



2025:DHC:3619-DB



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

+ **RFA(COMM) 166/2025**

**DIAMOND MODULAR PVT. LTD.** .....Appellant

Through: Mr. Rishi Bansal, Mr. S.K. Bansal, Mr. Rishabh Gupta, Mr. Ajay Amitabh Suman, Mr. Deepak Shrivastava and Ms. Shruti Manchanda, Advs.

versus

**VIKASH KUMAR & ANR.** .....Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

% **05.05.2025**

**C. HARI SHANKAR, J.**

1. CS (Comm) 444/2023<sup>1</sup> filed under Sections 134 and 135 read with Section 27(2) of the Trade Marks Act, 1999, stands dismissed by the learned District Judge (Commercial Court)-05, South, Saket<sup>2</sup> by judgment dated 15 October 2024. Aggrieved thereby, Diamond Modular Pvt Ltd, the plaintiff in the suit, has preferred the present appeal.

## **Facts**

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<sup>1</sup> **Diamond Modular Pvt Ltd v Vikash Kumar and Anr**

<sup>2</sup> "the learned Commercial Court", hereinafter



## 2. Case set up by the appellant in its plaint


**2.1** CS (Comm) 444/2023 was instituted by the appellant, alleging that the respondents had, by using the mark DIAMOND GOLD, infringed the appellant's trademark 'DIAMOND', registered in the appellant's favour in Class 11 for Lamp Shade Holders and in Class 9 for electric switches, plugs, sockets, accessories and parts thereof. A tabulated list of the appellant's trade mark registrations may be depicted thus:

S No	Trademark & Date of Application	Application No., Class and User Claimed	Goods	Valid Upto And Disclaimer if any
1.	DIAMOND 28.08.1984	426403 Class 09 01/04/1975	Electric Switches, Plugs Sockets, Accessories and Parts thereof included in Class 9.	Registered, Renewed till 28/08/2025; No disclaimer
2.	DIAMOND 08.04.1996	709611 Class 09 Proposed	Electric Switches, Sockets, Connector, Plug, Pin, Top, Regulators, Dimmers, Choke, Patti, Starter	Registered, Renewed till 08/04/2033; No Disclaimer
3.	DIAMOND 10.12.1998	831578 Class 09	Electrical Accessories	Registered, Renewed till 10/12/2028;



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		01/01/1975	including Switches, Sockets, Plug, Top, Pin, Holder, Fuse, Connector, Jointer, Voltage Stabilizer, Transformer , Iron, Kettle, Wires and Cables, Conduit Pipes, Dimmer, Timer, Choke, Patti, Starter	No Disclaimer
4.	 08.06.1978	337296 Class 11 01/04/1975	Lamp Shade Holders	Registered, Renewed till 08/06/2026; No Disclaimer
5.	DIAMOND 10.12.1998	831577 Class 11 01/01/1975	Electrical fans and Parts thereof, Coolers and Parts thereof, Geyser, Boiler, Chimney, Ovens, Hot Case, Hot Plates, Toaster, Roaster, Griller, Coffee Percolator, Coffee Filter, Water	Registered, Renewed till 10/12/2028; No Disclaimer



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			Filter, Hair Dryer, Gas Lighter, Massager, Immersion Rod, Heaters, Heat Convactor, Heating Elements, Cooking Range, Food Processors, Electric Pressure Cooker, Gas Tandoor, Gas Stoves, Stoves, Burner, Tubes for Lighting and Fitting thereof, Emergency Lights, Torches, Electric Bulbs, Lamps, All being goods included in Class 11.	
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**2.2** It was also alleged that the respondents were using a trade dress which was visually and structurally deceptively similar to that of the appellant.



**2.3** The appellant claimed that it had been dealing in electrical goods and accessories since 1975, either itself or through its predecessor-in-interest. By dint of continuous user, the appellant claimed to have built up a considerable reputation in the asserted mark ‘DIAMOND’, which had become a source identifier for the appellant. The appellant further asserted that the art work employed by it, was an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957, which was enforceable in law. The appellant also claimed to be the owner of the interactive website, [www.diamondindia.co.in](http://www.diamondindia.co.in). Under the asserted mark, the appellant was dealing in switches, LED lights and was a leading market player. During the financial year 2020-2021, the appellant claimed a turnover in the region of ₹ 23.7 Crores. The DIAMOND mark was, therefore, entitled to be treated as a well-known trademark, within the meaning of Section 2(1)(zg) of the Trademarks Act.

**2.4** The unregistered mark ‘DIAMOND GOLD’ used by the respondents, it was submitted, infringed the appellant’s registered trademark ‘DIAMOND’. It was alleged that the respondent’s trademark ‘DIAMOND GOLD’ was phonetically, visually and structurally deceptively similar to the appellant’s registered trademark ‘DIAMOND’. Inasmuch as both the marks conveyed the same meaning, the appellant also pleaded idea infringement.

**2.5** The appellant further submitted that the respondent had, on 4 July 2022, applied for registration of its wordmark/device mark ‘DIAMOND GOLD’ in Classes 9, 11 and 35 in relation to wires and



cables, switches, ceiling fans, electrical heaters and in respect of services relating to trading and import and export of electronic projects and electrical accessories. This was followed by further applications of the same mark under Classes 11 and 35 on 1 July 2022. The appellant had objected to the said applications, which were yet to be granted.

**2.6** It was further alleged that the respondent was also operating online through its website <https://sites.google.com/view/wwwadfancom/home?authuser=0> as well as on Facebook, WhatsApp, YouTube and G-mail, which were interactive in nature.

**2.7** Predicated on these allegations, the appellant sought a decree of permanent injunction restraining the respondents and all others acting on their behalf from dealing in any manner, with the impugned trade mark/trade name DIAMOND GOLD or with the device mark DIAMOND GOLD or any other mark of which DIAMOND was a part in relation to electric goods, electrical accessories, wires, cables, lights, switches, fans or any other allied or cognate goods. Additionally, the suit sought reliefs of delivering up, rendition of accounts, damages and costs.

