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

**APPEAL NO. 66 OF 2012
IN
NOTICE OF MOTION NO. 993 OF 2009
WITH
CROSS OBJECTION NO. 3 OF 2012
IN
APPEAL NO. 66 OF 2012
WITH
NOTICE OF MOTION NO. 445 OF 2012
IN
APPEAL NO. 66 OF 2012**

UTO Nederland B. V. & Anr. ... Appellants
Versus
Tilaknagar Industries Ltd. ... Respondent

**WITH
NOTICE OF MOTION NO. 740 OF 2013
IN
APPEAL NO. 66 OF 2012**

UTO Nederland B.V. & Anr. ... Applicants
Versus
Tilaknagar Industries Ltd. ... Respondent

**WITH
INTERIM APPLICATION NO. 2979 OF 2024
IN
APPEAL NO. 66 OF 2012**

Allied Blender and Distillers Ltd. ... Applicant
Versus
UTO Nederland B. V. & Ors. ... Respondents

**WITH
NOTICE OF MOTION NO. 1427 OF 2014
IN
APPEAL NO. 66 OF 2012**

Tilaknagar Industries Ltd. ... Applicant
Versus
Herman Jansen Beverages Nederland B. V. & Ors. ... Respondents

Ms. L. M. Jenkins a/w. Mr. Siddhant Dalvi i/b Laxmi Maria Jenkins for the Appellants.

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Karl Tamboly and Mr. Priyank Kapadia i/b Yashvi Panchal for the Proposed Appellant in IA/2979/2024.

Mr. Ravi Kadam, Senior Advocate and Mr. Venkatesh Dhond, Senior Advocate a/w. Mr. H. W. Kane, Mr. Rohan Kelkar, Mr. Rohan Kadam, Mr. Manvendra Kane, Mr. Ashutosh Kane, Ms. Vedangi Soman and Mr. I. K. Paranjape i/b Mr. H. W. Kane for the Respondent in APP/66/2012

**CORAM: ALOK ARADHE, CJ.,
M. S. KARNIK &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : APRIL 21, 2025
PRONOUNCED ON : APRIL 28, 2025**

JUDGMENT (PER : CHIEF JUSTICE)

1. A Division Bench of this Court noticed irreconcilable conflict of views expressed by Division Benches of this Court in **COLGATE PALMOLIVE COMPANY AND ANOTHER VS. ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.¹** and **PARKSONS CARTAMUNDI PVT. LTD. VS. SURESH KUMAR JASRAJ BURAD²** as well as **GOLDMINES TELEFILMS PVT. LTD. VS. RELIANCE BIG ENTERTAINMENT PVT. LTD. AND ORS.³** with regard to following aspects; (i) Whether order passed on an application for temporary injunction is *prima facie* adjudication and not an exercise of discretion (ii) Scope of appeal from an order of the trial court on an application of injunction.

¹ **2005(1) Mh.L.J. 613**

² **2012 SCC OnLine Bom 438**

³ **Appeal (L) No.458/2014 in NM/452/2014 in Suit/194/2014 dt.24.09.2014**

The Division Bench, therefore, by an order dated 15th December 2014, has referred the matter for consideration by a larger Bench:

(I) FACTS :

2. The facts leading to the order of reference lie in a narrow compass. The appellants are major dutch producers, importers, exporters, sellers and distributors of various spirits and liquors, including scotch whiskey, gin, vodka, rum, liqueurs and cognac. The respondents are in the business of manufacturing and marketing of industrial alcohol, spirits, Indian made foreign liquor and sugar cubes. The appellants claim to be proprietors of several trademarks including 'Mansion House' and 'Savoy Club' which the appellants have used in relation to the spirits and liquors manufactured by them. According to them, appellant No.1 is a registered proprietor of the trademark 'Mansion House'. The appellants claim to have used the trade mark 'Savoy Club' from 1947.

