



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO. 126 OF 2016

UltraTech Cement Limited & Anr.

...Plaintiffs

Versus

M/s. Shiv Cement Co.

...Defendant

Mr. Hiren Kamod a/w. Mrs. Alka Parelkar i/b. VA Associates for the Plaintiffs.

None for the Defendant.

Mr. Dhiraj D. Zatke, representative of the Court Receiver, present.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 24th MARCH 2026

PRONOUNCED ON : 28th APRIL 2026

P.C.

1. The present Suit is filed for infringement of trade mark combined with a cause of action for passing off. The Plaintiffs in the present Suit are companies incorporated under the Companies Act, 1956, having their registered offices at the addresses mentioned in the cause title of the Plaint. The Plaintiffs seek a permanent injunction to restrain the Defendant from infringing the Plaintiffs' registered 'UltraTech' trade marks as set out in Exhibit P9 ("UltraTech trade marks") and from committing the tort of



passing off by using the trade marks “Ultraplus Cement” /

HiTouch” / “Ultra HiTouch Cement bemisal Majbuti”/,



and “UltraPower” (“**impugned marks**”) in relation to the Defendant’s goods, namely building materials / cement (“**impugned goods**”).

2. It is the case of the Plaintiffs’ that the impugned marks are nearly identical with and/or deceptively similar to the Plaintiffs’ UltraTech trade marks and that the impugned marks are used by the Defendant in relation to the sale of cement for which the Plaintiffs have secured registration and are using their “UltraTech” trade marks.
3. Mr. Kamod, Learned Counsel for the Plaintiffs, at the outset submitted that by an Order dated 1st August 2016, this Court had granted *ex-parte* ad-interim reliefs in respect of prayers (a) and (c) of Notice of Motion (L) No. 63 of 2016. He then, drew my attention to the Court Receiver’s Report dated 12th August, 2016, to point out that pursuant to the *ex-parte* ad-interim order, the representative of the Court Receiver, had visited the premises of the

Defendant and had seized the impugned goods, i.e., cement bags bearing the impugned trade marks containing ULTRA, namely 'ULTRA PLUS 42', 'ULTRA Hi Tech 950', 'ULTRA Uttan 10', and 'UltraGold 100'. He submitted that over 1102 bags bearing the impugned trade marks had been seized and sealed at the Defendant's premises.

4. He then submitted that vide an Order dated 30th August 2016, this Court allowed the Plaintiffs' Leave Petition No. 217 of 2016 and granted leave under Clause XIV of the Letters Patent. He also pointed out that by a separate Order of the same date, this Court disposed of the Notice of Motion by confirming the ad-interim order additionally granting relief to the Plaintiffs in respect of passing off in terms of prayer (b) of the Notice of Motion.
5. Mr. Kamod then submitted that despite service of the writ of summons on 30th September 2016, the Defendant had neither appeared in person nor through an advocate. The Suit was, accordingly, transferred to the list of undefended Suits as per the Order of the Prothonotary and Senior Master dated 21st December 2016.

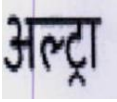
6. By the Order dated 2nd December 2025, the Plaintiffs were directed to file the Affidavit of Evidence and Compilation of Documents and Affidavit of Documents. Thereafter, vide an Order dated 27th January 2026, the Affidavit of Examination in Chief of the Plaintiff's witness, Mr. Tim S. Gupta, the Senior Manager – Legal and Constituted Attorney of Plaintiff No. 1, and the Affidavit of Documents and Compilation of Documents were taken on record and marked in evidence.

Submissions on behalf of the Plaintiffs:

7. Mr. Kamod, submitted that in 2001, Plaintiff No. 2 acquired a 10% stake in L&T Ltd., which was increased to approximately 20% by 2002. In 2003, L&T Ltd. undertook a demerger of its cement business into a separate entity, namely UltraTech Cemco Limited. He submitted that in the same year, Plaintiff No. 2 acquired an additional 8.5% equity stake from L&T Ltd. and thereafter made an open offer to acquire 30% of the equity share capital of UltraTech Cemco Limited with a view to obtaining management control thereof. Pursuant thereto, in 2004, Plaintiff No. 2 acquired a controlling stake in UltraTech Cemco Limited, which was subsequently

renamed UltraTech Cement Limited, being Plaintiff No. 1 herein. He further submitted that Plaintiff No. 1 had originally been incorporated as L&T Cement Limited, and that its name was thereafter changed to UltraTech Cemco Limited and subsequently to its present name, UltraTech Cement Limited, with effect from 14th October 2004. Copies of the Certificates of Incorporation evidencing these name changes were produced and marked as Exhibit P-7.