**3.** Despite issuance of summons, none appeared to contest the suit. The respondents were, therefore, proceeded *ex parte* on 9 April 2024.

**4.** The appellant led the evidence of one Piyush Gupta as PW1. PW1 Piyush Gupta filed his affidavit in evidence, of which the



following passages merit reproduction:

“23. I say that the Defendants have adopted and started using the impugned trademark dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established goodwill, reputation and proprietary rights of the Plaintiff in the Plaintiff's said trademark. I say that Dishonesty of the Defendants is apparent from the fact that the Defendants are carrying out the impugned activity/ business using the impugned tradename and dealing with the impugned trademark/device in respect to the impugned goods and are day by day expanding their impugned business pan India through various offline and online channels. The Screenshot of various impugned products bearing impugned trademark are reproduced below:

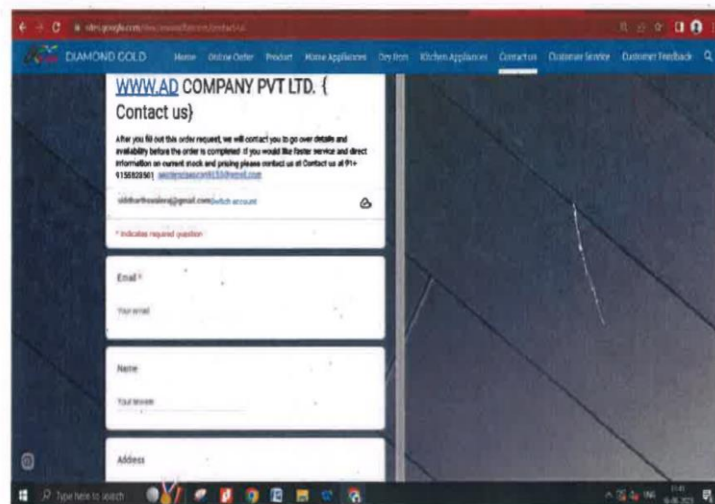
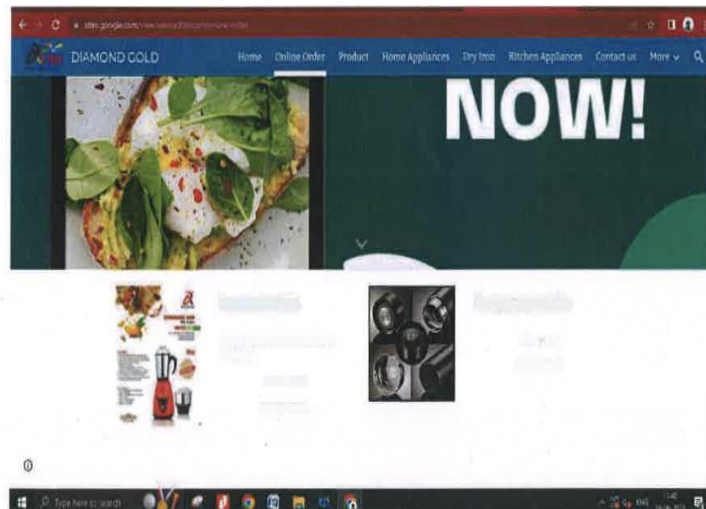
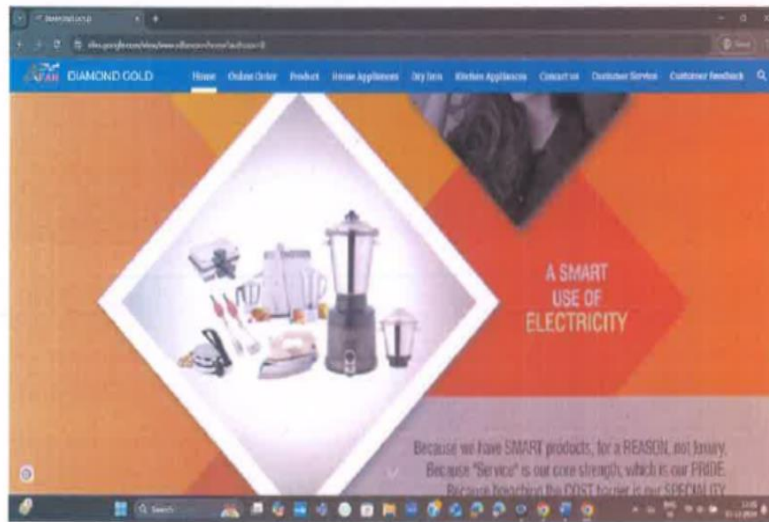


24. I say that the Defendants are also operating via its website in the URL

<https://sites.google.com/view/wwwadfancom/home?authuser=0>, (hereinafter referred to as "impugned website") and also social media platforms like [www.facebook.com](https://www.facebook.com), [www.whatsapp.com](https://www.whatsapp.com); [www.youtube.com](https://www.youtube.com) and [www.gmail.com](https://www.gmail.com) which are interactive in nature, wherein its impugned are being promoted and offered for sale instantly Screenshots of the Defendant's impugned website is reproduced herein below:



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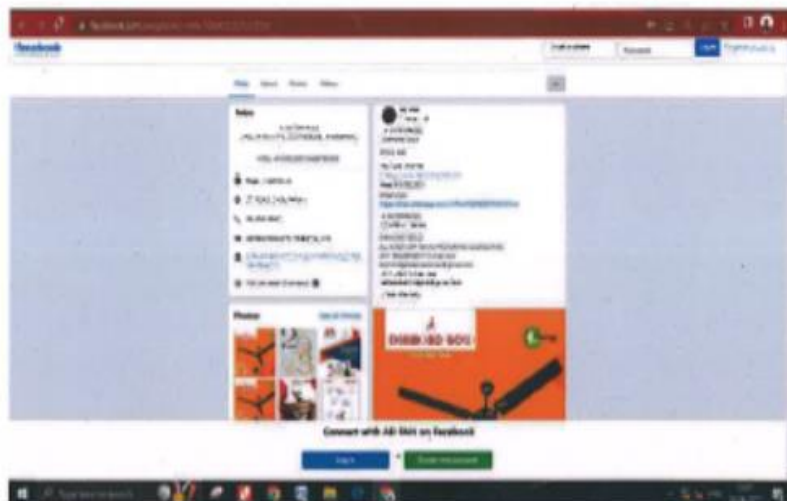
25. I say that the Defendant No.1 runs a Facebook page in the





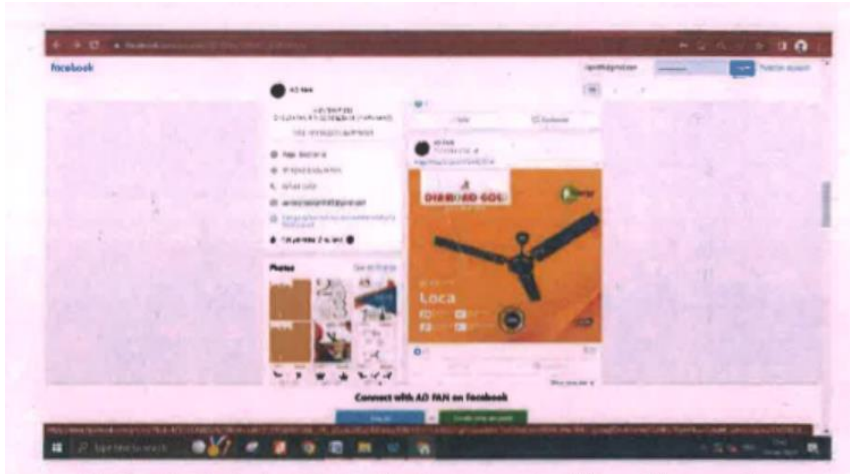
wherein it promotes, advertises, solicits and markets impugned goods bearing the impugned trademark DIAMOND GOLD/DIAMOND GOLD with DEVICE to various consumers. I say that the impugned Facebook page of the Defendant No.1 reveals the prices of impugned goods, email address for placing orders, Phone number and the company website of the Defendant no.1. The above details can be clearly seen from the screenshots reproduced below:

[:https://www.facebook.com/profile.php?id=100065283828555](https://www.facebook.com/profile.php?id=100065283828555)





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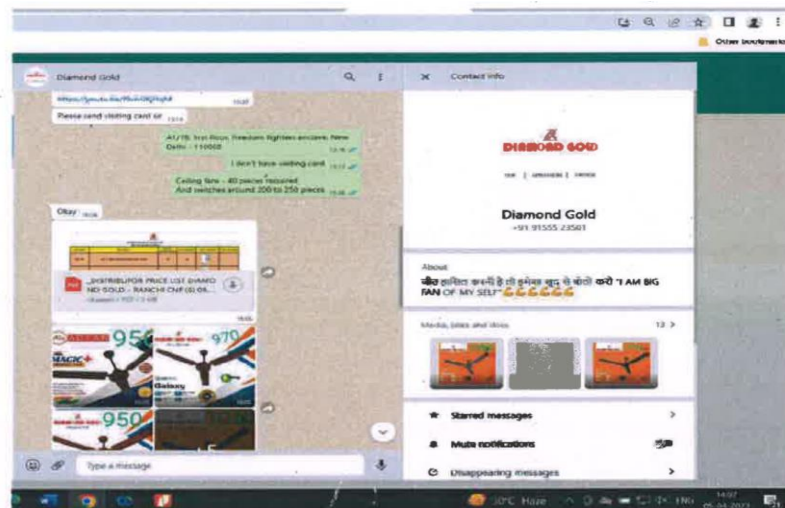
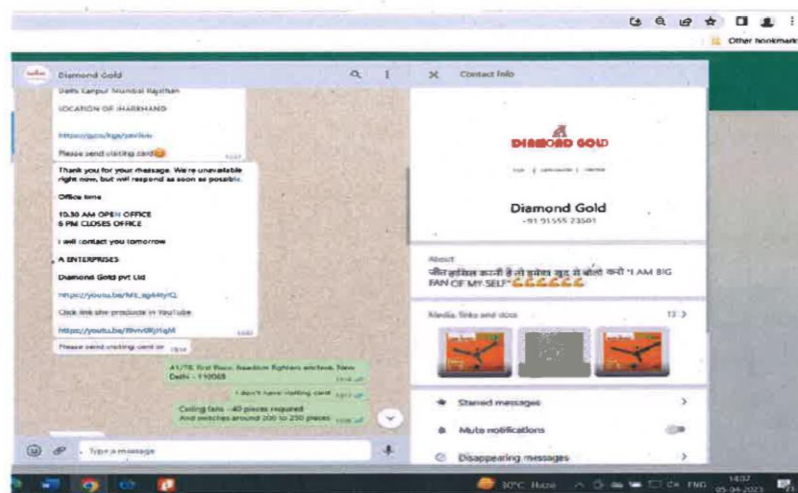
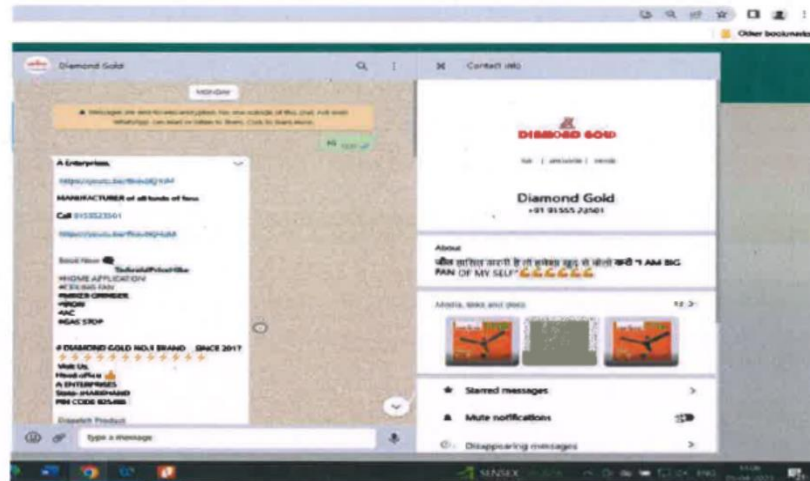
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27. I say that the Defendant has a Whatsapp business profile and runs various other Whatsapp groups having consumers all across India to promote, advertise, solicit, market and actively take orders for delivery all across India. It is submitted that in order to obtain a comprehensive understanding of the impugned business activities of the Defendants, the Plaintiff approached the Defendants over Whatsapp and the Defendants agreed to deliver the impugned goods at the address A1/78, First Floor, Freedom Fighters Enclave, South, New Delhi 110068. It is pertinent to mention that the abovementioned address falls within the jurisdiction of this Hon'ble Court i.e. South District, New Delhi. The screenshots hereinbelow shows that the Defendant is actively engaged in taking orders and promising to deliver the impugned goods.