3. Sometime in the year 1982, the respondents approached the appellants to consider the possibilities of entering into collaboration for sale of the appellants' products in India. Thereupon, appellant No.1, on 7th July 1983, entered into a license agreement with the respondents by which the respondents were licensed and permitted to use the trade marks and labels of 'Mansion House' and 'Savoy Club' for alcoholic beverage products such as whisky, gin, brandy and rum. According to the appellants, the respondents, with dishonest and *mala fide* intention, filed various applications for registration of trade marks 'Mansion House' and 'Savoy Club' in India including the logo 'Herman Jensen', which was used by appellant No.2

since 1947. The appellants, thereupon, filed a suit for infringement of copyright and passing-off. Along with the plaint a Notice of Motion seeking injunction was also filed. The trial court, by order dated 22nd December 2011 rejected the notice of motion for injunction. The appellants challenged the aforesaid order in an appeal namely, appeal No.66 of 2012.

(II) SUBMISSIONS BEFORE DIVISION BENCH :

4. Learned senior counsel for the appellants, at the time of hearing of the appeal before Division Bench, contended that there is an infringement and assignment of trademark of the appellants and in the alternative, there has been an abandonment of trade marks by the appellants. It was further contended that, even, there has been acquiescence on the part of the appellants in permitting the respondents to use the appellants' trade mark. It is submitted that in the instant case, in an appeal from order refusing to grant injunction, the scope of inquiry is not restricted only to examine whether the impugned order is perverse or suffers from errors apparent on the face of record but the impugned order can be examined in all its aspects. It was further contended that the appellate court, whenever necessary, on consideration of all the facts and law, is obliged to substitute the conclusion of the trial judge by its own findings.

(III) ORDER OF REFERENCE:

5. The Division Bench of this Court, thereafter, in paragraph 9 held as under:

"9) It may be pointed out that the entire exercise of determining whether order of the learned Single Judge while disposing of an interim application is within realm of discretion or is a prima facie adjudication, is of vital importance because on that finding would depend the

scope of an Appeal Court's interference with an order passed by the learned Single Judge on an interim application for injunction. This is an issue which would arise in every appeal from an order disposing of interim application for injunction. We are of the view that it does appear that there are two parallel views and in spite of our attempts with the aid of the learned counsels, we were not able to reconcile the two views. However, considering the various decision of the Apex Court beginning with **Wander Limited Vs. Antox India Pvt. Ltd.**⁴ and the decision rendered in **Colgate Palmolive Co. (supra)** on one hand and the decision of the Division Bench in **Parksons Caratmundi (supra)** and **Goldmines Telefilms (supra)** on the other, we are of the view that there is an apparent conflict between the aforesaid two lines of decisions. In that view of the matter, it would be appropriate that the following questions of law be placed before Hon'ble the Chief Justice for his consideration to place the following questions before a Larger Bench to resolve the apparent conflict and/or reconcile the two lines of the decisions referred to hereinabove. Accordingly, we direct the following question of law be placed before the Hon'ble the Chief Justice for consideration to refer them for opinion of a Larger Bench.

"Q.1 Which of the decisions rendered in **Colgate Palmolive Vs. Anchor Health and Beauty Care Pvt. Ltd. (supra)** holding that an order passed on the application for temporary injunction does not cease to be an order passed in discretion merely because the Trial Judge does not find any prima facie case or the decision in **Parksons Cartamundi Pvt. Ltd. Vs. Suresh Kumar Jasraj Burad (supra)** and **Goldmines Telefilms Pvt. Ltd. Vs. Reliance Big Entertainment Pvt. Ltd. & Ors. (supra)**, where it has been held that the order passed on the application for temporary injunction is prima facie adjudication and not an exercise of discretion sets out the correct law?

Q.2 What is the scope and ambit of an appeal from an order passed by the trial Judge on an interlocutory application pending the disposal of the suit?"

In the aforesaid factual background, this reference is made to a Larger Bench.

⁴ **1990 (supp) SCC 727**

(IV) SUBMISSIONS OF APPELLANTS:

6. Learned counsel for the appellants submitted that the learned Single Judge, while passing the impugned order, has delved into *prima facie* adjudication of the rights of the parties and therefore, the scope of inquiry by the appellate court is not restricted to examine whether the impugned order is perverse or suffers from error apparent but with regard to all aspects of the impugned order and the appellate court is entitled to substitute the conclusions by its own findings.

