



2024:DHC:4609



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

% Reserved on : 06<sup>th</sup> May, 2024  
Pronounced on : 31<sup>st</sup> May, 2024

+ **CS(COMM) 251/2023, I.A. 8888/2023 & I.A. 13154/2023**

JINDAL INDUSTRIES PRIVATE LIMITED. .... Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. With Mr.  
Sarad Kumar Sunny, Mr. Rohan Dua and Ms.  
Yashi Aggarwal, Advs.

versus

JINDAL SANITARYWARE PRIVATE LIMITED & ANR. .... Defendants

Through: Mr. Jayant Mehta, Sr. Advocate along with  
Mr. Sudeep Chatterjee, Mr. Rohan Swarup,  
Ms. Tanya Arora and Mr. Jaydeep Roy,  
Advocates for D-1.

**CORAM  
HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

**I.A. 13154/2023 (Application under Order XXXIX Rule 4 of CPC) and I.A.  
8888/2023 (Application under Order XXXIX Rules 1 and 2 of CPC)**

1. The suit has been filed seeking a decree of permanent injunction restraining the defendants and all those acting for, and on their behalf, from using the marks



2024: DHC: 4609



(hereinafter referred to as “**JINDAL’ marks**”) jointly or severally, or any other marks deceptively similar to the plaintiff’s trademark ‘JINDAL’, and other attendant reliefs.

2. An *ad interim* injunction was granted on 09<sup>th</sup> May, 2023, in favour of plaintiff. The essential grievance of the plaintiff is that defendant has no registration for the mark ‘JINDAL’ in respect of Poly Vinyl Chloride (*hereinafter referred to as “PVC”*) pipes and is the registered holder of the mark ‘J-PLEX’ w.e.f. 18<sup>th</sup> May, 2020, but had started using the mark ‘JINDAL’ for PVC pipes.
3. Pictures of PVC pipes manufactured by defendant as provided in para 26 of the plaint have been extracted as under:





4. Plaintiff asserted prior user in respect of the mark ‘JINDAL’ for PVC pipes, and registration of the mark with effect from 01st September 2006. Accordingly, the Court observed as under:

*“25. Mr. Abhishek Grover, learned Counsel for the Defendant 1 is unable to support the use, by the defendant, of the mark “JINDAL” for PVC pipes. He merely asserts that Defendant 1 has the device mark “JINDAL” registered in its favour.*

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*29. In that view of the matter, at this prima facie stage, there is no reason for the court not to believe the assertion in the plaint that the defendant was, till recently, using its registered mark J PLEX for PVC pipes and has only recently started using the mark JINDAL on such pipes.*

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*31. Prima facie, therefore, the user, by the Defendant 1, of JINDAL for its PVC pipes and fittings is recent and, in any event, later in point of time both to the registration and the user of the said mark in favour of the plaintiff for identical PVC pipes.*



32. Moreover, even applying the principle of balance of convenience at this ad interim stage, the court does not find that the defendant would be subjected to any serious prejudice if it is restrained from using JINDAL on its PVC pipes, as it is already using the mark J PLEX, which is registered in the defendant's favour for PVC pipes.

33. The Court does not see how Defendant 1, while it has already obtained registration for the mark J PLEX for pipes, has chosen to include, on the body of the PVC pipes, the mark JINDAL, which stands registered for the PVC pipes in favour of the plaintiff.

34. A prima facie case of infringement is, therefore, made out.

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46. Till the next date of hearing, the defendants as well as all others acting on their behalf shall stand restrained from using the marks



or any other mark deceptively similar to the Plaintiff's trademark "JINDAL" in any manner whatsoever on PVC pipes or any goods allied thereto."

5. Defendants after entering appearance filed application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") claiming that defendants have been engaged in the business of manufacturing and




selling a wide variety of sanitary and bathroom fittings, including pipe-fittings made out of PPR and PVC pipes, for the last several decades.

6. Defendant no. 1 was started as a partnership firm by the father of defendant no. 2, Sh. Lal Chand, and is presently a sole proprietorship under defendant no. 2, Shri Ram Niwas Jindal. It is submitted that they had adopted and started using the mark ‘JINDAL’ in respect of sanitaryware and bathroom fittings in PVC pipes from 1<sup>st</sup> July, 2006, and therefore, using the trademark ‘JINDAL’ as part of the primary essential and distinctive part of the family name. In the year 2009, defendant no. 2 incorporated defendant no.1 company under the name and style of ‘*Jindal Sanitaryware Private Limited*’. Prior to said incorporation, defendant no. 1 had been duly permitted by defendant no. 2 use of their registered mark “JINDAL”.

7. The essential dispute is regarding the use of the mark ‘JINDAL’ for PVC pipes by both, plaintiff and defendant, with a disputing claim as to who was the prior user. In this regard, it will be useful to tabulate, as under, the marks and registrations in question:



### Trademark Registrations of the Plaintiff

MARK	REGISTRATION NO.	CLASS	USER DETAIL	CATEGORY OF GOODS	DATE OF APPLICATION
	1483835	17	Proposed to be used	PVC Pipes and Fittings	01.09.2006
“JINDAL”	1483834	17	Proposed to be used	PVC Pipes and Fittings	01.09.2006








2024: DHC: 4609



	1787420	17	01.04.2006	PVC Pipes and Fittings	19.02.2009
“JINDAL”	2697386	17	01.04.2006	PVC Pipes and Fittings	12.03.2014
	384816	06	01.05.1972	Galvanised Iron Pipes and Tubes	31.12.1981



### Trademark Registrations of the Defendants

MARK	REGISTRATION NO.	CLASS	USER DETAIL	CATEGORY OF GOODS	DATE OF APPLICATION
	861968	11	16.04.1981	Cisterns and Cistern Parts	21.06.1999
	1820964	11	01.05.2009	Toilet Seats, Toilet Parts	22.05.2009
	792571	20	01.10.1997	PVC Water storage tanks	24.02.1998
	861967	20	01.04.1990	Mirror cabinet and Mirror Frame	21.06.1999
 (not yet registered)	1694903	20	01.04.2007	Water Storage Tanks (Not of	04.06.2008



2024: DHC: 4609



				metal nor of masonry)	
	5633766 (not yet registered)	17	16.04.1981	Watertight Rings for Plumbing Pipes	03.10.2022
	4428202 (not yet registered)	17	01.10.1997	PVC Pipes and Fittings	03.02.2020

### Submissions on behalf of plaintiff

8. Mr. C.M. Lall, Senior Counsel for plaintiff, submitted that plaintiffs have a registered trademark in the word mark 'JINDAL', effective from 01<sup>st</sup> September, 2006, and defendant would have to show evidence to trump the 2006 user. If the defendant manages to do so, then it would be hit by the 1981 user of plaintiff in Galvanized Iron (*hereinafter referred to as "G.I."*) pipes.

