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

Reserved on: 14 February 2025
Pronounced on:18 February 2025

\+ FAO(OS) (COMM) 26/2025, CM APPL. 8864/2025 & CM APPL. 8865/2025

SAMMAAN FINSERV LIMITED .....Appellant
Through: Mr. Mukul Rohatgi and Mr. Rajiv Nayyar, Sr. Advs. with Mr. Anirudh Bakhru, Ms. Aadhya Chawla, Mr. Rishi Agarwala, Mr. Ankit Banati, Ms. Nandini Choudhary, Ms. Rinkoo Kakkar, Mr. Abhay Agnihotri and Mr. Pratham Mehrotra, Advs.

versus

SVAMAAN FINANCIAL SERVICES PRIVATE LIMITED & ORS. .....Respondents
Through: Mr. Neeraj Kishan Kaul, Mr. Sandeep Sethi, Mr. Arvind Varma, Mr. Jayant Mehta, Sr. Advs. with Mr. Saikrishna Rajagopal, Mr. Siddharth Chopra, Mr. Himanshu Bagai, Mr. Kushal Gupta, Mr. Kuber Mahajan, Ms. Pritha, Ms. Shrey Sethi, Ms. Riya Kumar, Mr. Rajat Sinha, Ms. Smridhi Sharma, Ms. Ira Mahajan and Ms. Dhanya S. Krishnan, Advs. for R-1.

\+ FAO(OS) (COMM) 27/2025, CM APPL. 8869/2025, CM APPL. 8870/2025, CM APPL. 8871/2025, CM APPL. 8872/2025 & CM APPL. 8873/2025

SAMMAAN CAPITAL LIMITED & ORS. .....Appellants
Through: Mr. Mukul Rohatgi, Mr. Rajiv Nayyar, Mr. Ravi Sikri, Sr. Advs. with Mr.

Anirudh Bakhru, Ms. Aadhya Chawla, Mr. Rishi Agarwala, Mr. Ankit Banati, Ms. Nandini Choudhary, Ms. Rinkoo Kakkar, Mr. Abhay Agnihotri and Mr. Pratham Mehrotra, Advs.

versus

SVAMAAN FINANCIAL SERVICES PRIVATE LIMITED & ANR. .....Respondents

Through: Mr. Neeraj Kishan Kaul, Mr. Sandeep Sethi, Mr. Arvind Varma, Mr. Jayant Mehta, Sr. Advs. with Mr. Saikrishna Rajagopal, Mr. Siddharth Chopra, Mr. Himanshu Bagai, Mr. Kushal Gupta, Mr. Kuber Mahajan, Ms. Pritha, Ms. Shrey Sethi, Ms. Riya Kumar, Mr. Rajat Sinha, Ms. Smridhi Sharma, Ms. Ira Mahajan and Ms. Dhanya S. Krishnan, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

% 18.02.2025

C. HARI SHANKAR, J.

1. This judgment disposes of CM Appl. 8864/2025 and CM Appl. 8869/2025.

2. By judgment dated 10 February 2025, passed in IA 41270/2024 in CS (Comm) 871/2024[1], a learned Single Judge of this Court has

[1] **Svamaan Financial Services Pvt Ltd v Sammaan Capital Ltd**

injuncted Sammaan Capital Ltd[2] and Sammaan Finserv Ltd[3] from using, advertising, adopting or in any other manner displaying in the course of trade any mark/name identical or deceptively similar to the registered trademarks of the respondent Svamaan Financial Services Pvt Ltd, which may be tabulated thus:

S. No.	Application No.	Date of Application	Class	Mark	Status
1.	3967632	08/10/2018	36	SVAMAAN (word)	Registered and renewed upto 08/10/2028
2.	3971167	11/10/2018	36	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028
3.	3969849	10/10/2018	09	SVAMAAN (word)	Registered and renewed upto 10/10/2028
4.	3971163	11/10/2018	09	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028
5.	3967630	08/10/2018	16	SVAMAAN (word)	Registered and renewed upto 08/10/2028
6.	3971164	11/10/2018	16	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028
7.	3967631	08/10/2018	35	SVAMAAN (word)	Registered and renewed

[2] "SCL" hereinafter
[3] "SFL" hereinafter

					upto 08/10/2028
8.	3971165	11/10/2018	35	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028
9.	3969850	10/10/2018	42	SVAMAAN (word)	Registered and renewed upto 10/10/2028
10.	3971166	11/10/2018	42	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028

3. In the process, Sammaan Capital Ltd and Sammaan Finserv Ltd have been restrained from using the marks "SAMMAAN CAPITAL",  and  [4].

4. Aggrieved thereby, these appeals have been preferred by SCL and SFL under Section 13 of the Commercial Courts Act 2015 read with Order XLIII Rule 1 (r) of the Code of Civil Procedure 1908. The appellants, in their appeals, seek quashing and setting aside of the impugned judgment dated 10 February 2025 of the learned Single Judge.

5. The appeals are accompanied by applications [CM Appl. 8864/2025 in FAO (OS) (Comm) 26/2025 and CM Appl. 8869/2025

[4] Collectively referred to, hereinafter, as the "SAMMAAN marks"

in FAO (OS) (Comm) 27/2025] seeking interim stay of operation of the impugned judgment.

6. The appellants seek admission of their appeals and interim stay of operation of the judgment of the learned Single Judge. The respondent, on the other hand, submits that the appeals are devoid of merits and that they deserve to be dismissed. In the event that the court feels that the appeals raise issues deserving of consideration, the respondent submits, in the alternative and without prejudice, that no stay of operation of the judgment of the learned Single Judge should be granted.

7. These appeals were listed before another Bench of this Court on 13 February 2025. As one of the learned Members of the Bench recused, and in view of the urgency expressed by the appellants, the appeals were listed before us on the same day i.e. 13 February 2025 at 2.30 pm. As we had not had a chance to study the papers, we re-notified the matter for the next day i.e. 14 February 2025 and, in order to avoid prejudice to either side, directed the *status quo*, as it existed on 13 February 2025, to continue till 14 February 2025, when the appeals would be taken up at 10.30 am.

8. We took up the matter at 10.30 am on 14 February 2025, as scheduled. Exhaustive arguments were addressed by learned Senior Counsel on both sides. The appellants were represented by Mr. Mukul Rohatgi and Mr. Rajiv Nayyar, learned Senior Counsel and Mr. Anirudh Bakhru, learned Counsel. The respondents were represented

by Mr. Sandeep Sethi, Mr. Neeraj Kishan Kaul, Mr. Arvind Varma and Mr Jayant K. Mehta, learned Senior Counsel. Arguments took the whole of the pre-lunch session on 14 February 2025.

