



2025:DHC:794



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

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Judgment Reserved on: 17.12.2024
Judgment pronounced on: 10.02.2025

I.A. 41270/2024, I.A. 43249/2024 and CRL. M.A. 32198/2024
IN

+ CS(COMM) 871/2024

**SVAMAAN FINANCIAL SERVICES PRIVATE
LIMITED**

.....Plaintiff

Through: Mr. Neeraj Kishan Kaul and
Mr. Sandeep Sethi, Senior Advocates
with Mr. Himanshu Bagai, Mr. Kushal
Gupta, Mr. Naimish Tewari, Mr.
Ayush Hoonka and Ms. Dhanya,
Advocates.

versus

SAMMAAN CAPITAL LIMITED & ORS.Defendants

Through: Mr. Mukul Rohatgi and Mr. Rajiv
Nayar, Senior Advocates with
Ms. Aadya Chawla, Mr. Ankit Banati,
Ms. Rinkoo Kakkar, Ms.
Nandini Choudhary and Mr. Saurabh
Seth, Advocates for D-1, D-3 and D-4.
Mr. Dayan Krishnan, Sr. Advocate
with Ms. Mallika Kamal, Mr. Adithya
Devarayan, Mr. Sanjeev Seshadri and
Mr. Shridharan, Advocates for D-2.
Mr. Mrinal Ojha, Mr. Debarshi Dutta,
Mr. Arjun Mookerjee, Ms. Nikita
Rathi and Mr. Risabh Agarwal,
Advocates for D-5.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL



JUDGMENT

AMIT BANSAL, J.

CRL. M.A. 32198/2024 (under Section 379 of BNSS r/w Section 215(1)(b)(ii) of BNSS r/w Section 340 and 342 of BNS) and I.A. 43249/2024 (under Section 151 of CPC r/w Order VI Rule 15A of CPC)

1. By way of CRL. M.A. 32198/2024, the defendant no.1 seeks reference of a criminal complaint against the plaintiff for filing forged and fabricated documents in the present suit. By way of I.A. 43249/2024, the defendant no.1 seeks dismissal of the present suit on account of forged and fabricated documents filed by the plaintiff.

2. It is the contention of the defendant no.1 that the following trade mark registration certificates filed by the plaintiff along with its rectification application dated 19th July, 2024 under Section 16(1)(b) of the Companies Act, 2013 with the Registrar of Companies (*hereinafter 'RoC'*) (*filed at pages 1119 to 1134 of the documents filed with the plaint*) are forged and fabricated:

- i. Trade mark registration no. 3969709 in Class 35
- ii. Trade mark registration no. 3967703 in Class 9
- iii. Trade mark registration no. 396770 in Class 70
- iv. Trade mark registration no. 396770 in Class 3
- v. Trade mark registration no. 3967700 in Class 41
- vi. Trade mark registration no. 39677706 in Class 30
- vii. Trade mark registration no. 3967630 in Class 35
- viii. Trade mark registration no. 3967630 in Class 36



3. In support of its contention, the defendant no.1 has placed on record E-Register extracts from the website of the Trade Marks Registry corresponding to the aforesaid trade mark application/ registration numbers. It is submitted






that as per the E-Register extracts from the website of the Trade Marks Registry, the aforesaid trade mark applications/ registrations are in respect of different proprietor/ mark/ class.

4. Taking note of the aforesaid applications, the plaintiff, *vide* order dated 24th October, 2024, was directed to file an affidavit to clarify the position.

5. Pursuant to the said direction, an affidavit dated 24th October, 2024 was filed on behalf of the plaintiff. In the said affidavit, the plaintiff has tabulated the trade mark registrations granted in its favour along with the application numbers in the following manner:

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



					upto 11/10/2028
7.	3967631	08/10/2018	35	SVAMAAN (word)	Registered and renewed upto 08/10/2028
8.	3971165	11/10/2018	35	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028
9.	3969850	10/10/2018	42	SVAMAAN (word)	Registered and renewed upto 10/10/2028
10.	3971166	11/10/2018	42	SVAMAAN Device i.e. 	Registered and renewed upto 11/10/2028

6. In respect of all the aforesaid registrations, the plaintiff has filed the corresponding trade mark registration certificates (*pages 60 to 75 of the documents filed with the plaint*).