9. In order to refute defendants attempt to show prior user, Senior Counsel for plaintiff submitted that defendant no. 2 in an affidavit dated 09<sup>th</sup> July, 2010, for the

mark 'JINDAL'



in class 17 shows user of the mark since 2006 -2007 onwards, but did not file any bills to substantiate the same; *firstly*, the mark in any case was objected to and has not been granted registration; *secondly*, for the




mark in class 17, the affidavit dated 1<sup>st</sup> October, 2022 filed certain bills to claim user, the earliest bill being of 14<sup>th</sup> December, 2010; *thirdly*, On 03<sup>rd</sup> February, 2020, defendant no.1 had filed a trademark application for the device




2024:DHC:4609



mark  in class 17 on a ‘*proposed to be used*’ basis, and later corrected it to 01<sup>st</sup> October, 1997, pursuant to the opposition by plaintiff regarding the application on ‘*proposed to be used*’ basis, however, defendant had not filed any document to substantiate the same; *fourthly*, defendant no.2 applied for the



mark  in class 17 with user claim of 01<sup>st</sup> July, 2006. Plaintiff’s mark was cited as a conflicting mark. Defendant no. 2, in response, did not produce any invoices and did not claim priority *vis-a-vis* plaintiff, on the contrary, defendant no. 2 stated that the trademark applied by defendant no. 2, is identical and similar to the plaintiff’s registered trademark, and is in respect of same or similar goods and eventually abandoned its trademark application.

10. Plaintiff’s counsel contended that defendants in their company profile have stated that they commenced the business of PVC pipes in the year 2007 and that they were using the mark ‘J-PLEX’ for pipes.

11. Plaintiff’s counsel further contended that sales figures claimed by defendant pertaining to *Jindal Sanitary Works* are from 2017-2018; first sales figures of defendant no.1 start from 2013-2014; sales figures pertaining to *Jindal Plast (India)* start from 01<sup>st</sup> April 2007; sales figures pertaining to *JS Industries* start from 01<sup>st</sup> April 2009.

12. It was brought to attention that defendants, in para 26 of the application, stated that they have used the mark ‘JINDAL’ since the last 16 years, prior to institution of the suit on 26<sup>th</sup> April, 2023, and on a calculation their user would be from 24<sup>th</sup> April, 2007. No dispute had been raised by the defendants regarding plaintiff’s invoices starting from 1973 with respect to steel pipes and tubes.





2024:DHC:4609



13. It was submitted that defendants' invoices of the year 2006 bear license numbers for various products *inter alia* plastic flushing cisterns, polythene floats and valves, and none of the goods were registered in class 17.
14. It was submitted that defendants have been using the mark 'J-PLEX' on a standalone basis in relation to the goods in class 17 which is evident from the company's profile, and the defendants' affidavit dated 30<sup>th</sup> October 2014.
15. There was no suppression by the plaintiff since all three enlisted trademark applications of defendants had been disclosed by plaintiff in the plaint, as also the e-records of the three applications of defendants had been filed by plaintiff.
16. The defense of Section 35 of the Trade Marks Act, 1999 (*hereinafter referred to as "the Act"*) would not be available since, in the trademark application no. 606858, defendant no. 2 had mentioned his father's surname as "Gupta" and not "Jindal". Despite this, defendant no. 2 pleaded that the defendants adopted the mark 'JINDAL' from the surname of father of defendant no. 2, Sh. Lal Chand Jindal.
17. The order of 09<sup>th</sup> May, 2023, was passed after having heard the defendants and was not *ex parte*. The plaintiff had not made any false or misleading statement which would trigger vacation of the injunction under Order XXXIX Rule 4 of CPC. There had been no change of circumstance on the present date, as compared to 09<sup>th</sup> May, 2023.
18. The defendants did not have a single 'JINDAL' trademark registration in Class 17 and all the defendants' marks were in either Class 11 or 20 and were in respect of unrelated goods like water storage tanks, cabinets, mirrored cabinets etc. Only one registered mark 'J-PLEX' in Class 17 was available for the defendants for the PVC pipes.
19. It was pointed out that defendants have also admitted that they deal in pipes and fittings under the mark 'J-PLEX'. The plaintiff had stated in its plaint that it



2024:DHC:4609



came to its knowledge in 1<sup>st</sup> week of February 2023 that defendants had started embossing the mark 'JINDAL' on PVC pipes, although they had not produced a single document or photograph to show prior use of the mark 'JINDAL' on PVC pipes before February 2023.

20. The plaintiff has registrations since 1973 in the Jindal brand which are in relation to steel pipes and tubes in Class 6. Steel pipes and tubes were allied and cognate goods to PVC pipes.
21. The defendant's plea, that it intends to expand its mark 'JINDAL' in other classes beyond Class 17, plaintiff's counsel submits will need to be accounted for, considering it will trample on the plaintiff's usage of the mark.
22. Counsel for plaintiff relied upon Section 35 read with Section 29(1) of the Act, to submit that use of 'JINDAL', as use of the "name" as part of business is permissible, however, use of the same as a mark is prohibited under Section 29(1).
23. Counsel for plaintiff relied upon the following decisions:
  - i. ***Preetendra Singh Aulakh v. Green Light Foods Pvt. Ltd.***, 2023 SCC Online Del 2492, on the doctrine of approbate/reprobate was not applicable to the plaintiff since both parties had taken contrary stands;
  - ii. ***Parker Knoll v. Knoll International Ltd***, (1962) 10 RPC 265 (278), submitting that the defense of Section 35 was not available to the defendants;
  - iii. ***Rajesh Chugh and Anr v. Chhavi Poplai & Ors.***, 2019 SCC Online Del, 6717 on marks common to trade;
  - iv. ***Raj Kumar Prasad v. Abbott Healthcare (P) Ltd.***, 2014 SCC Online Del 7708, on the issue of maintainability of trademark infringement suits against registered proprietors;
  - v. ***Evergreen Sweet House v. Ever Green and Others***, 2008 SCC OnLine Del 1665, on distinctiveness of a mark.