8. He then submitted that the Plaintiffs had applied for and secured registration of the UltraTech trade marks shown at Exhibit P9 and that Plaintiff No. 2 is

the registered proprietor of the trade mark  i.e. Ultra in the Devanagari script bearing No. 3999722 in Class 19. He submitted that the mark “Ultra” is a distinctive mark by itself and also forms a distinctive part and an essential and prominent part/feature of the trade marks which are already registered in the name of the Plaintiffs and/or pending registration.

9. Mr. Kamod submitted that initially Plaintiff No. 1 was the registered proprietor of some of the UltraTech trade marks and had, by a Deed of Assignment dated 30th September 2009, *inter alia*, assigned the UltraTech

trade marks along with the goodwill of the business concerned in favour of Plaintiff No. 2. A copy of the Deed of Assignment dated 30th September 2009 was marked in evidence as Exhibit P9 pursuant to which Plaintiff No. 2 had come on record on the Register of Trade Marks as the registered proprietor of the trade marks assigned in its favour by Plaintiff No. 1. He then submitted that at present, Plaintiff No. 2 is the proprietor of the UltraTech trade marks shown at Exhibit P9 and that the said registrations are valid and subsisting. Mr. Kamod then pointed out that by virtue of a License Agreement dated 29th June 2011, a Supplementary Agreement dated 19th October 2015, and a Registered User Agreement dated 3rd May 2018, all of which were marked in evidence as Exhibit P11. He submitted that Plaintiff No. 2 had thereafter granted a license to Plaintiff No. 1 to use, *inter alia*, the UltraTech trade marks and that use of the UltraTech trade marks by Plaintiff No. 1 was for and on behalf of Plaintiff No. 2 and that such use would enure to the benefit of Plaintiff No. 2 since Plaintiff No. 2 owned the goodwill and reputation in the UltraTech trade marks. He submitted that the Plaintiffs were also the registered proprietors of the trade mark UltraTech

internationally in various countries and that the registration certificates in relation to the Plaintiffs' trade mark registrations in foreign jurisdictions were marked in evidence as Exhibit P18.

10. Mr. Kamod then submitted that the Plaintiffs had been openly, continuously and extensively using the UltraTech trade marks in relation to the building materials, including cement, since the year 2003 and that the Plaintiffs presently manufacture and market various products under the trade marks *inter alia* containing the mark 'UltraTech', of which 'Ultra' is a leading, essential, and prominent feature. He pointed out that a representation of the Plaintiffs' cement bag bearing the UltraTech trade mark was marked in evidence as Exhibit P13.

11. He then submitted that by virtue of such open, continuous and extensive use of the UltraTech trade marks since 2003, the same have acquired immense reputation and goodwill and have acquired a secondary meaning and have come to be associated with the Plaintiffs alone. He then placed reliance upon copies of Plaintiffs' sales invoices for the years 2004 to 2025 in relation to the Plaintiffs' goods bearing the UltraTech trade marks which were marked

in evidence as Exhibits P15 and P19. He also placed reliance upon the Plaintiffs' Chartered Accountants' Certificates, providing a certified statement of the Plaintiffs' sales turnover and promotional expenditure in relation to the UltraTech trade marks for the financial years 2003-2004 to 2024-2025, which was marked in evidence as Exhibit P16. He also placed reliance on various advertisements and promotional material published in Superbrand magazine and in various other print media, which were marked in evidence as Exhibits P16 and P17.

