CNR No : HCBM020257442019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 2372 OF 2025
IN
COMMERCIAL IP SUIT NO. 279 OF 2020

Sky Enterprise Private Limited	...Applicant/ Plaintiff
In the matter between	
Sky Enterprise Private Limited	...Plaintiff
Versus	
Abaad Masala & Co.	...Defendant

Mr. Sanjeev Singh *a/w Shivani R. Bindra & Shailesh Rai for Plaintiff.*

Mr. Anand Mohan*a/w Himanshu V., Pooja Shah for Defendant.*

CORAM: SOMASEKHAR SUNDARESAN, J.
DATE: AUGUST 3, 2026

Judgement:

Context and Factual Background:

1. This Interim Application (L) No. 2372 of 2025 has been filed invoking provisions of Order XXXIX Rule 2A of the Code of Civil Procedure ("***CPC***"), alleging contempt and wilful disobedience of an order dated January 8, 2020, ("***Interim Order***"), passed by a Learned Single Judge of this Court, imposing

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certain restraints on the Defendant, Abaad Masala & Co. ("***Abaad***"), to protect the Plaintiff, Sky Enterprise Private Ltd. ("***Sky***"). Specifically, the restraint imposed, reads thus:

> *18.* ***Accordingly, the Plaintiff has made out a case for leave under Clause XIV of the Letter Patent and an interim injunction****. The Leave Petition is allowed.* ***The Defendant is restrained by an interim injunction from advertising or displaying*** *or* ***using directly or indirectly the impugned trademarks*** *'White Chinese Pepper Masala' and 'Black Chinese Pepper Masala'* ***or any other identical or deceptively similar trademark or words in their peculiar combination in connection with its goods****. The* ***Defendant is also restrained by an interim injunction from passing-off its goods*** *as those of the Plaintiff* ***by using the words 'White Chinese Pepper Masala' or 'Black Chinese Pepper Masala' or any other identical or deceptively similar trademark/s or words in their peculiar combination****. The Interim Application is disposed of accordingly.*
>
> ***[Emphasis Supplied]***

2. Commercial IP Suit No. 279 of 2020 is a Suit for infringement of Sky's registered trademarks as also passing off of Abaad's products by using marks that are deceptively similar to Sky's products. Sky is engaged in the trade and business of processing, manufacturing and marketing of masala powders, spices, condiments, seasoning and allied goods. Sky is a Registered Proprietor of the trademark "Star Zing" both as a label mark and a word mark, as well as various other marks, with or without the words "Star Zing" such as 'White Chinese Pepper Curry Powder', 'White Chinese Pepper Seasoning', 'Black Chinese Pepper Curry Powder', 'Black Chinese Masala', 'White Chinese Pepper

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Masala', 'Black Chinese Pepper Masala' and 'White Chinese Masala', all in Class 30, registered in 2016-2017. These marks are used for marketing different masala powders of the Plaintiff. Sky has also enjoyed word marks such as 'Star Zing White Chinese Pepper Masala', 'Star Zing Black Chinese Pepper Masala', 'Star Zing Black Chinese Masala', which were registered in 2012.

3. The Learned Single Judge, while passing the Interim Order, noted that each individual word forming part of the registered Trade Mark may well have been a generic or descriptive word over which proprietary rights could not be claimed, but no rival trader ought to use the particular distinctive combination or order in which Sky uses those words in its registered Trade Mark to distinguish its goods. The Learned Single Judge also bore in mind that the particular combination and order are not generally used in the trade for describing the character or quality of goods.

4. The Interim Order went on to even give the example that a rival trader may perhaps use a description of 'Pepper Masala' or 'Chinese Masala' or 'Black Masala'. However, a description of the goods as 'White Chinese Pepper Masala' 'Black Chinese Pepper Masala', using the very same combination and order of words which constitute Sky's registered trade marks, could not be permissible. It was observed that Sky's trade marks had come to acquire a distinctive reputation and association with Sky's goods and no others. The

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Learned Single Judge was pleased to find that the trademarks 'Star Zing White Chinese Pepper Masala' and 'Star Zing Black Chinese Pepper Masala', had been registered way back in 2012 and that Sky's turnover has progressively and exponentially grown over the years. The Learned Single Judge repelled the contention that such registration was *ex facie* illegal, fraudulent or shocking the conscience of the Court by holding that the peculiar combination and order was distinctive and had acquired a secondary meaning, to enable registration.

5. Abaad's use of words such as 'White Chinese Pepper Masala' and 'Black Chinese Pepper Masala' was not seen as a *bona fide* use. Abaad, a rival and breakaway faction from the same family as the promoters of Sky, was using 'Star King' as a prefix to 'White Chinese Pepper Masala' and 'Black Chinese Pepper Masala'. The use of 'Star King' that is so similar to 'Star Zing' was seen as a *prima facie* demonstration of dishonestly preying on the reputation and goodwill of Sky's registered Trade Mark framework involving 'Star Zing White Chinese Pepper Masala' and 'Star Zing Black Chinese Pepper Masala'.

6. After the Interim Order, Abaad moved on to using 'Frize' in place of 'Star King'. However, Abaad adopted 'White Spicy Pepper Masala' and 'Black Spicy Pepper Masala', which is assailed by Sky as deliberate and continued usage of phonetically and visually similar marks that constitute a violation of

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the Interim Order, which prohibited usage of marks that are deceptively similar to Sky's registered marks.