7. In respect of the trade mark registration certificates, alleged by the defendant no.1 to be forged and fabricated and occurring at pages 1119 to 1134 of the documents filed with the plaint, it has been explained that the aforesaid registration certificates were filed by the plaintiff before the Ministry of Corporate Affairs (*hereinafter 'MCA'*) along with its application dated 19th July, 2024 under Section 16(1)(b) of the Companies Act, 2013 objecting to the change in the corporate name of the defendant no.1 to Sammaan Capital Limited. It has been explained that these registration certificates filed by the plaintiff on the MCA website were compressed to



reduce the file size as there was a size limit of 2 MB for uploading documents on the MCA website. As a consequence thereof, these registration certificates got altered on account of a technical error. These registration certificates along with the aforesaid application, as downloaded by the plaintiff from the MCA website, were filed along with the plaint at pages 1119 to 1134 of the documents filed with the plaint (*as noted from the Index of List of Documents filed with the plaint*), without realizing that they were corrupted. In support of this explanation, the plaintiff has also filed the email correspondence exchanged between the plaintiff and its external advisors, as Document – 1, with its affidavit dated 24th October, 2024.

8. The correct and uncorrupted trade mark registration certificates have also been filed along with the application dated 25th July, 2024 filed by the plaintiff under Section 16(1)(b) of the Companies Act, 2013 objecting to the change of name of the defendant no.2 (*pages 1166 to 1181 of the documents filed with the plaint*).

9. To verify the aforesaid position, I had also sought a status report from the Trade Marks Registry, which has been filed on 5th November, 2024. In the said status report, it has been confirmed that the trademarks, which are the subject matter of the present suit, have been duly registered in favour of the plaintiff. The relevant extracts from the status report filed on behalf of the Trade Marks Registry is set out below:

“3. In compliance with the directions of the Hon’ble Court, the undersigned has obtained the necessary instructions regarding the genuineness and validity of the above-mentioned trademark registrations. Pursuant to these instructions, it is verified that the trademarks in question are duly registered. A table detailing the status of the Trademarks is as follows:



<i>S. No.</i>	<i>Trademark Application No.</i>	<i>Registration valid up to</i>
1.	3971163	11/10/2028
2.	3971164	11/10/2028
3.	3971165	11/10/2028
4.	3971166	11/10/2028
5.	3971167	11/10/2028
6.	3969849	10/10/2028
7.	3967630	08/10/2028
8.	3967631	08/10/2028
9.	3967632	08/10/2028
10.	3969850	10/10/2028

Copy of details of the trademarks and their current status, as on 25.10.2024, as per the record of the trademark registry, and which are forming part of the plaint, at pages 60-75 of the documents is annexed herewith as DOCUMENT A-1 (Colly)."

10. The status report filed on behalf of the Trade Marks Registry confirms the fact that the plaintiff's trademarks, which are the subject matter of the present suit, have been duly registered under the trade mark application numbers provided in the plaint. These trade mark application numbers correspond with the correct trade mark registration certificates, which are also filed on behalf of the plaintiff at pages 60 to 75 of the documents filed with the plaint.

11. In view of the above, I am satisfied with the explanation given by the plaintiff that the trade mark registration certificates filed by the plaintiff on the MCA website got corrupted during the process of reducing the file size and inadvertently, the same have been filed by the plaintiff in the present suit, without realizing that the said registration certificates have got corrupted. There was no reason for the plaintiff to file forged and fabricated trade mark registration certificates once the correct ones have been filed by the plaintiff.



12. Accordingly, I find no merit in these applications. The same are, accordingly, dismissed.

I.A. 41270/2024 (under Order XXXIX Rules 1 and 2 of CPC)

13. This application has been filed on behalf of the plaintiff under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking an *ad interim* injunction against the defendants no.1 to 4 (*hereinafter collectively referred to as 'defendants'*).

14. Summons in the present suit and notice in the application for interim injunction were issued and accepted by the defendants in court on 4th October, 2024.

15. The defendants no.1, 3 and 4 filed a common reply to the aforesaid application on 12th October, 2024 and the plaintiff filed its rejoinder thereto on 14th October, 2024. The defendant no.2 filed its reply to the aforesaid application on 26th November, 2024 and the plaintiff filed its rejoinder thereto on 17th December, 2024.

16. Submissions were heard on behalf of counsel for the parties on 15th October, 2024, 24th October, 2024, 29th October, 2024, 11th November, 2024, 20th November, 2024, 27th November, 2024, 5th December, 2024 and 17th December, 2024, when the judgment was reserved and liberty was given to the parties to file written submissions within one week.

17. Pursuant thereto, written submissions on behalf of the plaintiff, the defendants no.1, 3 and 4 and the defendant no.2, along with judgments in support, have been handed over in court and the same have been taken on record.

CASE SET UP BY THE PLAINTIFF

18. The case set up by the plaintiff in the plaint is as follows:




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18.1. The plaintiff company was incorporated in the year 2017 and has an authorized capital of INR 200 crores and a paid-up capital of INR 191.03 crores. The plaintiff is an RBI-registered Non-Banking Finance Company – Micro Finance Institution (*hereinafter* ‘NBFC-MFI’) and provides micro finance loans for purposes including setting up businesses, fulfilling working capital requirements, home building/ improvement, education, wedding and medical emergencies. The plaintiff also provides other financial products and services including insurance and credit for consumer durables.