2024:DHC:4609



### Submissions on behalf of defendants

24. Mr. Ajay Sahani, counsel for defendants, asserted that defendants and their sister concerns have been using the trademark 'JINDAL' in respect of goods in classes 11 and 20, sanitary and bathroom fittings, sanitary pipes and storage tanks, since 1981. The use in PVC pipes and fittings in class 17 was since 2006, which was prior to the injunction.

25. The *ad interim* injunction ought to be vacated since there was concealment and suppression of material facts by plaintiff. Plaintiff was aware of the use by defendant of the mark 'JINDAL', by virtue of various proceedings between the parties, *inter alia* as under:

- i. Oppositions in May 2010 to plaintiff's application for registration of 'JINDAL' under application no. 1522441 and 1522442, where user pleaded by defendant no. 2 was of 1981 and 2006 respectively.
- ii. Opposition dated May 2010 filed by sister concern of defendants, *Jindal Plast (India)*, against plaintiff's registration no. 1522441 of the mark 'J I N D A L', where evidence was also led before the trademark registry, and documents in relation to defendant's user of the mark 'JINDAL' were also with the plaintiff.
- iii. Opposition was filed by the plaintiff on 03<sup>rd</sup> September, 2009, to the defendant's trademark application no. 1500231 for the trademark 'JINDAL'



in class 11.



iv. Plaintiff filed application for registration of the mark ‘JINDAL’ and the label



in September 2006 in class 17 on a ‘proposed to be used’ basis. On 11<sup>th</sup> May, 2009, plaintiff filed an affidavit before the registry claiming they shall be launching goods under Jindal “very shortly”. On this basis, defendant's counsel claimed that up to the year 2009, the plaintiff had not commenced business under the trademark ‘JINDAL’ for goods in class 17. After noticing claim of user and defendant's applications, plaintiff filed subsequent applications under nos. 1522441, 1522442, 1522447, 1787420, 2697386, 2697387 for trademarks ‘JINDAL’ claiming user since 1<sup>st</sup> April 2006 to make it prior to the defendant’s use of 1<sup>st</sup> July, 2006. The registrations were therefore *prima facie* invalid based on a false user.

26. Plaintiff itself is not the owner of the mark ‘JINDAL’, as another entity Jindal India Limited claims ownership and user since 1952, which is admitted by the plaintiff.

27. In reply to examination report by plaintiff to application no. 1787420 in class 17 for Jindal, the plaintiff admits before the Registrar that trademark ‘JINDAL



(label)’ as well as goods of the plaintiff are entirely different from



trademark ‘JINDAL’ of defendant no. 2. The same was the situation in

application no. 1856072 in class 11 for the mark ‘JINDAL (label)’





28. Several other entities have obtained registration of the mark 'JINDAL' and the plaintiff cannot claim exclusivity in any event. The defendants placed reliance on various registrations, details of which are extracted as hereunder:

S No	App No	Trade Mark	Class	App Date	User	Status	Valid Upto	PropName
1	387534	JINDAL	11	12-Mar-82	01-01-1979	Registered	12-Mar-30	DEVRAJ JINDAL .
2	437165	JINDAL (LABEL)	11	30-Apr-85	01-04-1982	Registered	30-Apr-26	M/S JINDAL HOME PRODUCTS PVT. LTD
3	747027	JINDAL (DEVICE OF SQUARE CONTAINING LETTER J)	6	05-Mar-97	01-01-1980	Registered	05-Mar-27	JINDAL STRIPS LIMITED
4	747028	JinDAL STAINLESS , J	6	05-Mar-97	01-01-1990	Registered	05-Mar-27	JINDAL STRIPS LIMITED
5	870617	J I N D A L	19	10-Aug-99	01-01-1998	Registered	10-Aug-29	SHIV KUMAR JINDAL
6	926930	JINDAL	11	24-May-00	Proposed to be used	Registered	24-May-30	SH. RAMANDE EP SINGH
7	1003424	JINDAL	20	16-Apr-01	01-04-1998	Registered	16-Apr-31	BALRAJ AGGARWAL



8	1129886	JINDAL	6	29-Aug-02	01-01-1970	Registered	29-Aug-32	JINDAL ALUMINIUM LTD.
9	1245120	JINDAL	20	15-Sep-03	01-07-2000	Registered	15-Sep-23	KULDIP RAJ
10	1266289	JINDAL	19	11-Feb-04	01-04-2000	Registered	11-Feb-24	SUMIR GOYAL
11	1329754	JINDAL	35	03-Jan-05	16-09-1985	Registered	03-Jan-15	JATINDER KUMAR
12	1347425	JINDAL WITH DEVICE OF SUN	20	29-Mar-05	01-01-1996	Registered	29-Mar-25	SRODEEP POLYMERS LTD.
13	1375196	JINDAL (LABEL)	11	03-Aug-05	01-01-1998	Registered	03-Aug-25	ANITA GUPTA
14	1462007	JINDAL STAINLESS	6	14-Jun-06	27-01-2003	Registered	14-Jun-26	JINDAL ARCHITECTURE LIMITED
15	1462010	JINDAL STAINLESS	19	14-Jun-06	27-01-2003	Registered	14-Jun-26	JINDAL ARCHITECTURE LIMITED
16	1462011	JINDAL STAINLESS	20	14-Jun-06	27-01-2003	Registered	14-Jun-26	JINDAL ARCHITECTURE LIMITED
17	1475158	JINDAL PLASTIC PRODUCTS	35	01-Aug-06	01-06-1996	Registered	01-Aug-26	JINDAL PLASTIC PRODUCTS