9. The rival submissions advanced by learned Senior Counsel on both sides, which would be set out hereinafter, clearly make out a case deserving of consideration.

10. We, therefore, issue notice on the appeals and set them down for final disposal at 2.30 pm on 21 April 2025.

11. This order, therefore, addresses only the issue of the position which should be allowed to prevail in the interregnum.

12. Orders were reserved, after hearing learned Counsel, on 14 February 2025. On 17 February 2025, we queried of learned Counsel, particularly of learned Counsel for the respondents, as to whether they desired to file replies to CM Appl. 8864/2025 and CM Appl. 8869/2025 and, therefore, that the order passed be *ad interim* in nature, or whether they were agreeable to disposal of CM Appl. 8864/2025 and CM Appl. 8869/2025 on the basis of the submissions advanced. Learned Counsel, in one voice, requested the Court to dispose of CM Appl 8864/2025 and CM Appl 8869/2025.

13. We, therefore, proceed to do so.

14. Learned Senior Counsel for the appellants would contend that the impugned judgment of the learned Single Judge ought not to be allowed to take effect till the appeals are finally heard. In other words, learned Senior Counsel would pray for continuance of the *status quo* directed by this Court on 13 February 2025 till the appeals are heard finally, whereas learned Senior Counsel for the respondent, as already noted, contend that no case for grant of stay is made out.

15. Apart from merits, learned Senior Counsel have individually addressed submissions on the aspect of balance of convenience.

Re: Balance of Convenience

16. Learned counsel for the appellants submit that the domain name www.sammaancapital.com was registered on 12 June 2023. On 5 October 2023, articles were published, reporting that the appellant, earlier known as Indiabulls Housing Finance Ltd, changed its corporate name to Sammaan Capital Ltd. On 20 November 2023, the respondent issued a cease and desist notice to SCL with respect to the www.sammaancapital.com domain name and the proposal to change its corporate name to Sammaan Capital Ltd. SCL replied to the said cease and desist notice on 8 December 2023. A fresh certificate of incorporation was issued by the Registrar of Companies[5] to SCL on 21 May 2024, pursuant to change of its name to "Sammaan Capital Ltd". SCL received a Certificate of Registration from the Reserve Bank of

[5] "the ROC" hereinafter

India[6] as a Non-Banking Finance Company-Investment and Credit Company[7] on 28 June 2024.

17. In the interregnum, SCL applied for registration of the SAMMAAN marks. The respondent filed an opposition, against Sammaan Capital Ltd's application for registration of the "SAMMAAN CAPITAL" mark on 16 July 2024.

18. The above submissions have been adopted in respect of Sammaan Finserv Ltd as well.

19. In these circumstances, it is submitted by learned Senior Counsel for the appellants that the SAMMAAN marks have been in use by the appellants since October 2023 when the corporate name "Sammaan Capital Ltd" was adopted by SCL and that, as far back as in March to May 2024, SCL had applied, with the Registrar of Trade Marks, for registration of the SAMMAAN marks.

20. As against this, CS (Comm) 871/2024, wherein the presently impugned judgment has come to be passed by the learned Single Judge, were filed only on 3 October 2024. Arguments on I.A 43249/2024 and CRL. M.A. 32198/2024 were heard and reserved by the learned Single Judge on 17 December 2024 and the impugned injunction order has come to be passed on 10 February 2025. By this time, it is submitted that over a year has passed since the SAMMAAN marks has been in use by the appellants and almost 10 months have

[6] RBI
[7] NBFC-ICC

elapsed since SCL had applied for registration of the SAMMAAN marks with the Registrar of Trademarks.

21. In the interregnum, it is submitted that the appellants have been regularly using the SAMMAAN marks and the SAMMAAN marks are indelibly associated, in the market, with the appellants. It is pointed out, in this context, that SFL and SCL were formerly known as India Bulls Housing Finance Ltd and India Bulls Commercial Credit Ltd and were operating under the well-known mark "India Bulls". It is submitted that the appellants have a large and renowned respected presence in the macro finance space and that, by now, the public have come to associate the SAMMAAN marks with the appellants.

22. Inasmuch as the SAMMAAN marks have been used by the appellants since late 2023 to early 2024, and the impugned judgment has been passed on 10 February 2025, and comes into operation with immediate effect, learned Senior Counsel would submit that failure to grant interim protection to the appellants would completely paralyse their business. Irrespective of the merits of their case – which the appellants seriously press – it is submitted that, in these circumstances, the wholesome approach to adopt would be to set down the appeals for hearing and allow the *status quo* granted on 13 February 2025 to continue till then.

23. This request is seriously opposed by learned Senior Counsel for the respondents, who press, into service, the following passages from

Wander Ltd v Antox India Pvt Ltd[8], which delineate the boundaries of interference, in appeal, with interlocutory orders passed in intellectual property matters:

> "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) Private Ltd. v Pothan Joseph***[9]:
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> > "... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v Jhanaton***[10] '...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'."

24. Tested on the anvil of the standard set out in the above passage from ***Wander***, it is submitted that no case is made out for injuncting operation of the impugned judgment of the learned Single Judge, even

[8] **1990 Supp SCC 727**
[9] **AIR 1960 SC 1156**
[10] **1942 AC 130**

for a day. Rather, they submit that the appeals themselves deserve to be dismissed at the outset.

On Merits

25. To assess the extent to which an arguable case has been made out by the appellants, it would be appropriate to enumerate the submissions advanced by learned Senior Counsel for both sides.

Rival submissions on merits

26. Learned Senior Counsel for the appellants contend thus:

(i) The respondent cannot be said to be catering to the same consumer segment as the appellants. Broadly characterising all of them as financing companies, it is submitted, ignores actual realities of the financing business. The appellants advance large loans, which have necessarily to be in excess of ₹ 40 lakhs. Loans below that figure are not advanced by them. In fact, Mr. Rohatgi submits that most of the appellants' clients seek loans to the tune of ₹ 50 crores and above. As against this, the respondent is a micro-financing institution, which provides loans of any amount. Consumers who seek to avail loans of the kind advanced by the appellants, it is submitted, would never go to the respondent, and likewise the consumers of the respondent would not approach the appellants for loan.