Contentions of Parties:

7. Mr. Sanjeev Singh, Learned Advocate on behalf of Sky would submit that Abaad's use of the word 'Spicy' to replace 'Chinese' and that too with a trade dress that is deceptively similar to the trade dress of Sky, is wilful disobedience of the Interim Order. Mr. Singh would submit that Abaad is meant to keep a "safe distance" when faced with the Interim Order. Instead, Abaad is deliberately adopting a contumacious conduct, demonstrating disregard for the real intent and import of the Interim Order. It is contended that substantial elements, including colour schemes, design motifs, packaging, font style, word arrangements and graphic elements are being replicated, which literally exacerbates the potential for customer deception and confusion and represents a colourable imitation of Sky's trademark label, trade dress and representation. Minimal alterations are lip service to purported compliance with the Interim Order and Abaad has demonstrated a clear desire to adopt a strategy of pursuing a confusingly similar mark.

8. A comparative chart of Sky's and Abaad's products is tabulated in Paragraph 7 of the Interim Application, which is extracted below:

> *7. That the* ***defendant has replicated substantial elements of plaintiff's trade dress, including color schemes, design motifs, and packaging layout, such as font style,***

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word arrangement, and graphic elements. This replication not only exacerbates the potential for consumer deception and confusion but also constitutes a colorable imitation of our client's trademarks/label/trade dress/representation. It is submitted that minimal alterations amount to a deliberate attempt to copy the plaintiff's intellectual property and mislead the public. The said conduct of defendant clearly results in trademark infringement, passing off, and unfair competition, all with the clear intent to unfairly benefit from the goodwill and reputation that plaintiff has painstakingly built and the said actions reflect a calculated effort to exploit plaintiff's established brand, market presence and success by adopting a confusingly similar mark and trade dress. Below is a presentation of both the trade marks/ labels/ dress/ representations for comparative purposes:





[Emphasis Supplied]

9. In sharp contrast, Mr. Anand Mohan, Learned Advocate on behalf of the Abaad would submit that there is no breach at all of the Interim Order, much less any wilful, deliberate or contumacious disobedience of it, to warrant any intervention pursuant to Order XXXIX Rule 2A of the CPC. Mr. Mohan would submit that Sky had never brought up trade dress in the first instance in the pleadings in the Plaint and it cannot expand the scope of the Suit through the Interim Application. He would also submit that there can be no confusion or

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deception since Abaad's presence is in the wholesale business-to-business (B2B) space while Sky is in the retail market.

10. Mr. Mohan would submit that in the contempt jurisdiction, the Court must not enter into questions which have not been dealt with and decided in the Interim Order, of which contempt is alleged. Therefore, he would submit, the scope of enquiry for the captioned Interim Application, ought to be strictly confined to the word marks which were subject matter of protection in the Interim Order, without being drawn into the trade dress, packaging or labels, which were never part of the scope of the Interim Order. That apart, Mr. Mohan would submit, Abaad has voluntarily sought to obviate controversy by adopting further changes to its packaging, which have been brought on record by way of an affidavit.

11. Mr. Mohan would submit that because the Interim Order restrained Abaad from using the words 'White Chinese Pepper Masala' and 'Black Chinese Pepper Masala' or any mark identical to or deceptively similar to the aforesaid two marks, the new marks 'Frize White Spicy Pepper Masala' and 'Frize Black Spicy Pepper Masala' adopted after the Interim Order are completely different from Sky's marks. Any intervention in the contempt jurisdiction would lead to the grant of excessively broad monopolies over common, non-proprietary words comprised in Sky's registered marks.

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12. Mr. Mohan would submit that the Interim Order must be read in its entirety and in proper context, because the order itself contemplates that the individual integers and words are non-proprietary in nature and what has been protected is only the unique and peculiar four-word combination, thereby granting only a limited and circumscribed monopoly. Therefore, Sky's marks are inherently vulnerable and enjoy a very narrow protection, which must be borne in mind in testing whether Abaad's new marks are in breach of the Interim Order.

13. In reliance on the judgement of the Supreme Court in ***U. N. Bora***[1], Mr. Mohan submitted that where two views are possible, the element of wilfulness would vanish, and where two interpretations are possible, contempt proceedings should not be maintainable. The very fact that Abaad is now a registered proprietor of the new marks, Mr. Mohan would submit, too would need to be borne in mind.

Analysis and Findings

14. Against this background, I have examined the contentions by the Learned Advocates, with whose assistance, I have examined the material on record. The constituents, promoters and partners of the parties are part of a wider family with the factions now in commercial rivalry. At the threshold, the

1 *Dr. U. N. Bora, Ex. Chief Executive Officer & Others. v. Assam Roller Flour Mills Association and Anr. – 2022 (1) SCC 101.*

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Interim Order not having been set aside or stayed, is binding as a protective interlocutory measure.

15. Against this backdrop, when one takes a holistic view of the factual matrix, the following facets stand out:

A] The Interim Order found in favour of the combination of otherwise generic and descriptive words resulting in distinctiveness that is worthy of protection. While it may be arguable that the individual constituents of Sky's marks being generic affords a less robust or more vulnerable degree of protection, the fact is that the Interim Order has clearly found that in that combination, there exists intellectual property worthy of registered protection. Therefore, the Interim Order has directed Abaad to steer clear of the registered marks of Sky, which is a binding order;

B] Abaad has indeed taken steps to change its approach to its marks. 'Star Zing' has been replaced by 'Frize'; 'Chinese' is replaced by 'Spicy'; with the first letter 'White' and the last two letters 'Pepper Masala' remaining the same. The expectation by Abaad is that these changes are remarkable changes that address the potential for confusion that had been perceived and found in the Interim Order;

