



2025:DHC:10125-DB



\$~3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 122/2025, CM APPL. 29130/2025 & CM APPL. 29132/2025**

NUTRIVATIVE FOODS PRIVATE LIMITEDAppellant
Through: Mr. J. Sai Deepak, Sr. Adv. with
Ms. Kangan Roda, Ms. Apoorva Sharma, Mr.
Tanishq Sharma, Mr. Sarthak Sharma and
Mr. R. Abhishek, Advs.

versus

B.L. AGRO INDUSTRIES LIMITEDRespondent
Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Sanjeet Trivedi and Mr. Rajesh Sharma,
Advs.

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

JUDGMENT(ORAL)

%

04.11.2025

OM PRAKASH SHUKLA, J.

The lis

1. The present appeal has been filed by the appellant challenging the order dated 02.05.2025 passed by the learned District Judge (Commercial Court-03) at Patiala House Courts, New Delhi, on the application filed by the respondents under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908¹ in the pending Civil Suit bearing CS (COMM) No. 286/2023. It may be mentioned herein that the

¹ "CPC", hereinafter



2025:DHC:10125-DB



respondents (Plaintiffs before the Trial Court) filed the aforesaid Civil Suit against the appellant (Defendant before the Trial Court) for permanent injunction restraining alleged trade mark infringement and passing off, as well as rendition of accounts, damages and other consequential reliefs.

2. We have heard Mr. J. Sai Deepak, learned Senior Counsel for the appellants and Mr. Kirti Uppal, learned Senior Counsel for the respondent, at length.

3. The parties would be addressed by their status as they have before the learned Trial court and as such the Appellant would be referred to as the “Defendant” and the Respondent would be referred to as the “Plaintiff” and so on and so forth.

4. The parties would be addressed by their status as they have before the learned Trial court and as such the Appellant would be referred to as the “Defendant” and the Respondent would be referred to as the “Plaintiff” and so on and so forth.

Factual Context

5. It has been averred that plaintiff is engaged, in the manufacture and marketing of edible oils, ghee, fats and allied food products under the trademark “**nourish**”. They claim that they have been in the said business since the year 2007 and their product packaging and labels are unique, distinctive, and constitute a trade mark within the meaning of



2025:DHC:10125-DB



Section 2(m) of the Trade Marks Act, 1999², being characterized by a particular colour combination and artistic features. It is further averred that they are the owner of the registered trademark “**nourish**” and have achieved substantial commercial success and consumer recognition, having come to denote goods originating exclusively from them. Further, they have incurred substantial expenditure on the advertisement and promotion of their products under the mark “**nourish**” through various media and digital platforms, including the websites www.blagro.org and www.nourishstore.co.in

6. According to plaintiff, it was only on 03.05.2023, that they became aware that the defendant had launched food products, including millet milk, flour, seeds, and muesli, under the mark “**nourish you**”, which, according to them was identical or deceptively similar to their registered trade mark “**nourish**”.

7. The plaintiff invoked the provisions of Sections 134(2) of the Trade Marks Act and Section 20 of the CPC, asserting territorial jurisdiction of the Delhi Commercial Court, as their products were sold both online and offline within Delhi, and the Defendant’s infringing goods were also available within the same jurisdiction.

8. Thus, the plaintiff prayed for decrees of permanent injunction restraining the defendant from using the mark “**nourish you**” or any mark deceptively similar to “**nourish**”, for rendition of accounts and

² “Trade Marks Act” hereinafter



restraining alleged trade mark infringement and passing off, as well as damages and other consequential reliefs.

9. The defendant/appellant filed their written statement and raised preliminary objections of non-disclosure of cause of action and that the suit lacked material particulars as it sought a blanket injunction without specifying the exact impugned mark or the particular goods in respect of which restraint was sought.

10. It was further averred by the defendant that it had been using the mark “**nourish you**” along with a heart device and a human figure since 2015, openly and continuously, in relation to superfoods, millets, seeds, plant-based and vegan products; plaintiff could not claim exclusivity over the word “**nourish**”, as it is an ordinary, descriptive/generic English word commonly used in relation to health, nutrition and food products, and that several third parties had also obtained or applied for registrations containing the word “**nourish**” and also relied, on the principle noticed in *Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Ltd*³ to say that a trader cannot block an entire class of goods by using a common word.