Screenshots of Whatsapp conversation with the Defendants and Whatsapp group created by the Defendants wherein impugned goods are promoted, solicited, marketed and sold to various consumers:

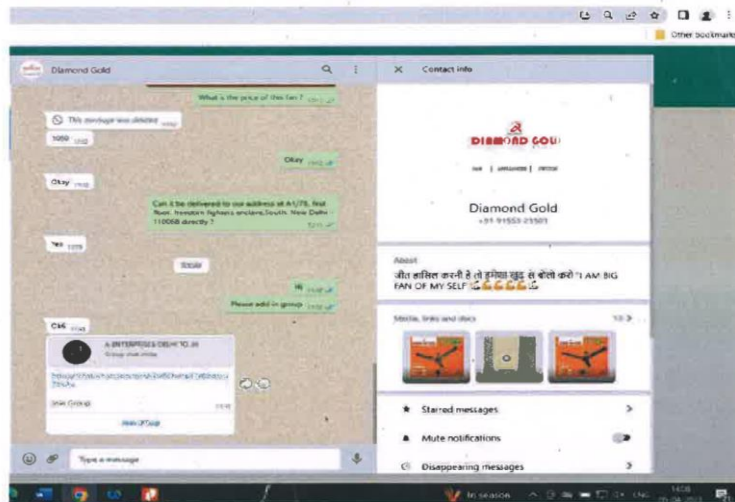
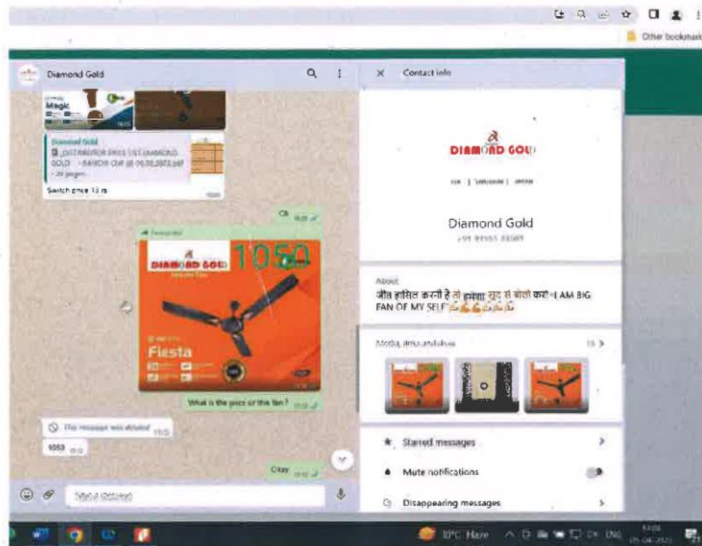


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29. I say that in addition to the above, the Defendants are also inviting, accepting orders of consumers across India through emails via email address [aenterprisescpn9155@gmail.com](mailto:aenterprisescpn9155@gmail.com), [adhelpdiamondgold@gmail.com](mailto:adhelpdiamondgold@gmail.com) and [diamondgoldaccessories@gmail.com](mailto:diamondgoldaccessories@gmail.com).

## Findings in impugned order, submissions of appellant and our findings

5. The learned Commercial Court has, in the impugned order, addressed four aspects. They are



- (i) the territorial jurisdiction of the learned Commercial Court to entertain the suit,
- (ii) merits,
- (iii) the issue of whether the asserted trade mark 'DIAMOND' has been validly assigned to the appellant and
- (iv) whether Mr. Piyush Gupta, in whose favour Board Resolution as well as SPA (Ex. PW-1/28) have been issued by Mr. Rajesh Gupta, was competent to depose in the matter.

## 6. Re. territorial jurisdiction

**6.1** On the aspect of territorial jurisdiction, the findings of the learned Commercial Court are somewhat confusing, but, in the ultimate eventuate, the learned Commercial Court appears to have proceeded on the premise that it possesses territorial jurisdiction to deal with the matter.