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C] The word 'Chinese' and the word 'Spicy' are phonetically similar in such a manner that the distinction is lost in the wider longer name that is registered. Indeed, 'Frize' is written differently from 'Star Zing' and the earlier 'Star King' and the involvement of 'Z' in that word is not something that has been pressed into service by Mr. Singh in assailing the difference being one without a distinctiveness. The average human mind can even read sentences entirely comprised of individually jumbled words, where the first letter and the last letter of the words are kept intact with the contents in between them being carefully jumbled and misspelt in a manner that primes the brain to read what it expects to read. This is called the "transposed letter effect" where misspelt words are accurately read – for example "*jugde*" is read by the mind as "*judge*" or "*trail*" is read as "*trial*" depending on the context of the sentence in which the mis-spelling is placed. The careful placement of '*Spicy*' in place of '*Chinese*' with the lettering of the four-letter mark starting with "White" or "Black" and ending with "Pepper Masala" is, to my mind, evidently non-distinctive;

D] In my view, when one takes an overall view of the revised mark and juxtaposes it with the intent behind the interlocutory protection, the changes effected by Abaad do not appear to address the concerns addressed in the Interim Order. The approach is truly provocative even

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if it would be more challenging to call it truly contumacious. The attempt appears to have been to test the limits of the requirement to comply with the Interim Order. This is evidently a deliberate attempt to come as close as possible to precisely what has been interdicted in the Interim Order. It appears to me that to a person of average intelligence with imperfect recollection, the revised marks would not be distinctively different, with striking visual similarity and the problematic phrasing of replacing a two-syllable word 'Chinese' with another two-syllable word 'Spicy' with phonetic proximity that comes very close to the very conduct that has been prohibited in the Interim Order;

E] Interim orders can be rendered ineffective if there is lip service to the prohibitions directed, undermining the objective of preservation of the subject matter of the Suit, and rendering them meaningless. Indeed, when faced with a situation such as the current one, one would expect Abaad to keep a "*safe distance*", as rightly pointed out by Mr. Singh. The changes are indistinctive and it is in this context that I have examined the contentious element of trade dress. While the Plaint in the Suit may not have invoked the element of trade dress at all, one cannot help notice that changes being made to the trade dress in order to compensate for the minor revisions made to the trade marks would constitute a contrivance or a device to circumvent the objective

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underlying the Interim Order. The scope of the Interim Order is to prohibit the infringement and passing off, directly or indirectly, found on a *prima facie* basis. Use of such a trade dress would constitute an indirect way of achieving what is prohibited from being done directly;

F] The founders of Abaad and of Sky are indeed related and from the same family. They transact in the very same trade ecosystem and work in similar trade channels. The *alibi* that Abaad is only in the B2B space does not move the needle in Abaad's favour because in response to a query from the Bench about the unit size of the packaging, it was candidly stated that the packages are in units of half a kilogram, which is a retail pack size. Therefore, while one could argue that the bulk of retail units are meant to be sold in a wholesale manner by Abaad while Sky is in the retail space, this is again a distinction without a difference, and in fact underlines another unreasonable distinction sought to be presented, that does not inspire confidence and in fact undermines confidence in the defence;

G] Evidently, Abaad too applied to register 'Frize White Spicy Pepper Masala' and 'Frize Black Spicy Pepper Masala' and obtained registration in January 2025, five years after the Interim Order. Admittedly, there was no disclosure to the Registrar about the existence of the Interim Order. Indeed, rectification applications have been filed by Sky and are

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pending before this Court. *Prima facie*, a registration obtained without disclosure of the Interim Order would not have given the Registrar any opportunity to examine the very question that has now arisen in this Interim Application, and therefore, despite such registration, applying the law declared by the Full Bench in ***Lupin***[2], in my view, the registration would not come to the aid of Abaad to prohibit review of the combination used by Abaad when adjudicating this Interim Application; and

H] This is not a case of an infringement being alleged against a Defendant, who simply points to registration of the impugned marks to invoke the statutory protection from being assailed. The registration was effected after the Interim Order was passed and admittedly without notice of the existence of the Interim Order to the Registrar. Sky having missed out on the advertisement to initiate opposition proceedings too does not assist Abaad, because getting a surreptitious registration without disclosing the Interim Order to the Registrar, and that too when mediation is on, fits the standards of deceit in securing the registration and shocking the Court's conscience on a *prima facie* basis at this stage. Therefore, necessary interventions in the interest of justice are not barred in terms of the law declared in ***Lupin***. Such remedies would also

2 *Lupin Ltd. v. Johnson and Johnson* – ***(2014) SCC OnLine Bom 4596***

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further the object and purpose of Order XXXIX Rule 2A i.e. to further and preserve the enforcement of the Interim Order in exercise of the Court's inherent powers under Section 151 of the CPC rather than adopting the measures of attachment of property or civil imprisonment, which are not an end in themselves.

Relevant Case Law and Application to Facts:

Safe Distance Principle

16. The safe distance rule is indeed well recognised in situations such as this – where the need arises of having to examine in the contempt jurisdiction whether tiny changes made are truly compliant with the orders of which contempt is alleged. This principle is well articulated by a Learned Single Judge of this Court in ***Pidilite Industries***[3], which would lends itself to application in this case.

Deceptive Similarity

17. A number of submissions about the generic nature of the integers of the competing marks have been made on Abaad's behalf. I must be mindful of the fact that this is an Interim Application under Order XXXIX Rule 2A and the binding Interim Order is in existence. Mr. Singh's reliance on the decision of a Learned Single Judge of Delhi High Court in ***Rana Steels***[4] is appropriate – the

3 *Pidilite Industries Ltd. v. Raghunath Chemicals & Ors. in* ***Contempt Petition (L) No.30589 of 2021 in Suit No. 729 of 2015 order dtd. June 30, 2023***.