11. The defendant also alleged non-compliance with Section 12A of the Commercial Courts Act, 2015, arguing that the plaintiff had not resorted to pre-institution mediation and that the plaintiff could not bypass the statutory requirement by merely pleading urgency.

³ (2018) 9 SCC 183



2025:DHC:10125-DB



Submissions of Plaintiff/respondent before the learned Commercial Court

12. The plaintiff submitted that it is the registered proprietor of the trade mark “**nourish**” in various classes, including Classes 29, 30 and 31. It was contended that all its registrations are valid and subsisting and that, in addition, its labels/artworks under the title “**nourish**” stand protected under the Copyright Act, 1957. On this basis, it was urged that the plaintiff enjoys exclusive statutory and common law rights in the mark “**nourish**”.

13. It was further submitted that, being a prior adopter and user of the mark “**nourish**”, the plaintiff has consistently taken steps to protect its goodwill and reputation by opposing third-party applications containing the mark “**nourish**” or variations thereof, including applications for NOURISH ORGANICS, NOURISH WELL, BRAND NOURISH, V NOURISH, COCO NOURISH and also LILYOU BY NOURISH YOU filed by the present defendant in Class 30. According to the plaintiff, this conduct shows that it has always asserted exclusivity over the mark.

14. The plaintiff submitted that “**nourish**” had become exclusively associated with its products and synonymous with quality, the plaintiff also relied on its sales rising from ₹2.45 crores in 2012–2013 to ₹466.67 crores in 2022-2023. It was further stated that the plaintiff has regularly advertised its products across different media and sells them through its websites www.blagro.org and www.nourishstore.co.in



2025:DHC:10125-DB



15. With respect to the cause of action, the plaintiff stated that it first became aware on 03.05.2023 that the defendant had launched products such as millet milk, flour, seeds and muesli under the impugned mark “**nourish you**”. This, according to the plaintiff, followed an advertisement/news item carried in The Hindu Business Line on 29.03.2023. Upon further inquiry, the plaintiff found that the defendant had on 05.01.2023, applied for registration of the mark “**nourish you**” in Class 29 for dairy products, dairy substitutes and milk-based beverages on a “proposed to be used” basis, and that the plaintiff had already opposed the defendant’s earlier Class 30 applications.

16. On merits, the plaintiff submitted that the defendant is neither the registered proprietor nor the prior adopter of the impugned mark “**nourish you**”. Further, it was contended that the defendant’s use of a mark containing in its entirety the plaintiff’s registered and prior-used mark “**nourish**” for identical and allied goods i.e., dairy products, milk products, food products, tea, spices, noodles, flour, etc. would lead to confusion and deception and would create an impression of trade connection with the plaintiff. Such use, it was contrary to honest commercial practices and was detrimental to the distinctiveness and reputation of the plaintiff’s mark.

17. The plaintiff, therefore, contended that all three ingredients for interim relief stood satisfied: (i) a prima facie case, as it was the prior registered proprietor; (ii) balance of convenience, as the defendant was a later entrant and could easily adopt a non-conflicting mark; and (iii) irreparable injury, since continued use by the defendant would erode



2025:DHC:10125-DB



the plaintiff's goodwill in a mark which it had built over years and across market.

Submissions of the defendant before the learned Commercial Court

18. The defendant opposed the application for interim injunction primarily on the ground that it has been carrying on business under the name and style “**nourish you**” since 2015, and that it is the first Indian superfood brand producing and selling home-grown organic quinoa and chia seeds. It was submitted that the defendant's business was conceived as a plant-based, sustainable and health-focused enterprise, and that in 2023 it launched millet-milk, claimed to be India's first plant-based, vegan and lactose-free alternative, after research conducted with ICRISAT. The defendant also pointed out that it has operated the domain “**nourish you**” since 20.10.2014.