(V) SUBMISSIONS OF RESPONDENT:

7. On the other hand, learned senior counsel for the respondent submitted that a Court dealing with a prayer for injunction decides the same on the touchstone of three well settled parameters viz. *prima facie* case, balance of convenience and irreparable injury. It is submitted that the object of interlocutory remedy of grant of injunction is to preserve the *status-quo* and the rights of the parties, which appear on a *prima facie* case. It is also submitted that the Court dealing with a prayer for injunction, exercises its discretion while granting or refusing to grant the injunction. It is also urged that the scope of an appeal is confined to examining whether the discretion has been exercised arbitrarily, capriciously or perversely or whether the Court had ignored well settled parameters regulating the grant or refusal to grant an interlocutory injunction. It is contended that the law laid down by Division Bench of this Court in **HIRALAL PARBHUDAS VS. GANESH TRADING COMPANY AND OTHERS**⁵ cannot be applied to the facts of the case and the subsequent Division Bench in **PARKSONS**

⁵ **AIR 1984 BOM 218**

CARTAMUNDI PVT. LTD. (SUPRA) erred in applying the decision in **HIRALAL PARBHUDAS (SUPRA)**. In support of the aforesaid submissions, reliance has been placed on **WANDER LTD. AND ANOTHER VS. ANTOX INDIA P. LTD. (SUPRA)**, **GUJARAT BOTTLING CO. LTD. AND OTHERS VS. COCA COLA CO. AND OTHERS**⁶, **SHYAM SEL AND POWER LIMITED AND ANOTHER VS. SHYAM STEEL INDUSTRIES LIMITED**⁷ and **RAMAKANT AMBALAL CHOKSI VS. HARISH AMBALAL CHOKSI AND OTHERS**⁸.

(VI) CONSIDERATION:

8. We have considered the rival submissions made on both the sides and have perused the record. The law relating to injunctions in India has its origin in Equity Jurisprudence of common law. Injunction is a judicial process by which party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. Identification of the standards for exercising such discretionary powers by the Court has not, generally, been part of the legislations. The guiding principles for exercise of discretionary powers appear to be drawn from the judicial precedence and the common law principles. The decision whether or not to grant an injunction has to be taken at the time when existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The relief, by way of interlocutory injunction is granted to mitigate the injustice to the plaintiff during the period before that uncertainty could be resolved. The object of interlocutory

⁶ (1995) 5 SCC 545

⁷ (2023) 1 SCC 634

⁸ 2024 SCC OnLine SC 3538

injunction is to protect the plaintiff against the injury by violation of his right for which he cannot be adequately compensated in damages in the recovery if the uncertainty were to be resolved at the trial.

(VII) TRINITY TEST:

9. The cardinal principles for grant of injunction are:

- (i) Whether the plaintiff has *prima facie* case?
- (ii) Whether the balance of convenience lies in favour of the plaintiff?
- (iii) Whether the plaintiff would suffer irreparable injury if his prayer for interlocutory injunction is disallowed?

10. Now we may advert to the scope and ambit of the trinity test on the basis of which the discretionary prayer for grant of injunction has to be dealt with. The expression '*prima facie* case' is a Latin expression means 'at first sight or based on first impression or on the face of it'. The expression '*prima facie* case' has a well settled meaning in legal parlance. The House of Lords in **AMERICAN CYNAMID CO. AND ETHICON LTD.,⁹** while dealing with scope and ambit of expression '*prima facie* case' held as under:

"The use of such expressions as "a probability," "a prima facie case," or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with

⁹ **1975 (1) ALL ER 504**

at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing": Wakefield v. Duke of Buccleugh (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

The aforesaid principle was reiterated in **GARDEN COTTAGE FOODS LTD. VS. MILK MARKETING BOARD¹⁰**.

11. The meaning of expression '*prima facie* case' was considered by Supreme Court in **MARTIN BURN LTD. VS. R.N.BANERJEE¹¹**. In the said case, Supreme Court explained the connotation '*prima facie* case' in the following words:

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence let it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at on that evidence."