**6.2** Para 10 of the impugned order notices the submission of the appellant that the respondents were targeting customers within the jurisdiction of the Saket Commercial Court and were selling goods in Saket, Hauz Khas, Malviya Nagar etc. It has also noted the submissions of the appellant that its authorised representative had, in fact, entered into correspondence with the respondents, resulting in the respondents undertaking to supply the goods at A1/78, Freedom Fighters Enclave, South, New Delhi-110068 which fell within the jurisdiction of the Saket Commercial Court.





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**6.3** Following this, it has noted the reliance, by the appellant, on the judgment of the Division Bench of this Court in *Tata Sons Private Ltd. v Hakunamatata Tata Founders*<sup>3</sup> and has also referred to the earlier decision of the another Division Bench of this Court in *Banyan Tree Holding (P) Ltd v A. Murali Krishna Reddy*<sup>4</sup>.

**6.4** The learned Commercial Court has thereafter referred to the decision of a learned Single Judge of this Court in *Burger King Corporation v Techchand Shewakramani*<sup>5</sup>, in which this Court has held that, in the regime of e-commerce, even the mere advertising of goods and services on the internet would render every Court, within whose territorial jurisdiction the plaintiff's website could be accessed, territorially competent to entertain the suit and adjudicate thereon.

**6.5** Following this, the learned Commercial Court has, unfortunately, not returned any finding on the aspect of territorial jurisdiction.

**6.6** However, it has proceeded to deal with other aspects of the matter, which indicates that the learned Commercial Court appears to have proceeded on the premise that it has territorial jurisdiction.

**6.7** Even in law, we are of the opinion that, given the extant legal possession, the learned Commercial Court was possessed of territorial jurisdiction to deal with the matter.

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<sup>3</sup> 2022 SCC OnLine 2968

<sup>4</sup> 2009 SCC OnLine 3780

<sup>5</sup> 2018 SCC OnLine 10881



**6.8** Apropos the aspect of jurisdiction, as noted above, Mr. Bansal has drawn our attention to the series of correspondence of the appellant's representative, situated within the jurisdiction of the Saket District Court and the respondents, captured in the screenshots contained in the paragraphs from the evidence of PW-1 extracted in para 4 *supra*. The said correspondence has gone un-rebutted, as it was proved by the representative of the appellant deposing as PW-1, and he was never subjected to cross-examination.

**6.9** As such, the evidence on record indicates that the respondents agreed to supply goods to customers situated within the jurisdiction of the Saket District Court.

**6.10** This amounts to meaningful invocation of the jurisdiction of the Saket District Court by the respondent and, therefore, itself made out a case of jurisdiction of the Saket District Court to deal with the matter.

**6.11** Moreover, even applying the law laid down by the Division Bench of this Court in *World Wrestling Entertainment, Inc. v Reshma Collection*<sup>6</sup>, as the appellant's website was interactive and could be accessed by any party within the jurisdiction of the Saket District Court, the suit must be held to have been competently instituted within the said jurisdiction.

**6.12** We, therefore, hold that the learned Commercial Court acted within jurisdiction in entertaining and proceeding to decide the matter.

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<sup>6</sup> 2014 SCC OnLine Del 2031



## 7. On merits

7.1 On merits, the findings of the learned Commercial Court, to the extent they are of relevance, read thus:

“So far as the defendants own website is concerned, it has not been placed on record by the Plaintiff that the orders could be placed and money could be paid on the said website which had only provided the catalogue of the products, in which defendants were dealing. Admittedly, till the date of filing of the present suit, the Plaintiff herein had been dealing in electrical switches and LED lights, despite holding a registration in respect of fans, etc., which are the products actually dealt by the defendants.

Furthermore, it is provided in the Section 34 of the Trademarks Act itself that the goods in respect of which infringement has been alleged must be produced/manufactured continuously and one or two casual manufacturing would not give rise to a party to allege infringement.

In the light of above legal positioning, no material has been placed on record by the Plaintiff to show that Plaintiff was also manufacturing/dealing in any manner whatsoever with the goods such as ceiling fans, cables and wires in which defendant were allegedly indulging.”

7.2 Thus, the learned Commercial Court has held against the appellant on more than one ground.

7.3 Firstly, the learned Commercial Court has noted that the appellant was not dealing in fans, but in electrical switches and LED lights.

7.4 Secondly, it has held that Section 34<sup>7</sup> of the Trade Marks Act

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<sup>7</sup> 34. **Saving for vested rights.**— Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or





requires the goods, in respect of which infringement is alleged, to be produced/manufactured continuously, and does not allow a claim alleging infringement to be raised on the basis of any casual manufacture.

**7.5** Neither of these findings of the learned Commercial Court is sustainable either in law or on facts.

**7.6** Re. nature of goods in respect of which the rival marks are used

**7.6.1** The finding of the learned Commercial Court that the appellant could not lay a claim of infringement against the respondent, as the respondent was dealing in fans, whereas the appellant was dealing in electrical switches and LED lights, is completely erroneous in law.

**7.6.2** In the first place, actual use of the trademark by sale of the goods in the market is not a pre-condition for a claim for infringement of law. Section 28(1)<sup>8</sup> of the Trade Marks Act clearly confers, on the registered owner of valid trademark, exclusive right to use the said trademark and to obtain relief in respect of infringement of the

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nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

- (a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or
  - (b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his;
- whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

<sup>8</sup> **28. Rights conferred by registration.**—(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.



trademark. Infringement is defined in Section 29<sup>9</sup>, and is available to every proprietor of a registered trademark. Actual use of the registered trademark is not a *sine qua non* for a valid claim for infringement to lie.