19. It was contended that the defendant's mark and the plaintiff's mark are not identical or deceptively similar when compared as a whole. According to the defendant, “nourish you” (with a device of a heart and human figure) is structurally, visually and phonetically different from the plaintiff's “**nourish**”; the trade dress, colour scheme, packaging, product descriptions and price points are all different; and the respective goods cater to different strata of consumers which is superfoods and premium health products in the case of the defendant, as against conventional grocery products such as oils, ghee and dals in the case of the plaintiff.



20. The defendant further submitted that the plaintiff cannot claim monopoly over the word “**nourish**”, which is descriptive/generic of nutrition and well-being, and that several traders in the market use “nourish” as part of their marks., It was contended that registration in one class does not entitle a party to prevent bona fide use of the same descriptive element in another line of goods, especially when the plaintiff itself is not shown to be using the mark across all such goods.

21. On the issue of prior use, the defendant pointed out that it had placed documents to show market presence since 2015 in Class 30. As regards Class 29, the defendant submitted that the plaintiff had, in fact, no comparable product in the market at present which could be said to be clashing with the defendant’s millet-milk product. Accordingly, no case of immediate conflict or passing off was made out.

22. The defendant further relied on the fact that it holds registrations for “**nourish you**” (word) in Class 35 from 02.12.2019 and for “**nourish you**” device and “Lil.You by nourish you” device from 04.10.2021, and argued that, in view of Section 31 of the Trade Marks Act such registrations are prima facie evidence of validity and of its right to use. On this ground, too, it was contended that an interim injunction restraining the defendant from using its own registered mark ought not to be granted.

23. In aid of these submissions, the defendant cited various decisions of the Supreme Court and this Court on (i) descriptive/common elements in marks; (ii) the principle that a proprietor cannot block an



entire class when not using across all goods; (iii) the test of overall similarity (Pianotist test); and (iv) the effect of delay and acquiescence.

Plaintiff's submissions in Rejoinder

24. By way of rejoinder, the plaintiff submitted that the defendant had not produced reliable material to establish continuous use of the mark “nourish you” for goods falling in Classes 5, 29 or 30 prior to 29.03.2023. It was pointed out that certain invoices filed by the defendant showed GST numbers even for dates prior to 01.07.2017, which, according to the plaintiff, cast doubt on the authenticity of the defendant's claimed user.

25. The plaintiff also contended that, since the defendant itself had applied for registration of “nourish you”, it could not now be heard to say that “**nourish**” is generic or non-distinctive; a party seeking statutory protection, it was argued, is estopped from challenging distinctiveness at the interlocutory stage. The plaintiff further clarified that references in the synopsis to certain opposed application numbers (such as 4436055 and 5401616) were not the basis of the present action.

26. It was finally submitted that, the plaintiff having opposed the defendant's applications earlier, any subsequent use by the defendant was at its own risk, and that, in any case, the plaintiff's prior adoption, larger sales, wider product basket and subsisting registrations entitled it to interim protection.



IMPUGNED JUDGMENT

27. By the impugned order, the learned Commercial Court allowed the plaintiff's application under Order XXXIX Rules 1 and 2 CPC and restrained the defendant from using the impugned mark "**nourish you**" or any other mark identical or deceptively similar to the plaintiff's registered mark "**nourish**" in respect of goods falling in Classes 29, 30 and 31 during the pendency of the suit. A limited relaxation was, however, granted to the defendant to clear existing perishable stocks bearing the impugned mark within three months, subject to filing an affidavit of stock within four weeks.

28. In arriving at this conclusion, the learned Commercial Court first noticed the scheme of the Trade Marks Act particularly Section 2(m) (definition of "mark"), Section 2(1)(h) (definition of "deceptively similar") and Section 29 (acts constituting infringement). The court recorded that, under Section 29, infringement may occur where (i) the impugned mark is identical and used for similar goods/services, (ii) the impugned mark is similar and used for identical/similar goods/services, or (iii) the use is such as is likely to cause confusion or association in the mind of the public.