4 *Rana Steels v. Ran India Steels Pvt Ltd. –* ***2010 SCC Online Del 139***

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Court was presented with examining if use of trade marks "RANATOR" and "RAN INDIA" violated an interim order protecting the trade mark "RANA". Likewise, reliance on the view of the Madras High Court in the case of ***Apex Laboratories***[5], where a Learned Single Judge repelled the use of the mark 'ZENKO-VIT', which was found to be deceptively and phonetically similar to the registered mark 'ZINCOVIT', is appropriate.

18. In my view, as stated above, just replacing one word with a phonetically similar word in four-letter and five-letter trademarks that appear similar, and further compensating for such change by making other indirect changes, and even registering it, points to the adoption being primarily with view to exploit the commercial goodwill achieved by Sky.

19. The changes effected by Abaad are *de minimis* fixes that do not make any material change to the subject matter of protection in the Interim Order. The words "*using directly or indirectly the impugned trademarks 'White Chinese Pepper Masala' and 'Black Chinese Pepper Masala' or any other identical or deceptively similar trademark or words in their peculiar combination in connection with its goods*" used in the Interim Order would be rendered meaningless if the changes made by Abaad are to be considered adequate and responsive to the Interim Order.

5 *M/s Apex Laboratories Pvt. Ltd. v. Axis Life Sciences* ***order dtd. January 3, 2022 in Civil Suit No.254 of 2020.***

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20. The celebrated judgement of the Supreme Court in ***Ruston***[6] would be most appropriate in the facts of this case – in particular, Paragraphs 7, 8 and 9 of the judgement, which read thus:

> *7. In an action for infringement where the defendant's trade mark is identical with the plaintiff's mark, the Court will not enquire whether the infringement is such as is likely to deceive or cause confusion. But where the alleged infringement consists of using not the exact mark on the register, but something similar to it, the test of infringement is the same as in an action for passing-off. In other words, the test as to likelihood of confusion or deception arising from similarity of marks is the same both in infringement and passing-off actions.*
>
> *8. In the present case the High Court has found that there is a deceptive resemblance between the word "RUSTON" and the word "RUSTAM" and therefore the use of the bare word "RUSTAM" constituted infringement of the plaintiff's trade mark "RUSTON". The respondent has not brought an appeal against the judgment of the High Court on this point and it is, therefore, not open to him to challenge that finding. If the respondent's trade mark is deceptively similar to that of the appellant the fact that the word "INDIA" is added to the respondent's trade mark is of no consequence and the appellant is entitled to succeed in its action for infringement of its trade mark.*
>
> *9. We are accordingly of the opinion that this appeal should be allowed and the appellant should be granted a decree restraining the respondents by a permanent injunction from infringing the plaintiff's trade mark "RUSTON" and from using it in connection with the engines, machinery and accessories manufactured and sold by it under the trade mark of "RUSTAM" or "RUSTAM INDIA". The appellant is also entitled to an injunction restraining the respondent and its agents from selling or*

6 *Ruston & Hornsby Ltd. v. Zamindara Engineering Co. – (1969) 2 SCC 727.*

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advertising for sale of engines, machinery or accessories under the name of "RUSTAM" or "RUSTAM INDIA". The appellant is also granted a decree for nominal damages to the extent of Rs 100. The appellant is further entitled to an order calling upon the respondent to deliver to the appellant "price-lists, bills, invoices and other advertising material bearing the mark "RUSTAM" or "RUSTAM INDIA". The appeal is allowed with costs to the above extent.

[Emphasis Supplied]

21. Applying the aforesaid principles, in my view, there is a deceptive similarity between Abaad's modified marks and Sky's registered marks. This is what attracts the 'safe distance' principle, necessitating intervention.

Order XXXIX Rule 2A vs. Contempt Jurisdiction:

22. Having made the analysis as above, I have to be mindful of the fact that when assessing an appropriate measure under Order XXXIX Rule 2A, elements of the law applicable to contempt must be borne in mind. The parties are from the same family and have attempted mediation too. In family disputes, better commercial sense takes longer to prevail.

23. The provisions of Order XXXIX Rule 2A read thus:

2A. Consequence of disobedience or breach of injunction –

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to

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be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

[Emphasis Supplied]

24. While the import of Order XXXIX Rule 2A is that of disobedience of an interlocutory order passed under Order XXXIX Rule 1 and Rule 2, it is a jurisdiction conferred on civil courts to address the breach of their interim orders, as opposed to the contempt jurisdiction of the Courts of Record flowing from their inherent powers of contempt under Article 215 of the Constitution of India read with the Contempt of Courts Act, 1971 ("***CC Act***"). It must be remembered that every order passed under Order XXXIX Rule 2A is appealable under Section 104 of the CPC read with Order XLIII Rule 1(r) while only orders exercising jurisdiction to impose punishment under the CC Act are appealable under Section 19 of that legislation.

25. The evident objective of Order XXXIX Rule 2A is to ensure that interim orders, passed for preserving the subject matter of the Suit, are indeed

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honoured in order to enable the full protection of the rule of law in society. The underlying principle of the real objective of Order XXXIX Rule 2A is well stated in ***Sitaram***[7] and in particular paragraphs 2 and 3 are relevant, which reads thus :

> *"2. .....The purpose of Order 39, Rule 2-A of the CPC is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21. Rule 32 of the CPC which provide for the execution of a decree for injunction The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison.*
>
> *3. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari, AIR 1961 SC 221 : while dealing with O. 39, Rule 2(iii) of the CPC (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of O. 21. R. 32 and of O. 39, R. 2(iii) of the CPC which is similar to Order 39. R. 2-A. This curative function and purpose of Rule 2-A of Order 39 of the CPC is also evident from the provision in Rule 2-A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. ....."*
>
> ***[Emphasis Supplied]***

7 *Sitaram v. Ganesh Das – 1973 SCC OnLine Allahabad 296*

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26. Even a plain reading of Order XXXIX Rule 2A would indicate that the objective of the provision is to confer on the Court a coercive power to procure compliance with the interim order that has been violated. Rule 2A(1) provides for the measure of attachment of property and to "also" direct civil imprisonment for a period of six months. It is the imposition of punitive nature of these measures of attachment and imprisonment that attract the higher standard of proof beyond reasonable doubt on the premise that the import is quasi-criminal in nature. On the other hand, if the Court is satisfied that there has indeed been a breach of the interlocutory order, the Court has the power to direct a remedy under Section 151 of the CPC instead of inflicting penal injury, and in that regard, the very civil standard deployed in passing the Interim Order would be considered to determine if there has been a breach of explicit obligations found in the Interim Order.

