

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

% *Judgment Reserved on: 18th February 2025*
Judgment Pronounced on: 25th March, 2025

+ CS(COMM) 254/2023 and I.A. 8154-55/2023

BRIDGESTONE CORPORATIONPlaintiff

Through: Mr. Dhruv Anand, Ms. Udit
Patro, Ms. Sampurna Sanyal,
Advocates.

versus

M/S. MERLIN RUBBERDefendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiff, along with passing off and other ancillary reliefs.

CASE SET UP BY THE PLAINTIFF

2. The plaintiff, 'Bridgestone Corporation', is a company incorporated under the laws of Japan. The plaintiff was established in 1931 by Shojiro Ishibashi and is engaged in *inter-alia* manufacture and sale of tyres and tubes for automobiles, materials of natural rubber, synthetic rubber, synthetic resins, machines for prevention of environment pollution, materials for public works and marine structures etc., under the trade mark and name 'BRIDGESTONE'.

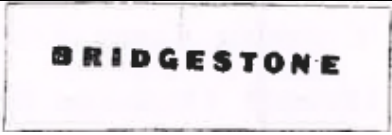





3. Since its establishment in 1931, the plaintiff has expanded its business significantly and now maintains a strong international presence, selling its products in over 150 countries worldwide. The plaintiff also operates over 228 manufacturing plants in over 26 countries and has a workforce of approximately 1,44,000 employees. Over time, the plaintiff has achieved undisputed market leadership and is one of the largest manufacturers of tyres and rubber products in the world today.

4. The plaintiff's innovation and marketing excellence has been recognized through numerous prestigious awards for outstanding performance in its industry. Printouts of the said articles have been exhibited as **Exhibit PW 1/2 (colly)**.

5. The plaintiff operates websites www.bridgestone.com and www.bridgestone.co.in, providing global and India-specific information respectively, about its business and products. A search for 'BRIDGESTONE' on major search engines yields results exclusively linked to the plaintiff. Printouts of the said webpages have been exhibited as **Exhibit PW 1/3 (colly)**.

6. The plaintiff's trademark and name 'BRIDGESTONE' comes from a literal translation and transposition of the founder's surname "Ishibashi" meaning "stone bridge" in Japanese and thus has all the trappings of an invented mark.

7. The plaintiff has obtained registration for its 'BRIDGESTONE' mark in relation to '*rubber tyres and tubes for wheels for automobiles and other vehicles*' in India and over 130 countries worldwide. The details of the registrations obtained by the plaintiff in India are given below:

S. No.	Trademark	Class	Registration No.	Date of Registration
1	BRIDGESTONE (word)	12	238591	01.11.1966
2		12	203633	17.07.1961
3	BRIDGESTONE (device)	12	204725	12.09.1961
4		12	696551	31.01.1996
5		7,12,17	1837728	08.07.2009
6		12,35,37	1894383	10.12.2009
7		12,35,37	1925813	22.02.2010
8	BRIDGESTONE SELECT (word)	12,35,37	2634528	28.11.2013
9		17	320184	10.11.1976

10		17	770121	23.09.1997
11		7	770127	23.09.1997
12		12	408044	15.07.1983
13		37	2106271	25.02.2011
14		99	2106272	25.02.2011
15		35	IRDI-3343943	19.11.2015

7.1. Details of the trademark registrations obtained by the plaintiff in India have been exhibited as **Exhibit PW 1/5 (Colly)**.

8. The 'BRIDGESTONE' trademark has been recognised as a well-known/famous mark in India by the Registrar of Trade Marks. Further, the plaintiff's mark has been recognised as a well-known mark in other jurisdictions such as Thailand, Taiwan, Hong Kong, Japan and the Philippines. Copies of judicial authorities recognising the mark as well-known have been marked as **Mark PW-1/6 (Colly)**.

9. The plaintiff has been vigilant in protecting its rights for its 'BRIDGESTONE' marks throughout the world. The plaintiff has successfully prosecuted infringers in multiple jurisdictions and has obtained favourable orders protecting its 'BRIDGESTONE' mark. Copies of favourable orders obtained by the plaintiff for its mark have been marked as **Mark PW-1/7 (Colly)**.