18.2. The plaintiff honestly adopted and commenced use of the arbitrary and

inherently distinctive trademarks ‘SVAMAAN’ and ‘’, (*hereinafter* ‘SVAMAAN marks’) in relation to financial services in 2017. The plaintiff has filed various invoices/ loan application forms, communications/ agreements with its customers/ vendors/ government authorities/ business partners, employment agreements, etc. in support of its use of the SVAMAAN marks since 2017.

18.3. The plaintiff received a license from the Reserve Bank of India (*hereinafter* ‘RBI’) to operate as an NBFC-MFI throughout India on 24th September, 2018 and commenced its business operations in January 2019. The plaintiff has expanded its operations to 275 branches in about 153 districts and 20,968 villages in various states across the country. The plaintiff has over 2,90,712 active loans and 2,48,163 borrowers and as of 31st August, 2024, a total loan book of INR 968 crores. The plaintiff was also assigned ‘CRISIL A+/Stable’ rating by CRISIL.



18.4. The plaintiff has obtained trade mark registrations for the SVAMAAN marks in various classes, including Class 36, a list of which is provided in paragraph no.9 of the plaint and paragraph no.5 hereinabove. The registration certificates have been filed along with the plaint (*pages 60 to 75 of the documents filed with the plaint*). The earliest trade mark registration in favour of the plaintiff for the word mark 'SVAMAAN' in Class 36 dates back to 8th October, 2018 with a user claim since 31st October, 2017.

18.5. The plaintiff's goodwill and reputation is evident from the fact that its total income in the financial year 2023-24 has reached over INR 169.84 crores from the total income of a mere INR 0.39 crores in the financial year 2018-19.

18.6. The plaintiff has a robust online presence and spends substantial amount of money towards advertisement and promotional activities. The plaintiff operates its website, accessible at <https://www.svamaan.in>, as well as its profiles on social media platforms such as Instagram, Facebook and LinkedIn.

18.7. The plaintiff's services under the SVAMAAN marks have been widely recognized and reported by third-parties across various print and online forums, a list of which is provided in paragraph no.23 of the plaint. The plaintiff has also received multiple awards owing to its reputation, goodwill and quality of business operations, a list of which is provided in paragraph no.27 of the plaint.

18.8. The defendants are a part of the INDIABULLS Group. Prior to July 2024, their corporate names included the word 'INDIABULLS'. In or around July 2024, the defendants changed their corporate names by removing the word 'INDIABULLS' and adding the word 'SAMMAAN'.



18.9. The defendant no.1 is *inter alia* engaged in the business of providing loans for housing, loans against property, developer loans and lease rental discounting and the defendant no.2 is engaged in the business of finance and insurance. The business of the defendants no.1 and 2 is identical with that of the plaintiff. The services of the defendants no.3 and 4 are also allied and cognate to the plaintiff's services.

18.10. In November 2023, it came to the knowledge of the plaintiff that the defendant no.1 is intending to change its name and identity to 'SAMMAAN CAPITAL', which is deceptively similar to the plaintiff's SVAMAAN marks.

18.11. The plaintiff issued a cease-and-desist notice dated 20th November, 2023 to the defendant no.1 calling upon the defendant no.1 to refrain from using the word 'SAMMAAN' either as a trade mark or as a corporate name. The defendant no.1 sent an interim response to the aforesaid notice on 8th December, 2023, wherein it was stated that the defendant no.1 was merely changing its corporate name to 'SAMMAAN CAPITAL'.

18.12. The defendant no.1, however, proceeded with filing applications for registration of the word mark 'SAMMAN CAPITAL' and the device marks



(hereinafter collectively referred to as 'SAMMAAN marks') in Class 36 between February 2024 and May 2024. On 16th July, 2024, the plaintiff filed a notice of opposition against the aforesaid application for the mark 'SAMMAN CAPITAL' on the ground that the said mark is almost identical with the plaintiff's SVAMAAN marks and is sought to be registered in respect of identical services.



18.13. The plaintiff sent emails dated 22nd November, 2023 to RoC and RBI stating that the mark ‘SAMMAAN CAPITAL’ proposed to be used by the defendant no.1 is deceptively similar to the plaintiff’s SVAMAAN marks and any use thereof would result in a confusion in the minds of the general public. However, the plaintiff did not receive any response to the aforesaid emails.

18.14. Since the defendants no.1 and 2 were permitted to change their respective corporate names to the names including the word ‘SAMMAAN’, the plaintiff filed applications on 19th July, 2024 and 25th July, 2024 with the MCA under Section 16(1)(b) of the Companies Act, 2013 seeking rectification/ change in the corporate names of the defendants no.1 and 2 respectively. These applications are currently pending adjudication with the MCA.