29. The learned Commercial Court then held that, on the facts of the present case, "**nourish**" is the essential and dominant feature of the plaintiff's marks and that the defendant's mark "**nourish you**" incorporates this essential feature in its entirety. It was observed that the mere addition of the word "you" in the defendant's mark would not be sufficient to dispel the visual and phonetic resemblance, as the



dominant element plays a crucial role in the likelihood of confusion analysis.

30. For this purpose, the Court placed reliance on the principles laid down in *Amritdhara Pharmacy v. Satya Deo Gupta*⁴ and *Cadila Healthcare Ltd v. Cadila Pharmaceuticals Ltd*⁵, noting that, in assessing deceptive similarity, several factors have to be considered, including (a) the nature of the goods, (b) the degree of resemblance between the marks, (c) the type of mark (word/device), and (d) the class of purchasers. Applying these factors, the court found that the rival marks were phonetically and structurally close, that the goods were of the same general description like food, dairy and allied products, and that they moved through similar trade channels to a similar consumer base. This, in the court's view, heightened the possibility that consumers or trade partners may assume a connection between the two.

31. The learned Commercial Court further observed that, since the plaintiff held a word mark registration, such registration was *prima facie* evidence of its validity and conferred on the plaintiff the exclusive right to use and protect the mark, unlike a pure passing off action which rests only on prior user. It was also noticed that the defendant had not initiated any proceedings for rectification or cancellation of the plaintiff's registrations; following the view of this Court in *Walter Bushnell Pvt. Ltd. v. Miracle Life Sciences*⁶, the trial court held that,

⁴ 1962 SCC OnLine SC 13

⁵ 2001 (5) SCC 73

⁶ 2014 (59) PTC 339 (Del)



so long as the registration stands, the court should recognize and protect the statutory exclusivity.

32. The plea of the defendant that several third parties were also using marks containing the word “**nourish**” was rejected. The learned Commercial Court held that the fact that the plaintiff had not sued every alleged infringer could not be used as a defence in an action for infringement or passing off; it was the prerogative of the registered proprietor to choose whom to sue and in what order. The court also recorded that the plaintiff had, in fact, taken action in other proceedings to protect the mark.

33. As to the defendant’s reliance on its own registration of “nourish you” in Class 35, the learned Commercial Court examined the classification of goods and services and referred to Section 28(3) of the Act. It held that Class 35 relates to advertising and business services, and that, as between two registered proprietors of identical/deceptively similar marks in different classes, neither would have exclusivity against the other in that class. On that reasoning, the court held that no injunction could be granted against the defendant’s registered Class 35 use, and to that limited extent the plaintiff was not entitled to relief.

34. Accordingly, the application was allowed, and an interim injunction was issued restraining the defendant and persons acting on its behalf from using the impugned mark “nourish you” or any other identical or deceptively similar mark to “**nourish**” for goods in Classes 29, 30 and 31, subject to the limited three-month period to exhaust existing stocks.



Submissions before this Court

APPELLANTS/DEFENDANTS

35. The appellant submits that it honestly adopted the mark “**nourish you**” for its range of superfood products inter alia chia seeds, quinoa, flax seeds, millets, brown rice and other plant-based/vegan products and commenced use as early as 2015. It is stated that the domain www.nourishyou.in was created in October 2014 and that social-media and e-commerce listings began in mid-2015, demonstrating a bona fide and continuous adoption.

36. It is further submitted that the appellant is the registered proprietor of the mark “**nourish you**” in Class 35, and suit of infringement cannot lie. Further, it was argued that this registration is supported along with the material placed on record i.e., CA certificate, invoices, website pages, e-commerce listings, social-media posts and photographs of offline presence, and evidences which shows sustained commercial use and the building up of goodwill from 2015 onwards. According to the appellant, these documents were placed before the Trial Court, but were either not discussed or not given due weightage.

37. The appellant contends that the respondent’s plea of user from 2007 is not borne out from the respondent’s own documents. On the appellant’s showing, the earliest material of the respondent is around 2012, and that too for edible oil/ghee. It is, therefore, argued that any expansion by the respondent into other food categories in Classes 29,



2025:DHC:10125-DB



30 and 31 is later in point of time than the appellant's entry into the superfood space.