10. The plaintiff enjoys a widespread reputation in India among members of the trade and the general public. The plaintiff's 'BRIDGESTONE' products have been available in India even prior to the establishment of its joint venture in 1995. In this regard, the plaintiff has placed reliance on a tripartite agreement executed between Bridgestone (manufacturer), Mitsui Corporation (exporter, Japan), and Western Tyre Co. (buyer, India) in 1959 and the agreement has been marked as **Mark PW- 1/8**.

11. The plaintiff established Bridgestone ACC India in February 1995 as a joint venture with an Indian entity. Subsequently, the plaintiff set up a manufacturing facility in September 1996, marking the commencement of sales in the same year. In February 1996, the plaintiff incorporated Bridgestone India Private Limited, which presently operates an extensive dealership network, exceeding 3,500 dealers across India. Printouts of the

extract from the Ministry of Corporate Affairs (MCA) website regarding the plaintiff's Indian subsidiary have been exhibited as **Exhibit PW 1/9**.



12. To accommodate the increasing demand within the Indian market, the plaintiff launched three diversified product plants in Madurai, Chennai, and Manesar. Additionally, the plaintiff has established manufacturing units in Pithampur (1996) and Chakan (2013) to fortify its supply chain and to ensure seamless distribution of its world-class 'BRIDGESTONE' products throughout India. In furtherance of its commitment to consumer engagement and service excellence, the plaintiff has recently unveiled one of its largest "Select Super Stores" in Noida, designed to offer a premium Bridgestone experience with an emphasis on safety, reliability, and manufacturing excellence.

13. The plaintiff also widely advertises its product under its 'BRIDGESTONE' mark. The plaintiff has created multiple advertisements which are regularly aired on Indian television, displaying the trademark of the plaintiff along with its slogan "Your journey, our passion". The plaintiff is also the associate sponsor of the Indian Premier League's cricket team 'Mumbai Indians' through which the plaintiff has extensively advertised and promoted its 'BRIDGESTONE' mark. The plaintiff's worldwide advertising and promotional expenses for their 'BRIDGESTONE' products have been provided in paragraph 24 of the Evidence Affidavit of the plaintiff's witness. Notably, the worldwide sales of the plaintiff in the year 2022 were USD 30.72 billion and the Indian sales amounted to INR 4,84,776 lakhs.

13.1. Copies of web extracts providing links to some commercials and advertisements by the **Mark PW 1/10 (Colly)**. Copy of the news article

validating the plaintiff's brand has reached several millions of people in India on account of plaintiff's associate sponsorship has been exhibited as **Exhibit PW 1/11**. Printout of the products list showing the plaintiff's Bridgestone products on the e-commerce website have been exhibited as **Exhibit PW 1/12**.

14. The defendant, M/s. Merlin Rubber, is an entity engaged in the business of manufacturing and supplying Rubber Ring, Rubber Coupling, Pump Rubber Cap and Fire Safety Valve etc.

15. In April 2022, while conducting a market survey, the plaintiff came across the defendant's listing on the online trade directory of www.tradeindia.com selling butyl tubes of two-wheeler and four-wheeler vehicles under the infringing marks , . Pursuant to this, the plaintiff engaged an independent Investigator to examine the infringing activities carried out by the defendant.

16. On 8th August, 2022, the plaintiff sent a legal notice to Trade India in order to take down the infringing products from their website. Office copy of the legal notice dated 8th August 2022, sent by the plaintiff to TradeIndia has been exhibited as **Exhibit PW 1/15**.

17. Pursuant to the legal notice sent by the plaintiff to the said online trade directory, the infringing BRIMESTONE butyl tube products, were taken down.

18. In January, 2023, during a physical investigation through an independent Investigator, the plaintiff discovered that the defendant was continuing to deal in the infringing BRIMESTONE products despite its

product being de-listed from 'TradeIndia'.

18.1. A copy of the Investigator's affidavit dated 26th April 2023, providing the details of the investigation has been exhibited as **Exhibit PW 1/16**. The images of the product bearing the infringing 'BRIMESTONE' mark as purchased by the independent Investigator have been marked as **Mark PW 1/17**. Copy of the business card of the defendant has been marked as **Mark PW 1/18**. Photographs of the other products of the defendant as taken by the Investigator have been marked as **Mark PW 1/19**.