12. The meaning of expression '*prima facie* case' was again explained by Supreme Court in **DALPAT KUMAR AND ANR VS. PRAHLAD SINGH AND ORS.¹²** and it was held that *prima facie* case is a substantial question raised *bona fide* which needs investigation and a decision on merits. It has further been held that expression '*prima facie* case' is not to be confused with *prima facie* title which has to be established, on evidence at the

¹⁰ (1983) 2 All ER 770

¹¹ AIR 1958 Supreme Court 79

¹² 1992(1) SCC 719

trial. Thus, at the stage of consideration of the application for injunction, the plaintiff, in order to establish he has *prima facie* case, has to prove that there is serious question to be tried in the suit.

13. The Supreme Court elucidated the meaning of expression '*prima facie* case' in **GUJARAT BOTTLING CO. LTD. (SUPRA)** to mean that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability that of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. The expression '*prima facie* case' means a substantial question raised *bona fide* which needs investigation and decision on merits and the Court, at the initial stage, cannot insist upon a full proof case warranting an eventual decree. [See : **ANAND PRASAD AGARWAL VS. TARKESHWAR PRASAD¹³, RAMAKANT AMBALAL CHOKSI (SUPRA)** and **STATE OF KERALA VS. UNION OF INDIA¹⁴**].

14. The Court, while dealing with the prayer for injunction has also to advert itself to the second essential ingredient for grant of injunction viz. 'balance of convenience'. In order to determine whether the balance of convenience lies, the Court must weigh two matters. The first is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were to be resolved in his favour. The second matter is that the defendant's need to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately

¹³ (2001) 5 SCC 568

¹⁴ (2024) 7 SCC 183

compensated by an undertaking if the uncertainty were to be resolved in defendant's favour at the trial. [see : **HALSBURY'S LAWS OF ENGLAND, FOURTH EDITION, VOL-24 para 856, AMERICAN CYNAMID CO. AND ETHICON LTD (SUPRA)** and **FELLOWES & SON V. FISHER.**¹⁵]

15. The aforesaid principle has been reiterated with approval by Supreme Court in **WANDER LIMITED (SUPRA)** and it has been held that need to protect the plaintiff against the injury by violation of his right for which he cannot be compensated in damages recoverable in the action if the uncertainty were to be resolved in his favour has to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights for which he would not be adequately compensated. The Court, therefore, must weigh one need against another and determine where the 'balance of convenience' lies.

16. The Court, while dealing with the prayer for grant of injunction is required to consider the third essential ingredient viz. irreparable injury. The Supreme Court in **M/S. GUJARAT BOTTLING CO. LTD. (SUPRA)** has held that the Court is required to satisfy itself that the party seeking injunction needs protection from the consequences of apprehended injury and the injury is such which cannot be adequately compensated by way of damages. Thus, the Court is required to satisfy itself that in case an injunction as prayed for is not granted, the party seeking the same will suffer irreparable injury.

¹⁵ (1975) 2 ALL ER 829

17. A party is not entitled to an order of injunction as a matter of right. The grant of interlocutory injunction is a remedy which is discretionary in nature. However, such a discretion has to be exercised on the touchstone of trinity test viz. *prima facie* case, balance of convenience and irreparable injury. [See **SHIV KUMAR CHADHA ETC. VS. MUNICIPAL CORPORATION OF DELHI**].¹⁶ It is equally well settled legal proposition that the temporary injunction being equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands **SEEMA ARSHAD ZAHEER VS. MUNICIPAL CORPORATION OF GREATER MUMBAI**.¹⁷

(VIII) SCOPE OF APPEAL:

18. Having noted the three well settled legal propositions on the basis of which a discretionary power to deal with the prayer for injunction has to be exercised, we may now advert to the scope of appeal against an order dealing with a prayer for temporary injunction. A decision of three Judge Bench of Supreme Court in **WANDER LIMITED (SUPRA)** can be considered as a *locus classicus*. The Supreme Court, in paragraph 14 has dealt with the scope of appeal against an order granting temporary injunction, which is extracted below for the facility of reference:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. 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.

¹⁶ **1993 SCC (3) 161**

¹⁷ **(2006) 5 SCC 282**

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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) (P) Ltd. v. Pothan Joseph [Printers (Mysore) (P) Ltd. v. Pothan Joseph, (1960) 3 SCR 713 :

'... These principles are well established, but, as has been observed by Viscount Simon L.C. in Charles Osenton & Co. v. Johnston [Charles Osenton & Co. v. Johnston, 1942 AC 130 (HL)] , AC at p. 138 :The law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case'.

