



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA  
&  
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI  
ON THE 6<sup>th</sup> OF OCTOBER, 2025  
MISC. APPEAL No. 5004 of 2023**

***KRITI NUTRIENTS LTD.***

*Versus*

**M/S RAJLAKSHMI OILS**

**Appearance:**

*Shri Vikram Malviya and Shri Rajendra Bhansari, learned counsel for the appellant.*

*Shri Bhashkar Agrawal, learned counsel for the respondent.*

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**MISC. APPEAL No. 5126 of 2023**

***M/S RAJLAXMI OILS THROUGH SOLE PROPRIETOR MR. KISHORE  
KUMAR***

*Versus*

**KRITI NUTRIENTS LTD.**

**Appearance:**

*Shri Bhashkar Agrawal, learned counsel for the appellant.*

*Shri Vikram Malviya and Shri Rajendra Bhansari, learned counsel for the respondent.*

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**ORDER**

***Per: Justice Binod Kumar Dwivedi***

Having regard to the similitude in the controversy involved in these miscellaneous appeals, they are heard analogously and are being decided by this common order.



**02.** Miscellaneous Appeal No. 5004/2023 filed under Order 43 Rule 1 of Code of Civil Procedure, 1908 (hereinafter referred for short ‘CPC’) r/w Section 135 of Trade Marks Act, 1999 (hereinafter referred for short ‘the Act of 1999’) and Section 55 of Copyright Act, 1957 (hereinafter referred for short ‘the Act of 1957’) has been preferred against the impugned order dated 04.07.2023 passed by Commercial Court, Indore in Commercial Case No. 68/2022 on application (I.A. No. 01/2023) under Order 39 Rule 1 & 2 r/w Section 151 CPC filed on behalf of appellant – Kriti Nutrients Ltd. has been dismissed.

**03.** Appellant-M/s Rajlaxmi Oils in Miscellaneous Appeal No. 5126/2023 is also aggrieved by the impugned order on the ground that the learned trial Court has failed to appreciate the controversy involved in right perspective. For the sake of convenience, facts have been taken from Miscellaneous Appeal No. 5004/2023.

**04.** Draped in brevity, admitted facts of the case are that appellant/plaintiff - Kriti Nutrients Ltd. on 09.02.2021 had filed Civil Suit No. 248/2021 (new number - Commercial Case No. 68/2022) before the learned Commercial Court, Indore for declaration and injunction under the provisions of the Act of 1999 and the Act of 1957. Along with the suit, he has also filed an application for temporary injunction (I.A. No. 1/2023) mentioning the fact that appellant-Kriti Nutrients Ltd. is a company incorporated under the Companies



Act, 1956 and is a manufacturer, marketer and exporter of all kinds of Goods and Services including, all kinds of Edible Oils like, Soya Bean Vegetable Oil, Soya Bean Refined Oils, Coconut Oils, Mustard Oils, Till Oils, Groundnut Oils, Sunflower Oils, Rice Bran Oils, Rap Seed Oils etc. under the trade name “KIRTI” with distinctive and fancy trade mark. The said goods of appellant are sold openly, extensively and continuously throughout India and abroad by the appellant due to the standard quality of said goods and long experience. Trade mark “KRITI”, “KRUTI” and “कृति” is an essential feature, along with distinctive art work.

**05.** The respondent-M/s. Rajlaxmi Oils is engaged in business of manufacturing and marketing of the goods namely, all kinds of Edible Oils with trade mark/packaging/trade dress/label “KRITI” i.e. suffix words, written in very small size of fonts i.e. “SHRI”, “SPECIAL” and “LITE”. The respondent is manufacturing and selling impugned goods under identical and deceptively similar trade mark/package/trade dress “KRITI/ कृति” with impugned substantial and material reproduction of art work/label of “KRITI” is of the appellant's artwork/ label of "KRITI" “कृति”. Earlier companies of the appellant with distinctive trade name and trade mark KRITI, was incorporated in the year 1990 with trade name "Kriti Plastics Pvt. Ltd." for various goods/ services. The