PROCEEDINGS IN THE SUIT

19. On the first date of hearing on 28th April 2023, this court issued the summons in the suit and granted an *ex parte ad interim injunction* in favour of the plaintiff restraining the defendant from manufacturing, selling or offering for sale, advertising or dealing in any products bearing the deceptively similar mark 'BRIMESTONE' or any other similar mark as that of the plaintiff's registered trademark 'BRIDGESTONE' or its device mark. Further, the court-appointed a Local Commissioner for the search and seizure of the defendant's infringing products.

20. On 2nd May 2023, the commission was executed by the local commissioner at the premises of the defendant. The local commissioner's report dated 15th May 2023 has been exhibited as **Exhibit PW 1/22**.

21. On 6th July 2023, the matter was referred for mediation before the Delhi High Court Mediation and Conciliation Centre as the parties jointly submitted they were exploring the possibility of reaching an amicable settlement.

22. On 13th September 2023, it was noted that the mediation proceedings between the parties had not been successful.

23. On 16th November 2023, the learned Joint Registrar closed the defendant's right to file their written statement.

24. Since none appeared on behalf of the defendant after 13th September 2023, the court *vide* order dated 23rd February 2024, directed that the defendant be proceeded against *ex-parte*. In the same order, the Court also directed the plaintiff to file evidence by way of an affidavit.

25. On 12th July 2024, the plaintiff filed its affidavit of evidence of its witness Ms. Reni Varghese [**PW 1**].

26. On 15th October 2024 and 20th November 2024, the Joint Registrar recorded the statement of the plaintiff's witness Ms. Reni Varghese [**PW 1**]. Since no cross-examination was carried out on behalf of the defendant, the recording of the plaintiff's *ex-parte* evidence was completed on the said date and exhibits were marked.

27. *Vide* order dated 11th December 2024, this court noted that the examination in chief of Ms. Reni Varghese [**PW 1**] was concluded and the plaintiff's evidence was closed.

28. On 18th February 2025, arguments on behalf of the plaintiff were heard and judgments were reserved.

ANALYSIS AND FINDINGS

29. I have heard the counsel for the plaintiff and examined the material on record.

30. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has

been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

31. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that they are the registered proprietors of the trademark 'BRIDGESTONE'. (Please refer: **Exhibit PW 1/5**). In the affidavit filed by the Investigator on 26th April 2023 (Please refer: **Exhibit PW 1/16**), it is stated that the Investigator visited the defendant's premises on 25th January 2023. During the visit, the Investigator met Mr. Mukesh Patel, who identified himself as the owner of the defendant entity. Mr. Patel disclosed that the defendant entity is engaged in the manufacturing and supply of Butyl Tubes, Rubber Rings, Rubber Couplings, Pump Rubber Caps, Fire Safety Valves, and similar products for two- and four-wheeler vehicles.

32. Significantly, Mr. Patel explicitly stated to the Investigator that the defendant entity had been using the mark 'BRIMESTONE' as its brand name for Butyl Tubes for the past three years.

33. The Investigator observed a stock of over 100 pieces of the infringing products inside the defendant's premises. Upon inquiry, he was informed that the Butyl Tubes bearing the 'BRIMESTONE' mark were being sold at Rs. 150 per tube and when the Investigator tried to purchase it, Mr. Patel insisted on receiving the payment through cash and deliberately refrained from issuing an invoice after selling the infringing products. Additionally,

based on discussions with Mr. Patel, it was revealed that the defendant's business has an estimated annual turnover of approximately Rs. 1.5 Crores.

34. The plaintiff has also placed on record the products of the defendant to show that the defendant is indulging in infringement and passing off the plaintiff's registered mark, 'BRIDGESTONE'. The comparison of the pictures of the products and marks used by the plaintiff and the defendant as exhibited in **Exhibit PW-1/20** is illustrated below:

PLAINTIFF'S TRADEMARK	DEFENDANT'S INFRINGING MARK
	

35. The comparison would show that the defendant's mark 'BRIMESTONE' is nearly identical to the plaintiff's mark 'BRIDGESTONE'. The defendant has not only imitated the plaintiff's 'B' device but has also merely replaced 'DG' with 'M' and adopted the 'STONE' as is in the end. Therefore, in my view, the 'BRIMESTONE' mark of the defendant is structurally, visually and phonetically similar to the 'BRIDGESTONE' of the plaintiff.