12. Mr. Kamod then submitted that the market presence of the Plaintiffs was evident from the volume of shares transacted in relation to Plaintiff No. 1, which could be discerned from the Annual Reports of Plaintiff No. 1 for the years 2003-2004, 2015-16, and 2024-2025, all of which were marked in evidence as Exhibit P14. He also placed reliance upon orders in which several Courts had recognised and protected the Plaintiffs' rights in the UltraTech trade marks by restraining third parties from using infringing marks identical with and / or deceptively similar to the Plaintiffs' UltraTech trade marks. He pointed out that this Court had taken judicial notice of the

fact that the Plaintiffs' trade mark UltraTech has attained the status of a well-known trade mark in India, subsequent to which the office of the Trade Marks Registry has added the trade mark UltraTech to the list of well-known trade marks. The list of well-known trade marks as published and downloaded from the official website of the Trade Mark Registry showing the Plaintiff's trade mark in the list of well-known marks was marked in evidence as Exhibit P20.

13. Mr. Kamod then submitted that, in or about July 2012, the Plaintiffs came across the impugned goods bearing the impugned trade marks 'ULTRA PLUS', 'ULTRA HI-TOUCH' & 'ULTRA POWER' being sold in the market all in connection with the sale of cement. The Plaintiffs, therefore, conducted a search in the Trade Mark Registry and found that the Defendant had made applications for registration of the impugned trade marks 'ULTRA PLUS', 'ULTRA HI-TOUCH', and 'ULTRA POWER' under Application Nos. 2026655, 2035426, and 2214242, dated 21st September 2010, 11th October 2010, and 3rd October 2011, respectively, all in Class 19. He submitted that the Plaintiffs therefore addressed a cease and desist notice

dated 25th July 2012 to the Defendant calling upon the Defendant to cease and desist using the impugned marks, including from manufacturing, marketing, distributing, selling, offering for sale, advertising or otherwise howsoever dealing in 'Cement' or any similar product bearing the impugned trade marks 'ULTRA PLUS', 'ULTRA HI-TOUCH', and 'ULTRA POWER' or any other mark that is identical or deceptively similar to the Plaintiffs' registered UltraTech trade marks but the parcel containing the said notice was returned with the remark 'Address incomplete without Father's name'.

14. He then submitted that the name and address of Defendant and other details were confirmed by the Plaintiffs' marketing department and also verified from the records available on the Trade Mark Registry's website and were found to be correct. The Plaintiffs, through their Advocates, issued a reminder notice dated 20th September 2012 to the Defendant. He submitted that this notice was also returned with the same remark. Mr. Kamod then submitted that the marketing department of Plaintiff No. 1 was thereafter unable to trace any product being sold under the impugned trade marks

which led the Plaintiffs to believe that the Defendant was no longer using the impugned trade marks to sell cement.

15. However, in November 2013, the Plaintiffs came across an advertisement of the Defendant's trade mark application under No. 2291944 in Class 19 for the impugned trade mark 'Ultra Cement' in the Trade Marks Journal No. 1614 dated 11th November 2013, by which the Defendant had applied for registration of the mark with a user claim of 1st April 2011. Mr. Kamod took pains to point out that in the said application the Defendant's address was the same as the address at which the notices were sent by the Plaintiffs. He thus submitted that it was clear the Defendant was intentionally dodging service of the said notices.

16. Mr. Kamod then pointed out that on 10th December 2013, the Plaintiffs filed a Notice of Opposition to oppose the registration of the Defendant's trade mark application under No. 2291944, however, despite the passage of considerable time, no counter statement or reply was filed by the Defendant. The Plaintiffs, through their attorneys, followed up with the Trade Marks Registry vide letters dated 29th March 2014 and 4th December 2015, and the

Plaintiffs’ marketing team also simultaneously conducted searches in the market to locate the Defendant’s cement bags bearing the mark ULTRA CEMENT but were at that time unable to trace any cement bag bearing the mark ULTRA CEMENT.

17. He submitted that it was only thereafter that the Plaintiffs, through their advocates, learnt that the Defendant’s trade mark application for the trade mark ULTRA CEMENT under No. 2291944 had been abandoned due to non-filing of a counter statement by the Defendant.

18. Mr. Kamod then submitted that in or around June 2016, the Plaintiffs’ marketing department came across cement bags bearing the marks UltraPlus

CEMENT/  and UltraHiTouch CEMENT/ 

manufactured by Defendant in the year 2016, which were identical with and/or deceptively similar to the Plaintiffs’ UltraTech trade marks. He pointed out that the said cement bags did not reveal any specific address of the Defendant. He submitted that given the Plaintiffs’ past attempts at serving the Defendant having failed, it was clear that the Defendant was

clearly a fly-by-night operator who was using the impugned trade marks to sell cement.