name of the said company, "Kriti Plastics Pvt. Ltd." was changed to "Kriti Plastics Ltd." in the year 1992. Subsequently, then name of the company, "Kriti Plastics Ltd." was changed to "Kriti Agro & Plastics Industries Ltd." in the year 1992. The appellant company, "Kriti Agro & Plastics Industries Ltd." was changed to "Kriti (India) Ltd." in the year 1995. In the year 1996, one Solvent division was also incorporated with trade name "Kriti Sadev Pvt. Ltd." by the "Kriti Industries (India) Ltd." The name of "Kriti Sadev Ltd." was changed to "Kriti Nutrients Pvt. Ltd." in the year 2007. The name of the company "Kriti Nutrients Pvt. Ltd." was changed to "Kriti Nutrients Ltd." in the year 2007. In the year 2007, one Auto Engineering and Plastic division was also incorporated with trade name "Kriti Auto & Engineerings Plastics Pvt. Ltd." by the "Kriti Industries (India) Ltd." Thereafter, by virtue of order of the Hon'ble High Court of M.P. Indore Bench, Dated 25.11.2009 in Company Petition No. 14/2008, under the scheme of arrangement/compromise, there was division/demerger of company Kriti Industries (India) Limited, resulting into two demerged companies Kriti Auto and Engineering Plastics Pvt. Ltd. and Kriti Nutrients Limited on 25.01.2010. The appellant is carrying on an established business of manufacturing, marketing and exporting of said goods with trade name/trademark "KRITI/ कृति". The appellant has honestly and bonafidely adopted distinctive and fancy trade name/trade mark "KRITI/ "कृति" in the year



1990 and started the use of same in open market in the year 1990 i.e. 12.03.1990. In the year 1990, looking to market demand and trend, the appellant has also adopted and created unique artistic work for label containing and consisting trade name/trade mark "KRITI/ कृति". Being first adopter and user of trade name/trade name/trademark "KRITI कृति", the appellant become the true and lawful owner/proprietor of trade name/trademark "KRITI/कृति". The appellant has various packaging/trade dress/labels. The essential feature in trade name/trademark/packaging/trade dress/label is "KRITI/कृति". The original artistic works of said mark were prepared in the years 1990/1995/1996/2010. Due to long and concurrent use and because of standard quality of said goods maintained by the appellant, said mark has acquired tremendous reputation and goodwill in the market. The appellant is using said mark since long in respect of said goods, which has been extensively advertised through various media and large sums of money is spent each year for the advertisement and promotion of said goods of the appellant. The appellant to protect such reputation and goodwill and to get statutory rights/protection, has also filed various trademark applications for trademark "KRITI, "KRUTI" for various goods/services for registering its said distinctive mark. The registrations of the appellant's said mark for various goods/services are valid and in force till date. Appellant is the



prior, honest, and bona-fide adopter and also prior, long and continues user of said mark. The appellant, with an annual sales turnover of around 520.38 Crore for the year 2019-2020, is the flagship company.

**06.** The allegation of the appellant is that respondent got its Copyright registration by suppressing material and vital facts. The appellant is challenging copyright registration of the respondent. In view of said fact, the respondent cannot claim any right under the provisions of The Act of 1957 for impugned artistic work containing trademark KIRTI. Impugned mark adopted by the respondent is phonetically, visually, substantially, and structurally identical and deceptively similar with said mark of the appellant. It is the common practice in the trade that order in respect of the goods is being always placed orally i.e. by way of the spoken use of any trade mark that is to say people would always ask/demand/place the order of the particular goods/services with trademark. Thus, the oral/spoken use of impugned identical and deceptively similar mark is also breach of Intellectual Property Rights of the appellant's said mark. It has been further alleged that comparison between said mark and impugned mark, clearly demonstrates that the respondent has ditto to ditto imitated/copied said mark of the appellant and made substantial and material reproduction of artwork of the appellant's label to infringe the mark. On these aforesaid grounds, appellant made a prayer for allowing his application to restrain the respondent,