38. The appellant also submits that the Trial Court placed undue reliance on invoices that were annexed to the appellant's abandoned trade mark application No. 2917291 (and which the appellant itself was not relying upon in the suit), to cast doubt on the appellant's user, but did not correspondingly consider the appellant's larger body of user material WHOIS record (20.10.2014), social-media posts of July 2015, Amazon listing of August 2015, YouTube account creation of September 2015, invoices of November 2015, and subsequent e-commerce presence in favour of bona fide and continuous adoption.

39. It is next urged that, on the issue of delay and concealment, the respondent had knowledge of the appellant's mark at least from August 2021, when it filed opposition to the appellant's trade mark application No. 4364009, and again in October 2021 and February 2022 when the appellant filed its counter-statement and affidavit before the Trade Marks Registry. Despite this knowledge, the respondent pleaded discovery only in May 2023 on the basis of a news/investment item, which, according to the appellant, creates a fabricated cause of action and operates against the grant of an interim injunction.

40. The appellant further submits that no clear case of passing off was pleaded or established by the respondent. It is argued that the impugned order nevertheless records that the "trinity test"- goodwill, misrepresentation and damage, stood satisfied, without there being specific pleadings or evidence on goodwill of the respondent across all



2025:DHC:10125-DB



the impugned goods, or on misrepresentation by the appellant, or on likelihood of damage. On this footing, the appellant contends that the essentials for an interim injunction: prima facie case, balance of convenience and irreparable injury were not met.

Submissions on behalf of the Respondent

41. The respondent submits that it is the prior adopter, prior user and registered proprietor of the mark “**nourish**” for goods falling in Classes 29, 30 and 31, and that it instituted suit when the appellant began using the impugned mark “**nourish you**” for food/dairy/similar products in the same classes.

42. The respondent’s case is that the mark “**nourish**” has been in use by it at least since 2007 for edible oils (Class 29) and thereafter, from 2017, for goods in Classes 30 and 31, and that this use is supported by substantial sales and advertisement figures. On that basis, the respondent asserts a right over the field of “NOURISH”-formative marks for food and allied goods.

43. The respondent submits that, by order dated 02.05.2025, the Trial Court accepted this position, found deceptive similarity between “**nourish**” and “**nourish you**”, and restrained the appellant from using the impugned mark for goods in Classes 29, 30 and 31, giving only a limited window to clear perishable stock. The respondent supports the impugned order.



44. A central plank of the submissions on behalf of the respondents is that the appellant is not a prior adopter or prior user of “**nourish you**” for the relevant goods. The respondent points out that the several invoices and documents relied on by the appellant to claim use from 2014/2015 either do not mention “**nourish you**” at all or contain GST numbers for periods prior to 01.07.2017, the date on which GST didn’t even come into force, The learned Counsel for the respondent submits that the aforesaid are the very documents the Trial Court had referred to while doubting the appellant’s claim of early user. On this footing, the respondent alleges that the appellant has relied on fabricated or unreliable documents, and that a party approaching the court on such material is not entitled to discretionary relief.

45. The learned counsel for respondent further seeks to rely on a judgement of single bench of this court in *Rajnish Aggarwal & Ors. v. Anantam*⁷ to submit that the appellant cannot take protection under Section 28(3) or 30 of the Trade Marks Act.

ANALYSIS

46. We have heard the learned Senior Counsels for both parties and perused the material on record.

47. It is a settled law that this Court cannot re-appreciate the evidence or cannot exercise power which an appellate court would usually exercise under Section 96 of CPC as the impugned order has been

⁷ 2010 (43) PTC 442 (Del.)



2025:DHC:10125-DB



passed at an interim stage. Thus, an appeal against an order of a Commercial Court of interlocutory injunction, is an appeal in principle and would yield for any interference only in those cases, wherein it has been shown from the order itself that it has essential traits or trapping of a final order. Reliance in this regard is made on ***Wander Ltd v. Antox Indis P Ltd***⁸ and ***Ramakant ambalal Choksi v. Harish Ambalal Choksi & others***⁹.