(ii) The test of the consumer of average intelligence and imperfect recollection, *alias* the man on the Clapham omnibus, therefore, does not apply in such cases. The court has to be conscious of the nature of the consumers to whom the plaintiff and the defendant before it, cater. Consumers who seek loans from financing companies, particularly consumers who seek loans from the appellants, are literate and knowledgeable in matters of loan financing and would know, therefore, whether to approach, in a given case, the respondent or the appellants. There is no likelihood of such a consumer mistaking the appellants for the respondents or *vice versa*.

(iii) In this context, it is submitted that one of the main grounds on which the learned Single Judge granted injunction was the finding that the words SVAMAAN and SAMMAAN are phonetically similar. Phonetic similarity, it is submitted, has to be tested on the anvil of the following classic test enunciated by Parker J in ***Re. Pianotist Application***[11]:

> "*You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks.* If, considering all those circumstances, you come to the conclusion that there will be a confusion—that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which

[11] **(1906) 23 RPC 774**

> will lead to confusion in the goods—then you may refuse the registration, or rather you must refuse the registration in that case."
>
> (Emphasis supplied)

One of the factors which, therefore, has to guide the court while applying the test of phonetic similarity, is the nature of the consumer of the goods or services. A consumer who seeks to avail financial loans, it is submitted, is unlikely to be confused between the appellants and respondent. In any event, there is no likelihood of such confusion merely because of the similarity between "SVAMAAN" and "SAMMAAN".

(iv) The words SVAMAAN and SAMMAAN, it is further submitted, are *publici juris*. They have well known meanings in Hindi, and it is not open to anyone to monopolise the word "Sammaan". "Sammaan" is a laudatory epithet, and there can be no injunction against a person using SAMMAAN as its brand name. Expressed otherwise, by being the proprietor of the registered "SVAMAAN" marks, the respondent cannot permanently injunct use, by every other person, of the mark "SAMMAAN", which conveys an entirely different and well-known idea and impression.

(v) When one views the two marks as label marks, their appearance is completely different:

Appellant's trade marks	**Respondent's trade marks**
SAMMAAN	SVAMAAN

(vi) In this context, the learned Senior Counsel have drawn attention to para 43 of the impugned judgment of the learned Single Judge, which reads thus:

> "43. I have given my anxious consideration to the aforesaid judgments relied upon on behalf of the defendants. In all the aforesaid judgments, the first word/ syllable/alphabet[12] in the competing marks were different, which is not the case in the present suit. In the normal enunciation, the initial syllable(s) of the words are the most important and the accentuation would be upon the initial word/ syllable/ alphabet …. This is a significant aspect that distinguishes the aforesaid judgments from the case at hand."

Learned Senior Counsel submitted that the finding of the learned Single Judge that the first syllable of the two marks in the present case was the same, is erroneous, as the first syllable of the "SVAMAAN" marks is "SVA" whereas the first syllable of the "SAMMAAN" marks is "SAM". Applying the test of first syllable identity, invoked by the learned Single Judge himself in para 43 of the impugned judgment, therefore, it is contended that the marks "SVAMAAN" and "SAMMAAN" have to be treated as dissimilar, not similar.

(vii) The learned Single Judge proceeds, in para 44, to distinguish the judgment of a Division Bench of this Court in

[12] *sic* letter

Vasundhra Jewellers v Kirat Vinodbhai Jadvani[13], on which the appellants placed reliance, thus:

> "44. The defendants have also relied upon the judgment in ***Vasundhra Jewellers v Kirat Vinodbhai Jadvani***, wherein the plaintiff claimed exclusivity over the word VASUNDHRA despite having no registration for the word mark VASUNDHRA. The Court held in favour of the defendant, whose mark was visually different from the plaintiff's marks. In the present case, the plaintiff has valid registrations for the word mark 'SVAMAAN'. Therefore, the aforesaid judgment cannot come to the rescue of the defendants in the present case."

Learned Senior Counsel would submit that there is no reasonable basis to distinguish, from the present case, the decision in ***Vasundhra Jewellers***. The observation of the learned Single Judge that, in that case, the rival marks were visually different, in fact, should operate to the benefit of the appellants, rather than the respondent. Visually, it is submitted that there is obviously no similarity between SAMMAAN CAPITAL and SVAMAAN.

Ergo, if visual dissimilarity of the device marks is to be treated as the test, it is submitted that the respondent cannot be said to be entitled to any injunction. Visual dissimilarity between the rival marks is the sole ground on which the learned Single Judge has distinguished the decision in ***Vasundhra Jewellers*** which, being a judgment of the Division Bench of this Court, was otherwise binding on him and is, in fact, binding on us as

[13] **2022 SCC OnLine Del 2996**

well. The impugned judgment, it is submitted, deserves to be stayed even on this sole ground.

(viii) Apropos the judgment in ***Vasundhra Jewellers***, though the learned Single Judge has also observed that Vasundhra did not have any word mark registration in the mark "Vasundhra" whereas the respondent has word mark registration of the mark "SVAMAAN", it is submitted that that the factor would not make a difference, in view of the settled position that, if the word constituting the main feature of the defendants' mark is infringing, the device mark would also become *ipso facto* be infringing in nature. Thus, the existence, or non-existence of a word mark registration can make no substantial difference.

(ix) Learned Senior Counsel then proceed to para 45 of the impugned judgment, which reads thus:

> "45. The position that emerges from the aforesaid legal precedents is that the impugned mark need not be completely identical with the registered trade mark of the plaintiff and any minor difference therein would be of no consequence. In view of the aforesaid, I am of the considered view that the competing marks are structurally, phonetically and conceptually so close to each other, which renders the defendants' SAMMAAN marks deceptively similar to the plaintiff's SVAMAAN marks and the added matters including the words CAPITAL/ FINANCE/ FINSERVE, a different logo and other visually different elements would not make any difference."

Learned Senior Counsel submit that the learned Single Judge is clearly in error in holding that the rival marks, in the present case, are structurally, phonetically and conceptually close to

each other. Structurally, the marks are completely different, in logo, font, colour and appearance. Conceptually, the words "SVAMAAN" and "SAMMAAN" convey different ideas, with "SVAMAAN" conveying the idea of self-respect and "SAMMAAN" conveying the idea of honour or an encomium or decoration. Phonetically, too, it is submitted that, as the first syllables between "SVAMAAN" and "SAMMAAN" are different, they cannot be said to be phonetically similar. Thus, the learned Single Judge has, it is submitted, clearly erred in holding that the rival marks in the present case are structurally, phonetically and conceptually close to each other.