its proprietor, partners, sister concerns, associates, servants, agents, retailers, stockiest, dealers, distributors, printers and publishers by an order of temporary injunction from selling, printing, publishing, using, infringing of Copyright and Trademark and impugned goods namely, all kinds of Edible Oil under trade mark/packaging/trade dress "SHRI KIRTI", "SPECIAL KIRTI" and "KIRTI LITE" with an essential feature prefix and/or suffix KIRTI and/or any other mark, which may be identical and/or deceptively similar to the appellant's registered trade mark "KRITI" and to restrain the respondent from committing an act of Infringement of the appellant's registered Trademark "KRITI" and “कृति”. Further to restrain the respondent, its proprietor, partners, sister concerns, associates, servants, agents, retailers, stockiest, dealers, distributors, printers and publishers from using trade mark/packaging/trade dress "SHRI KIRTI", "SPECIAL KIRTI" and "KIRTI LITE with an essential feature prefix and/or suffix KIRTI and/or any other trade mark, which may be identical with and/or deceptively similar with the appellant's trade name "KRITI" and distinctive and fancy trade mark "KRITI/KRUTI/कृति” and restrain them from manufacturing/marketing impugned goods namely, all kinds of Edible Oil by using trade mark "SHRI KIRTI", "SPECIAL KIRTI and "KIRTI LITE" with an essential feature prefix and/or suffix KIRTI in any manner and thereby, restrain them from committing an act of passing off and enable others to pass off



impugned goods namely, all kinds of Edible Oil as and for said goods namely, all kinds of Edible Oil of the appellant with trade mark/packageing/trade dress "SHRI KIRTI", "SPECIAL KIRTI" and KIRTI LITE" with an essential feature prefix and/or suffix KIRTI and restrain them from diluting the immense reputation and goodwill of trade name "KRITI" and distinctive and fancy trade mark "KRITI/KRUTI/कृति" of the appellant.

**07.** Learned counsel for the appellant submits that the learned trial Court has committed an error of law in coming to conclusion that appellant has no prima facie case, which is against pleadings and evidence on record and, therefore, it is perverse and against settled principles of law. He further submits that learned Court below has committed error of law in not considering the fact that appellants are being prior user of the Trademarks since 1990. In para-34 of impugned order, it has been held that impugned mark of respondent/defendant is similar to the appellant and deceptively identical, but learned Court below has rejected the application by holding that who is prior user of the trademark in dispute i.e. "KRITI", "KRUTI", "कृति", "KRITI" is yet to be decided on evidence. Ignoring the cogent and unrebutted evidence on record, such a finding is not only perverse and bad in law and against the settled principles of law.



**08.** Learned counsel for the appellant further submits that when consumer is of a same area and the mark is similar that too in its sound and is phonetically, by design, by font type, by colour combination, it will prima facie bound to create confusion and deception to the consumer using the product and hence the rejection of the application is bad in law.

**09.** Learned counsel for the appellant further submits that the learned trial Court has committed an error of law in rejecting the application only on the ground that because the invoices of 2004 to 2007 are reflecting GST, therefore, the same cannot be treated to be evidence of prior use, but such finding is perverse. Invoices which has been made basis of doubt are downloaded from the official website of the department after 2017. Hence, the word “GST” has come on printouts. Learned Court below ignoring such technical fact has given undue weightage to the aforesaid fact while coming to the conclusion that without evidence prima facie use cannot be presumed. Application has rejected on flimsy grounds, therefore, the finding by the Court below is perverse and requires interference. On these miscellaneous submissions, learned counsel prays for allowing the appeal by setting aside the impugned order and allowing the application of the appellant by restraining the respondents, its proprietor, partners, sister concerns, associates, servants, agents, retailers, stockiest, dealers, distributors, printers and publishers by an order of temporary injunction from



selling, printing, publishing, using, infringing of Copyright and Trademark of the appellants.

**10.** Per contra, learned counsel for the respondent supporting the impugned order on I.A. No. 1/2023 submits that the order is a well reasoned and passed after scrutinising and appreciating the material available on record in right perspective. He further submits that interim orders should not be lightly interfered with by the appellate Court unless it is perverse. Since the appellant could not make out any case for issuing temporary injunction against them by adducing relevant materials, hence no fault can be found in the impugned order. On these submissions, he prays for dismissal of the appeals.