19. He submitted that the Plaintiffs also came across an article in a local newspaper with circulation in Punjab called Jagbani (Chandigarh Edition) dated 22nd June 2016, which carried an article regarding the increase in the usage and selling of duplicate cement in Punjab. He submitted that the said article reported on the increase in the sale of duplicate cement under trade marks which were deceptively similar to well-known trade marks including those of the Plaintiffs. He submitted that the Plaintiffs also learnt that the Defendant was also involved in the racket of selling cement for use in government projects and pointed out that the said article in fact carried an image of a cement bag bearing the impugned trade mark UltraHiTouch CEMENT.

20. Mr. Kamod reiterated that all of the impugned marks, namely ULTRA



PLUS/ULTRAPLUS CEMENT/ , ULTRA HITOUCH/ ULTRA



HITOUCH CEMENT BEMISAL MAJBUTI/ and ULTRA POWER contain the leading and essential feature “ULTRA”, which is also the essential feature of the Plaintiff’s registered trade mark ‘UltraTech’ trade marks. He also pointed out that the placement of features, getup, colour scheme, and general idea of the impugned marks was identical with and / or deceptively similar to the Plaintiffs’ ‘UltraTech’ trade marks. He also pointed out that the impugned marks as a whole were visually, structurally, and phonetically identical with and, in any event, deceptively similar to the Plaintiffs’ registered and well-known UltraTech trade marks. He submitted that the Defendant had made minor and insignificant changes to the UltraTech trade marks to form the impugned marks and that such inconsequential modifications did not make the impugned marks distinctive or dissimilar to the UltraTech trade marks. He submitted that the impugned marks were used for the same goods for which the Plaintiffs are registered and were using their UltraTech trade marks.

21. Basis the above, he submitted that the dishonesty on the part of the Defendant was plainly evident and that the Defendants' use of the impugned marks in respect of the sale of cement was likely to cause confusion, deception, and misrepresentation amongst consumers and members of the trade. He further also submitted that the use of the impugned marks was without due cause and was likely to take advantage of and be detrimental to the distinctive character and repute of the Plaintiffs' well-known mark UltraTech. Mr Kamod, therefore, submitted that the Defendants' use of any of the impugned marks would amount to an infringement of the Plaintiffs' registered UltraTech trade marks and also to passing off.
22. Mr. Kamod then submitted that the Defendant had used the impugned marks only with a view to trade upon and cash in on the goodwill and reputation of the Plaintiffs' registered marks. He further submitted that since the impugned mark was used in respect of cement, the same seriously exposes the trade and public to an inevitable risk of deception and/or confusion and jeopardises the public interest at large, more so given that the cement was of substandard quality. He reiterated that the substandard quality of the cement

manufactured/sold by the Defendant by using the impugned marks was also reported in Jagbani (Chandigarh Edition), and that the representative of the Court Receiver had also found goods manufactured under the impugned mark when he visited the Defendant's premises. Mr. Kamod submitted that the Plaintiff continued to track the Defendant's activity right from the year July 2012 and had incurred substantial costs towards investigation, prosecution, and litigation to the tune of ₹ 16,48,006/- (Rupees Sixteen Lakhs Forty-Eight Thousand and Six Only) and tendered a statement of the expenses incurred by the Plaintiff.

23. Mr. Kamod then placed reliance on the decision of this Court in the case of ***Hiralal Prabhudas v. Ganesh Trading Company & Ors***¹, to point out the principles laid down for determining deceptive similarity viz.

“5. What emerges from these authorities is (a) what is the main idea or salient features, (b) marks are remembered by general impressions or by some significant detail rather than by a photographic recollection of the whole, (c) overall similarity is the touchstone, (d) marks must be looked at from the view and first impression of a person of average intelligence and imperfect recollection, (e) overall structure, phonetic similarity and similarity of idea are important and both visual and phonetic tests must be applied, (f) the purchaser must not be put in a

¹ AIR 1984 BOM 218.

state of wonderment, (g) marks must be compared as a whole, microscopic examination being impermissible, (h) the broad and salient features must be considered for which the marks must not be placed side by side to find out differences in design and (i) overall similarity is sufficient. In addition, indisputably must also be taken into consideration the nature of the commodity, the class of purchasers, the mode of purchase and other surrounding circumstances.”