48. However, in this case, this Court, *prima facie* observes that the appellant has made out sufficient case for interreference. We say so for the reasons and findings stated below.

49. The present dispute between the parties pertains to the use of the



mark “**nourish you**” by the appellants vis-a-vis the mark of



respondent “**nourish**” .

50. The appellant’s case is that they are not the manufacturers but they market the goods/products and hold a valid registration under Class 35. According to them, since they hold a valid and subsisting registration, they have the exclusive right to use their mark, and no case of infringement can lie against them. Further, it is their contention that the impugned order has effectively restricted them to deal with the

⁸ 1990 Supp SCC 727

⁹ 2024 INSC 913



goods for what they have a registration. Furthermore, in view of Section 30 of the Trade Marks Act, they claim that the use of a registered trademark cannot constitute infringement. Hence, they claim that the respondents cannot invoke infringement as a ground to restrain them.

51. Further, they claim the defence under Section 34, which preserves the right of a prior use. The appellant's case is that they are the continuous and *bona fide* user of the mark in relation to all the goods except edible oils in the Classes 30 and 31, hence, it is much prior than that of the respondent.

52. Respondent's case on the other side is that the invoices and documents relied on by the appellant to claim prior use do not mention "**nourish you**" at all or contain GST numbers or any other contemporaneous numbers for periods when GST had not come into force. The respondent relies on the very documents that the Trial Court referred to while doubting the appellant's claim of prior user.

53. Adverting to the facts of the present *lis*, it is not disputed that the appellant holds a valid registration under Class 35 covering "*Retailing, Marketing & Distribution of Amaranth, Chia, Cumin, Fenugreek, Flax, Mustard, Sesame, Sunflower, Pumpkin, Water Melon, Foxtail millet, Lentil & Quinoa Seeds; Retailing, Marketing & Distribution of Dosa & Idli Batter, Retailing, Marketing & Distribution of All types of ready to eat food products made up of Chia Seeds Quinoa, Cereals & Wheat; Buck Wheat, Brown Rice; Retail Outlets; Wholesale Services; Online Sales of Amaranth, Chia, Cumin, Fenugreek, Flax, Mustard, Sesame,*



2025:DHC:10125-DB



Sunflower, Pumpkin, Water Melon, Foxtail millet, Lentil & Quinoa Seeds”.

54. The respondent, on the other hand, have Class 30 and 31 registrations for *“Atta, Maida, Besan, Sooji, Rice, Biscuits, Confectionery, Dalia, Sattoo, Cereals and preparations made from cereals, Bakery products, Tea, Coffee, Cocoa, Sugar, Salt, Spices, Ice creams, Ice, Processed grains, Baking preparations, Flavourings and condiments, Honey, Chocolates, Sandwiches and Pizzas, Flaxseed”.*

55. As it is evident, the underlying goods are food products for human consumption, made from grains, pulses, and seeds etc. Both parties operate within the same segment of the food industry. The goods are intended for nutrition and consumption. Further, the plaintiff had expressly pleaded in the plaint before the Commercial Court that the goods are allied and same. Hence, there is a clear similarity in the nature, purpose and the trade channel of the goods. The goods that are being produced by respondent are similar to goods being marketed by appellant. Therefore, at this stage, it would be profitable to refer to Section 30(2)(e) of the Trade Mark Act, which deals with a situation where two or more parties have separately registered marks that are identical or resemble each other. Section 30(2)(e) in these types of situations lays that when both marks are registered, then each registered proprietor is entitled to use their mark. Consequently, use by one cannot be called infringement by the other, because both are exercising a statutory right bestowed on them by virtue of their registration.



56. Applying the law, in this particular case, the appellant cannot be restrained to invoke their rights arising from the valid registration of their mark on grounds of infringement and neither can the accompanying request for an injunction under Section 30(2)(e) be sustained.

