FINAL DRAFT D5

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 7916 – X Dt. 18/2/26

From

The Registrar General
High Court of Delhi
New Delhi.

1457
18 FEB 2026
Rohini District Courts, Delhi

To

1. The Principal District and Sessions Judge, Central, Tis Hazari Courts, Delhi.
2. The Principal District and Sessions Judge, West, Tis Hazari Courts, Delhi.
3. The Principal District and Sessions Judge, South, Saket Courts, Delhi.
4. The Principal District and Sessions Judge, South-East, Saket Courts, Delhi.
5. The Principal District and Sessions Judge, North-West, Rohini Courts, Delhi.
6. The Principal District and Sessions Judge, East, KKD Courts, Delhi.
7. The Principal District and Sessions Judge, North-East, KKD Courts, Delhi.
8. The Principal District and Sessions Judge, Shahdara, KKD Courts, Delhi.
9. The Principal District and Sessions Judge, North, Rohini Courts, Delhi.
10. The Principal District and Sessions Judge, NDD, Patiala House Courts, Delhi.
11. The Principal District and Sessions Judge, South-West, Dwarka Courts, Delhi.
12. The District Judge(Comm. Court-03),West, Tis Hazari Courts , Delhi ....or SC
13. The PA to Registrar General, Delhi High Court, New Delhi.

FAO (Comm) No. 21/2024

SURESH SHARMA .....Appellant/s

Vs

KRISHAN LAL THUKRAL .....Respondent/s

Appeal against the order dated 20.10.2023 passed by the Mr. Dig Vinay Singh, District Judge (Comm. Court-03), West, Tis Hazari Courts , Delhi in CS Comm 902/2022.

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action on a copy of order dated **02.02.2026** passed by the **Hon'ble Divisional Bench** of this Court in the above noted case.

Other necessary directions are contained in the enclosed Copy of Order.

Please acknowledge the receipt.

Encl:- 1. Copy of order dated **02.02.2026**
2. Memo of parties

Yours faithfully,

18/2/26

Admn. Officer (J) C-IV
For Registrar General

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 8915–8989 ....Genl.I/F. 3(A)/N-W & N/RC/2026 **Dated** 27/2/2026

Copy alongwith its enclosures, forwarded **(through electronic mode)** for information & necessary action/compliance, to :-

1. All Ld. Judicial Officers posted at **N/W & North,** Rohini Courts, Delhi.
2. The Branch In-Charge, Filing Section, **N/W & North,** Rohini Courts, Delhi.
3. Dealing Official, Computer Branch, Rohini Courts for uploading the same on WEBSITE.
4. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(VINOD YADAV)
Officer In-Charge, General Branch
North-West & North District
Rohini Court Complex, Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

(COMMERCIAL APPELLATE DIVISION)

F.A.O. (COMM.) NO. OF 2024

(Against the order dated 20.10.2023 passed by the Sh. Dig Vinay Singh, Ld. District Judge (Commercial Court)-03, West, Tis Hazari Courts, Delhi in CS (Comm.) No.: 902/2022)

IN THE MATTER OF:

SURESH SHARMA ...Appellant

Versus

KRISHAN LAL THUKRAL ...Respondent

MEMO OF PARTIES

Suresh Sharma

Trading as: M/s Jai Shri Cottage Industries,

C/o- BE/377, Gali No.8, Near Bharat Gas Agency

Hari Nagar, New Delhi-110064

Also at:

Near PNB ITI Road,

Mahendragarh, Haryana-123029 ...Appellant

Versus

Krishan Lal Thukral

Trading as: M/s Kamal Store

Through its Authorized Representative

Mr. Kamal Thukral

C/o- 4048, Lahori Gate, Naya Bazar

Backsider, Delhi-110006 ...Respondent

Email: Thukralkamal@yahoo.com

Appellant

Through

Place: Delhi Dated: 25.01.2024	SANJAY KUMAR PANDEY ADVOCATE SP & ASSOCIATES, Advocates & Solicitors, A-335, 2nd Floor, Defence Colony, New Delhi-110024 Email Id: sanpanadvocate@gmail.com Mobile No: 09717371892, Tel: 011-40158284

2026:DHC:855-DB

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

\+ FAO (COMM) 21/2024 & CM APPL. 5948/2024

SURESH SHARMA .....Appellant

Through: Mr. Vivek Ranjan Tiwary, Mr. Amber Jain and Mr. Sarath J Prakash Advocates

versus

KRISHAN LAL THUKRAL .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 02.02.2026

C. HARI SHANKAR, J.

1. There is no appearance on behalf of the respondent though the matter was called out thrice.

2. We have heard Mr. Vivek Ranjan Tiwary, learned counsel for the appellant.

3. This appeal emanates from CS (Comm) 902/2022 instituted by the respondent against the appellant, alleging that the appellant was passing off its goods as those of the respondent by use of the marks THUKRAL KRANTI, THUKRAL, KS THUKRAL and KS THUKRAL KRANTI.