Basis the above, he submitted that in the present case, given how identical or then deceptively similar the impugned marks were to the Plaintiff's registered Trade Mark, the aforesaid decision would squarely apply.

24. Mr. Kamod then also placed reliance upon the decision of this Court in the case of *Ultra Tech Cement Ltd. v. Alaknanda Cement (P) Ltd.*², to point out that Plaintiff No. 1 herein had, in that case, sought to protect its rights in the UltraTech trade marks against a third party and that this Court had granted an injunction after holding that even though Plaintiff No. 1 did not have a registration for the trade mark Ultra Tech *per se*, the same was distinctive of Plaintiff No. 1's goods and that the objection raised by the Defendant therein under Section 17 of the Trade Marks Act, 1999 was not tenable. He submitted that this decision was confirmed by the Division

² 2011 SCC OnLine Bom 783.

Bench of this Court in *Alaknanda Cement (P) Ltd. v. Ultratech Cement*

*Ltd.*³ in which the Division Bench held as follows, viz.

“32 .The Defendants have next relied on Section 17 of the Trade & Marks Act, 1999 in support of their contention that the registration granted to the plaintiff does not confer any exclusive right in the matter “ULTRA” and “ULTRATECH” which form only a part of the whole of the plaintiff's registered trade mark. Section 17 of the Act is for the sake of convenience reproduced here under :-

“17. (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trademark taken as a whole.

(2) Notwithstanding anything contained in sub-section

(1), when a trade mark –

(a) contains any part –

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or (b) contains any matter which is common to the trade or is otherwise of a non-distinctive character; The registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.”

33. From the language used in Section 17 it is clear that when a trade mark consists of several marks the registration confers upon the proprietor exclusive rights to the use of trade mark taken as a whole. As held in the aforesaid decisions while comparing the marks, the Court has to consider and compare the essential features of both the marks. If the essential features are similar, then confusion and deception can be said to arise. As submitted by the plaintiff, all that Section 17 lays down is that the registration of a trade mark shall not confer any exclusive rights in the matter forming only a part of the whole of trade mark so registered unless the part is the subject matter

³ 2011 SCC OnLine Bom 1487.

of a separate application for registration or is separately registered or is distinctive. The provisions of Section 17 contained in Sub Section 2(a)(i) and 2(a) (ii) and Sub Section (b) show that the three things mentioned therein are disjunctive and not cumulative. In the present case the word ULTRATECH is distinctive. As submitted by the plaintiff, the fact that the plaintiff's mark is registered without any disclaimers or limitations itself shows that the word ULTRATECH is a distinctive mark and the plaintiff has satisfied the criteria laid down in Sections 9 and 11 of the Trade & Marks Act, 1999. Therefore in the present case though the word ULTRATECH is not separately registered nor is a subject of a separate application, the same being distinctive shall not be hit by Section 17 (2) as submitted by the defendants. Both the Ld. Advocates have relied on various paragraphs of the decision of the Calcutta High Court in the case of Three-N Products Private Ltd., V/s. Emami Ltd., GA Nos. 2951 and 3976 of 2007 and CS No.204 of 2007, Paragraph 35 of the said decision is relevant and is reproduced hereunder:

“35. The words ‘the registration thereof shall not confer any exclusive right’ towards the end of Section 17(2) have to be understood in the context. The import of such words is that the registration of the composite mark will not ipso facto confer any exclusive right as to the parts of the composite mark. But if the owner can establish exclusivity alone, the owner can assert the exclusivity. The registered owner is entitled to protection of its goodwill in such prominent features as in an action for passing off unless the registered owner seeks to rely on Section 17(2)(b) of the Act in respect of a distinctive matter not common to the trade.”

34. In view thereof, the defendants' contentions/arguments with regard to reliance on Section 17 of the Trade Marks Act, 1999 is misplaced.”

25. Basis the above, Mr. Kamod submitted that the Plaintiffs have squarely made out a case for and are entitled to the grant of reliefs in terms of prayer clauses (a), (b), (c), and (d) of the present Suit in respect of infringement of

trade mark, passing off, damages, and destruction of the infringing goods and materials.