The appellate judgment does not seem to defer to this principle."

19. The aforesaid view was quoted with approval by another two Judge Bench of Supreme Court in **SHYAM SEL AND POWER LIMITED (SUPRA)**. In paragraph 36, it was held that the judgment in **WANDER LIMITED (SUPRA)** has been guiding the appellate courts in the country for decades while exercising the appellate jurisdiction considering the correctness of the discretion and jurisdiction for grant or refusal of interlocutory injunctions. Paragraphs 36 of **SHYAM SEL AND POWER LIMITED (SUPRA)** reads as under:

"36. *The learned Judges of the Division Bench of the High Court have taken pains to make a mention of the judgment of this Court in Wander [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] . This judgment has been guiding the appellate courts in the country for decades while exercising their appellate jurisdiction considering the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions. In the said case, the learned Single*

Judge had refused an order of temporary injunction in favour of the plaintiff who was claiming to be a registered proprietor of the registered trade mark. The Division Bench of the High Court had reversed the order passed by the learned Single Judge and granted interim injunction. Reversing the order of the Division Bench of the High Court and maintaining the order of the learned Single Judge, this Court observed thus : (Wander case [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] , SCC p. 733, para 14)

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. 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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) (P) Ltd. v. Pothan Joseph [Printers (Mysore) (P) Ltd. v. Pothan Joseph, (1960) 3 SCR 713 : AIR 1960 SC 1156] , SCR p. 721, AIR p. 1159, para 9 : (AIR p. 1159, para 9)

9. ... These principles are well established, but, as has been observed by Viscount Simon L.C. in Charles Osenton & Co. v. Johnston [Charles Osenton & Co. v. Johnston, 1942 AC 130 (HL)] , AC at p. 138

"... The law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case".'

The appellate judgment does not seem to defer to this principle."

20. Recently, another two Judge Bench of the Supreme Court in **RAMAKANT AMBALAL CHOKSI (SUPRA)** dealt with the scope of appellate jurisdiction of the Court dealing with an appeal against an order of injunction and approved the principles laid down in **WANDER LIMITED (SUPRA)** and referred to the decision in **SHYAM SEL AND POWER LTD., (SUPRA)** and in paragraph 21, 26, 30, 32 35, 36, 37 it was held as under:

21. *The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd., 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:*

- a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and*
- b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.*

26. *What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:*

- a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and*
- b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.*

30. *This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed*

that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

32. *The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.*

35. *Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough, (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey, 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*

36. *The expression "perverse" has been defined by various dictionaries in the following manner:*

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed.

Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English - International Edition

Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition
Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed. Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. *The wrong finding should stem out on a complete*

misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See : Damodar Lal v. Sohan Devi, (2016) 3 SCC 78)

(IX) RELEVANT STATUTORY PROVISIONS:

21. At this stage, it is apposite to take note of Section 56(1) of the Trade and Merchandise Marks Act, 1958 (**1958 Act**) and Order XXXIX Rule (1) of the Code of Civil Procedure, 1908, which are extracted below for the facility of reference:

"56. Power to cancel or vary registration and to rectify the register:

(1) On application made in the prescribed manner to a High Court or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or 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."

"ORDER XXXIX TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS Temporary injunctions

1. Cases in which temporary injunction may be granted. -
Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in

dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

The Legislature has employed different language in Section 56(1) as well as Order XXXIX Rule (1) of the Code of Civil Procedure, 1908.