2024: DHC: 4609



18	1480523	JINDAL STAINLESS STEELWAYS WITH LABEL	6	22-Aug- 06	06-08-2004	Registered	22-Aug-26	JINDAL STAINLESS STEELWAYS LTD.
19	1602826	JINDAL	35	18-Sep- 07	01-01-1972	Registered	18-Sep-27	JINDAL ROLLING MILLS PRIVATE LIMITED
20	1683368	JINDAL KUMAR	19	05- May-08	01-06-2007	Registered	05-May-28	KAVIT KUMAR GUPTA
21	1706687	SHRAVAN JINDAL PLUS	19	03-Jul- 08	25-07-1995	Registered	03-Jul-28	SHRAVAN CEMENT PRIVATE LIMITED
22	1706688	SHRAVAN JINDAL KUMAR	19	03-Jul- 08	25-07-1995	Registered	03-Jul-28	SHRAVAN CEMENT PRIVATE LIMITED
23	1706689	RAJ JINDAL PLUS	19	03-Jul- 08	19-10-1990	Registered	03-Jul-28	JINDAL RAJSHREE CEMENTS PVT. LTD.,
24	1706690	RAJ JINDAL KUMAR	19	03-Jul- 08	Proposed to be used	Registered	03-Jul-28	JINDAL RAJSHREE CEMENTS PVT. LTD.,
25	1739001	JINDAL RAJSHREE	19	30-Sep- 08	26-06-2008	Registered	30-Sep-18	JINDAL RAJSHREE CEMENTS PVT. LTD.,



2024: DHC: 4609



26	1759970	JINDAL GOLD	11	04-Dec- 08	18-12-1999	Registered	04-Dec-28	SMT. SANGITA AGRAWAL
27	1768724	jINDAL BROTHER S	35	29-Dec- 08	01-04-2005	Registered	29-Dec-18	JINDAL PADDINGS (P) LTD.
28	1820963	jindal	19	22- May-09	01-05-2009	Registered	22-May-29	SIDDHART H JINDAL
29	1892551	JINDAL	19	07-Dec- 09	01-08-1997	Registered	07-Dec-29	MR. SATYAPAL JINDAL
30	1903725	RAMDEV JINDAL GOLD	20	31-Dec- 09	01-12-2009	Registered	31-Dec-29	SOMBAI PRAJAPATI
31	2188243	SANDARB H JINDAL	35	09-Aug- 11	01-04-2011	Registered	09-Aug-21	MAYUR RATHI
32	2209224	Jindal Shakti (LABEL)	19	22-Sep- 11	15-09-2009	Registered	22-Sep-31	SHRI SURINDR KUMAR JINDAL
33	2254705	JINDAL MECTEC (LABEL)	11	22-Dec- 11	01-04-2008	Registered	22-Dec-31	KINGSPAN JINDAL PRIVATE LIMITED
34	2283260	K-JINDAL (DEVICE)	19	15-Feb- 12	01-04-2009	Registered	15-Feb-32	KAILASH JINDAL
35	2629046	JINDAL SAFEWRA P	6	18- Nov-13	12-08-2013	Registered	18-Nov-33	JINDAL ALUMINIU M LIMITED