26. In addition to the above, Mr. Kamod submitted that the present Suit, being a Commercial Suit, is governed by Section 35 of the Civil Procedure Code, 1908, as amended by Section 16 of the Commercial Courts Act, 2015, entitling the Plaintiff to an order of costs against the Defendant. He submitted that under the provisions of Section 35, the costs contemplated thereunder would include legal fees and all other expenses incurred in connection with the proceedings. He also pointed out that Section 35(3) of the amended Code of Civil Procedure, 1908, provides that while awarding costs, due regard is also required to be given to the conduct of the Defendant.
27. In the aforesaid context, Mr. Kamod submitted that given the dishonest adoption of the impugned marks by the Defendant, the Defendant's malafide intention to ride upon the goodwill and reputation of the UltraTech trade marks, the Defendant's inferior / spurious nature of the cement being sold under the impugned marks, and the failure/neglect of the Defendant to appear before this Court, show that the conduct of the Defendant was plainly

dishonest. He submitted that in view of such conduct of the Defendant, not only are the Plaintiffs entitled to an order of damages and costs, but they are also entitled to an order of exemplary costs. Mr. Kamod then submitted that in addition to costs as contemplated under the Commercial Courts Act, 2015, this Court also has the inherent power under Section 151 of the Civil Procedure Code, 1908, to grant exemplary costs in favour of the Plaintiffs and that such an order was required to be passed to act as a deterrent to other dishonest parties.

28. Basis the above, Mr. Kamod submitted that the Defendant was liable to pay punitive damages. Furthermore, considering the nature of infringement and passing off, the nature of rival goods being cement which are used in, *inter alia*, sensitive areas including the construction of homes, bridges, public and private infrastructure, and with a view to dissuading others from indulging in such activities, it is imperative that exemplary costs (including an order for costs of the litigation) be awarded to the Plaintiffs. He submitted that in the event this Court was not inclined to award the damages of ₹1,00,00,000/- as claimed by the Plaintiffs in the Suit, the Court Receiver's Report dated

12th August 2016 demonstrated that the Defendant had manufactured and was selling substantial quantities of cement bearing the impugned marks. He submitted that in these facts and circumstances, and given the fact that the Defendant had chosen not to file its Written Statement or Reply, this is a fit case for the Court to order and decree the Defendant to render a true and faithful account of all the profits earned by the Defendant by use of the impugned marks by themselves and/or any other mark containing the impugned marks and/or the word Ultra by itself or in combination with any other word or device and that the Defendant be further ordered and decreed to pay to the Plaintiffs such amount as may be found due on such account being taken.

29. After having heard Mr. Kamod and having considered the evidence led by the Plaintiff, none of which is even controverted, much less denied, I am satisfied that the Plaintiffs have made out a case which entitles the Plaintiffs to the reliefs sought for. The reasons are as follows:

A. There is no dispute that the Plaintiffs are the registered proprietors of the UltraTech trade marks as is evident from the legal proceedings

certificates marked in evidence at Exhibit P9. The Plaintiffs have also proved through the evidence of the Plaintiffs' witness, i.e., Mr. Tim S. Gupta, that the Plaintiffs have been openly, continuously, and extensively using the UltraTech trade marks since the year 2003. The Plaintiffs have, in support of their use of the said trade mark, produced in evidence several sales invoices from the year 2004 onwards; a statement of sales and promotional expenditure in relation to the Plaintiffs trade marks for the financial years 2003-2004 to 2024-2025, duly certified by a Chartered Accountant; (iii) copies of various advertisements and promotional material published in Superbrand magazine and in various other print media; and (iv) the Annual Report of Plaintiff No. 1 for the years 2003-2004 and 2015-16. None of the Plaintiffs' evidence has been challenged.

- B. The Plaintiff has thus, on the basis of the evidence produced and as set out in (A) above, clearly proved the extensive commercial use of the UltraTech trade marks by the Plaintiffs. The evidence led by the Plaintiff's witness has also established that UltraTech has acquired

distinctiveness and is exclusively associated by the public and persons in the trade with the Plaintiffs alone. The Plaintiffs have also relied upon the decision of the Bombay High Court in the case of ***UltraTech Cement Limited and Ors v. Dinesh Kothari and Ors*** to point out that the UltraTech trade mark has been recognised by the Court as a well-known trade mark. Thus, the Plaintiffs have clearly established the immense goodwill and reputation in the registered UltraTech trade marks including in ULTRA, in the context of cement in Class 19.

