



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 3815/2025

Mupub Mehta S/o Vinod Kumar Mehta, Aged About 35 Years,
Lalit Nivas, Station Road, Sumerpur, Tehsil Sumerpur, District
Pali, Rajasthan. Other Address- Owner/authorised Officer, Plot
No. 1 A, Vidhi Agritech, Aungaur Industrial Area, Jawaibandh
Road, Sumerpur, Tehsil Sumerpur, Distt. Pali (Raj.)

----Appellant

Versus

1. M/s Vinayak Corporation (Huf), Through Karta
Representative Khima Ram S/o Dhulaji Address 47-48 A
Jakha Mata Industrial Area, Sumerpur, Tehsil Sumerpur,
District Pali, Rajasthan
2. M/s Uma Trading Company, A Jakha Mata Industrial Area,
Sumerpur, Tehsil Sumerpur, District Pali Rajasthan

----Respondents

For Appellant(s) : Dr. Ashok Soni Sr. Adv. Asst by
Mr. Yash Dadhich
Mr. Prateek Charan
Mr. Aditya Soni
Dr. Milap Chopra

For Respondent(s) : Mr. Rajesh Joshi Sr. Adv. Asst by
Mr. Naman Mohnot
Mr. Anirudh Kothari
Mr. Himanshu Pareek

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order

27/01/2026

1. Under challenge herein is an order dated 07.10.2025 passed
by learned Commercial Court No.1, Metropolitan Jodhpur in Civil
Misc. Case No.20/2025 (NCV No.20/2025) whereby application
filed by respondent No.1/plaintiff under Order XXXIX Rules 1 & 2
read with Section 151 of C.P.C. seeking temporary injunction was
allowed. Consequently, the appellant has been restrained by way



of temporary injunction, pending disposal of the suit, from manufacturing or selling similar or parallel products, either directly or through dealers, distributors, representatives, employees or agents, under the trademark 'DURGA' or packing label wholly or partially similar thereto.

2. The respondents claim that mustard and groundnut oil have been manufactured and sold by them under the trademark "DURGA" since 1999. The trademark was originally owned by Vrindavan Oil Products, which applied for its registration on 01.06.2009, and the mark was duly examined and registered on 30.08.2018. By an Assignment Deed dated 28.02.2020, the trademark along with its goodwill was assigned to M/s Uma Trading Company, and subsequently, by another Assignment Deed dated 02.11.2021, it was assigned to the respondent, M/s Vinayak Corporation; both assignments were duly recorded with the Trade Marks Registry.

2.1 Respondent No.1 instituted a suit seeking permanent injunction, damages, and restraint against the appellant on allegations of infringement of its registered trademark and passing off. Respondent No.1 asserts exclusive statutory rights over the registered trademark "DURGA" in respect of mustard oil and alleges that the appellant has commenced sale of mustard oil under the mark "TRIBAA DURGA" with a deceptively similar label, colour scheme, layout, packaging, and imagery of Goddess Durga, thereby causing likelihood of consumer confusion and misappropriation of the respondent's goodwill. On these





allegations, interim relief was sought to restrain the appellant from using the word "DURGA" or any deceptively similar mark, as well as from manufacturing, selling, or promoting oil products using the impugned packaging or trade dress.

2.2. The appellant filed a reply opposing the grant of interim injunction, contending that the word "DURGA" is a common word and the name of a Hindu deity, and therefore incapable of exclusive appropriation. It was pleaded that several traders are using the word "DURGA" as part of their trademarks and that the appellant has been independently using the mark "TRIBAA DURGA" since the year 2021. The appellant denied any similarity in the label, font, colour scheme, or packaging, and raised objections of delay, acquiescence, absence of a prima facie case, balance of convenience, and irreparable injury. It was further stated that the appellant's application for registration of the mark "TRIBAA DURGA" dated 08.01.2025 had been accepted and advertised by the Trade Marks Registry, though the same had been opposed by the respondent.

2.3 Upon consideration of the pleadings, the learned Commercial Court vide impugned order dated 07.10.20245, allowed the respondent's application under Order XXXIX Rules 1 and 2 CPC and granted a temporary injunction restraining the appellant from manufacturing or selling mustard oil under the trademark "DURGA" or any other deceptively similar name or packing label during the pendency of the suit.





3. Aggrieved by the impugned order, appellant has preferred this appeal.

4. We have heard the learned Senior counsels for the respective parties and perused the case file.

5. Learned counsel for the appellant *inter alia* contends that the learned Trial Court erred in holding the marks to be deceptively similar. It is submitted that a holistic comparison of the rival marks demonstrates that "TRIBAA DURGA" is a composite and distinct mark, materially different from the respondent's mark "DURGA." The prefix "TRIBAA" significantly alters the pronunciation, structure, and overall commercial impression. Further, the trade dress, colour scheme, font, layout, and artistic depiction of Goddess Durga are entirely dissimilar. Mere depiction of the same deity, cannot amount to infringement when the mode of expression and overall visual presentation differ substantially. The Trial Court is stated to have failed to apply the settled doctrine of overall impression from the standpoint of an average purchaser of imperfect recollection.

