. 1428861 from the Register of Trade Marks; b) A writ of and/or Writs in the nature of CERTIORARI, order or direction quashing and setting aside the impugned communication dated 26.04.2022 and 27.04.2022 passed by the respondent No. 1 and all action/direction acted upon in pursuance thereto in relation to the impugned trade mark application Nos. 4089465 and 4089423; c) A writ of and/or Writs in the nature of MANDAMUS directing the respondent No. 1 authority to forthwith transmit all records pertaining to the present case before this Hon'ble Court, so that conscionable justice may be done; d) A stay on the implementation and execution of the impugned communication dated 26.04.2022 and 27.04.2022 passed by the respondent No. 1 and thereby carrying out the aforesaid change in the trade mark register, and thereby restrain the private respondents from acting and implementing their rights as registered proprietor of the impugned trade marks, pending the admission, hearing and final disposal of this application; e) An ad-interim order be passed restraining the private respondents from making any further trade mark applications for registration of any trade mark comprising of "Fox Mandal" without the consent of the petitioner; f) Rule NISI in terms of prayers (a), (b) and (c) made herein above; g) Ad-interim order in terms of prayers (a), (b) and (c) made herein above; h) Pass such other and further order or orders and/or direction(s) as Your Lordships would deem fit and proper in the interest of justice.	under Clause 12 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, 1865, Order II Rule 2 of the Code of Civil Procedure, 1908 and also under Section 12A of the Commercial Courts Act, 2015 and claims – a) Declaration that the defendant Nos. 1 and 2, their men, agents, servants and assigns and any other the partner of the defendant No.2 have no right and/or authority to use the plaintiff No. 1's trademark 'Fox & Mandal' or the marks 'Fox Mandal', 'Fox Mandal and Co', 'FM' or any other similar trademarks in any manner whatsoever including but not limited to as part of their firm name, domain name or e-mail address; Perpetual injunction restraining the defendant Nos. 1 & 2 and their men, agents, servants and assigns and other partners, if any, of the defendant No.2 from passing off their firm and/or legal services as that of the plaintiff Nos. 1 and 2 by using the said plaintiff No. 1's trademark 'Fox & Mandal' or the marks 'Fox Mandal', 'Fox Mandal and Co', 'FM' and/or any other similar marks in any form whatsoever including as part of their firm name, domain names and email addresses; b) Delivery up and cancellation of all records, stationery and other material, both physical and electronic of the defendant Nos. 1 and 2 and their men, agents, servants and assigns and any other partner of the defendant No.2 where the trademarks 'Fox & Mandal', 'Fox Mandal', 'Fox Mandal and Co', 'FM' or any other similar trademarks feature; c) Mandatory injunction directing the defendant Nos. 1 and 2 and their men, agents, servants and assigns and other partners of the defendant No.2 to immediately make over and destroy all material records etc. featuring the trademarks 'Fox & Mandal' 'Fox Mandal', 'Fox Mandal and Co', 'FM' and/or any other similar trademark; d) Perpetual injunction restraining the defendant Nos. 1 and 2 and their men, agents, servants and assigns and/or any other partners of the defendant No.2 holding themselves out as part of or connected with the plaintiff No. 1 as also the plaintiff No. 2; e) Decree for Rs.100 crores as pleaded in paragraph 68 above and in the alternative, an enquiry into damages and decree for such sum as may be found due and payable; f) Interim interest @ 18% per annum; g) Receiver; h) Injunction; i) Costs; j) Such other relief or reliefs.	under Clause 12 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, 1865, Order II Rule 2 of the Code of Civil Procedure, 1908 and also under Section 12A of the Commercial Courts Act, 2015 and claims – a) A decree of permanent injunction restraining the defendants, their men, agents, servants and assigns and any other partner from passing off their services rendered under their registered marks as that of the plaintiff's registered trademarks namely, Fox Mandal, "Fox & Mandal" and "FM"; b) A decree of permanent injunction restraining the defendants, their men, agents, servants and assigns and any other partner from passing off their services rendered under their registered marks as that of the Plaintiff's by using the trademarks "Fox Mandal", "Fox and Mandal", and "F&M" or any other mark being deceptively similar to the registered mark of plaintiff. c) A decree of declaration that the goodwill and legacy associated with the registered mark, "Fox & Mandal" is a shared goodwill of the Mandal family which includes the plaintiff; d) Ex parte ad interim orders in terms of prayers (a), (b) and (c) above; e) Decree of Rs. Twenty Crore towards damages on account of passing off of the marks referred to in (a) and (b) above, f) Receiver taking a delivery of infringing/impugned material including letter heads, brochures, journals, magazines etc, destruction thereof; g) Costs; h) Such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
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3. The parties inter-alia claim rival rights primarily in respect of the mark 'Fox & Mandal' which belongs to the partnership firm. It is contended on behalf of the petitioner that there are common issues of facts and law which arise in all these three proceedings which include but are not limited to (a) goodwill in the subject marks; (b) whether there is any possibility of confusion being created by concurrent user of the subject marks; (c) whether any of the parties can claim exclusive ownership of any trademark to the exclusion of the other; and (d) whether any of the parties can restrain the other from using the subject marks or any of them. As such, consolidation of these proceedings would ensure overlapping and conflicting decisions and are necessary to ensure effective determination of the disputes. In support of such contentions the petitioner relies on the decisions in *Prem Lala Nahata & Ors. vs. Chandi Prasad Sikaria (2007) 2 SCC 551* and *Chittivalasa Jute Mills vs. Jaypee Rewa Cement (2004) 3 SCC 85*.
4. On behalf of the plaintiffs/respondents it is contended that this application is an abuse of process of Court and has been filed with the ulterior intent of procrastinating matters. This is a suit for passing off. The defendants have chosen not to file their Written Statement within the prescribed mandatory time period of 120 days and are indirectly trying to thwart progress of this suit. The applicant has filed this application as an afterthought only to stall the hearing of the application under Order XIII A for summary judgment filed in this suit. The prayer for consolidation has also been repeatedly raised at different stages and has been rejected. In addition, the *stage* of all the