36. Further, the use of the mark 'BRIMESTONE' for identical goods i.e. tyres as that of the plaintiff constitutes an infringement of the plaintiff's registered trademark 'BRIDGESTONE'.

37. Based on the discussion above, a clear case of infringement of trademark is made out. The defendant has taken unfair advantage of the reputation and goodwill amassed by the plaintiff's 'BRIDGESTONE' tyres. Therefore, the plaintiff has established a case of passing off as well.

38. At this stage, it is pertinent to note that the defendant appeared before the Court only twice, on 6th July 2023 and 13th September 2023, and has not entered an appearance thereafter. Since the defendant has failed to take any requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that it has no defence to put forth on merits.

39. In view of the foregoing analysis, the plaintiff is entitled to a decree of permanent injunction.

40. Counsel for the plaintiff presses for relief of damages and costs as well.

41. In the report filed by the local commissioner, it is stated that during the commission, huge quantities of infringing goods were found bearing the 'BRIMESTONE' marks (Please refer: **Exhibit PW 1/22**). The list of products found by the local commissioner at the defendant's premises is given below:

S. NO.	ITEMS FOUND	QUANTITY
1	Pack tubes bearing the infringing brimstone mark (both big sacks and small sacks)	5850 pieces
2	Packaging material and stickers for rubber patches bearing the infringing	77,600 pieces

	BRIMESTONE mark	
3	Rubber patches for tubes wearing the BRIMSTONE mark	800 pieces
4	Dye for stamping BRIMESTONE mark on tubes	1 piece

42. It is a settled position of law that the Local Commissioner’s report can be read into evidence in the terms of provisions of Order XXVI Rule 10 (2) Code of Civil Procedure, 1908 (‘CPC’) where it is not challenged by any party. (Please refer: *Aero Club v. M/s Sahara Belts¹, Puma se v. Ashok Kumar²*).

43. It is a settled principle of law that while awarding damages, the court has to adopt a stringent approach where the infringement is deliberate and *mala-fide*. In *Koninlijke Philips N.V. & Anr. v. Amazestore & Ors³*, a Coordinate Bench of this Court outlined principles for awarding proportionate damages on the basis of the degree of *mala-fide* conduct. The relevant observations of the coordinate bench are extracted below:

“40. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:-

#	<i>Degree of mala fide conduct</i>	<i>Proportionate award</i>
(i)	<i>First-time innocent infringer</i>	<i>Injunction</i>

¹ 2023 SCC OnLine Del 7466

² 2023 SCC online Del 6764

³ 2019 SCC OnLine Del 8198

(ii)	<i>First-time knowing infringer</i>	<i>Injunction + Partial Costs</i>
(iii)	<i>Repeated knowing infringer which causes minor impact to the Plaintiff</i>	<i>Injunction + Costs + Partial damages</i>
(iv)	<u>Repeated knowing infringer which causes major impact to the Plaintiff</u>	<u>Injunction + Costs + Compensatory damages.</u>
(v)	<i>Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.</i>	<i>Injunction + Costs + Aggravated damages (Compensatory + additional damages)</i>

41. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.”

[Emphasis is mine]

44. In *Cartier International A.G. v. Gaurav Bhatia*⁴, while granting the damages in a case where the defendants were selling counterfeit watches and did not appear to contest the suit filed by the plaintiff, a coordinate bench of this Court has observed that a defendant who deliberately avoids court proceedings should not be allowed to benefit from such evasion as that would be unfair to a defendant who submits account records and is held liable for damages, while one who evades proceedings escapes liability due to the absence of financial records. The relevant extract is given below:

“66. It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the

⁴ 2016 SCC OnLine Del 8

Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books.

67. A party who chooses not to participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs as the Court in the present case are dealing with counterfeiting products. It is rank case of dishonesty where the piracy committed by the defendants is apparent on the face of the record. It is just like printing of duplicate currency. The counterfeiter can never be allowed to do such illegal activities. Cheating can never be condoned by the Court unless the accused is punished.

68. Sub-Section (1) of Section 135 of the Trade Marks Act, 1999 provides that relief may be granted in any suit for infringement or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs have chosen the route of damages. The plaintiffs in the present matter while establishing in evidence have been able to prove the damages suffered by them. Materials have been filed and proved accordingly. The damages which they claim are attributable to flagrant infringement.”