**7.6.3** No doubt, continued non-user of a trademark may confer a right on another person to seek a removal of the mark from the register of trademarks in terms of clause (a) of Section 47<sup>10</sup> of the Trade Marks Act. That, however, is an independent right and does not impact, in any way, the right of the registered trademark owner to seek relief against infringement, where the registration is valid and subsisting,

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<sup>9</sup> **29. Infringement of registered trade marks.**— (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, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

- (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
  - (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
  - (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,
- is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

- (a) is identical with or similar to the registered trade mark; and
- (b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and
- (c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

<sup>10</sup> **47. Removal from register and imposition of limitations on ground of non-use.**— (1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the [High Court] by any person aggrieved on the ground either—

- (a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or, in a case to which the provisions of Section 46 apply, by the company concerned or the registered user, as the case may be, and that there has, in fact, been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to a date three months before the date of the application; or



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under Section 28 (1) of the Trade Marks Act.

**7.6.4** Moreover, the appellant is the holder of a valid trademark registration, w.e.f. 28 August 1984 in Class 9 in respect of “electric switches, plugs, sockets, accessories and parts thereof”, claiming user since 1 April 1975, w.e.f. 8 June 1978 in Class 11 in respect of Lamp Shade Holders and w.e.f. 10 December 1998 in Class 11 in respect of, *inter alia*, electrical fans and parts thereof.

**7.6.5** Thus, the appellant, as a holder of a registered trademark specifically in respect of the aforementioned categories of electrical goods, was entitled to protect the registered trademark from infringement by others, who attempted to use any identical or deceptively similar trademark for identical *or similar* goods or services. The learned Commercial Court is clearly in error in holding against the appellant on the ground that the respondent is not using the DIAMOND mark for fans. Section 29(2)(a) and (b) of the Trade Marks Act includes, within the ambit of “infringement”, use, by another person, of an unregistered mark, which is likely to cause confusion or lead to a presumption of association with the appellant, of a similar mark, covering identical *or similar* goods. Within the ambit of the expression “similar” would be encompassed all goods which are allied or cognate to the goods or services in respect of which the asserted mark is used. There is, therefore, no requirement of the rival marks being used in respect of the *same goods or services*, as the learned Commercial Court incorrectly presumes.



**7.6.6** Fans are electrical goods. Fans, and other electrical goods such as switches and electrical fittings, are often manufactured by the same manufacturer. They are, therefore, clearly *similar*, within the meaning of Section 29(2)(a) and (b), to the electrical goods in respect of which the appellant's DIAMOND mark is registered, and in respect of which it uses the said mark. As such, the mere fact that the appellant was manufacturing electrical switches and LED lights, whereas the respondent was manufacturing fans, could not be cited as a ground to hold against the appellant on merits, in so far as his claim of infringement against the respondents was concerned.

**7.6.7** From the facts, it is clear that the appellant has both priority of user and priority of registration over the respondent, in so far as the mark DIAMOND is concerned. The appellant has a word mark registration of the mark DIAMOND w.e.f. 28 August 1984 in respect of electrical switches, plugs, sockets, accessories and parts thereof. *It also holds a registration of the word mark DIAMOND in Class 11 in respect of electrical fans and parts thereof.* The respondent does not own any registered trademark. Without any registration in its favour, the respondent has been using the mark DIAMOND GOLD in respect of fans since July and December, 2022.

**7.6.8** Clearly, the marks DIAMOND and DIAMOND GOLD are deceptively similar to each other and, to a person of average intelligence and imperfect recollection, there is every likelihood of confusion, or of his presuming an association between the marks, as a consequence of the similarity between the marks and the fact that both



are used for electrical goods and appliances.

**7.6.9** Ergo, a case of infringement, within the meaning of Section 29(2) of the Trade Marks Act is clearly made out, justifying injunction.

## **7.7** Re. Section 34

**7.7.1** The reliance, by the learned Commercial Court, on Section 34 of the Trade Marks Act, which has really nothing to do with the controversy, is also completely misplaced.

**7.7.2** Section 34 is a proscriptive provision, which acts as an exception to a right to claim relief against infringement even where the plaintiff's mark is registered and the defendant's is not. The Section provides that the proprietor of a registered trademark cannot restrain the use, by a person, of an identical or deceptively similar trademark, where such latter person has priority both of registration and of user over the person seeking injunction.

**7.7.3** We are completely at a loss to understand how the learned Commercial Court has read Section 34 of the Trade Marks Act as requiring that the goods in respect of which infringement is alleged have to be produced/manufactured continuously, or that casual manufacture would not justify a claim for infringement. Nothing of the kind is to be found in Section 34 of the Act.



**7.7.4** This finding is, therefore, clearly vitiated by non-application of mind.

**7.8** Thus, the two lone grounds on which the learned Commercial Court has held against the appellant on merits cannot sustain.

**8. Re. proprietorial right of the appellant over the asserted DIAMOND trade mark**

**8.1** The third ground on which the learned Commercial Court has non-suited the appellant is contained in the following single sentence in the impugned order:

“Furthermore, the Plaintiff had also failed to adduce any evidence to the effect of assignment of trademark by Smt. Lalita Gupta in their favour as no assignment deeds as alleged in Para 5 and 6 of the Plaint were either placed or proved on record.”

**8.2** Adverting to this finding of the learned Commercial Court, Mr. Bansal has taken us through the following paragraphs of the impugned order, and the recital of facts contained therein:

“It was stated that Plaintiff through its predecessor was engaged in the business of electrical goods and accessories since the year 1975. Plaintiff's predecessor had adopted and had started using the trademark and trade name "DIAMOND" in relation to their said goods and business in the year 1975 itself.

It was stated that Mrs. Lalita Gupta W/o Mr. R. D. Gupta and thereafter her son Mr. Rajesh Gupta and daughter-in-law Ms. Priti Gupta were the predecessors of the Plaintiff. Mrs. Lalita Gupta had started her proprietorship business under the name and style of "Diamond Products (India)" and had adopted and started using the trademark "DIAMOND" in relation to her said goods and business and her husband Mr. R. D. Gupta was stated to have been



managing the affairs of the said business and thereafter, name of her business changed to "New Diamond Electricals".