2024: DHC: 4609

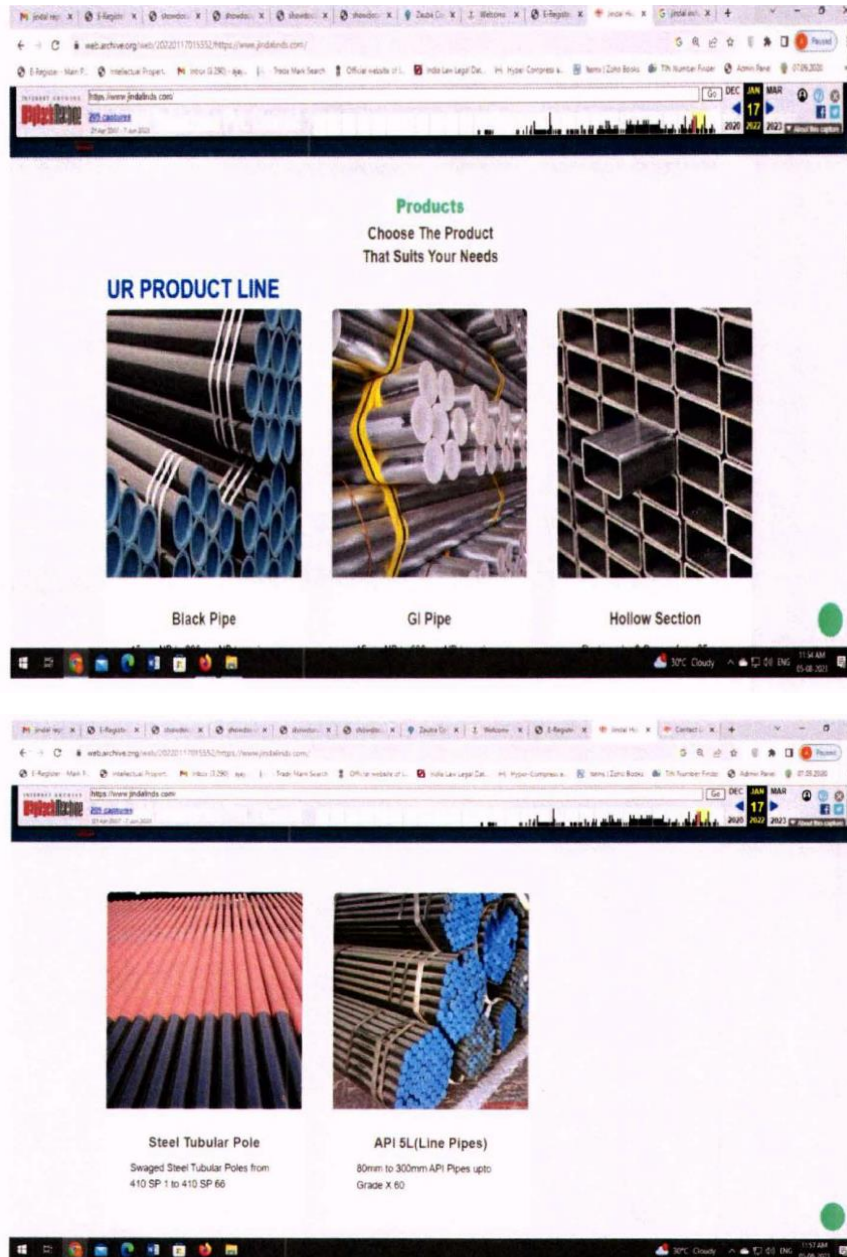


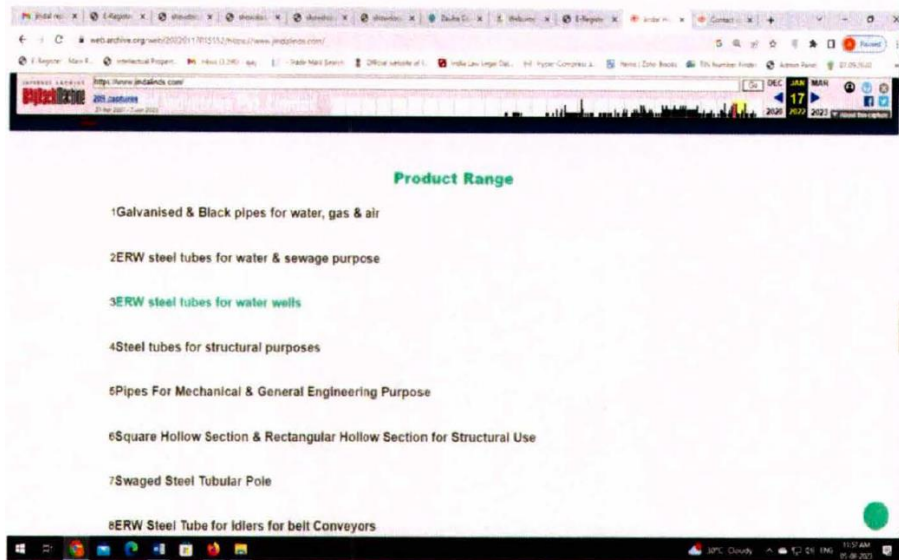
36	2629047	JINDAL SAFEWRA P	6	18- Nov-13	12-08-2013	Registered	18-Nov-33	JINDAL ALUMINIU M LIMITED
37	2747846	JINDAL FOREVER	6	31- May-14	01-05-2014	Registered	31-May-24	JINDAL ALUMINIU M LIMITED
38	2747847	JINDAL FOREVER ALUMINIU M ROOFING SHEETS	6	31- May-14	01-05-2014	Registered	31-May-24	JINDAL ALUMINIU M LIMITED
39	2998762	ROHAN JINDAL SHEET	35	02-Jul- 15	01-06-2015	Registered	02-Jul-25	BHARAT BERA
40	3507732	JINDAL PLUS	19	13- Mar-17	20-09-2016	Registered	13-Mar-27	JINDAL SHAKTI CEMENT
41	4502727	JINDAL ALUMINIU M LIMITED	6	16- May-20	14-07-1970	Registered	16-May-30	M/S. JINDAL ALUMINIU M LIMITED
42	4502728	JINDAL ALUMINIU M	6	16- May-20	14-07-1970	Registered	16-May-30	M/S. JINDAL ALUMINIU M LIMITED
43	4644753	JPI JINDAL POLYPLAS T INDUSTRI ES	19	07-Sep- 20	01-09-2020	Registered	07-Sep-30	MR. VISHAL JINDAL
44	4805988	DEVICE OF JM JINDALCO METAL WITH DEVICE	35	03-Jan- 21	Proposed to be used	Registered	03-Jan-31	JINDALCO METAL PRIVATE LIMITED



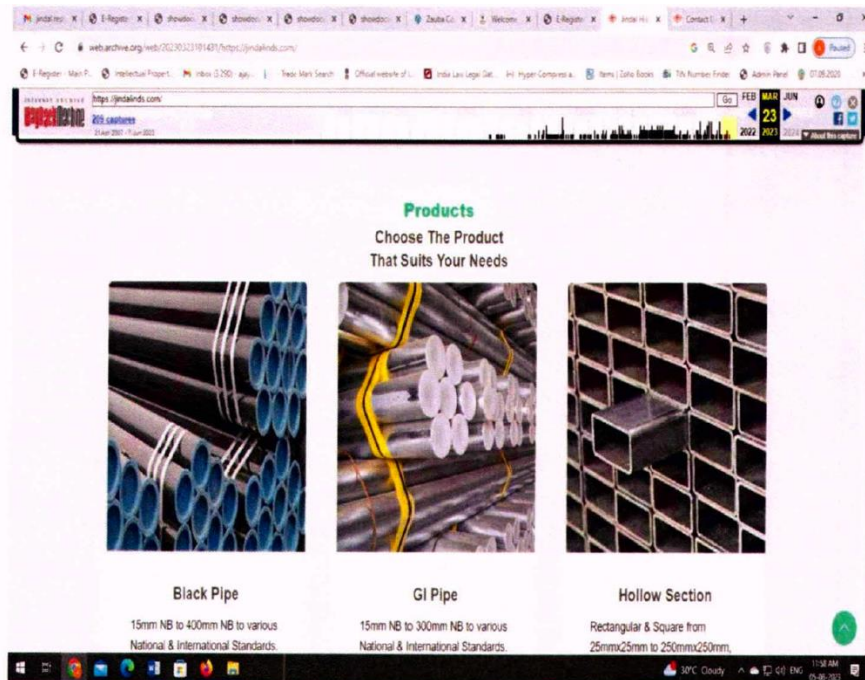
29. The first user of the plaintiff in relation to mark ‘JINDAL’ class 17, is since 2022-2023 as per website records of the plaintiff, which is subsequent to defendant’s use of since 2006. These website records, as placed on record, are extracted hereunder:

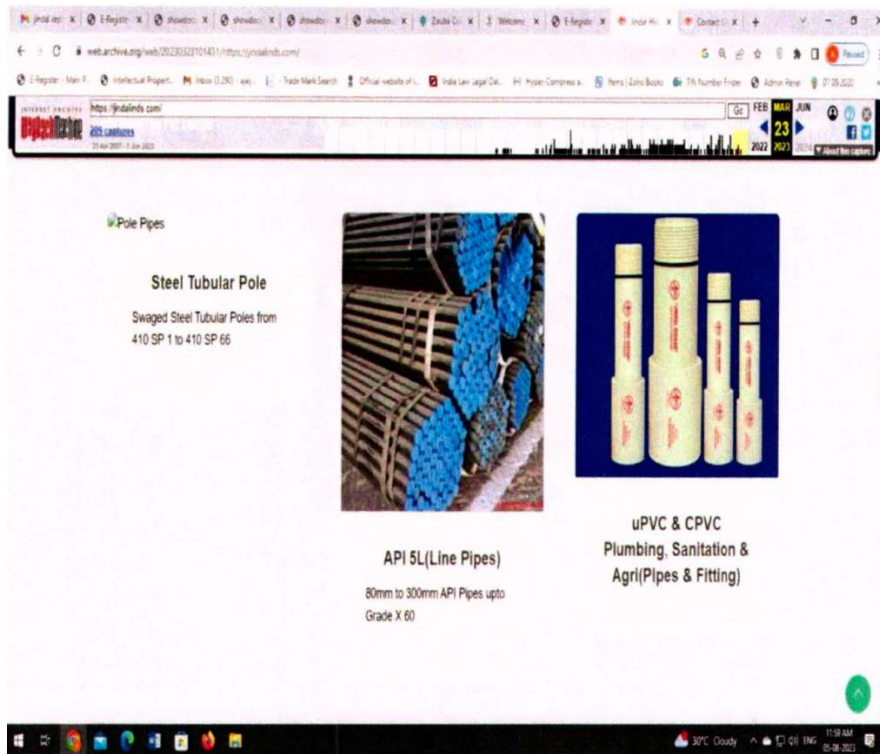
### Plaintiff’s Website in 2022





### Plaintiff's Website in 2023





30. It was highlighted by the defendant's counsel that it is evident from para 25 of order dated 09<sup>th</sup> May, 2023, that an *ad interim* injunction was passed in favour of plaintiff, since the counsel for defendants was unable to present the user of the mark 'JINDAL' for PVC pipes, and merely asserted that defendant no.1 has a device mark registered in their favour.

31. Counsel for the defendant relied upon the following decisions:

- i. ***Veerumal Praveen Kumar v. Needle Industries (India) Ltd. & Anr.***, 2001 SCC OnLine Del 892, particularly para 24, whereby it was held that non-use by a registered owner for a long time, disentitles them from an injunction against the defendant;
- ii. ***Neon Laboratories Limited v. Medical Technologies Limited and Others***, (2016) 2 SCC 672, particularly paras 7 and 8, to submit that a proprietor does not have the right to prevent use by another party of an identical or similar



2024 : DHC : 4609




mark, for which the user commenced prior to the proprietor's user/registration;

- iii. ***Vikas Gupta v. Sahni Cosmetics***, 2021 SCC OnLine Del 4643, particularly paras 5 and 8, to submit that when the defendant has been using the impugned mark for a long period of time, prior to the filing of the suit, the plaintiff is not entitled to an injunction.
- iv. ***Jindal Industries (P) Ltd. v. Suncity Sheets (P) Ltd.***, 2024 SCC OnLine Del 1632, to submit that one who obtains registration of a common name like 'Jindal' as a trademark does so with the risk that such registration entails, since it is open to everyone to use their names on goods.

32. Balance of convenience lies in favor of the defendants since they have been using it for 13 years. There were other persons using 'JINDAL' as well. Additionally, the ground of non-use is not maintainable, since use by the plaintiff itself was in 2022. As regards father's name, partnership deed dated 16<sup>th</sup> October 2007 was shown which clearly states the name of the father of defendant no. 2 as Shri Lal Chand Jindal.

### **Analysis**

33. The crux of the dispute revolves around which party is the prior user for the mark 'JINDAL' on PVC pipes under class 17. Plaintiff has relied upon their registration no. 2697386 (for the word mark 'JINDAL' in class 17), to claim user

since 01<sup>st</sup> April, 2006 and no. 1787420 (for the device mark  in class 17) and user detail of 01<sup>st</sup> April, 2006. On this basis, the plaintiff claims user since April 2006.



2024: DHC: 4609



34. Defendant contends that they have been using the mark 'JINDAL' in respect of goods in classes 11 and 20 (sanitary and bathroom fittings and sanitary pipes etc.) since 1981 and have registrations for the device marks being no. 861968 for



(in class 11) and no. 792571 for



(in class 20). The use

of the mark on PVC pipes and fittings, in class 17 was since 2006, which was much prior to the injunction being granted on 09<sup>th</sup> May 2023.

35. The plaintiff's user being claimed on the basis of the proposed registration may stand on thin ground considering that the same word mark 'JINDAL' and the



device mark was originally applied for registration under application No. 1483834 and 1483835 respectively on 01<sup>st</sup> September, 2006, on a '*proposed to be used basis*'.

36. However, subsequent applications for registration were made under class 17 to change the user from '*proposed to be used*' to 01<sup>st</sup> April, 2006. Application no. 1787420 dated 19<sup>th</sup> February, 2009 showed user since 01<sup>st</sup> April, 2006 for the



mark and application no. 2697386 was made on 12<sup>th</sup> March, 2014 for the word mark 'JINDAL' showed user since 01<sup>st</sup> April, 2006. A bare perusal of these subsequent applications would show that as regards class 17 (PVC pipes and fittings) the re-think by plaintiff of the user was revised, first in 2009, and then in 2014.

37. The issue then arises as to is there any actual proof of the claimed user by plaintiff. There is no document filed by plaintiff which determinatively shows that



2024: DHC: 4609



the mark ‘JINDAL’ was used by them, as of April 2006, or even subsequently. In fact, defendants have pointed out to various instances, relying on plaintiff documents from which it can be gleaned that the user of plaintiffs on PVC pipes would at best be from 2022.

- i. *First*, is an affidavit dated 11<sup>th</sup> May, 2009 filed by plaintiff through its General Manager. This affidavit was filed in support of their change of user for class 17 made in 2009. Though the application had been filed in the category of ‘*proposed to be used basis*’, the said affidavit stated categorically that they had applied to the relevant authorities and ‘*will start the use of said trademark in connection with the said goods very soon.*’. This is a clear admission by plaintiff, on record before the Registrar, that the mark was not in use at least till 2009. On this basis alone the amendment of the user of 2006 itself is vitiated and cannot be countenanced. The subsequent statement made in para 4 of the affidavit that the trademark has been continuously in use since adoption of the mark is general, contradicts the previous statement made in the affidavit, without any specification in support and cannot be relied upon.
- ii. *Second*, to further substantiate that user of plaintiff was only post 2022, reliance was placed by defendant on the plaintiff’s brochure which was titled “*Jindal Hissar Introduces Super Strong Lead Free uPVC column pipe*”. The said brochure stated that “JINDAL HISSAR” is a leading manufacturer of *inter alia* G.I. pipes and has taken a step ahead by manufacturing Unplasticized Polyvinyl Chloride (*hereinafter referred to as “uPVC”*) column pipes and the product was being introduced. Though the brochure is undated, it has a logo stating, “*60 years since 1962*”. The brochure though undated, can therefore be said to be of 2022, and bears out that the PVC




products were being introduced then, leading to a fair conclusion that they were not producing such products prior to that.