27. In ***Samee Khan***[8], the Supreme Court has declared that the words "and may also order" in Order XXXIX Rule 2A would indicate that the power to send a person to prison is a power additional to the power to attach property and it is not necessary to send a person to prison as a necessary consequence of finding of a violation. Moreover, on the facet of attachment, the Supreme Court declared that the attachment is only a means of securing compliance and in aid of disposal of the property if the non-compliance continues for

8 *Samee Khan v. Bindu Khan* – ***AIR 1998 Supreme Court 2765***

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beyond one year. The attachment is not an end in itself. The following extract is noteworthy:

> *'For what purpose is the property to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment, the court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile, the attachment also would cease. Thus even under Order 39 Rule 2-A, the attachment is a mode to compel the opposite party to obey the order of injunction."*
>
> ***[Emphasis Supplied]***

28. In my view, in the facts of this case, considering this is a family dispute, the more appropriate course of action is to issue remedial directions to further the cause of the Interim Order and to secure compliance with the Interim Order rather than send the founder of Abaad to civil prison.

29. Indeed, a Learned Single Judge of the Madras High Court, in ***HUL-Roopa***[9], sentenced the violator of an interim order to imprisonment and ordered attachment of his property in exercise of powers under Order XXXIX Rule 2A of the CPC. Mr. Singh would commend this ruling for application to this case – more from the perspective of the absence of *bona fides* in a registration obtained by suppression of the Interim Order from the Registrar.

9 *Hindustan Unilever Ltd. vs. Roopa Industries and Anr.* – ***Judgement dated November 26, 2025 in A.No. 1861 of 2025 in OA No. 489 of 2020 in CS o. 427 of 2015***

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In ***HUL-Roopa***, the violator had been injuncted from using the trade mark "*Double Whale*" which had been found to be deceptively similar to the mark "*Active Wheel*" in its manner of depiction. A new trade mark titled "*Double Wheel*" was created and even registered when the injunction was pending. This was held to be contumacious conduct since it was found that in conscious circumvention of the interim order, an even more deceptively similar mark was created and registered, necessitating bringing down the strong arm of the law.

30. In the matter in hand, Abaad has attempted to make changes to its mark in purported compliance with the Interim Order. Indeed, the registration of the new mark was effected behind the back of Sky during mediation and without informing the Registrar about the Interim Order. However, for purposes of Order XXXIX Rule 2A, in my view it is this judgement that has returned a finding that the new marks of Abaad do not meet the standard of compliance expected in the Interim Order and that Abaad ought to have, but has not, maintained safe distance from Sky's registered marks.

31. While the captioned Interim Application has also thrown in references to the CC Act, in essence and substance, this is nothing but an application under Order XXXIX Rule 2A of the CPC. I am treating it as such, and not treating this as a Contempt Petition. Litigants and their advocates routinely

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conflate the two jurisdictions – Order XXXIX Rule 2A of the CPC and the CC Act – but while they may be "akin" to each other, they are simply not the same and interchangeable in totality. This is precisely where often there is a conflation of the principles to be borne in mind when considering the penal measure with the principles to be borne in mind when considering the occurrence of a violation of an interim order.

32. It is well settled in a catena of judgements that the standard of proof that is applicable in the contempt jurisdiction is the criminal law standard of beyond reasonable doubt and that the definition of the term "civil contempt" under Section 2(b) of the CC Act requires discernible "evil intention" and mala fides. This is a safeguard declared in law bearing in mind that the contempt jurisdiction is a serious power vested directly in this Court as a Court of Record by virtue of Article 215 of the Constitution of India and further regulated only by the CC Act. It is a unique and extraordinary jurisdiction not vested in all civil courts. In sharp contrast, the very objective of Order XXXIX Rule 2A is to vest in all civil courts the coercive power to ensure that interim orders which are meant to preserve the subject matter of the suit proceedings are not lightly disobeyed and ignored. The jurisdiction under Order XXXIX Rule 2A is one that can be exercised even by civil courts that are not Courts of Record, with an appellate oversight, as explained above. Therefore, while the latter jurisdiction may be *akin* to the former, it is not identical with the former.

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FCI, Surendranath and Amazon

33. The core foundation of linking the jurisdiction under Order XXXIX Rule 2A of the CPC and the CC Act across various cases is the Supreme Court's ruling in ***FCI***[10], the relevant extracts of which, read thus:

> *38.* ***The power exercised by a court under Order 39 Rule 2-A of the Code is punitive*** *in nature,* ***akin to the power to punish for civil contempt*** *under the Contempt of Courts Act, 1971.* ***The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order****. While considering an application under Order 39 Rule 2-A,* ***the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the "order", on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility****.*
>
> *39.* ***It is shocking that the trial court had entertained an application under Order 39 Rule 2-A from a person who was not entitled to file the application, has accepted an interpretation of the order which does not flow from the order****, and has* ***created a liability where none existed****, resulting in attachment of the assets of FCI to an extent of more than Rs.1.12 crores. The order dated 15-12-2004 cannot be supported or sustained, under any circumstances.*
>
> ***[Emphasis Supplied]***

34. A close reading of ***FCI*** and its application in various decisions made under Order XXXIX Rule 2A of the CPC would indicate that it is in support of the decision not to attach property or to send the violator to prison that the

10 *Food Corporation of India v. Sukh Deo Prasad* – ***(2009) 5 SCC 665***

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principle of the two jurisdictions being "*akin*" to each other, has been brought to bear. In ***FCI***, the Supreme Court has ruled that one cannot extrapolate and infer from an interim order an obligation to do or refrain from doing something that is not actually mentioned in the order, and then consider the heavy hand of attachment, sale and imprisonment. Surmise, suspicion and conjecture cannot lead to inferring obligations that are not actually spelt out in the interim order.