(x) Learned Senior Counsel further pointed out that, in all their promotional materials, the appellants prominently include the clarificatory logo "formerly known as Indiabulls Home Loans". The reply filed by the appellants to IA 41270/2024 provides a screen shot of the advertisement of SCL, thus:

Once this caveat is to be found in all their promotional materials, it is submitted that the likelihood of confusion is considerably effaced. It is submitted that the learned Single Judge has, in para 46 of the impugned judgment, completely erred in the view that he has taken on this aspect. The learned Single Judge holds, in this regard, that (a) the reference to "Indiabulls" was during the transition phase, and usage of the phrase "formerly known as INDIABULLS" is, therefore, temporary, and (b) the incorporation of the words "Formerly known as Indiabulls Home Loans" was only to comply with Section 12(3) of the Companies Act 2013. Learned Senior Counsel submit that while the first finding is factually incorrect, the second finding is inconsequential. It is submitted that there is no basis for the learned Single Judge's presumption that the use of the phrase "formerly known as INDIABULLS" was temporary or transitional. Learned Senior Counsel submit, on instructions, that they are willing to include, in all their physical and digital promotional material and advertisements, the phrase "formerly known as INDIABULLS" and are also willing to make the clarificatory phrase more prominent, should the Court so direct. Regarding the second observation of the learned Single Judge on this aspect, it is submitted that the issue of whether the logo "formerly known as INDIABULLS" was made to comply with Section 12(3) of the Companies Act, or for any other reason, is irrelevant. All that is relevant is that, by the said clarification, the appellants had completely eliminated all chances of confusion in the minds of the consumers.

(xi) With respect to the plea that the consumers who approach the appellants or, for that matter, even the respondent, are literate consumers, who would never be confused between one and the other, the learned Single Judge has held, in pars 59 and 60, thus:

> "59. The defendants have contended that a consumer in the financial service sector is not an average consumer with imperfect recollection, but is sophisticated and literate, who will not get confused between the competing marks.
>
> 60. I am unable to agree with the aforesaid submission made on behalf of the defendants. Persons who avail loans may come from any background, be it rural or urban, literate or illiterate, Hindi-speaking or non-Hindi speaking. Both the plaintiff and the defendants operate on a pan-India basis. The plaintiff has also filed newspaper publications/ advertisements in regional languages such as Bengali, Odia and Marathi to substantiate its operations across India including in rural areas *(pages 804-805, 889, 892-894, 896-898 of the documents filed with the plaint)*. There is a high probability that consumers, who are illiterate, semi-literate or non-Hindi speaking, would find the competing marks 'SVAMAAN' and 'SAMMAAN' very similar or nearly identical and therefore get confused between the two. Therefore, I cannot accept the submission that the class of consumer in the financial service sector is sophisticated or is capable of differentiating between the competing marks."

These findings, it is submitted, are merely the *ipse dixit* of learned Single Judge, unsupported by any material. Semi-literate consumers, who may be seeking small loans, would never approach the appellants. The learned Single Judge has not, therefore, applied himself to ground realities while examining whether the consumer base of the appellants on the one hand and the respondent on the other, is or is not the same.

Significantly, not a single instance of actual confusion was provided by the respondent in its suit.

(xii) The view adopted by the learned Single Judge would render Section 29(5) of the Trade Marks Act 1999 otiose. Reliance has been placed in this context, on the judgment of a Full Bench of the High Court of Bombay in ***Cipla Ltd v Cipla Industries Pvt. Ltd***[14], which holds that Section 29(5) is an exception to Sections 29(1) to 29(4). If, therefore, a mark used by the defendant as part of its trade name or business concerned is not found to be infringing, within the meaning of Section 29(5), it cannot be regarded as infringing within the meaning of Section 29(1) to Section 29(4). Learned Senior Counsel have relied particularly on paras 1 and 31 of ***Cipla*** which read thus:

> "1. The learned Single Judge by his order dated 26th April, 2016 expressed a view that a decision of the Division Bench of this Court in the case of ***Raymond Limited v Raymond Pharmaceuticals Pvt Ltd***[15]., needs reconsideration. Paragraph 21 of this order reads thus: —
>
> > "21. I am, of course, bound by the decision in the Raymond. However, in my respectful submissions, and for the reasons I have outlined above, that decision in Raymond requires reconsideration; specifically on the following questions:
> >
> > > (1) Where a party is found to be Using a registered trade mark as a 'name', viz., as a corporate or trading name or style, though in respect of goods dissimilar to the ones for which the trade mark is registered, is the proprietor of the registered trade mark entitled to an injunction on a cause of action

[14] **AIR 2017 Bom 75**
[15] **2010 SCC OnLine Bom 967**

in infringement under section 29(5) of the Trade Marks Act, 1999?

(2) Whether the use of a registered trade mark as corporate name or trading name or style is excluded from the purview of sections 29(1), 29(2) and 29(4) of the Trade Marks Act, 1999, and whether those sections are restricted to the use of a trade mark 'as a trade mark', i.e., in the 'trade marky' sense?

(3) Whether sections 29(4) and 29(5) operate in separate and mutually exclusive spheres, i.e., whether. If the defendant uses the registered trade mark only as a corporate name or trading name or style in respect of dissimilar goods, a plaintiff can have no remedy and Is not entitled to an Injunction?

(4) Whether the view taken by the Division Bench in ***Raymond Ltd. v Raymond Pharmaceuticals Pvt Ltd***, is a correct view?

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31. Now, coming to sub-sections (1) and (2), the same apply on its plain meaning only to "trade mark versus mark" situation. Both the sub-sections use the words "uses in the course of trade". They do not refer to use of trade mark as a part of corporate/trade/business name. Both the sub-sections do not apply when use of a registered trade mark is made by the defendant as a part of trade/corporate/business name."

(xiii) The appellants have obtained regulatory approvals from the RBI, the National Housing Board, the GST Authorities and are also listed on the National Stock Exchange and Bombay Stock Exchange. An immediate direction to them to discontinue use of "SAMMAAN" would, therefore, place them in serious jeopardy, financially as well as otherwise.