- iii. *Third*, defendants have also adverted to the website of 2021 and 2022, and the annual report dated 04<sup>th</sup> June, 2022 appended by plaintiff, which does not mention the PVC products as part of their portfolio.
- iv. *Fourth*, the reference to the invoice dated 06<sup>th</sup> February, 2020 of plaintiff was also instructive, since it states that plaintiffs were manufacturers of galvanized and black steel tubes, and PVC is conspicuous by its absence.
- v. *Fifth*, on the contrary, an invoice of 06<sup>th</sup> April, 2022 of plaintiff shows presence of uPVC pipe on their invoice, which carries the HSN code 39172390, the code allotted to a PVC product.

38. If one joins these dots, there is no evidence *prima facie* to accept plaintiff's claim that they had started producing PVC pipes prior to 2022 and therefore, the claim of user for trademark, for such products in class 17, is untenable.

39. There is something which can also be gleaned from the prosecution history of the plaintiff in their marks, 'JINDAL' in class 17.

- i. *Firstly*, similar marks 'JINDAL' (including the defendants' marks ,



, **jindal**)



no. 1787420 for the mark and application no. 1856072 for the mark



, to which the plaintiff filed a reply stating that they were not similar, even though the cited marks did state 'JINDAL'.






- ii. *Secondly*, an agreement dated 23<sup>rd</sup> May 1989, had been arrived between the plaintiff and another entity *Jindal (India) Limited*, filed under an application under Order XXIII Rule 3, CPC in suit no. 1257/1988, where plaintiff had agreed that both parties were independent owners of the trademark ‘JINDAL’ in respect of steel pipes and therefore, admitted to a shared reputation.
- iii. Application no. 152242 was moved by plaintiff for registration of ‘J I N D A L C O R’ showing user from 01<sup>st</sup> April, 2006, but the application was opposed by *Jindal Plast (India)* and was subsequently abandoned. This is relevant since defendant no. 2 is the current proprietor of *Jindal Sanitary Works*, and in 2005, defendant no. 2 started the partnership firm *Jindal Plast (India)*.
40. This itself dilutes the stand of plaintiff to an exclusivity over the ‘JINDAL’ mark, considering that the agreement to coexist with respect to steel pipes, the plaintiff cannot be seen to be asserting its exclusivity on PVC pipes, a product which they adopted much later (*seemingly in 2022, as per the discussion above*).
41. The assertion of the counsel for plaintiff that a “name” cannot be used as a trademark when Section 35 is read with Section 29 (1) of the Act, does not hold much water. Reliance in this regard is placed on the decision in *Jindal Industries Private Limited vs Suncity Sheets Private Limited*, 2024 SCC OnLine Del 1632, in which Single Judge of this Court has held as under:

“37. Indeed, one who obtains registration of a common name, or surname, like JINDAL, as a trade mark in his favour, does so with all the risks that such registration entails. It is open to anyone, and everyone, to use his name on his goods, and, therefore, the possibility of there being several JINDAL's looms large. The plaintiff cannot, by obtaining registration for JINDAL as a word mark, monopolize the use of JINDAL even as a part - and not a



very significant one at that-of any and every mark, even in the context of steel, or SS pipes and tubes. The Trade Marks Act, and the privileges it confers, cannot be extended to the point where one can monopolize the use of a common name for goods, and, by registering it, foreclose the rest of humanity from using it.

38. For that reason, Mr. Lall's lament that, if the defendants are permitted to use the impugned , mark, the plaintiff's statutory rights in its registered JINDAL word mark would be jeopardized is really misplaced. The risk of having others bona fide using "JINDAL" as a name for their products, and in the marks used on their products, is a risk that the plaintiff consciously took, when it obtained registration of the mark. If one registers a mark which lacks inherent distinctiveness, the possibility of others also using the same mark for their goods, and of the registrant being powerless to restrain such use, is a possibility that looms large, which the registrant has to live with.

39. Albeit in an entirely different context, the Supreme Court has this to say, with respect to a name and its importance:

"1. "What's in a name? That which we call a rose by any other name would smell as sweet", said Juliet. This quote from William Shakespeare's "Romeo and Juliet" is unarguably one of the most iconic dialogues in classical literature. It conveys that the natural characteristics of an individual are more important than his/her artificial/acquired characteristics. A poetic statement as it certainly is, it does not go in tune with the significance of a name in marking the identity of an individual in his/her societal transactions. To put it differently, name is an intrinsic element of identity.

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123. *The question whether bye-laws under consideration impose reasonable restrictions on the exercise of rights under Article 19 of the Constitution of India, may have to be understood in the context of enunciation of this Court that the core existence of an individual is not exemplified by her outer characteristics but by her inner self-identification and also about the significance of the acquired identity in the form of name. The identity of an individual is one of the most closely guarded areas of the Constitutional scheme in India. The sanctity of identity has been recognised by this Court in a plethora of cases including National Legal Services Authority v. Union of India, Navtej Singh Johar v. Union of India, and K.S. Puttaswamy (Privacy-9J.) v. Union of India.*

124. *In fact, in **Navtej Singh Johar**, the Court noted how the core existence of an individual is not exemplified by her outer characteristics but by her inner self-identification. In the context of natural identity of an individual, this Court in **Navtej Singh Johar** had noted that:*

*“5. The natural identity of an individual should be treated to be absolutely essential to his being. What nature gives is natural. That is called nature within. Thus, that part of the personality of a person has to be respected and not despised or looked down upon. The said inherent nature and the associated natural impulses in that regard are to be accepted. Non-acceptance of it by any societal norm or notion and punishment by law on some obsolete idea and idealism affects the kernel of the identity of an individual. Destruction of individual identity would tantamount to crushing of intrinsic dignity that cumulatively encapsulates the values of privacy, choice, freedom of speech and other expressions. It can be viewed from another angle. An individual in exercise of his choice may feel that he/she should be left alone but no one, and we mean, no one, should impose solitude on him/her.”*



125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely “for all times”. Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of **Navtej Singh Johar**, this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.”