(X) HIRALAL PARBHUDAS (SUPRA) & AND NATIONAL CHEMICALS AND COLOUR CO. (SUPRA):

22. Now we may advert to the decisions rendered by the Division Benches of this Court. A Division Bench of this Court in paragraph 22 of the judgment in **HIRALAL PARBHUDAS (SUPRA)** dealing with contention that a discretionary order passed by the Dy. Registrar under Section 56(1) of the 1958 Act should not be lightly disturbed, in paragraph 22 held as under:

"22. It was finally urged by Mr. Kale that the discretion exercised by the Deputy Registrar under Section 56 of the Act in the respondents' favour should not be lightly disturbed and the appellate Court should therefore not disturb the judgment and order of the learned single Judge. We ask ourselves. Pray where at all arises the question of discretion. To start with, the Deputy Registrar did not exercise any discretion under Section 56 in rejecting the appellants' application for rectification. It must be remembered that the concept of discretion is distinct from that of adjudication. When the Deputy Registrar rejected the appellants' application for rectification on the ground that the two marks are not deceptively similar, she did not use any discretion but adjudicated upon the rival contentions of the parties. It would be trite to say that exercise of discretion can arise in favour of a party when adjudication by the Registrar is against that party. In the present case, the Deputy Registrar's adjudication was in fact in favour of the respondents, with the result that there was no occasion for the Deputy Registrar to exercise any discretion. If the Deputy Registrar had held that the two marks were deceptively similar (which she did not) but that in exercise of her discretion she did not consider it necessary to pass an order for rectification, it could be said that the Deputy Registrar having exercised the discretion in favour of the respondents, interference with such discretion was not called for. Nothing of the kind can be said in the present case where in fact the Deputy Registrar has held that the two marks are not deceptively similar. In any event, this Court having come to the conclusion that the two marks are deceptively

similar, this cannot be a case for the exercise of discretion in favour of the respondents as their case is not founded on truth and also in view of the uncontroverted evidence of actual deception perpetrated and confusion caused."

23. A Division Bench of this Court, in ***HIRALAL PARBHUDAS (SUPRA)*** was dealing with submission that a discretionary order passed under section 56(1) of the 1958 Act should not be lightly interfered with in an appeal. In the facts of the said case, it was found by the Division Bench that the order passed by the Registrar was not passed in exercise of discretion but on adjudication.

24. Another Division Bench of this Court in ***M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)*** again dealt with an order of the Registrar passed under the 1958 Act and referred to the decision in ***HIRALAL PARBHUDAS (SUPRA)*** for the proposition that there is a distinction between the adjudication by the Registrar and exercise of discretion by the Registrar under the 1958 Act.

Thus, both the decisions in ***HIRALAL PARBHUDAS (SUPRA)*** and ***M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)*** dealt with an order passed under Section 56(1) of the Act of 1958.

(XI) COLGATE PALMOLIVE COMPANY AND ANOTHER:

25. Another Division Bench judgment of this Court in ***COLGATE PALMOLIVE COMPANY (SUPRA)***, while placing reliance on the decision of Supreme Court in ***DALPAT KUMAR AND ANR VS. PRAHLAD SINGH AND ORS.,***¹⁸ held that grant of injunction is discretionary relief and held that the decisions rendered by Division Benches of this Court in ***HIRALAL***

¹⁸ ***1992(1) SCC 719***

PARBHUDAS (SUPRA) and **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)** have no relevance to an appeal arising out of an order under Order XXXIX Rule 1 and 2 of the CPC. In paragraph 10, it was held as under:

"10. Let us make it clear and we do that the impugned order declining to grant temporary injunction has not ceased to be discretionary order merely because the learned motion Judge did not find any prima facie case and accordingly refused to grant interim restraint order. In the matters of temporary injunction, the Court does not adjudicate on the subject matter or any part of it on merits. The Court considers the application for temporary injunction in the light of well known principles as already noticed above and then exercises its discretion weighing all relevant considerations without any expression of opinion on merits of the matter. We hardly find the relevance of the two judgments of this Court namely Hiralal Prabhudas and National Chemicals and Colour Co. on the position we have noticed above."