4. Additionally, the suit also prayed for a decree for delivery up of goods, damages, rendition of accounts and the like.

5. We eschew reference in detail to the facts or the rival contentions as, to our mind, the impugned order is liable to be set aside on a short ground and the matter remanded for consideration.

6. Various applications were filed by the appellant, as the defendant before the learned Commercial Court, contesting the plaint filed by the respondent. Among these, were applications under Order VII Rule 11 of the Code of Civil Procedure, 1908[1], Section 12A of the Commercial Courts Act and Section 10 of the CPC. These applications stand dismissed by the learned Commercial Court. The appellant has not chosen to assail the impugned judgment to that extent.

7. Mr. Tiwary, learned counsel for the appellant, submits that he is restricting his challenge to the impugned judgment on the ground that while confirming the *ex parte ad interim* injunction granted to the respondent and dismissing the appellant's application under Order XXXIX Rule 4 of the CPC, the learned Commercial Court has, without returning any finding on goodwill, held in favour of the respondent, on passing off.

8. In fact, we find that the learned Commercial Court has not just failed to address the aspect of goodwill but has also failed to record any findings on the merits of the respondent's application under Order

XXXIX Rules 1 and 2 of the CPC. The learned Commercial Court has merely adverted to the appellant's application under Order XXXIX Rule 4 of the CPC. There is no finding on merits whatsoever. We may, in this context, reproduce paras 5 to 5.4 of the impugned judgment.

> "5 Turning to the second application Under Order 39 Rule 4 CPC, besides some of the common grounds as referred above such as suppression and concealment of facts & documents and invoking of Sec. IO of CPC, non-compliance of Sec. 12A of the Commercial Courts Act, the defendant/applicant seeks vacation of the stay order dated 21.02.2023 on the ground that the defendant is a bonafide user of the mark since 2003 and that there is non-compliance of Order 39 Rule 3 of CPC by the plaintiff.
>
> 5.1 So far as bonafide user of the impugned trademark by the defendant since 2003 is concerned, as against it, the case of the plaintiff is that plaintiff is bonafide user of the trademark since 1983. It is therefore a disputed question of fact which will have to be determined during trial. Suffice it to note that the Ld. Predecessor Court did get prima facie satisfied as to existence of all the three necessary ingredients i.e. prima facie case, balance of convenience and irreparable loss to the plaintiff and only thereafter the injunction order dated 21 .02.2023 was passed. The said order is a detailed order clearly establishing existence of the three requisite conditions for grant of stay in favour of the plaintiff.
>
> 5.2 So far as non-compliance of Order 39 Rule 3 CPC is concerned, the plaintiff has filed an affidavit on record that on 06.03.2023 when the LC went to execute the Commission, at that very time compliance of the said provision was made by the plaintiff upon the defendant. In a case of infringement, as the present case is, it sometimes become necessary to get Commission executed by a Local Commissioner and whenever such an order is passed, the execution of Commission in fact depends even upon the availability of the LC so appointed and availability of time with the LC. It is particularly important when the Commission is to be executed outstation. In such circumstances if there occurs delay of few days in execution of the Commission at a location outside the city of the Court which passes the order it may cause delay in compliance of Clause (b) of proviso clause of Ruic 3 of Order 39. Supplying a copy or the plaint and injunction application and other

[1] "CPC", hereinafter

documents before execution or the Commission, may actually frustrate the very purpose of appointment of a Commissioner as an unscrupulous defendant may remove the infringed goods before the Commissioner reaches the premises. In such circumstances, compliance by the plaintiff on the date of execution of Commission, as done in this case should be taken as sufficient compliance.

5.3 Reliance placed by the applicant/defendant upon the following cases does not help his case for the following reasons. In ***East African (I) Remedies Pvt. Ltd. v. Wallace Pharmaceuticals Ltd.***[2], the plaintiff failed to establish prima facie case in its favour and the balance of convenience also lied in favour of the defendant who was bonafide user of the trademark and the suit of the plaintiff was also suffering from delay and latches. Similarly in the case of ***Shiv Kumar Chadha v. Municipal Corporation of Delhi***[3], Civil Appeal No. 2532 of 1993 (Arising out of S. L. P (C) No. 9538 of 1991), all that is relied upon by the defendant is that before granting *ex parte* injunction, the Court must record reasons mandatorily. In this case, the said condition has indeed been complied in the Order dated 21.02.2023 was passed. In the case of ***M/s Ashwini Pan Products Pvt. Ltd. v. M/s Krishna Traders***[4] decided by Hon'ble Delhi High Court on 2 March 2012, because of non-compliance of Order 39 Rule 3 CPC, the stay order was held to be liable to be vacated. In the present case, as mentioned above, the said provision was indeed complied with on the very day when the LC went to execute the Commission. In the case of ***Premwati Bansal v. M/s Shri Ganpati International***[5] decided by Hon'ble Delhi High Court, the parties were known to each other having commercial transactions *inter se* and the injunction was prayed after a lapse of five years and therefore the Court observed that the case was not fit for grant of injunction. In the case of ***Rameshwar Dass v. Brij Bhushan & Others***[6], what was held is that the order vacating injunction order without notice to the person in whose favour the injunction was passed, is bad in law.