5.1. Learned Senior counsel also submits that respondent No.1 failed to substantiate its claim of prior use, goodwill, or reputation. No invoices, sales figures, advertisements, assignment deeds, proof of record, or Legal Proceedings Certificate were placed on record. In the absence of such documentary evidence, even the passing off claim is untenable. It is further contended that the Trial Court ignored the appellant's defence that the word "Durga" is common to the trade and widely used in the oil industry.





6. Per contra learned Senior counsel for the respondent No.1 argues that the appellant has not approached this Court with clean hands, having suppressed material and critical facts, and has filed based on a fabricated narrative.

6.1 He also contends that the appellant's entire case rests on a false claim of prior use of the impugned trademark since 2021, which stands squarely contradicted by the appellant's own conduct and admissions. Learned Senior counsel submits that the appellant applied for registration of the mark only on 08.01.2025 expressly declaring the mark as "proposed to be used," thereby constituting a binding admission that no prior use had commenced. By taking mutually destructive stands before the Trade Marks Registry and this Court, the appellant is stated to have misled the Court. Such conduct, it is argued, disentitles the appellant to any equitable relief, warrants recall of the interim order, and justifies dismissal of the appeal.

7. Having heard as above, it is pertinent to note that the impugned order is *inter alia* premised on the reasoning that, in terms of Section 31 of the Trade Marks Act, 1999, registration of a trade mark constitutes prima facie evidence of its validity, and that Section 33 of the Act bars any challenge to a later registered mark after five years of knowing acquiescence, except where the registration is shown to have been obtained in bad faith.

7.1. The impugned order records that the plaintiff/respondent No.1 is the registered proprietor of Trade Mark Registration No. 1971747 dated 30.08.2018 in respect of the mark "DURGA",





comprising the word "DURGA" along with the depiction of Goddess Durga, and further notes that the Respondent's (appellant herein) mark "TRIBAA DURGA," used in Sumerpur and adjoining areas, similarly incorporates the image of Goddess Durga within a circle, albeit with the verbal elements in Hindi.

8. From a perusal of the record, it thus appears that the respondents obtained registration of the trademark "DURGA" from the competent authority in the year 2018, whereas the appellant applied for registration of the trademark "TRIBAA DURGA" only in January, 2025, seeking to carry on the business of oil products in the same category in which the respondent had been operating much prior thereto. In this backdrop, the respondent instituted the civil suit seeking a decree of permanent injunction restraining the appellant from using the trademark "TRIBAA DURGA," alleging the same to be deceptively similar to its prior registered trademark "DURGA."

9. Once prior use is acknowledged, the only surviving issue for consideration is whether the appellant's trademark "TRIBAA DURGA" can be said to be distinct or sufficiently dissimilar so as to avoid infringement. In this regard, it is well settled that while comparing trademarks, the Court must consider the overall commercial impression, the essential and dominant features of the marks, and the likelihood of confusion in the mind of an average consumer with imperfect recollection.

10. During the course of hearing, the tin containers bearing the trademarks of both rival parties were produced for our





consideration. Upon examining the same, we are of the considered opinion that, the nature of the product being identical and the use of the logo depicting Goddess "DURGA" create an overall impression as if the common product is likely to have been manufactured and marketed by the same company, thereby giving rise to confusion in the minds of the general public. Accordingly, we reject the appellant's stand of common use of the image Goddess Durga as such an alleged prevalence does not prima facie dilute or negate the statutory and territorial rights accruing to the plaintiff by virtue of its valid registration, not does it constitute a defence to infringement of a registered trade mark.

11. In the peculiar facts and circumstances of the case, we thus find no ground to interfere, as not only is the product category identical, but the logo and trademark are also deceptively similar. Consequently, it is in the larger interest of the general public that the interim injunction be allowed to operate until a final view is taken by the learned Trial Court.

12. We may also like to add here, trite it may sound though, that trademark infringement affects not only the disputing parties but also consumers and the general public, due to the risk of confusion and deception. Therefore, public interest must be a paramount consideration in adjudicating trademark infringement cases, a principle consistently upheld in judicial precedents.

13. The appeal is dismissed.

14. Stay petition and pending applications, if any, stand disposed of. Learned Trial Court to proceed further without being influenced





by the observations of this Court as the same are only for the purpose of deciding the interim stay during pendency of the suit.



(YOGENDRA KUMAR PUROHIT),J

24-Devanshi/-

(ARUN MONGA),J