(XII) PARKSONS CARTAMUNDI PVT. LTD. (SUPRA):

26. However, a Division Bench of this Court in **PARKSONS CARTAMUNDI PVT. LTD. (SUPRA)** subsequently did not deal with the previous judgment of the Division Bench in **COLGATE PALMOLIVE COMPANY (SUPRA)**, which was binding on it and relied on a decision in **HIRALAL PARBHUDAS (SUPRA)**, which was already held to be not relevant while adjudicating an appeal arising out of an order of injunction. In paragraphs 14, 16 and 17 the subsequent Division Bench held as under:

"14. In the background of the above facts, we have heard learned counsel for the parties on the question whether use of mark "MERICELL NO. 7" printed on bigger cartons as well as small packets containing playing cards infringes plaintiff's registered trademark "MERELANE" and "MERELANE NO. 7". Having examined both the trademarks and also having seen the designs and colour schemes of the playing cards, the packets and bigger cartons, and also having gone through the orders dated 22 September 2011 in Notice of Motion No. 1948 of 2011 where "MARICELL 555" has been considered to be deceptively similar to "MARELANE 555" and the order dated 6 February 2012, where "NAIKAN No. 7" has been considered to be deceptively similar to "Nylon No. 7" we have no manner of

doubt that the defendant's playing cards as well as the packets and cartons are deceptively similar to the plaintiff's playing cards, packets and cartons. The reasoning of the learned Single Judge based on microscopic examination that there is no similarity between the words "MARICELL" and "MARELANE" cannot be accepted.

16. It is true that the learned Single Judge has passed the impugned order in favour of the respondent-defendant. The question is whether the same can be considered as a discretionary order. In Hiralal Prabhudas v. Ganesh Trading Company, where a similar contention was raised that the appellate court should not disturb the discretionary order of the learned Single Judge, a Division Bench of this Court speaking through Justice Lentin held as under:

"It was finally urged by Mr. Kale that the discretion exercised by the Deputy Register under Section 56 of the Act in the respondents' favour should not be lightly disturbed and the appellate Court should therefore not disturb the judgment and order of the learned single Judge. We ask ourselves; Pray where at all arises the Deputy Registrar did not exercise any discretion under Section 56 in rejecting the appellants application for rectification. It must be remembered that the concept of discretion is distinct from that of adjudication. When the Deputy Registrar rejected the appellants application for rectification on the ground that the two marks are not deceptively similar, she did not use any discretion but adjudicated upon the rival contentions of the parties. It would be trite to say that exercise of discretion can arise in favour of a party when adjudication by the Registrar is against that party. In the present case, the Deputy Registrar's adjudication was in fact in favour of the respondents, with the result that there was no occasion for the Deputy Registrar to exercise any discretion. If the Deputy Registrar had held that the two marks were deceptively similar (which she did not) but that in exercise of her discretion she did not consider it necessary to pass an order for rectification, it could be said that the Deputy Registrar having exercised the discretion in favour of the respondents, interference with such discretion was not called for. Nothing of the kind can be said in the present case where in fact the Deputy Registrar has held that the two marks are not deceptively similar. In any event, this court having come to the conclusion that the two marks are deceptively similar, this cannot be a case for the exercise of discretion in favour of the respondents as their case is not founded on truth and also in view of the

uncontroverted evidence of actual deception perpetrated and confusion caused.

(emphasis supplied)

17. *It is thus clear that the concept of discretion is distinct from that of adjudication. What the learned Single Judge has done in the instant case is making prima facie adjudication that the defendants' trademark is not deceptively similar to that of the plaintiff. Therefore, there is no question of any discretion exercised by the learned Single Judge. We have already held that the defendant has been infringing the plaintiff's trademarks and has been attempting to pass off its playing cards as those of the plaintiff. This has happened in respect of the very trademark "MERELANE, which is registered since the year 1971 and also the label mark on the packets containing the playing cards prominently bearing the words "MERELANE No. 7". Hence, there is no question of applying the principle enunciated in the case of Wander Limited v. Antox India (P) Limited.*

27. Another Division Bench of this Court in **GOLDMINES TELEFILMS PVT. LTD.** relied on the decision of **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)** and **HIRALAL PARBHUDAS (SUPRA)**.

28. It is pertinent to note that the subsequent Division Bench decision in **PARKSONS CARTAMUNDI PVT. LTD. (SUPRA)**, in the facts of the case found that the plaintiff has been able to make out a strong *prima facie* case and the balance of convenience lies in its favour. It was further held that in case injunction is not granted, the plaintiff in that case would suffer irreparable injury. Accordingly, injunction, in the facts of the case was granted. Similar view was taken in **GOLDMINES TELEFILMS PVT. LTD. (SUPRA)**.