three proceedings is of extreme importance before any prayer for consolidation can be considered. In support of such contentions the plaintiffs rely on the decisions in *Monohar Lal vs. Ugrasen* (2010) 11 SCC 557, *Ananda Swarup Agarwal & Anr. vs. State of West Bengal & Ors.* AIR 2000 Cal 222, *Jai Singh vs. Union of India & Ors.* (1977) 1 SCC 1, *Dyna Chem vs. Jaipal Das Punjabi* 2021 (4) MPLJ 406, *Dyna Chem vs. Jaipal Das Punjabi* (Special Leave to Appeal (c) No.11911/2021 order dated 09-08-2021, *Supriya Roy & Anr. vs. Bijaya Bose* 2018 (s) CHN 372, *Sri Sribrata Deb vs. Bank of India & Ors.* (W.P.No.26817(w) of 2016 order dated 16th June, 2017).

5. The Code of Civil Procedure, 1908 (as amended by virtue of the Commercial Courts Act, 2015) permits consolidation of proceedings as part of Case Management Hearing (*Order IV A*). Such powers may also be exercised under Section 151 of the Code of Civil Procedure, 1908 and also in terms of the Rule 18(b) of Intellectual Property Right Rules, 2023 of High Court at Calcutta.
6. Ordinarily, the power to direct consolidation may be exercised by the Court of its own initiative or on an application being made to it. In order to direct consolidation, it is necessary not only to ascertain the *subject matter* of the proceedings proposed to be consolidated, but the *stage* at which the proceedings are. In this suit (IP-COM 6 of 2025), the Writ of Summons has been duly served. The time to file the Written Statement has also expired. No Written Statement has been filed by any of the defendants. The interlocutory application being GA/1/2024 seeking interim reliefs has been disposed of by this Court.

The plaintiffs have now filed an application under Order XIII A for summary judgment and the matter has been heard on diverse dates. The plaintiff has concluded its opening arguments and the defendant no.1 is still being heard.

7. As far as the writ petition is concerned, there is no question of any trial being conducted. The writ petition was filed as far back as on 23 September 2022. Affidavits have been completed and the matter was at an advanced stage of hearing when the same was adjourned by a Co-ordinate Bench. The suit being CS/86/2023 now re-numbered IP-COM 31 of 2025, (*Somabrata Mandal versus Arun Kumar Mandal*) filed by the petitioner has made little progress. The Writ of Summons has not been lodged despite a period of more than two years having lapsed. An application for amendment of the plaint was dismissed on merits on 3 April 2024. Thereafter, an application under Order 7 Rule 11 of the Code of Civil Procedure 1908 has been filed and is still pending final disposal. The plaintiff in the above suit has also filed an application being GA/5/2025 praying for extension of time to lodge the Writ of Summons as recent as on 18th July 2025. Directions for affidavits have been ordered and the same is pending final disposal. Thus, other than the subject matter of three proceedings being different, the stages of the respective suits are also incomparable.
8. In this background, the filing of the instant application for consolidation is *ex-facie* to delay and procrastinate the hearing of the application under Order XIII A filed in this suit. There is no question of trial of the writ petition. The indisputable facts would reveal that the respondent no.1 has been indolent in proceeding with his suit and no