57. Additionally, as per section 28(3) of the Trade Mark Act no infringement can lie against a person/legal entity unless their registration is declared to be invalid. In the present case, no defence or argument has been made under Section 9 or Section 11 of the Trade Marks Act, for the Court to come to any conclusion with regard to *prima facie* invalidity of the registration of the defendant.

58. The impugned judgement has itself observed at *paragraph 25* that there can be no finding of infringement against a registered trademark unless the registration is to be held invalid and in the said background has rightly held that respondents are not entitled for any injunctions as against the appellants under Class 35. The relevant *para* is reproduced below:

“25. Now, coming to the point raised by the defendant that the defendant holds registrations in Class 35 for ‘nourish you’, it is relevant to refer Schedule IV of Trademark Rules, 2002, which provides the Classes wherein classification of goods and services has been provided. A bare perusal of Schedule reveals that Class 35 related to advertising, business management, business administration, official functions. A reading of Section 28(3) of the Act, 1999 provides that if the two registered marks are identical or deceptively similar to each other, the registered proprietor will not have any exclusive right against each other, and both proprietors will have equal rights against each other. Meaning thereby, between the two persons, who are registered owner of the trade mark, there is no exclusive right to use the said trade



mark against each other, thus giving concurrent right to both to use the registered trade mark against each other. **Thus, in the given facts, there can be no finding of infringements against a registered trademark, unless there is a finding of that the registration to be invalid.** The defendant's trade mark 'NOURISH YOU' is registered in its favour, there is no prima facie basis to hold that registration of defendant 'NOURISH YOU' is invalid. **Having observed so, the plaintiff is not entitled for any injunction as against the defendant in respect of goods falling under Class 35 in so far as its mark 'nourish' is concerned**".

(emphasis added)

59. However, de hors the said observation, the impugned order restrained the appellants from using the mark “**nourish you**” albeit in respect of goods falling in Classes 29, 30 and 31 till the pendency of the suit. The relevant portion for the same is extracted as below:

*“Accordingly, **the defendant and all others acting on its behalf are hereby restrained from using impugned trademark ‘nourish you’ or any other trademark in any form** or a manner which are identical or deceptively similar to the registered mark of plaintiff NOURISH with respect to goods falling in Classes 29,30 and 31 till the pendency of the suit”.*

(emphasis added)

60. This court notes that although, an injunction was granted for goods under Classes 29, 30 and 31 by the Commercial Court, but as evident from the list of goods mentioned above, the appellant is marketing similar goods under Class 35 and as a result, the injunction is preventing the appellants from using the statutory rights. The consequence of the injunction is that appellant is now indirectly prevented from using the statutory right granted by registration under class 35 since the appellant's marketing operations cannot be performed without using the mark in connection with such items.



2025:DHC:10125-DB



61. Hence, it can be inferred that the injunction granted by the learned Commercial Court effectively restrains the appellant from exploiting his registration which is in the teeth of Sections 28(1), 28(3) and 30(2)(e) of the Trade Marks Act.

62. The judgment of **Rajnish Aggarwal & Ors. v. Anantam (supra)** relied by the learned senior counsel for respondent is distinguishable as validity of trademark registration was challenged in that said particular judgement. However, in the present case, the registration of appellant in class 35 is not under challenge. Further, the judgment is of a single bench made in an interlocutory injunction application, needless to say, this decision has no binding over this division bench. In any case, the law relating to an interim order not having any precedential value stands settled by the Supreme Court in **Kapila Higorani v. State of Bihar**¹⁰, and **State of Assam v. Barak Upatyaka D.U Karmachari**¹¹.