35. In my view the following extracted observations of the Supreme Court in ***Surendranath***[11] (not cited by either side) are noteworthy:

> *7. For finding a person guilty of wilful disobedience of the order under Order 39 Rule 2-A CPC there has to be not mere "disobedience" but it should be a "wilful disobedience". The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "wilful disobedience". As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the Commissioner has noted is that "non-removal of the hoarding" displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one.*
>
> *8. In the facts and circumstances of the case, we do not find any "wilful disobedience" on the part of the appellant warranting invoking Order 39 Rule 2-A CPC and sentencing the appellant to one week's civil imprisonment.*
>
> *[Emphasis Supplied]*

11 *UC Surendranath v. Mambally's Bakery – (2019) 20 SCC 666*

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36. The above extracts indicate an element of "wilful" as a qualifier to "disobedience" and indicate that because of the disobedience having to be wilful, the Court must look at it in the nature of criminal *liability* and the Court has to be satisfied that the disobedience is wilful. The view in ***Surendranath*** along with the oft-quoted Paragraph 38 of ***FCI*** (extracted above) was pointed out to another bench of the Supreme Court in ***Amazon***[12] – the following extracts are noteworthy:

> *60. Mr Nankani cited the judgment of Food Corpn. of India v. Sukh Deo Prasad [Food Corpn. of India v. Sukh Deo Prasad, (2009) 5 SCC 665 : (2009) 2 SCC (Civ) 639] , in which he relied upon the following observations of this Court : (SCC p. 677, para 38)*
>
> *******
>
> *He also relied upon the judgment of U.C. Surendranath v. Mambally's Bakery [U.C. Surendranath v. Mambally's Bakery, (2019) 20 SCC 666] , and para 7 in particular, which states : (SCC p. 668)*
>
> *******
>
> *61. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not "mere disobedience" but "wilful disobedience". We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under*

12 *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.* – ***(2022) 1 SCC 209***

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Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature. Orders passed under Section 17(2) of the Arbitration Act, using the power contained in Order 39 Rule 2-A are, therefore, properly referable only to the Arbitration Act. Neither of the aforesaid judgments are an authority for any proposition of law to the contrary.

[Footnote to this paragraph in the Judgement – extracted here]:

When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. This also shows the object of Order 39 Rule 2-A is primarily to enforce orders of interim injunction.

[Emphasis Supplied]

37. The view in ***Amazon*** is that the legislature did not introduce the term "wilful" in Order XXXIX Rule 2A as it has in Section 2(b) of the Contempt of Courts, Act, 1971. Therefore, doubts were expressed about the observation in this regard in ***Surendranath***. The Supreme Court did not actually make a reference to a larger bench since it was dealing with disobedience of an interim order passed by an Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996, although that provision was stated to be referable to Order XXXIX Rule 2A of the CPC.

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38. Be that as it may, the observations in ***Surendranath*** extracted above show that the Court's observations were not a ratio about the standard of proof for discerning a violation, but were observations made to show the absence of deliberateness of a nature warranting imprisonment. It is a judgement akin to ***FCI***, holding that the Court should be satisfied that the disobedience was deliberate, in order to impose the serious sanction of taking away personal liberty by way of civil imprisonment, which was the subject matter of the challenge in ***Surendranath***.

39. For completeness, since ***Surendranath*** has used the word "wilful" in a case involving Order XXXIX Rule 2A of the CPC, the English meaning of the term "wilful" is set out below:

> *Oxford Dictionary:*
>
> *[something] done deliberately although the person doing it knows that it is wrong; doing exactly what you want, no matter what other people think or say*
>
> *Cambridge Dictionary:*
>
> *(of something bad) done intentionally or (of a person) determined to do exactly as you want, even if you know it is wrong:*
>
> *[Emphasis Supplied]*

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40. In my view, the use of the word "*wilful*" by the Supreme Court in ***Surendranath*** does not, for every purpose, convert Order XXXIX Rule 2A of the CPC into a provision providing for a criminal sanction. In fact, there are many usages of terms similar to "wilful", involving state of mind, even in civil law provisions, based on which interventions are legislated. Such provisions would not automatically become criminal law provisions. For example, the Reserve Bank of India's Master Circular on *wilful defaulters* provides for serious civil consequences including keeping such defaulters away from the banking system. It is well known that many references to terms that would find mention in criminal law are also found in civil law provisions – for example, "*fraud*", "*price manipulation*", "*deceit*", "*bid rigging*", "*cartelisation*" and "*insider trading*". Merely because an element of deliberation and conscious violation is involved, and both civil and criminal sanctions may be provided for, it would not follow that provisions themselves would attract criminal law standard of proof even in civil proceedings.