It was stated that Mrs. Lalita Gupta had carried on her said business till the year 1995 and thereafter her business was taken over by Ms. Priti Gupta. In the meantime, in the year 1984, Mr. Rajesh Gupta had started his sole proprietorship business of electrical goods and electrical accessories under the name and style of "Diamond Enterprises", however, initially, he was permissive user of the trademark DIAMOND and vide Assignment Deed dated 19.10.2001, the said trademark DIAMOND was assigned in his favour.

It was stated further that Ms. Priti Gupta and Mr. Rajesh Gupta, for the better management and expansion of the business had incorporated the Plaintiff Company and Trademark "DIAMOND" was also assigned in favour of the Plaintiff Company vide Deed of Assignment Dated 19.07.2018. Ms. Priti Gupta and Mr. Rajesh Gupta were stated to be the Directors of the Plaintiff Company.

It was stated that Plaintiff was the owner and proprietor of the trademark DIAMOND and had started using the aforesaid trademark as word mark in artistic logo/label form and in order to get statutory protection, he got the said trademark registered in its favour under the provisions of Trade Marks Act, 1999."

**8.3** Thus, in the plaint, as filed by the plaintiff, the precise case set up was that the trade mark DIAMOND was adopted and user thereof commenced, by Lalita Gupta, the predecessor of the appellant, in relation to electrical goods, in 1975. Ms. Lalita Gupta continued the business till 1995, in which year the business was taken over by Ms. Priti Gupta, the wife of Mr. Rajesh Gupta. During this period, in 1984, Rajesh Gupta commenced his sole proprietorship under the name "Diamond Enterprises". *Vide* assignment deed dated 19 October 2001, Lalita Gupta assigned the trade mark DIAMOND in favour of Mr. Rajesh Gupta. Further, by assignment deed dated 19 July 2018, Rajesh Gupta assigned the trade mark DIAMOND in favour of the appellant Diamond Modular Pvt Ltd.





**8.4** Having noted these observations as contained in the plaint, filed by the appellant, the learned Commercial Court observes that the appellant had “failed to adduce any evidence to the effect of assignment of trade mark by Smt. Lalita Gupta in their favour *as no assignment deeds as alleged in paras 5 and 6 of the plaint were either placed or proved on record.*” Thus, the learned Commercial Court has held that the appellant had failed to prove its proprietary rights over the registered trade mark DIAMOND as the assignment deeds dated 19 October 2001, whereby the trade mark was assigned by Ms. Lalita Gupta to Mr. Rajesh Gupta, and 19 July 2018, whereby the trade mark was assigned by Mr. Rajesh Gupta to the appellant, had not been placed on record.

**8.5** Mr. Rishi Bansal candidly acknowledges the fact that the aforesaid assignment deeds had not been placed on record. He, however, has drawn our attention to a Legal Proceedings Certificate<sup>11</sup> dated 12 March 2021 issued by the office of the Registrar of Trade Marks. This certificate notes the fact that the word mark DIAMOND stood registered in favour of the appellant Diamond Modular Pvt. Ltd. The date of the certificate is 13 February 1998 and the registration is effective from 28 August 1984, being the date when the application for registration was filed before the Registrar.

**8.6** The registration is for the word mark DIAMOND in Class 9 covering “electric switches, plugs, sockets, accessories and parts there of included in Class 9”. At the foot of the LPC is to be found the

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<sup>11</sup> “LPC” hereinafter





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following history data:

“HISTORY DATA:

LALITA GUPTA RZ-283/47A, WEST BLOCK, VISHNU GARDEN, NEW DELHI-110018 REGISTRATION RENEWED FOR A PERIOD OF 10 YEARS FROM 28TH AUGUST, 2005 ADVERTISED IN JOURNAL NO 1334.

PURSUANT TO A REQUEST ON FORM TM-24 DATED 23RD OCTOBER, 2001 AND ORDER THEREON DATED 1ST DECEMBER, 2003 RAJESH GUPTA TRADING AS M/S DIAMOND ENTERPRISES RZ-283/57, WEST BLOCK, VISHNU GARDEN, NEW DELHI-110018, IS/ARE REGISTERED AS SUBSEQUENT PROPRIETOR (S) OF THIS MARK AS FROM 19TH OCTOBER, 2001 BY VIRTUE OF ASSIGNMENT DEED DATED 19TH OCTOBER, 2001 & AN AFFIDAVIT OF LALITA GUPTA DATED 19TH OCTOBER, 2001 & SHRI RAJESH GUPTA DATED 19TH OCTOBER, 2001.

REGISTRATION RENEWED FOR A PERIOD OF 10 YEARS FROM 28/08/2015 ADVERTISED IN JOURNAL NO 1714

PURSUANT TO A REQUEST ON FORM TM-P DATED 19/07/2018 AND ORDER THEREON DATED 17/12/2019 DIAMOND MODULAR PRIVATE LIMITED HAS BEEN BROUGHT ON RECORD AS SUBSEQUENT PROPRIETOR IN RESPECT OF THE SAID REGISTERED TRADE MARK by virtue of assignment deed dated 19/07/2018 and affidavit dated 19/07/2018

FURSUANT TO A REQUEST ON FORM TM-P DATED 19/07/2018 AND ORDER THEREON DATED 17/12/2019 THE ADDRESS FOR SERVICE IS ALTERED TO SINGH & SINGH LAW FIRM LLP, C-139, DEFENCE COLONY, NEW DELHI-110024, TM@SINGH ANDSINGH.COM”

**8.7** The aforesaid LPC remained undisputed, as the respondent did not choose to file any written statement. As Mr. Rishi Bansal correctly points out, under Section 31(1)<sup>12</sup> of the Trade Marks Act, the

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<sup>12</sup> **31. Registration to be prima facie evidence of validity.**— (1) In all legal proceedings relating to a trade mark registered under this Act (including applications under Section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof.