5.4 Accordingly even application Under Order 39 Rule 4 CPC filed by the defendant is meritless. Resultantly, not only this application is also dismissed, but also the injunction order dated 21.02.2023 is confirmed till further orders / till pendency of this case, and accordingly even application Under Order 39 Rule 1 & 2 CPC also stands disposed of."

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[2] (2003) 105 DLT 293
[3] (1993) 3 SCC 161
[4] (2012) 188 DLT 432
[5] (1999) 82 DLT 398
[6] AIR 1988 HP 31

9. To our mind, the impugned judgment is completely unreasoned. The learned Commercial Court has not adverted to any of the aspects either to *prima facie* case, balance of convenience or irreparable loss, which are *sine-qua-non* before any injunctive order can be passed under Order XXXIX of the CPC, except for stating that the order of the learned predecessor Court had made out a case in that regard.

10. Neither of the parties have registrations under the Trade Marks Act, 1999, as a result of which the suit could only be considered on passing off. The three indispensable ingredients for a claim of passing off to succeed are the existence of goodwill on the part of the plaintiff, prior to adoption of the mark by the defendant, misrepresentation by the plaintiff and consequent damages to the defendant.

11. None of these aspects find any reference in the impugned order of the learned Commercial Court.

12. As a result, we have no option but to quash and set aside the impugned order of the learned Commercial Court. We accordingly do so.

13. The applications of the respondent under Order XXXIX Rules 1 and 2 and of the appellant under Order XXXIX Rule 4 of the CPC stand remitted to the learned Commercial Court for consideration afresh.

14. Needless to say, the learned Commercial Court would decide the matter uninfluenced by any observation contained in the impugned

order dated 20 October 2023.

15. To expedite matters, we direct learned counsel for the parties to appear before the learned Commercial Court on 19 February 2026.

16. We also direct the parties to file short notes of their respective submissions not exceeding five pages each at least three days in advance of the next date of hearing before the learned Commercial Court so as to facilitate expediting of the matter.

17. Learned counsel for the parties would not be entitled to seek any adjournment from the learned Commercial Court on the date fixed.

18. We also request the learned Commercial Court to decide the matter either on the said date or thereafter as expeditiously as possible.

19. The appeal stands allowed to the aforesaid extent.

20. We also request the learned Commercial Court that in case the said applications have been accorded registration numbers by the Registry of the District Court, to reflect the registration numbers in the order which is passed.

21. A Parting Note

22. We are coming across several cases in which orders passed by the learned District Courts on interlocutory applications and other

applications filed in pending proceedings do not reflect the application numbers. We were also informed on the administrative side that all applications are duly numbered at the time of filing.

23. We do not see why the procedure adopted in this Court is not prevalent in the learned District Courts[7].

24. We deem it appropriate to issue the following practice directions, to be followed by all District Courts:

(i) All applications, at the time of filing, would be duly registered.

(ii) The registration number of the application(s) would be reflected in the cause list when the matter is placed before the Court.

(iii) Pleadings in the application(s) would be required to cite the concerned Application Number.

(iv) Orders passed on the said applications should also reflect the Application Number(s) in which the orders are passed.

25. We request all the learned District Courts to ensure compliance with these directions so that it facilitates reference to the applications when they are dealt with at the appellate or revisional stage.

26. We also request the learned District Courts to ensure that

[7] We clarify that this order would apply to all District Courts at all levels, subject to the

judicial orders passed by them reflect the appearance of parties or learned counsel or, in case no one appears, notes to that effect.

27. Let a copy of this order be marked to the Principal District & Sessions Judge for circulating among all the learned District Judges as well as to the learned Registrar General of this Court, so that compliance therewith can be ensured.

28. The appeal stands allowed to the aforesaid extent.

29. Later, Mr. Bipin Bihari Singh, Advocate appears for the respondent and expresses his regret for not having been able to properly connect to the proceedings when the matter was called out.

30. We have already given reasons for our order. However, we note his appearance.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

FEBRUARY 2, 2026/yg