Writ of Summons has also been served till date. It is true that the questions raised in all the three proceedings may fall within the broad umbrella of intellectual property rights of the plaintiff's firm name 'Fox & Mandal', nevertheless, the question of passing off raised in this suit can be decided regardless of the question raised in those proceedings. One of the objects behind the enactment of the Commercial Courts Act, 2015 is for speedy disposal of commercial disputes. This cannot be jettisoned and defeated by recalcitrant litigants in an indirect and circuitous manner.

9. As a general rule, when claims by or against different parties involve common questions of fact bearing sufficient importance in proportion to the rest of the action it is desirable that all these matters be disposed of at the same time, the Court *may* then allow consolidation and further pass directions as to how the action should be tried. The power to make an order for consolidation is purely discretionary and the Court has to consider whether it is desirable in the facts and circumstances of the case that common questions of law and fact arise for consideration or the right to reliefs claimed in several cases or matters be disposed of at the same time. In passing an order for consolidation, the Court has a wide discretion to allow joinder as to common questions of fact. The fact that those causes of action which arise may raise direct or indirect issues is not the solitary ground for allowing consolidation. The timing of the instant application is also essential. Though the suit being IP-COM 31 of 2025 (Old Suit 86 of 2023) was filed two years ago, the instant application has been filed after a lapse of two years. [*Payne vs. British Time Recorder Co. Ltd.*

And WW Curtis Ltd. (1921) 2 KB 1; Harwood vs. Statesman Publishing Co. Ltd. (1929) 98 LKKB 450].

10. It is impossible to lay down any inflexible Rule as to how the discretion of Court ought to be exercised. The only purpose in directing consolidation is that there must be a strong common link either in the form of cause of action or the injury or the relief claim which warrants consolidation of proceedings. Then, there is an additional question of costs and time which could be saved. Even if a party is entitled as a matter of law yet as a matter of discretion, consolidation may be disallowed if there is incompatibility with the success or if it embarrasses or delays the trial of the action.
11. The stage of the suit is also extremely important for consolidation of the suit. The suit filed by the petitioner is stillborn since no Writ of Summons has even been lodged. A diligent party cannot be punished for the acts of an indolent opponent. (*Dyna Chem vs. Jaipal Das Punjabi (2021) 4 MPLJ 406* and *Supriya Roy and Anr. vs. Bijaya Bose 2018 (2) CHN 372*). Similarly, the issues raised in the writ petition have no material bearing to the issues raised in this suit. In any event, the main question in the suit, i.e., passing off can be decided regardless of any decision raised in the two proceedings of which consolidation is sought. Moreover, though oral submissions have been made for transfer of IP-COM 6 of 2025, there is no prayer to this effect in the application. [*Manohar Lal vs. Ugrasen, (2010) 11 SCC 557 @ Para 34*]
12. The point of the applicant having raised similar questions of consolidation in prior proceedings though admitted is irrelevant in

adjudicating the merits raised in this application. This is not a ground on which the application is liable to be dismissed. The different proceedings which the parties are contesting suggest that the applicant is trying to jettison the progress of this suit on frivolous pretexts.

13. The decisions cited on behalf of the petitioner are inapplicable and distinguishable. In *Chitivalasa Jute Mills vs Jaypee Rewa Cement (2004) 3 SCC 85*, the Court was dealing with section 25 of the Code of Civil Procedure, 1908, which confers powers on the Supreme Court to transfer cases. In this case, two different suits were filed in two different States pertaining to the very same subject matter i.e., transaction of supply of jute bags when transfer was sought for. Similarly, the decision cited in *Prem Lala Nahata & Anr vs Chandi Prasad Sikaria (2007) 2 SCC 551* pertains to consolidation of trials. The facts of this case are inapposite inasmuch as consolidation had been refused by the High Court. The decision in *Nagaland vs. Lipok Ao (2005) 3 SCC 752* was a case dealing with section 5 of the Limitation Act, 1963, where delay was condoned on the ground that government officers and servants could not be treated in the same manner as an individual private litigant.
14. In such view of the matter, there is no merit in this application. The prayer for consolidation is ill-motivated, misconceived and stands rejected. GA/5/2025 is dismissed. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)