(xiv) Reliance has been placed, by learned Senior Counsel, on the judgment of this Court, rendered by one of us (C Hari Shankar, J.) in ***Trustees of Princeton University v Vagdevi Educational Society***[16]**.** Attention has specifically been invited to paras 29.2 and 29.3 of the said decision which read thus:

> "29.2. Though the Princeton mark of the plaintiff, and the Princeton mark of the defendants are both used in the context of providing educational services, it would be facile, and plainly unrealistic, to believe that any consumer would confuse the services provided by the defendants with those provided by the plaintiff. *The "consumer", whether for the purposes of infringement or of passing off, though a consumer of average intelligence and imperfect recollection, has to be a consumer of the particular goods or services in respect of which the marks are used. To that extent, the consumer differs from the "man on the Clapham omnibus". The possibility of confusion or deception, whether for infringement of passing off has, therefore, to be examined from the point of view of a student, and not the ordinary man on the street. No student, or person interested in the services provided either by the plaintiff or by the defendants, is likely to be confused between the two, merely because of the use, by the defendants, of PRINCETON as part of the name of the defendants' institutions.* The plaintiff is, today, arguably the foremost higher educational institution in the world, and provides no services outside the US. The defendants' institutions are situated entirely within the State of Telangana, and do not even have any branch outside the said State. No aspirant to the portals of the plaintiff Institution is likely to mistakenly join the defendants; equally, no student, who wants to join one of the defendants' institutions, is likely to mistakenly approach the plaintiff, believing them to be interrelated. Admission to the plaintiff Institution is, for that matter, a formidable exercise, nearly unattainable to all but the most extraordinary of students, whereas the defendants' institutions are far more accessible and approachable. *These factors, coupled with the marked dissimilarity in the logos of the plaintiff and the defendants, render the chance of the defendants, passing off their services as those of the plaintiff, or even as associated with the plaintiff,*

[16] **2023 SCC OnLine Del 5524**

impossible.

29.3. So wide, indeed, is the gap between the plaintiff and the defendants, that it cannot be said, prima facie, that, by using the impugned mark, the defendants could even be intending to pass off their services as those of the plaintiff."
(Emphasis supplied)

(xv) In juxtaposition there with this, learned Senior Counsel for the appellants draw attention to paras 52 and 62 of the impugned judgment of the learned Single Judge, which read thus:

"52. The defendants have contended that the plaintiff provides small ticket loans for purposes such as setting up businesses, fulfilling working capital requirements, education, wedding and medical emergencies. On the other hand, the defendant no.1 provides large ticket sized housing loans, which are mortgage backed. Even if that be so, it is an admitted position that both the plaintiff and the defendant no.1 are essentially in the business of providing loans. The defendant no.1 is, in fact, admittedly in the business of granting both affordable home loans as well as mortgage-backed loans to micro, medium and small businesses *(pages 86-88 of the documents filed by the defendants no.1, 3 and 4)*. It may be true that at this point of time, the plaintiff is only providing loans of smaller amount as compared to those of the defendants. However, nothing prevents the plaintiff to expand its business in the future and provide big ticket loans, including housing loans, which is the main business of the defendant no.1.

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62. The defendants, in support of their contention of potential consumers being knowledgeable/ sophisticated, have relied on the judgments of this Court in ***CFA Institute v Brickwork Finance Academy***[17] and ***Trustees of Princeton University***. In both the aforesaid judgments, however, the rival parties were running educational institutes and their target consumers were students having at least a graduate qualification or seeking such qualification, who would not qualify as ordinary persons on the street. As noted above, persons availing loans may not

[17] **2020 SCC OnLine Del 2744**

> be educated. Therefore, these judgments do not advance the case of the defendants."

The observation of the learned Single Judge that the difference in the nature, size and the quantum of the loans provided by the appellants on the one hand and the respondent, on the other, was inconsequential as it was an admitted position that both were providing loans, is contrary to the principle laid down in ***Trustees of Princeton University***. The learned Single Judge has proceeded to observe that, even if Svamaan Financial Services Pvt Ltd was providing smaller loans, as compared to the loans provided by Sammaan Capital Ltd and Sammaan Finserv Ltd at that point of time, nothing prevented Svamaan Financial Services Pvt Ltd from expending its business in future and providing big loans and housing loans. This, submits learned Senior Counsel, is a purely hypothetical and speculative finding, which cannot constitute the basis of an order of injunction.

(xvi) Further, in para 62 of the impugned judgment, the learned Single Judge has distinguished the decision in ***Trustees of Princeton University*** on the ground that the target consumer base in the case of educational institutes is of educationally qualified persons, whereas persons availing loans may not be educated. This, it is submitted, is hardly a ground on the basis of which the decision in ***Trustees of Princeton University*** could be distinguished.

(xvii) Finally, learned Senior Counsel for the appellants submit that, unlike cases dealing with off the shelf products, where branding may make a difference to the consumer's purchasing choice, the decision making process in financial loan services involves multiple layers of evaluation, consultation and verification, which minimise the chance of likelihood of confusion.

27. For all these reasons, it is submitted that, at the very least, the appellants have an arguable case. Inasmuch as, for nearly a year till the passing of the impugned judgment, of the leaned Single Judge, there was no injunction against Sammaan Capital Ltd and Sammaan Finserv Ltd using the "SAMMAAN" marks, it is submitted that the operation of the impugned judgment, which suddenly changes the *status quo* and applies with immediate effect, ought to be kept in abeyance till the present appeal is heard.

28. As against this, learned Senior Counsel for the respondent advance the following contentions:

(a) The ***Wander*** test applies at every stage of hearing of an appeal against an order of interim injunction granted in an intellectual property matter. It also, therefore, applies at the stage of *ad interim* injunction. Unless the court is able to find some clear illegality in the manner in which the learned Single Judge has applied the law, no case for interference can be said to be made out.

(b) The respondent is both the prior adopter and prior registrant of the "SVAMAAN" marks. Section 28(3)[18] of the Trade Marks Act cannot, therefore, apply. It is not the appellant's case that they were unaware of the respondent's marks.

(c) The emphasis, by the appellants, on the time that has elapsed since they had started using the SAMMAAN marks, is misdirected. The respondent had issued a cease and desist notice on 20 November 2023, immediately on learning from the media on 5 October 2023 that the appellants were using the SAMMAAN marks. The actual physical usage of the SAMMAAN marks commenced, in the case of the appellants, only in July 2024.

(d) The rival marks are clearly phonetically similar. Between the two marks, the difference is, in fact, only of one letter, i.e. the intervening "V" between "S" and "A" in "SVAMAAN". It cannot be said, therefore, that the marks are not phonetically alike.

(e) Besides, this is also a case of idea infringement, inasmuch as the broad idea conveyed by the words

[18] **28. Rights conferred by registration:**

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(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

"SVAMAAN" and "SAMMAAN", both of which laud the products, is the same.