41. The Trade Marks Act, 1999 and judgements declaring the law therein (the very law under which these proceedings are filed), refer to "deceptive similarity", "fraudulent registration" and the like. That would not automatically mean that the standard of proof to be applied to even discern deceptive similarity would be the criminal law standard of beyond reasonable doubt. Therefore, the mere use of the word "wilful" in ***Surendranath*** would

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not convert interventions that are not punitive, and are only interventions that have only civil consequences, into criminal sanctions necessitating the criminal standard of proof. It must not be forgotten that Order XXXIX Rule 2A is a part of the CPC, which deals with due process for conduct of civil suits. The sanction for deliberate violation of an interim order is set out inherently in that provision. This framework, while held to be "*akin*" to the contempt jurisdiction, does not automatically make the provision a criminal law provision.

Circumstantial Evidence not Standard of Proof

42. Finally, I must also note that even in the criminal contempt jurisdiction, in ***Rajendra Sail***[13] the Supreme Court took a view that "preponderant circumstances" when examined objectively, led to a conclusion that a contemptuous speech was made. In ***National Fertilizer***[14], this was explained further by another bench of the Supreme Court to mean that the criminal law standard of proof in the contempt jurisdiction would not be disturbed by taking a preponderant view of circumstances. What this means in essence is that even under criminal law, circumstantial evidence can be brought to bear to convict and sentence for a crime, but when enforcing criminal law, the standard of beyond reasonable doubt would have to be deployed to arrive at a finding of criminal conduct.

13 *Rajendra Sail v. MP High Court Bar Association* – **(2005) 6 SCC 109**
14 *National Fertilizers Ltd. v. Tuncay Alankus* – **(2013) 9 SCC 600**

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43. Even in criminal prosecution, the standard of proof is one of proof *beyond reasonable doubt* and not of a standard of *beyond every possible doubt*. For a crime as charged, the doubts have to be reasonable for the criminal charge not to stick.

Interpretation of Judgements vs. Statute:

44. The judgement in ***FCI*** must also be read bearing in mind principles of interpretation of judgements as opposed to principles on interpretation of statute.

45. In ***Bahadur Singh***[15], the Supreme Court held as follows:

> *"9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] Lord MacDermott observed: (All ER p. 14 C-D) "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge...."*

15 *Union of India v. Major Bahadur Singh – (2006) 1 SCC 368*

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[Emphasis Supplied]

46. In ***Ravi Ranjan***[16], what a judgement is a precedent for, is well summarised by the Supreme Court in the following words:

> *41. It is well settled that* ***a judgment is a precedent for the issue of law that is raised and decided****. The* ***judgment has to be construed in the backdrop of the facts and circumstances*** *in which the judgment has been rendered.* ***Words, phrases and sentences in a judgment, cannot be read out of context****.* ***Nor is a judgment to be read and interpreted in the manner of a statute****. It is* ***only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say****.*
>
> ***[Emphasis Supplied]***

47. In ***FCI***, the Supreme Court clearly stated that the jurisdiction under Order XXXIX Rule 2A is *akin* to the power to *punish* for *civil contempt*. This statement was the basis to hold that one cannot infer a non-existent obligation by extrapolating from an interim order to invoke Order XXXIX Rule 2A of the CPC. It is necessary to establish that the interim order indeed contains the obligation that is alleged to have been violated. On facts, ***FCI*** dealt with a party that was not a beneficiary of the interim order of which violation was alleged (thereby lacking locus) having sought to enforce an obligation that was not even discernible from the interim order. The ruling has to be examined in that light. What ***FCI*** requires to be shown "*beyond any doubt*" is the existence

16 *Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee* – ***2022 SCC OnLine SC 568***

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of an obligation actually mentioned in the interim order. If the obligation is in existence, the proceedings under Order XXXIX Rule 2A would lie. Therefore, there should be no doubt about whether the interim order actually requires a party to do something or to refrain from doing something. Once all doubts about such existence of obligation are removed, the jurisdiction under Order XXXIX Rule 2A would be attracted.

48. For completeness, it would be appropriate to summarise the principles of law to be applied when considering an application under Order XXXIX Rule 2A of the CPC, as follows:

A] It would be necessary for the Court to identify beyond all doubt that there is indeed an obligation to do or refrain from doing some thing that is mentioned in the interim order, the violation of which has to be assessed;

B] When such an obligation is identified, the Court must examine if it has indeed been violated. The standard of proof necessary to be deployed for the finding on the alleged violation of the obligation is the civil standard of preponderance of probability, but of a high degree commensurate with the stigma attendant with violation of a Court order;

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C] The Court must remember that the objective of Order XXXIX Rule 2A of the CPC is to ensure compliance with the interim order – quite akin to the principles applicable under Order XXI, Rule 32 in relation to enforcement of a permanent injunction. Attachment of the violator's property or sending the violator to civil prison is not an end in itself. If remedial measures can be adopted to secure compliance the powers under Section 151 of the CPC may be brought to bear to achieve the same without having to attach property and inflict civil imprisonment;

D] Where it is felt that attachment of property for disposal or civil imprisonment is merited in the facts of a given case, great care and caution should be used to ensure that indeed there is no ambiguity about the existence of the obligation or its violation and that such measures are necessary to secure compliance with the interim order. For this purpose, the standard of beyond reasonable doubt may be applied to consider whether, in applying such standard, the measures of attachment and civil imprisonment are warranted; and

E] Judgements on the point have to be read in context of the factual matrix in which they were rendered and not interpreted as if the judgements were statutory provisions. Care must be taken to remember that the standard of proof applied for the *prima facie* view to direct an

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interim order was the civil standard and equity principles, and by adopting a criminal standard without regard to the measures intended to be deployed would stultify and nullify the very reason for which the interim order was passed in the first place.