29. The scope of appeal arising out of an order granting injunction is different than the appeal arising out of an order passed under Section 56(1) of the 1958 Act and cannot be compared to scope of an appeal arising from an order passed

under Section 56(1) of the 1958 Act. The scope of appeal against an order granting injunction is well delineated by the decisions of the Supreme Court in **WANDER LIMITED (SUPRA)**, **M/S GUJARAT BOTTLING COMPANY LTD. (SUPRA)**, **SHYAM SEL AND POWER LTD., (SUPRA)** AND **RAMAKANT AMBALAL CHOKSI (SUPRA)**.

30. Even otherwise, it is well settled in law that if there are two conflicting judgments of equal strength, the former decision will prevail in case where previous decision specifically considers a particular question and lays down the principle relating to the said question and where subsequent decision neither deals with the earlier decision nor the principle laid down therein. [See : **GOVERNMENT OF WEST BENGAL VS. TARUN K. ROY.**¹⁹ The subsequent Division Benches decision in **PARKSONS CARTAMUNDI PVT. LTD. (SUPRA)** and **GOLDMINES TELEFILMS PVT. LTD. (SUPRA)** did not consider the principle with regard to the scope of appeal arising out of an order of injunction laid down in **COLGATE PALMOLIVE COMPANY (SUPRA)**. The subsequent Division Benches in **PARKSONS CARTAMUNDI PVT. LTD. (SUPRA)** and **GOLDMINES TELEFILMS PVT. LTD. (SUPRA)** ought to have appreciated that the decisions rendered in **HIRALAL PARBHUDAS (SUPRA)** and **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)** dealing with an appeal arising from an order passed by the Registrar under 1958 Act, have no relevance while dealing with an appeal against an order granting or refusing to grant injunction. The subsequent Division Benches have failed to take note of the binding precedent with regard to the scope of appeal arising out of an order of injunction in **WANDER**

¹⁹ **(2004) 1 SCC 347**

LIMITED (SUPRA) and **M/S GUJARAT BOTTLING COMPANY LTD. (SUPRA)**. Therefore, the view taken by the Division Bench of this Court in **COLGATE PALMOLIVE COMPANY (SUPRA)** is in consonance with the well settled legal proposition with regard to the scope of an appeal and rightly holds that the decisions rendered by Division Bench in **HIRALAL PARBHUDAS (SUPRA)** and **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)**, which deal with the scope of appeal against an order passed by the Registrar under the 1958 Act, have no relevance while dealing with an appeal arising out of an order of injunction.

(XIII) ANSWER TO REFERENCE:

31. For the aforementioned reasons, the questions referred to us are answered as follows:

(i) The Division Bench decision of this Court in **COLGATE PALMOLIVE COMPANY (SUPRA)** sets out the correct principle of law. An order of temporary injunction does not cease to be a discretionary order merely because the learned motion Judge did not find any *prima facie* case and refused to grant interim restraint order. It correctly holds that in the matter of temporary injunction, the Court does not adjudicate on the subject matter or any part of it on merits and considers the application for temporary injunction in the light of well-known principles and exercises its discretion weighing all relevant consideration without any expression of opinion on merits of the matter. The Division Bench has rightly held that the decisions of this Court in **HIRALAL PARBHUDAS (SUPRA)** and **M/S. NATIONAL CHEMICALS AND COLOUR CO. (SUPRA)**

have no relevance while deciding an appeal arising out of an order of injunction.

(ii) The scope and ambit of an appeal from an order passed by the trial Judge has already been delineated by the Supreme Court in ***WANDER LTD. (SUPRA), SHYAM SEL AND POWER LIMITED (SUPRA) and RAMAKANT AMBALAL CHOKSI (SUPRA)***. In view of aforesaid enunciation of law by Supreme Court, it is evident that the appellate court will not interfere with exercise of discretion of 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. The Appellate Court while deciding an appeal, has to examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law and the appellate Court may, in a given case, has to adjudicate on facts even in such discretionary orders.

32. Accordingly, the reference is answered.

33. Let the appeal be listed for orders before the appropriate Bench.

(CHIEF JUSTICE)

(M. S. KARNIK, J.)

(SHYAM C. CHANDAK, J.)