(f) The triple identity test stands satisfied in the present case, inasmuch as the marks are deceptively similar to each other, they deal with same services i.e. financial loans and cater to the same customer segment. In this context, learned Senior Counsel submit that the learned Single Judge is correct in his finding that, even if, today, the respondent is advancing loans which are much less than the loans ordinarily advanced by the appellants, that situation can always change and the respondent may decide to enter the space occupied the appellants. For this purpose, learned Senior Counsel place reliance on the following passage from ***Somany Ceramics v Shri Ganesh Electric***[19]:

> "61. Pertinent it is to mention, at this stage, that while the Plaintiff started its business in ceramics tiles, it subsequently expanded into sanitaryware and bath fittings and obtained registrations in Class 11 on 05.01.2007. Later, Plaintiff also expanded its business into selling water heaters/geysers and obtained registration on 31.07.2018. This fact is important in the context of the judgment of the Supreme Court in Laxmikant (supra), where it was held that Courts have to be mindful of future expansion of the business of a proprietor of a trademark. Plaintiff is right in its contention that merely because a trademark registration is applied for in a particular class, the proprietor is forever bound to sell only those goods. Law recognises the expansion of business into similar or cognate or allied goods and this factor is relevant for determination of a claim for passing off."

[19] **2022 SCC OnLine Del 3270**

(g) Actual confusion is not required to be shown, likelihood of confusion is sufficient. Given the similarity of the marks, it is clear that there is likelihood of confusion between the rival marks.

(h) In fact, in the present case, Section 29(1) applies, for which purpose even likelihood of confusion is not required to be shown. Inasmuch as the appellants are using a mark which is deceptively similar to that used by the respondent, and is using it as a trade mark, infringement, in terms of Section 29(1) *ipso facto* stands committed. There is no need, therefore, to enter into the aspect of likelihood of confusion.

(i) The reliance on Section 29 (5) is completely misguided. Infringement in terms of Section 29(5) is independent of Section 29(1).

(j) In the case of infringement, unlike passing off, the comparison is mark to mark. Thus, even if there is added material, in the form of differences in imagery and the like, which may distinguish the two marks when seen as device marks or logos, that factor would be relevant only while examining whether a case of passing off exists. It has no relevance to the aspect of infringement. Reliance is placed, in this regard, on the following passages from ***Kaviraj Pandit Durga Dutt Sharma v Navaratna Pharmaceutical Laboratories***[20]:

[20] **AIR 1965 SC 980**

"28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negativing the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. In an action for infringement, the plaintiff must,

no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.

29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive". But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be

> phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff."

(k) Apropos the judgment of the Full Bench of the High Court of Bombay in ***Cipla***, learned Senior Counsel submit that, in fact, the judgment completely covers the case in favour of the respondent, for which purpose they place reliance on para 1 and 21 of the decision, which read as under:

> 1. The learned Single Judge by his order dated 26th April, 2016 expressed a view that a decision of the Division Bench of this Court in the case of ***Raymond Limited v Raymond Pharmaceuticals Pvt. Ltd***, needs reconsideration. Paragraph 21 of this order reads thus: —
>
> > "21. I am, of course, bound by the decision in the Raymond. However, in my respectful submissions, and for the reasons I have outlined above, that decision in Raymond requires reconsideration; specifically on the following questions:
> >
> > > (1) Where a party is found to be Using a registered trade mark as a 'name', viz., as a corporate or trading name or style, though in respect of goods dissimilar to the ones for which the trade mark is registered, is the proprietor of the registered trade mark entitled to an injunction on a cause of action in infringement under section 29(5) of the Trade Marks Act, 1999?
> >
> > > (2) Whether the use of a registered trade mark as corporate name or trading name or style is excluded from the purview of sections 29 (1) 29 (2) and 29 (4) of the Trade

Marks Act, 1999, and whether those sections are restricted to the use of a trade mark 'as a trade mark', i.e., in the 'trade marky' sense?

(3) Whether sections 29(4) and 29(5) operate in separate and mutually exclusive spheres, i.e., whether if the defendant uses the registered trade mark only as a corporate name or trading name or style in respect of dissimilar goods, a plaintiff can have no remedy and is not entitled to an Injunction?

(4) Whether the view taken by the Division Bench in ***Raymond Ltd. v Raymond Pharmaceuticals Pvt. Ltd***., is a correct view?"

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"21. It will be necessary to analyze section 29. Section 29 defines various types of infringement of Trade Marks. Broadly, it can be said that sub-section (1) of section 29 is identical to sub-section (1) of section 29 of the old Act. Under sub-section (1), a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, (i) uses in the course of trade, a mark which is identical with, or deceptively similar to the trade mark, (ii) in relation to goods or services in respect of which the trade mark is registered and (iii) in such manner as to render the use of the mark likely to be taken as being used as a trade mark. Thus, to attract sub-section (1), there has to be the use of a mark during the course of trade which is identical to the registered trade-mark or deceptively 'similar to the registered trade-mark. Use of such mark becomes infringement provided it is used in relation to the goods or services for which the trade-mark is registered in such a manner that the use of the mark is likely to be taken as being used as a trade-mark."

(l) The appellants have provided no explanation for adopting the word SAMMAAN as their mark. There is no similarity between INDIABULLS and SAMMAAN. If they decided to

change their INDIABULLS mark it was their responsibility to ensure that they do not come close to the previously registered SVAMAAN mark of the respondent.

(m) In this context, the respondent relies on para 47 to 49 of the impugned judgment of the learned Single Judge, which read thus:

> "47. It has not been pleaded by the defendants that they were not aware about the plaintiff's existence at the time of adoption of the SAMMAAN marks. It is also an undisputed fact that the plaintiff, upon becoming aware of the defendant no.1's intention to change its identity to 'SAMMAAN CAPITAL', which was reported in a news article dated 5th October, 2023, sent a legal notice to the defendant no.1 on 20th November, 2023 claiming its registrations for the SVAMAAN marks and calling upon it to refrain from adopting and using the mark 'SAMMAAN' as the same would amount to infringement of the SVAMAAN marks. Therefore, the defendants cannot possibly take the defence that they were not aware about the plaintiff's SVAMAAN marks prior to their change of corporate names and commencement of use of the SAMMAAN marks.
>
> 48. Despite having been put to notice by the plaintiff, the defendants proceeded to change their corporate names, obtained regulatory approvals under the new names and applied for trade mark registrations for the SAMMAAN marks. No satisfactory explanation has been given by the defendants for adopting the mark 'SAMMAAN', despite being made aware of the SVAMAAN marks used by the plaintiff in relation to its services.
>
> 49. In view of the aforesaid, I am of the considered opinion that the defendants have failed to establish that their adoption of the SAMMAAN marks was *bona fide*."