63. Additionally, the other aspect which warrants our consideration is the finding of the impugned order holding that the respondent's prior user of the mark for edible oil from 2007 is also the date of usage of all the goods falling under Class 29, 30 and 31. This finding is also under serious doubt and is rather an omnibus exaggeration to extending the benefits to the Plaintiff/Respondent. The relevant para for the same from the impugned order is reproduced below:

“6. As it is evident from the narration of facts and submissions made by Id. Counsels for parties, the present

¹⁰ (2003)6 SCC1

¹¹ (2009) 5 SCC 694.



dispute between the parties is use of mark 'nourish you' by the defendant. **The plaintiff claims to have adopted the trademark 'NOURISH' in year 2007 for the goods falling in Class 29 and for the goods falling in Class 30 and 31 since 2017.** On the other hand, the defendant is claiming its adoption of trademark 'nourish you' and its user since 2015. At this juncture, it is relevant to refer to documents annexed to the application no.2917291 in Class 30 filed by defendant before Trademark Registry claiming to be using the trademark 'nourish you' (device) in Class 30 since 27.11.2014, which reveals that bills dated 13.07.2014, 27.11.2014 and 08.03.2015 bear GST number. Similarly, these bills do not mention of the mark 'nourish you'. Though the defendant tried to justify that defendant had printed the invoice in the new/present format pursuant to GST details have been printed on the invoices even before the year 2017, this would not come to the rescue of the defendant to establish that defendant used the mark 'NOURISH' since 2015, rather shows a deliberate attempt to show its adoption in the year 2015. The purported explanation given by defendant appears not to be plausible. It is well settled that in absence of credible explanation with regard to adoption, Courts would readily infer dishonest adoption and pass an order of injunction against such users. There is no dispute that plaintiff has 53 registrations in trademark for Class 29, 6 in Class 30 and 5 in Class 31. **The plaintiff has filed evidence to show its prior adoption and use of the mark NOURISH stand alone also since 2007 in the form of registration certificates, invoices starting from year 2012, advertising and social media platforms.** These documents would clearly prima facie show that use of the mark NOURISH by the plaintiff was prior to the defendant's adoption of the mark 'nourish you' and the defendant is later entrant in the field".

(emphasis supplied)

64. The impugned order, after noting the claim of user of 2017 in Class 30 and 31, gives a blanket finding of the usage of the mark from 2007. It is to be noted that the date of 2007, though claimed by the plaintiff/respondent, applies only to its specific goods such as edible oil under Class 29 and cannot be treated as a blanket date or have any extended effect of usage for all other food products or services falling under other classes.



65. This court finds force in the argument of the learned Senior Counsel for the Appellant/ defendant that the aforesaid impugned order has an impact of granting a sweeping order across various products, which actually did not exist or were never transacted at that point of time. On the aspect of usage of the mark by the appellant, the learned Senior Counsel for the appellant has rightly brought our attention to the purchase orders/invoices dated 01.11.2015 and 10.11.2016 which indicate the commercial use of the trademark “**nourish you**”. We find that this document was neither mentioned in the impugned order nor was it considered or dealt with by the learned Commercial Court. Thus, for all goods except edible oils covered under Classes 29, 30 and 31, the appellant has placed invoices on record which indicate prior user by the appellant of the mark “**nourish you**”, i.e., prior to the dates of application by the respondent for registration of the mark for the said goods as well as the date of user which was claimed as 01.01.2017.

66. For all the aforesaid reasons, the impugned order cannot be sustained in the eyes of law as the appellant/ defendant is also entitled to the benefit of Section 34 of the Trade Marks Act.

67. Accordingly, the present Appeal is allowed and consequently, the impugned order dated 02.05.2025 passed by the learned District Judge (Commercial Court-03) at Patiala House Courts, New Delhi, on the application filed by the respondents under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 in the pending Civil Suit bearing CS (COMM) No. 286/2023 is quashed and set aside.



2025:DHC:10125-DB



68. Thus, the application filed by the respondent under Order XXXIX Rules 1 and 2 of the CPC shall stand dismissed.

69. However, we make it clear that all the observation made by this court in the present judgment is merely for the purposes of deciding the Application under Order XXXIX Rules 1 & 2 CPC and would not have any bearing on the merits of the pending Civil Suit, which needless to say shall be decided by the quality of evidence adduced and brought on records by the parties in the ensuing Trial.

70. The appeal is allowed in the aforesaid terms. There shall be no order as to cost.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

NOVEMBER 4, 2025/gunn