Application to Facts – Directions and Measures:

49. On the factual matrix of the instant case, I have set out above the reasons for my finding that the Interim Order has been violated. To my mind there is no inferential extrapolation necessary to discern the obligation in the Interim Order that has been breached. The Interim Order clearly stipulates that Abaad must not directly or indirectly use the words '*White Chinese Pepper Masala*' or '*Black Chinese Pepper Masala*' or "*any other identical or deceptively similar trade marks or words*" in their peculiar combination. Therefore, applying ***FCI*** principles, in my view, there is a discernible and clear obligation mentioned in the Interim Order, and the finding of violation is not based on conjecture, surmise or extrapolated inference.

50. When there is without any doubt, an obligation contained in an interim order, whether such obligation has indeed been violated, would need to be tested by the civil standard of proof – undoubtedly, with a significantly higher degree of preponderance of probabilities that is commensurate with the seriousness of the charge. An allegation of violating a Court order is a serious one and the degree of preponderance has to be commensurately high. If the

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Court were to consider imposing the sanction of attachment of property or imprisonment in order to deal with the finding of such obligation having been violated, then the Court would need to bring to bear a great degree of caution in use of such coercive power as declared in ***FCI***. If one finds that the severity of these sanctions is not commensurate with the factual matrix, the Court could then have resort to the inherent remedial powers under Section 151 of the CPC and bring that to bear to preserve the objectives underlying the interim order.

51. In my view, in the facts of this case, the appropriate course of action would be to exercise the power of the Court under Section 151 of the CPC to make remedial interventions to ensure compliance by Abaad with the Interim Order and to hold Abaad to account for the financial implications of its conduct, instead of attaching Abaad's property or sending its partners to civil imprisonment.

52. As stated in ***Samee Khan***, even these sanctions are not an end in themselves, but are methods to further the same objective – of procuring compliance with an interim order. Bearing that purpose in mind, in my view, this being a family dispute, I think it appropriate to bring to bear the grace of the Court to still give family factions a chance to mend their ways rather than make them more deeply and irrationally invested in a long-term family feud

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that would come with the terrain of one family faction's proceedings resulting in a member of the rival faction being imprisoned in a commercial dispute.

53. Therefore, the jurisdiction being a continuum of the equitable jurisdiction of interim relief under Order XXXIX Rule 1 and Rule 2 of the CPC, in my view a firmer remedial measure in the form of issuing directions that would have the effect of remedying the violation and holding Abaad to account, would be more appropriate, instead of attaching property or sending the violator to prison.

54. Therefore, the following order is passed in exercise of powers under Section 151 of the CPC read with Order XXXIX Rule 2A of the CPC:

A] Pending hearing and final disposal of the Suit, Abaad is injuncted from using '*Frize White Spicy Pepper Masala*' and '*Frize Black Spicy Pepper Masala*', which variants are not adequately dissimilar to constitute compliance with the Interim Order;

B] Abaad is hereby prohibited from adopting other *de minimis* quick fixes that pay only lip service to the Interim Order, it being a clear finding in this judgement that the introduction of 'Frize' coupled with the mere replacement of 'Chinese' with 'Spicy' does not constitute compliance with the Interim Order. Any other such *de minimis* variation that does not strike a clear distinction from the trademarks

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registered by Sky is injuncted and Abaad is directed to maintain safe distance from Sky's registered marks;

C] In terms of the declarations and findings made in this judgement, Abaad is directed not to effect any other similar inconsequential variation to other registered trade marks of Sky in a bid to claim compliance with the Interim Order;

D] The partners of Abaad shall file an affidavit with audited financial information about the total sales revenues earned from the use of the aforesaid two trade marks, setting out a break-up of the same on a calendar quarterly (three-month) basis;

E] The partners of Abaad shall also provide in such affidavit, full particulars of the total quarterly inventory of products manufactured; sold; lying with distributors; and the last batch of manufacture and volume of manufacture;

F] Such affidavit shall be filed within a period of four weeks from the date of pronouncement of this judgement, with an advance copy to Sky;

G] Considering that the products are commodities, Abaad is permitted to remove the contents of any packaged products in its pending unsold inventory, whether in its possession or in the possession of its distributor network, for repacking them in packages that may bear

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newly branded trade marks that are in compliance with the Interim Order i.e. not the trade marks that merely replace “Chinese” with “Spicy” and prefix them with ‘Frize’;

H] Abaad shall destroy all the used or unused packaging material, stationery and all promotional material, if any, that bear the new marks, namely ‘Frize White Spicy Pepper Masala’ and ‘Frize Black Spicy Pepper Masala’, including taking down any advertisements and promotional material in the public domain, all of which shall be completed within a period of eight weeks from the upload of this judgement on the Court’s website;

I] In the event of non-compliance with the aforesaid directions, the properties of Abaad shall be liable to be attached by the Court Receiver of this Court to ensure compliance with disposal for continued non-compliance beyond the statutory maximum period of attachment. Appropriate operational directions shall be issued to the Court Receiver should this situation arise;

J] Sky shall intimate the office of the Court Receiver about this Order having been passed, in accordance with the deadline stipulated in the Rules. Needless to say, the activity steps to be taken by the Court Receiver shall be subject to the deadlines stipulated above.

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55. Since Sky has filed rectification proceedings, those proceedings along with this Suit shall be listed under the caption "***For Directions***" on ***August 27, 2026***. Compliance with the deadlines for activities directed above shall also be assessed on that date.

56. This being a family dispute, it is still hoped that the parties are indeed able to arrive at a commercially commonsensical and amicable resolution with a sincere attempt to stop expending precious resources on litigation.

57. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

RUTUJA RAJENDRA BORSE

Digitally signed by RUTUJA RAJENDRA BORSE
Date: 2026.08.03 16:44:04 +0530

[SOMASEKHAR SUNDARESAN, J.]

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