(n) Initial interest confusion is sufficient to justify an injunction in the case of infringement. Between SVAMAAN and

SAMMAAN, both being marks used for the services of providing financial loans, a clear case of initial interest confusion exists.

(o) The judgment in ***Trustees of Princeton University*** is clearly not applicable. The Court was, in that case, dealing with students entering an institute of higher learning. There can be no comparison between such students and persons who seek to avail financial loans. There is no presumption, unlike a student who wants to enter an institute of higher learning, that a seeker of financial loan is literate or well aware of the distinction between the appellant and the respondent.

(p) The decision in ***Vasundhra Jewellers*** is also clearly distinguishable as, in that case, the plaintiff did not have any registration for the word mark VASUNDHRA. The Court was, therefore, concerned only with device-to-device comparison and found that the devices were dissimilar. In view of the fact that the respondent holds a word mark registration for the mark SVAMAAN, the decision in ***Vasundhra Jewellers*** can have no application.

(q) The emphasis on the fact that the appellants were, in their promotional material, including the caption "formerly known as Indian Bulls" was misguided, as this caption was in terms of Section 12(3) of the Companies Act. The necessary inclusion of the said caption could not be used as a basis for the appellants to infringe the registered trademarks of the respondent.

(r) When applying the tests of balance of convenience and irreparable loss, the matter had to be seen from both sides. The appellants and the respondent were both companies dealing in financing loans. The fact that one may be bigger than the other was irrelevant.

(s) Insofar as the certificates of registration granted by the RBI were concerned, para 86 of the impugned judgment notes that the certificates were given on an undertaking by the appellants, that, while changing their corporate names, they had neither infringed nor would infringe the respondent's registered trademark. As such, the RBI, while granting certificates of registration, did not adjudicate on the aspect of infringement.

(t) Neither could SVAMAAN, or SAMMAAN, be regarded as *publici juris* in the finance loan sector. It was clear that, by adopting the mark SAMMAAN, the appellants were seeking to capitalise on the respondent's respectability and reputation.

(u) This was, therefore, a case of dishonesty. In a case of dishonesty, the Court was required to be stricter in its approach, and there would be a presumption of confusion between the marks and of the dishonest adopter succeeding in his dishonest attempt.

29. In rejoinder, Mr. Rohtagi, learned Senior Counsel, while reiterating some of the submissions advanced earlier, refers, apropos the reason for the appellants adopting the marks "SAMMAAN", to paras 20.9 and 20.10 of the impugned judgment, which contain the appellants' submissions in that regard, and which read thus:

> "20.9. The SAMMAAN marks were *bona fidely* adopted by the defendants after thorough primary and secondary research conducted in-house as well as through a well-known global marketing communications agency and are unique, arbitrary and distinctive in nature.
>
> 20.10. The mark 'SAMMAAN' is inspired from the deep-rooted values and customer trust of the defendants as well as their long journey of growth and innovation. The mark 'SAMMAAN' symbolizes a blend of tradition and forward-thinking, ensuring each decision and service is infused with the respect and excellence that customers deserve."

Analysis

30. The Court is required to take a call whether to continue the *status quo* granted on 13 February 2024, or to reject the prayer for stay of operation of the impugned judgment altogether based on the aforesaid arguments.

31. There can, in the perception of the Court, be no gainsaying the fact that the rival submissions of learned Counsel, aided no doubt by the wealth of legal learning behind them, have raised thrown up several serious issues for consideration. Among these may, for the nonce, be enumerated the following:

(i) Is the aspect of likelihood of confusion foreign to Section 29(1) of the Trade Marks Act? Mr. Sethi would contend that it is, as the sub-section, unlike sub-sections (2) to (4) that follow, makes no reference to 'likelihood of confusion'. The issue, however, becomes complex because Section 29(1) uses the expression "deceptively similar", and Section 2(h) states that "a mark shall be deemed to be deceptively similar to another mark *if it so nearly resembles that mark as to be likely to deceive or cause confusion".* "Likelihood of confusion", therefore, is one of the necessary pre-requisites for a mark to be regarded as "deceptively similar". Section 29(1) applies where the defendant's mark is identical or deceptively similar to the plaintiff's. It is nobody's case that the appellants' and respondent's marks are identical – as, indeed, it cannot be. As the plaintiff, the onus would, therefore, be on the respondent to establish that they are deceptively similar, for Section 29(1) A to be invocable, and that would, in turn, require the respondent to establish that the use of the appellants' marks is likely to result in confusion.

(ii) Are the marks phonetically similar? While, on an oral intonation, they may appear to be, the definitive test that applies in the case of phonetic similarity is that enunciated in ***Pianotist***, cited by the Supreme Court in, *inter alia*, ***Amritdhara Pharmacy v. Satya Deo Gupta***[21], ***F. Hoffmann-La Roche & Co. Ltd v. Geoffrey Manners & Co. Pvt Ltd***[22], ***S.M. Dyechem***

[21] **AIR 1963 SC 449**
[22] **(1969) 2 SCC 716**

Ltd v Cadbury (India) Ltd[23], ***Cadila Health Care v. Cadila Pharmaceuticals Ltd***[24] and ***Khoday Distilleries Ltd v. Scotch Whisky Association***[25]. As per the ***Pianotist*** test, the Court has to consider:

> (a) the look, and the sound, of the words,
>
> (b) the goods or services to which they apply,
>
> (c) the nature and kind of customer who would be likely to buy the goods,
>
> (d) all surrounding circumstances, and
>
> (e) what is likely to happen if each of the marks is used in a normal way as a trade mark for the goods of the respective owners of the marks.

In the opinion of the Court, the issue of whether, applying all these criteria, the appellants' marks are so similar to the respondent's as would be likely to cause confusion, would require a deeper analysis and is, at the least, arguable.

(iii) *Prima facie*, the test of the consumer of average intelligence and imperfect recollection may not entirely apply to a case such as the present, in which the appellants and respondent provide loans, with the appellants being indisputably among the largest loan financing companies in the market, with what appears to be an established and formidable reputation. The minimum value of the loans advanced by the appellants is ₹

[23] **(2000) 5 SCC 573**
[24] **(2001) 5 SCC 73**
[25] **(2008) 10 SCC 723**

40 Lakhs. The issue of whether consumers who seek to avail large loans – or indeed, loans *per se* – would confuse the appellants with the respondent merely by use of the marks SAMMAAN by the former, as against the SVAMAAN mark of the latter, would again be required to be debated and considered.