- C. The Plaintiffs also, on the basis of orders which have been marked as Exhibit P21 in evidence, including orders of this Court, have recognised and protected Plaintiffs' proprietary rights in the UltraTech trade marks. As already noted in (B) above, this Court has held that the Plaintiffs' trade mark UltraTech has acquired the status of a well-known trade mark in India. The said trade mark has also been included in the list of well-known trade marks which has been marked in evidence as Exhibit P20.

D. From a bare perusal of the rival trade marks, I have not the slightest hesitation in holding that the impugned marks, namely, ULTRA



PLUS/ULTRAPLUS CEMENT/

, ULTRA HITOUCH/



ULTRA HITOUCH CEMENT BEMISAL MAJBUTI/

and

ULTRA POWER as a whole are visually, structurally, and phonetically virtually identical to, and, in any event, deceptively similar to the Plaintiffs' registered and well-known UltraTech trade marks. The impugned marks nearly contain the entirety of the Plaintiff's mark, ULTRA, which is also the leading and essential feature of the other UltraTech trade marks. The manner in which the impugned marks are used on the Defendant's impugned cement bags, more particularly, the get-up, placement, colour scheme, and general idea of the impugned marks, which makes evident the Defendant's *mala fide* adoption and use of the impugned marks. The similarities between the rival trade marks cannot be a matter of coincidence. The rival goods are also the

same, i.e., cement. Hence, the Defendant's use of the impugned trade marks in respect of the impugned goods is more than likely to cause confusion, deception, and misrepresentation amongst consumers and members of the trade. The possibility of the association of the Defendants' impugned goods bearing the impugned marks with the Plaintiffs' goods bearing the UltraTech trade marks cannot be ruled out.

- E. In the context of the above, I have no hesitation in holding that the use of the impugned marks is without due cause and is likely to take advantage of the distinctive character and goodwill associated with the Plaintiffs' trade marks. In this context, I find the reliance placed upon the decisions in *Hiralal Prabhudas, Ultra Tech Cement Ltd., and Alaknanda Cement (P) Ltd.* to be entirely apposite since the Defendants' use of the impugned marks clearly amounts to infringement of the Plaintiffs' registered trade marks and passing off the cement manufactured by the Defendant as being that of the Plaintiff.

- F. The dishonesty and lack of bonafides on the part of the Defendant is also apparent from the fact that the Defendant has not at any stage of the Suit appeared, either in person or through its Advocate, despite due service of the Writ of Summons. The Defendant has also chosen not to even file a Written Statement to justify the Defendant's adoption and use of the impugned trade marks. The Defendant has, neither led evidence nor cross-examined the Plaintiff's witness. Thus, the case as pleaded in the Plaint has gone uncontroverted, and the evidence unchallenged. Furthermore, the evidence led by the Plaintiff has not been tested, nor have the documents been denied.
- G. Hence, for the reasons set out in (A) to (F), I find that the Plaintiffs have made out a clear case for infringement of trade mark and passing off. The Plaintiffs are entitled to the grant of relief of injunction in terms of prayer clauses (a), (b) and (d) of the present Suit.
- H. Insofar as the prayer for damages is concerned, the Plaintiffs have not led any evidence to establish their claim for damages in the sum of ₹1,00,00,000. However, it is well-settled in the context of trade mark

infringement and passing off suits that, in appropriate cases, the Court may award damages of a compensatory as well as punitive nature, particularly where the infringement is deliberate, dishonest, or calculated to unjustly enrich the Defendant. It is also well settled that in cases where precise quantification of loss is inherently difficult, especially in matters involving infringement of intellectual property rights, the Court is not precluded from awarding damages on a reasonable and rational basis. Further, where a Defendant has despite service, chosen not to appear the Court would be justified in drawing an adverse inference and in ensuring that such conduct does not result in the Defendant escaping liability. In the present case, the conduct of the Defendant is *ex facie* dishonest and lacking in bona fides.