[Emphasis is mine]

45. The aforesaid principles would be squarely applicable in the present case. The defendant herein has been engaged in the business of selling infringing products of the plaintiff's products i.e., rubber tubes of four-wheeler and two-wheeler vehicles for three years under the mark 'BRIMESTONE' which is deceptively similar to the plaintiff's registered mark. Thus, in my view, the defendant has wrongfully gained substantial financial benefits from the unauthorized sale of counterfeit products. The evidence on record, including the Local Commissioner's report [**Exhibit PW 1/22**] and the Investigator's affidavit [**Exhibit PW 1/16**], indicates that

the defendant has been engaged in the sale of such infringing goods for a period of at least three years, and has generated substantial illicit profits from such activities. Since the profit has been earned by exploiting a deceptively similar trade mark without authorization from the plaintiff, the defendant shall not be allowed to retain such unlawful gains. Given the scale and duration of the defendant's activities, the plaintiff is entitled to a grant of compensatory damages.

46. In *Microsoft Corporation v. Yogesh Papat & Anr.*⁵ and *St. Ives Laboratories Inc. v. Sunny Bakshi and Anr.*⁶, the coordinate benches of this Court have observed that in cases where the defendants conduct their business surreptitiously, the plaintiff would be entitled to damages, as a direction for rendering of accounts would be a futile exercise. In the present case, the defendant has stopped appearing and therefore, a direction for rendering of accounts would be an exercise in futility.

47. In the affidavit of evidence filed by the plaintiff's witness Ms. Reni Varghese [PW1] the plaintiff has calculated the damages to the tune of Rs. 1,07,52,370/-. In the written submissions filed by the plaintiff, the plaintiff has provided a calculation of damages as under:

“5. CALCULATION FOR COMPENSATORY DAMAGES- The calculation is provided in paragraphs 49 to 51 of the Plaintiff's evidence affidavit - which calculates compensatory damages as INR 1,18,95,524/-. The Plaintiff during arguments has relied upon a more conservative calculation of damages, which is provided as under:

i. Documents relied upon in the calculation -

a. Investigator's Affidavit dated 25.04.2023-PW-1/16 at page 555 to 559 of Documents filed with the Evidence Affidavit;

⁵ 2005 SCC OnLine Del 216

⁶ 2009 SCC OnLine Del 205

b. LC Report dated 15.5.2023 (conducted on 2.5.2023) - PW-1/22 at page 576 to 611 of Documents filed with the Evidence Affidavit - Page 579: Inventory of Seized products;

*ii. **Defendant has been carrying on business for 3 years** - paragraph 13 of Investigator's Affidavit at Page 558*

iii. Calculation:

*a. **Packaged butyl tubes: 5850 pieces/units** (seized during LC raid)*

Cost of 1 unit - Rs. 150 - paragraph 11 of Investigator's Affidavit at Page 558

Assumptions made: (i) Assumed that seizure amounted to sale of products in 1 month; (ii) Profit margin assumed as 20%.

Assumption made the seized products denote sales made in 1 month

*Sales made in 1 year $5850 * 150 * 12 = 10530500$*

*Sales made in 3 years (2020 to 2023) $10530500 * 3 = 31590000$ 20% profit margin assumed - 20% of 31590000 = **INR 63,18,000/-***

*b. **Packaging material and stickers: 77,600 pieces/units** (seized during LC raid)*

Assumptions made: (i) Selling price of each assumed to be INR 1; (ii) Assumed that seizure amounted to sale of products in 1 month; (iii) Profit margin assumed as 20%.

*Sales made in 1 year = $77600 * 1 * 12 = 9,31,200$ Sales made in 3 years = $931200 * 3 = 27,93,600$*

*20% profit margin assumed - 20% of 27, 93, 600 = **INR 5,58,720***

*c. **Rubber patches: 800 pieces/units** (seized during LC raid)*

Assumptions made: (i) Selling price of each assumed to be INR 1; (ii) Assumed that seizure amounted to sale of products in 1 month; (iii) Profit margin assumed as 20%.