(Underscoring supplied; italics in original)

**40.** *To the extent it protects against interference with the use of one's name, Section 35 has to be understood in the context of the law enunciated in the above decision, and those cited within it. The right of a person to use her, or his, own name on her, or his, own goods, cannot be compromised; else, it would compromise the right to use one's name as an identity marker, which would ex facie be unconstitutional.*

**41.** *In the absence of any such caveat to be found in Section 35, it may be arguable, at the very least, whether, while the use of one's name as an identity marker is permissible under Section 35, but the instance it spills over into “trade mark” territory, it is rendered impermissible. Any such interpretation, in my prima facie view, would be reading a non-existent proviso into Section 35 and, in effect, rewriting the provision.”*

(emphasis added)



2024:DHC:4609



42. Having assessed that the plaintiff's user could possibly be only from 2022 in respect to PVC pipes, what needs to be seen next is whether defendant's user was prior.

43. The following documents do bear out that the defendants were in the industry of PVC pipes much prior and were manufacturing and selling the products under their brand 'JINDAL'.

- i. The Central Sales Tax Registration Certificate issued in the name of M/s Jindal Sanitary works is dated 16 April 1981, and bears out that plastic products were being sold in 1981.
- ii. A license by Bureau of Indian Standards dated 23<sup>rd</sup> June 2010, for permission to use their standards on UPVC pipes to the licensee being *Jindal Plast (India)*.
- iii. Invoice dated 16<sup>th</sup> April 1981 issued by *Jindal Sanitary Works* for plastic related material showed presence of PVC sanitary goods and the current defendant no. 1.
- iv. Invoice dated 14<sup>th</sup> December 2010 issued by *Jindal Sanitary Works* showing presence of Chlorinated Polyvinyl Chloride (*hereinafter referred to as "CPVC"*) Pipes.
- v. Invoice of 27<sup>th</sup> December 2010 issued by *Jindal Sanitary Works* showing presence of CPVC pipes and other such invoices.
- vi. Invoices of 18<sup>th</sup> October 2013, 22<sup>nd</sup> November 2013, 26<sup>th</sup> July 2014, 11<sup>th</sup> September 2014, 23<sup>rd</sup> November 2014, *et al.* issued by *Jindal Sanitary Work* for plumbing pipes using the aforementioned HSN classification no. 39172390.



2024:DHC:4609



44. These documents bear out that the defendant which has ‘JINDAL’ as part of its trade name, was manufacturing and selling PVC materials, including pipes, much before 2022, which is when the plaintiff’s user has been *prima facie* established.


45. The plaintiff’s application no. 1522441 for registration of ‘J I N D A L’ for class 17 was opposed by defendant no.1 and *Jindal Plast (India)* in 2010, and therefore the assertion by counsel for defendant that plaintiff knew of the use in 2010 itself ought to be taken into account, considering that the suit has been filed in 2023.

46. Reliance by defendant on *Neon laboratories (supra)* is appropriate as it holds that the proprietor of a mark does not have the right to prevent use by another party of an identical mark, which has user prior to the use or the registration by the proprietor.

47. Moreover, the plaintiff cannot monopolize the use of ‘JINDAL’ in the context of PVC pipes and tubes, particularly, when there are many marks of ‘JINDAL’ available on the register (as noted in para 28); the plaintiff have themselves agreed to co-existence with another ‘JINDAL’ user and have sought to plead dissimilarly with identical ‘JINDAL’ marks, which is without any basis.

48. The use of the phrase “name” in Section 35 cannot be read as divorced from and *de hors* “mark”, otherwise it may not have any meaning whatsoever. This aspect has been dealt with in *Suncity (supra)* and is already referred to in para 41 above.

49. The reliance of the plaintiff’s Counsel on *Parker Knoll (supra)* was also not sustainable, since its application itself had been rejected by this Court in para 31-33 of *Suncity (supra)*. Para 33 is extracted as under:

“33. It would be *stretching the limits of credulity, in my opinion, to hold that the use of JINDAL, by the defendants, as a mere part of the total composite impugned mark*  *, is likely to deceive a consumer of average*



intelligence and imperfect recollection that the goods of the defendants, on which the mark is used, are those of the plaintiff. The plaintiff, admittedly is not known as “R.N. Jindal” or “RNJ”, and that, indeed, is not even the plaintiff’s case. Besides, unlike the position that obtains in the US (as the extracts from **Parker Knoll** seem to suggest), Section 35 protects bona fide use of one’s own name, and proscribes any interference therewith. No exception is created in a case where the name is used as a trade mark, or otherwise. Whereas innocent use is, therefore, as per **Parker Knoll**, impermissible, if the use is bona fide, the defendant, in India, is entitled to the benefit of Section 35. Whether **Parker Knoll** applies, mutatis mutandis, to India and the law in this country, may, therefore, be debatable. To the extent it does, however, it does not substantiate the plaintiff’s case for injunction.”

(emphasis added)

50. The balance of convenience also falls in favour of the defendant, since *prima facie* they have been using the mark ‘JINDAL’ for 13 years, as also they are using their family name ‘JINDAL’, evident from the partnership deed dated 16<sup>th</sup> October 2007, which states the name of their father as Shri Ram Niwas Jindal.

### Conclusion

51. In these circumstances, the *ad interim* injunction granted on 09<sup>th</sup> May, 2023, cannot subsist. At that stage on 09<sup>th</sup> May, 2023, as evident from para 30, the counsel for defendant could not state facts as have been discussed above, and therefore, prompted the Court to issue an *ad interim* injunction.

52. Now, after a more comprehensive analysis of these facts, and having heard both the parties, in the opinion of this Court, the *ad interim* injunction ought not to subsist.



2024:DHC:4609



53. I.A. 8888/2023 under Order XXXIX Rule 4, CPC of the defendant is therefore allowed, and the *ad interim* injunction granted on 09<sup>th</sup> May, 2023, is set aside. I.A. 13154/2024 under Order XXXIX 1 & 2, CPC of the plaintiff therefore dismissed.

54. Accordingly, applications are disposed of.

**CS(COMM) 251/2023**

1. List before the Joint Registrar on 24<sup>th</sup> July, 2024.
2. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)  
JUDGE**

**MAY 31, 2024/RK/ig/kp**