- I. Further, the present Suit, being a Commercial Suit, is governed by the provisions of Section 35 of the Code of Civil Procedure, 1908, as amended by Section 16 of the Commercial Courts Act, 2015, which mandates that costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while

determining costs, to have due regard, inter alia, to the conduct of the parties. In the facts of the present case, the record reflects that the Defendant, in spite of being duly served, has chosen not to defend the Suit nor even cross-examine the Plaintiff's Witness. The Defendant's negligent conduct compelled the Plaintiff to incur substantial and avoidable expenditure. The Defendant's adoption of the impugned mark was entirely dishonest and was actuated in bad faith. In these circumstances, having regard to the conduct of the Defendant and the statutory mandate under Section 35 of the Civil Procedure Code, 1908, as amended, the Plaintiff is entitled to an award of costs.

30. Hence, for the aforesaid reasons, I pass the following order:

ORDER

i. The Suit is decreed in terms of prayer clauses (a), (b), and (d), which are reproduced below:

a) that the Defendant by itself, its servants, agents and distributors or representatives or any person claiming through or under it and the like be restrained by a perpetual order and injunction from in any manner in relation to any of its goods from using the marks "UltraPlus CEMENT



” & “**UltraHiTouch CEMENT**” or any mark containing words “**UltraPlus**” & “**UltraHiTouch**” together or by themselves or with any other word or device and/or any other mark containing the impugned marks as shown in **Exhibit J1-J8**, and/or the word **Ultra** by itself or in combination with any other word or device and/or other deceptively similar words written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered and



well known trademarks bearing No. 1244745 / bearing No.



1326528 “The Engineer's Choice” trademarks or parts thereof bearing Registration Nos. 1575299, 1544648, 1544649, 1340606, 1525671, 1525672, 1908355, 1908356, 2080447, 2080448, 2080449 and 2103267 so as to infringe the Plaintiffs said registered trademarks or part thereof;

b) that the Defendant by itself, its servants, agents, representatives or any person claiming through or under it and the like be restrained by a perpetual order and injunction of this Hon'ble Court from using the marks “**UltraPlus**



CEMENT” & “**UltraHiTouch CEMENT**” or any mark containing the words “**UltraPlus**” & “**UltraHiTouch**” together or by themselves or with any other word or device and/or any other mark containing the impugned marks as shown in **Exhibit J1-J8**, the word **Ultra** by itself or in combination with any other word or device and/or any other deceptively similar words written in a stylized manner or in any manner and/or any other deceptively similar mark to the Plaintiff's “**UltraTech**



CEMENT with Sun Device”/ “The Engineer's Choice” trademarks or parts thereof so as to pass off and/or enable others to pass off the Defendant's goods as

and for the goods of the Plaintiffs or in some way connected with the Plaintiffs;

d) that the Defendant be ordered and decreed to deliver up to the Plaintiffs for destruction thereof all the bags, stationery, brochures, pamphlets, forms and all promotional advertising, literature, packing material, poly bags and other materials, articles and effects of the Defendant bearing the impugned marks along with all stamps, dies, articles, papers



and things, bearing the impugned marks **“UltraPlus CEMENT**



” & “UltraHiTouch CEMENT” or any mark the containing words **“UltraPlus” & “UltraHiTouch”** together or by themselves and or any other mark containing the impugned marks and/or the word **Ultra** by itself or in combination with any other word or device and/or any other articles or materials used for printing the impugned marks/labels;

- ii. In view of (H) and (I), the Defendant shall pay costs of Rs. 50,00,000/- (Rupees Fifty Lakhs only) to the Plaintiff within a period of 8 weeks from today.
- iii. The Defendant shall also pay the Plaintiff a sum of Rs. 16,48,006/- (Rupees Sixteen Lakhs Forty Eight Thousand and Six) as per the Statement of Expenses incurred by the Plaintiff within a period of 8 weeks from today.

- iv. In the event the Defendant does not comply with (ii) and (iii) above, the Defendant shall be liable to pay interest at the rate of 8% per annum.
- v. The Court Receiver shall stand discharged without passing of the accounts on the Plaintiff's undertaking to make payment of all necessary costs, charges, and expenses of the Court Receiver.
- vi. The Suit is disposed of in the aforesaid terms.

[ARIF S. DOCTOR, J.]