*Sales made in 1 year = $800 * 1 * 12 = 9600$ Sales made in 3 years = $9600 * 3 = 28800$*

*20% profit margin assumed - 20% of 28800 = **INR 5760***

Total profits earned illegally by the Defendant = 6318000+558720+5760= underline INR 68, 82, 480"

48. In *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*⁷, a Division Bench of this Court outlined the principle of 'rough and ready calculations' for awarding damages. In *Koninklijke Philips* (supra), relying on the judgment passed by the Division Bench of this Court in *Hindustan Unilever* (supra), a Coordinate Bench of this Court granted damages assuming the profit margin of 20% of the defendants. Further in *Inter Ikea v. Sham Murari*⁸, a coordinate bench of this court granted damages on 'rough and ready calculation' based on the seizure made by the Local Commission.

49. In the present case, even though the Investigator in its report has stated that the defendant has been doing business for three years, it cannot be assumed that the volume of business of the defendant for all three years was constant. Taking a conservative view of the matter, the quantum of seizures made by the Local Commissioner, read in conjunction with the sales price given in the Investigator's affidavit, can be extrapolated for a period of 1.5 years. Therefore, the profit figure considered by the plaintiff in their written submissions, which was for a period of three years, can be halved (1.5 years) for awarding damages. Accordingly, the plaintiff is entitled to damages amounting to Rs. 34,41,240/-.

⁷ ILR (2014) 2 Del 1288

⁸ 2018 SCC OnLine Del 11221

50. With respect to the costs incurred in pursuing the present case, a reference may be made to *Uflex Limited v. Government of Tamil Nadu and Ors*⁹, the Supreme Court has laid down the principles for determining the costs in commercial matters. The relevant observations of the Supreme Court are set out below:

“55. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever-increasing litigation expenses; and (iii) the costs should serve the purpose of curbing frivolous and vexatious litigation. [Report No. 240 of the Law Commission of India.]

56. We may note that this endeavour in India is not unique to our country and in a way adopts the principle prevalent in England of costs following the event. The position may be somewhat different in the United States but then there are different principles applicable where champerty is prevalent. No doubt in most of the countries like India the discretion is with the court. There has to be a proportionality to the costs and if they are unreasonable, the doubt would be resolved in favour of the paying party [UK Civil Procedure Rule 44.2.]. As per Halsbury's Laws of England, the discretion to award costs must be exercised judicially and in accordance with reason and justice. [Vol. 10, 4th Edn. (Para 15).] The following principles have been set out therein:

“In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including:

- (i) The conduct of all the parties;*
- (ii) Whether a party has succeeded on part of his case, even if he has not been wholly successful; and*
- (iii) Any payment into court or admissible offer to settle made by a party which is drawn to the court's attention.*

The conduct of the parties includes:

- (a) Conduct before, as well as during, the proceedings and*

⁹ (2022) 1 SCC 165

in particular the extent to which the parties followed any relevant pre-action protocol;

(b) Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) The manner in which a party has pursued or defended his case or a particular allegation or issue; and

(d) Whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.” [10th Vol. 4th Edn. (Para 17).]”

[Emphasis is mine]

51. In my view, the present suit was filed in April 2023 and involved multiple hearings wherein counsel appeared on behalf of the plaintiff. Additionally, a Local Commissioner was appointed to visit the premises of the defendant. Taking into account the aforesaid position, I am of the view that in the present facts and circumstances, the plaintiff is entitled to recover actual costs from the defendant.

52. The plaintiff has filed its bill of costs which has been exhibited as **Exhibit PW-1/24** wherein the plaintiff has stated that the plaintiff has incurred costs of approximately Rs. 14,38,660.53/-.

53. Based on the discussion above, I am of the view that in the present facts and circumstances, the plaintiff is entitled to a decree of permanent injunction as well as compensatory damages and costs from the defendant.

RELIEF

54. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant in terms of prayer clauses 62 (a), (b) and (c) of the plaint.

55. A decree of damages of Rs. 34,41,240/- (Rupees Thirty-four lakhs forty-one thousand two hundred forty only) is passed in favour of the

plaintiff and against the defendant in terms of prayer clauses 62 (e) of the plaintiff.

56. As for the relief of costs prayed for in prayer clause 62 (i) of the plaintiff, the plaintiff shall appear before the Taxation Officer on 14th April, 2025, who shall determine the actual costs incurred by the plaintiff in the present litigation.

57. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

58. Let the decree sheet be drawn up.

59. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

MARCH 25, 2025

Vivek/-