**11.** Heard and considered the rival submissions raised at Bar and perused the record.

**12.** In the instant case, a dispute is with regard to the use of deceptively similar trademark by the respondent. Both the parties have raised rival claims. Learned Court below though has made passing remark in para 34 of the impugned order that from the pleadings and documents as well as perusal of both the marks, trademark “KRITI”, “KRUTI”, “कृति” and KRITI/SHRI KIRTI prima facie seems to be similar, but the Court below in giving finding with regard to the prima facie case has further gone to the fact as to who is the prior



user/adopter of the trademark. After perusing the material available on record in para-36 of the impugned order, it has been mentioned in order to prove prior user of trademark “KIRTI”, plaintiff along with the plaint has produced certain invoices of different dates from the year 2007 to 2017 at page No. 154 – 171 which finds mention of GST number. The term GST was not in existence in the year 2007 to 2014, which came into force on 1<sup>st</sup> July, 2017. Based on this, learned trial Court came to the conclusion that invoices cannot be made basis to prove a prima facie case of passing of an infringement in appellant/plaintiff’s favour. Learned trial Court has also taken into account that in the month of April, 2019, respondent has filed trademark application in Clause 30 for trademark KIRTI with substantial and material reproduction of art work as to that of said mark and on knowing this, appellant have filed interlocutory application before the Registrar, Trademarks to reject the application moved on behalf of the respondent. The learned Trial Court has further mentioned that in the month of July, 2020, appellant/plaintiff(s) came to know that respondent has filed two more trademark applications for registration of the impugned mark and on this knowledge, he has filed interlocutory application / petition before Registrar of Trademark for rejection of applications moved on behalf of the respondent. It has also been taken note of appellants’ case is that respondent has claimed to be registered proprietor of Artistic Work containing trademark SHRI



KIRTI vide copyright registration No. A-127092/2018 dated 12.10.2018 and appellants are in process to file necessary cancellation petition impugned wrongly and invalidly registered copyright in favour of the respondent, but no such documents have been filed by the appellant on record to substantiate his allegations. Invoices produced by the appellant prima facie proved prior use of mark/label KRITI and “कृति” have not been considered for finding a prima facie case in favour of the appellant coupled with admissions in the pleading of the appellant that the defendant is using the said mark since the year 2012.

**13.** In the aforesaid circumstances, learned trial Court came to the conclusion that no prima facie case, balance of convenience is found in favour of the appellant to issue temporary injunction as desired by them which ultimately resulted in rejection of his applications. Even though the appellant has put under challenge the impugned order on various grounds, but looking to the appreciation by the learned trial Court of the material available on record, it cannot be said that the view adopted by the learned trial Court is such which could not have been taken in the facts and circumstances of the case. Order on temporary injunction should not be rightly interfered with. Appellate Court should be slow in interfering with the discretionary order of the trial Court. The Division Bench of this Hon’ble Court has taken the same view in *Prasann*



*Kumar Jain vs. Dr. Basant Baman Rao [2009 (3) MPJR 325 (DB)]*. Hon'ble the Apex Court in *Esha Ekta Apartments CHS Ltd. and Ors. vs. The Municipal Corporation of Mumbai & Anr. [AIR 2012 SC 1718]* has held that the scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance is limited one. Relying upon the judgment in *Wander Ltd. vs. Antox India (P) Ltd., 1990 Supp. SCC 727*, the Apex Court has held as under:-

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. The same view has been taken by 3-Judges Bench of the Apex Court in *Skyline Education Institute (India) Pvt. Ltd. vs. S.L. Vaswani, AIR 2010 SC 3221* relying upon the observation in *N.K. Dongre vs. Whirlpool Corpn. (1996) 5 SCC 714* has observed as under:-

"The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo



consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

15. The same view has been taken by the Apex Court in para 20 of *Mohd. Mehtab Khan vs. Khushnuma Ibrahim Khan (2013) 9 SCC 221*, which runs as under:-

“20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd [1990 Supp SCC 727]*”

16. In the light of the aforesaid, we are of the considered view that no case is made out for interference in the impugned orders. Appeals are devoid of substance, fail and are hereby **dismissed**.

17. Since the final disposal of the case may take time and if finally appellant succeeds in its case, there may be possibility of award of damages in his favour, therefore, looking to the aforesaid possibility and to avoid complication in quantifying the amount of compensation, the respondent-M/s.



Rajlaxmi Oils is directed to maintain ledger of accounts of sale of disputed products and the same will be submitted before the trial Court by the end of each financial year till the suit is finally disposed of.

**18.** With the aforesaid observation, these appeals are devoid of any substance, fail and are hereby **dismissed**. Let a copy of this order be placed in the connected miscellaneous appeal.

**(VIVEK RUSIA)**  
**JUDGE**

**(BINOD KUMAR DWIVEDI)**  
**JUDGE**

*Soumya*