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registration of a trade mark is *prima facie* proof of its validity. Inasmuch as no evidence to the contrary was led by the respondent, who did not even choose to file any written statement, Mr. Bansal submits that the history data as contained in the LPC was itself sufficient to prove the aspect of proprietorial right of the appellant for the asserted trade mark DIAMOND.

**8.8** Having perused the aforesaid documents, we are inclined to agree with Mr. Bansal. The LPC dated 12 March 2021, as issued by the office of Registrar of Trade Marks clearly sets out the chain of transfer of titular rights over the trade marks from Ms. Lalita Gupta to Mr. Rajesh Gupta and thereafter from Mr. Rajesh Gupta to the appellant Diamond Modular Pvt Ltd. The LPC was exhibited as PW-1/11. In affidavit of evidence tendered by PW-1, the LPC stands specifically exhibited as Ex PW-1/11. The verification, with which the affidavit concludes, reads:

“Verification

I the above-named deponent do hereby verify that the some contents of my above affidavit are on the basis of my personal knowledge and records of the plaintiff fir and the legal points are on the basis of the advice by my legal counsel and are believed to be true and correct to my information, knowledge and belief.

Signed and verified at New Delhi on this day 22 day of May 2024.

Sd/- Piyush Gupta  
Deponent”

**8.9** The aforesaid evidence tendered by PW-1 by way of affidavit went un rebutted as the respondent did not enter appearance or chose or to lead evidence or cross examine PW-1.



**8.10** In that view of the matter, we are of the view of the learned Commercial Court was in error in disbelieving the titular or proprietary right of the appellant over the asserted trade mark DIAMOND.

**9. Competence of Piyush Gupta to depose as PW-1**

**9.1** The next, and last, ground on which the learned Commercial Court has held against the appellant is that Mr. Piyush Gupta, who had testified as PW-1, was not competent to do so, as the facts of the case were within the exclusive knowledge and domain of Mr. Rajesh Gupta, who was the signatory to the plaint. The authorisation in favour of Mr. Piyush Gupta, it is noted, was executed only on 5 July 2024. The learned Commercial Court has, therefore, expressed surprise as to how Mr. Piyush Gupta could have deposed about the facts which took place from 1975 onwards. The findings of the learned Commercial Court in this regard read thus:

“Last but not least, AR of the Plaintiff, who had placed on record the Board Resolution as well as SPA Ex. PW1/28 has failed to explain as to how he had acquired the knowledge about the facts, which were exclusively within the knowledge and domain of Sh. Rajesh Gupta, who is signatory to the Plaint, especially when the authorization in his favour was executed only on 05.07.2024, and not on any date or occasion prior to that. It is also surprising as to how he could have deposed about the events and facts, which had taken place since the year 1975 onwards till the date of his deposition.

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In view of my aforesaid discussion, I have no hesitation in holding



that Plaintiff has miserably failed to substantiate its allegation as levelled against the defendants entitling it to a decree of injunction as prayed as the witness examined by it was not a competent witness to depose about the facts, which were actually within the exclusive knowledge and domain of Plaintiff alone.”

**9.2** To support this finding, the learned Commercial Court has placed reliance on the judgment of the Supreme Court in *Janki Vashdeo Bhojwani v Indusind Bank Ltd*<sup>13</sup>

**9.3** Mr Bansal submits that the appellant was a juristic entity and had, therefore, necessarily to be represented by a natural person. *Janki Vashdeo Bhojwani*, as Mr. Bansal correctly points out, is a case in which one natural person had given a power of attorney in respect of another natural person to represent him in the proceedings. The Supreme Court had held this to be impermissible.

**9.4** In the present case, the power of attorney has been issued in favour of the appellant-company Diamond Modular Pvt Ltd by Mr. Piyush Gupta. Moreover, as Mr. Piyush Gupta has himself stated in his affidavit in evidence and in the verification accompanying the said affidavit, he has based his assertions in the affidavit on the basis of the documents which were available. As such, his competence to depose with respect to the facts in controversy cannot be discountenanced. Mr. Bansal correctly submits that, in that view of the matter, it could not be said that Mr. Piyush Gupta was an incompetent witness and that, therefore, his testimony had to be disregarded.

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<sup>13</sup> (2005) 2 SCC 217



**9.5** Moreover, we have our reservations as to whether the learned Commercial Court could have returned such a finding, especially when the testimony of Mr. Piyush Gupta went uncontested in evidence. It goes without saying that the Court cannot seek to make out, in favour of a party, a case which the party has itself not chosen to make out.

### **The Sequitur**

**10.** We, therefore, are unable to sustain any of the grounds on which the learned Commercial Court has held against the appellant.

**11.** Following our finding that there was deceptive similarity between the asserted mark DIAMOND and the respondent's mark DIAMOND GOLD which was used for goods which were either identical or at the very least similar, the appellant was clearly entitled to a decree of injunction.

**12.** As such, there shall be a decree of permanent injunction restraining the respondent as well as all others acting on behalf of the respondent from using the mark DIAMOND GOLD or any other mark which may be identical or deceptively similar to the registered word mark DIAMOND, registered in favour of the appellant for any other electrical goods or other goods which may be allied or cognate to the goods in respect of which the mark DIAMOND stands registered in favour of the appellant, including electric fans.



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13. The impugned order/judgment is accordingly quashed and set aside.
14. CS (Comm) 444/2023 filed by the appellant before the learned Commercial Court shall stand decreed in the aforesaid terms.
15. The Registry is directed to draw up a decree sheet accordingly.
16. The appeal is accordingly allowed.
17. Inasmuch the respondent has remained unrepresented, we refrain from awarding any damages or costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**MAY 5, 2025/dsn/an**

*Click here to check corrigendum, if any*