(iv) We may note, here, that Mr. Nayar, for the appellants sought to contend that the maximum loan extended by the respondent is of ₹ 10 lakhs. If that is so, the question of whether there is any customer segment overlap at all, would arise.

(v) Another issue that arises for consideration is whether between the marks SVAMAAN and SAMMAAN, commonality of idea can be alleged to as to make out a case of idea infringement. Linked to this would be the issue of whether, if "Sammaan" is a commonly used laudatory or descriptive expression – which itself may be debatable – there can be an injunction against its use, even assuming a *prima facie* case of infringement exists.

(vi) Among the respondent's contentions is the submission that, in the matter of infringement, as opposed to passing off, added matter, or visual dissimilarity between the marks, is irrelevant. If that is so, was the learned Single Judge justified in distinguishing the judgement in ***Vasundhara***, which stood affirmed by a Division Bench, on the sole ground that the

comparison, in that case, was between device marks, and not word marks?

(vii) In view of the fact that the appellants are, in all their promotional material, adding the caption "Formerly known as Indiabulls HOME LOANS", does the likelihood of confusion not get mitigated? How far is the respondent's emphasis on the fact that the inclusion of this caption was necessitated by Section 12(3) of the Companies Act, relevant? In this context, the appellant's offer to continue to include the said caption in all their advertisements and promotional materials – which, according to them, also demonstrates their *bona fides* and supports their contention that they are not seeking to piggyback on the respondent's reputation – also deserves serious consideration. At the end of the day, it has to be remembered that the objective of injuncting infringement is protection of intellectual property rights, not stifling of healthy competition.

(viii) The decision of the Full Bench of the High Court of Bombay in ***Cipla***, and the extent to which it applies to, and affects, the present case, also calls for serious consideration. The appellant's submission is that SAMMAAN is part of the corporate name of the appellant and cannot, therefore, be said to be infringing, in view of Section 29(5) of the Trade Marks Act. Extrapolating from this, and invoking ***Cipla***, it is sought to be contended that if the mark is protected by Section 29(5), it cannot be injuncted by invoking the preceding sub-sections of

Section 29. The extent to which the use of SAMMAAN by the appellants transcends its mere use as part of the appellant's corporate name, and, consequently, the extent to which the appellant can, if at all, be injuncted from using it, would also become relevant.

(ix) Juxtaposed with these issues, the consideration of the competing prejudice to which the appellants, and the respondent, would be subjected, if the impugned judgement of the learned Single Judge were, or were not, to be permitted to immediately take effect, would also have to be addressed. The fact that the appellants have been using "Sammaan" as part of their moniker, within the meaning of Section 2(c)[26] of the Trade Marks Act, since October 2023, to the knowledge of the respondent, and have been, admittedly, commercially using the mark since July 2024, would also have to be taken into account while assessing the considerations of balance of convenience and irreparable loss. The extent to which the "risk and peril" argument can justify grant of an interlocutory injunction against the appellants, in an action filed by the respondent nearly a year after the first cease and desist notice issued by the respondent to the appellants, and at least four months after commercial use of the mark by the appellants had, to the knowledge of the respondent, commenced, would also have to be considered.

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[26] **2. Definitions and interpretation**

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(c) "associated trade marks" means a trade marks deemed to be, or requited to be, registered as associated trade marks under this Act;

32. Needless to say, however, the consideration of all these aspects has to be within the four corners of ***Wander***.

33. We do not intend to venture any tentative view on these aspects at this stage, so as not to prejudice either side when the appeal is heard.

34. However, keeping in mind, *inter alia,* the fact that:

(i) the appellants have been using "Sammaan" as part of their domain name since October 2023 and commercially as part of their marks at least since May 2024, to the knowledge of the respondent,

(ii) even after filing of their suits in October 2024, there was no injunction in favour of the respondents till the passing of the impugned judgement by the learned Single Judge on 10 February 2025,

(iii) immediate enforcement of the impugned judgement is obviously likely to result in prejudice to the appellants who would forthwith have to change their word mark, device marks and even corporate name, in which name the appellants have obtained RBI clearance, ROC registration, and GST registration, among others, and as, in view of the various issues that arise for consideration as enumerated in para 31 *supra,* it would be premature for this Court to opine, even *prima facie*, on the merits of the rival contentions with any degree of finality, we are of the opinion that the interests of justice would be best subserved by setting down the appeal for hearing on a

fixed date and time, and, in the meanwhile, continuing the *status quo* granted by us on 13 February 2025, till disposal of this appeal.

35. At the same time, some protection against likelihood of confusion has to be granted, in the interregnum.

36. For these reasons, we dispose of CM Appl. 8864/2025 and CM Appl. 8869/2025 in the following terms:

(i) *Status quo*, as directed by us on 13 February 2025, shall continue till disposal of the present appeals. Till then, therefore, the operation of the impugned judgement of the learned Single Judge shall stand stayed.

(ii) The appellants would be required, however, to include, in all their advertisements and promotional campaigns, whether physical or virtual, the caption "Formerly known as Indiabulls", with the earlier Indiabulls logo prominently visible, so as to clearly convey, to the consumer, that the appellants are merely Indiabulls Companies, rechristened.

(iii) Additionally, in their advertisements and promotional campaigns, the appellants would be required to include a note/caption "**We have no connection with Svamaan Financial Services Pvt Ltd**", so as to be clearly visible to the consumer. This, in our view, would sufficiently assuage the

respondent's apprehension that, by use of the SAMMAAN marks, the appellants may ride on the respondent's reputation, by confusing consumers.

(iv) Stipulations (ii) and (iii) *supra* would apply after four weeks from today, till which time the presently existing advertisements and promotional campaigns may continue to be used. This is keeping in mind the fact that the appellants may have to be given reasonable time to modify their advertisements and promotional campaigns.

37. List the appeals for hearing and disposal on 21 April 2025 at 2.30 pm. Each side (which would include all learned Counsel) would be given 45 minutes, and no more, to complete their submissions, with 15 minutes for rejoinder.

38. At least one week in advance, each side would place on record written submissions, not exceeding 5 pages, accompanied by duly indexed compilations of the judicial authorities on which they seek to rely, after exchanging copies with all other learned Counsel. Arguments on points not contained in the submissions would not be permitted.

39. No adjournment would ordinarily be granted on 21 April 2025.

40. CM Appl. 8864/2025 and CM Appl. 8869/2025 stand disposed of accordingly.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 18, 2025
dsn

Click here to check corrigendum, if any