18.15. The plaintiff also wrote letters to RBI and SEBI stating that the use of the word ‘SAMMAAN’ by the defendants no.1 and 2 amounts to infringement of the plaintiff’s SVAMAAN marks. However, the plaintiff did not receive any response from the aforesaid bodies.

18.16. A senior functionary of the plaintiff, in August 2024, also reached out to the senior officials of the defendant no.1 urging the defendants to cease and desist from using the SAMMAAN marks, but the said efforts were in vain.

18.17. The defendants are habitual and compulsive offenders of law and on multiple occasions in the past, have been found guilty of flouting statutory norms during the course of their business.

19. Aggrieved by the aforesaid, the present suit has been filed.

CASE SET UP BY THE DEFENDANTS

20. The case set up by the defendants in their replies to the application for interim injunction is as follows:



20.1. The defendant no.1 was originally incorporated in 2005 as '*Indiabulls Housing Finance Limited*'. It was registered as a housing finance company regulated by National Housing Bank.

20.2. In 2024, the defendant no.1 transformed from a promoter-led and promoter-driven lender (housing finance company) to a mortgage-focused non-banking financial company (*hereinafter 'NBFC'*). Following this transformation, the defendants rebranded themselves with SAMMAAN-formative corporate names.

20.3. The defendant no.1 received a fresh certificate of incorporation dated 21st May, 2024 from RoC and a new certificate of registration as a Non-Banking Financial Company – Investment and Credit Company (*NBFC-ICC*) from RBI on 28th June, 2024.

20.4. The defendant no.1's business primarily focuses on long-term secured mortgage-backed loans. The defendant no.1 has a balance sheet size of INR 73066 crores as on 31st March, 2024 and has AA/Stable ratings issued by lending rating agencies including CRISIL. Further, the defendant no.1 has 218 branches across the country and has served over 1.5 million customers. The defendant no.1 has also received several awards, a list of which is provided in paragraph no.6.2 of its reply to I.A. 41270/2024.

20.5. The defendant no.1 operates its website, accessible at 'www.sammaancapital.com' which domain was registered on 12th June, 2023. The defendant no.1 also enjoys a strong presence on social media platforms, such as Facebook, Twitter (*now X*), Instagram, YouTube and LinkedIn.

20.6. The defendant no.2, in its reply to I.A. 41270/2024, has stated that it was incorporated in 2006 and changed its name from '*Indiabulls Commercial Credit Limited*' to '*Sammaan Finserve Limited*' and received a fresh



certificate of incorporation on 21st June, 2024. The defendant no.2 is classified as a ‘non-deposit taking systematically important’ (*ND-SI*) NBFC. The defendant no.2 has further stated that the defendants have duly received approvals from all the necessary statutory authorities to adopt their respective corporate names including the word ‘SAMMAAN’.

20.7. The defendant no.3, incorporated on 1st June, 2006, is engaged in the field of finance and insurance. The defendant no.3 changed its corporate name from ‘*Indiabulls Collection Agency Limited*’ to ‘*Sammaan Collection Agency Limited*’ and received a fresh certificate of incorporation dated 6th September, 2024.

20.8. The defendant no.4, incorporated on 2nd November, 2006, is involved in trading activities on behalf of others through commission agents, commodity brokers and auctioneers. The defendant no.4 changed its corporate name from ‘*Indiabulls Advisory Services Limited*’ to ‘*Sammaan Advisory Services Limited*’ and received a fresh certificate of incorporation dated 6th September, 2024.

20.9. The SAMMAAN marks were *bona fide* adopted by the defendants after thorough primary and secondary research conducted in-house as well as through a well-known global marketing communications agency and are unique, arbitrary and distinctive in nature.

20.10. The mark ‘SAMMAAN’ is inspired from the deep-rooted values and customer trust of the defendants as well as their long journey of growth and innovation. The mark ‘SAMMAAN’ symbolizes a blend of tradition and forward-thinking, ensuring each decision and service is infused with the respect and excellence that customers deserve.



20.11. The portrayal of the defendants as habitual offenders of law by the plaintiff is a deliberate attempt to distort facts and, in any case, is immaterial and irrelevant in the present suit.

SUBMISSIONS MADE ON BEHALF OF THE PLAINTIFF

21. Mr. Neeraj Kishan Kaul and Mr. Sandeep Sethi, learned senior counsel appearing on behalf of the plaintiff, have made the following submissions:

21.1. The plaintiff is the prior adopter, user and the registered proprietor of the SVAMAAN marks. The adoption of the mark 'SVAMAAN' by the plaintiff was in a *bona fide* manner. The SVAMAAN marks are arbitrary and inherently distinctive, hence deserve higher standard of protection.

21.2. Prior to the adoption of the mark 'SAMMAAN', the defendants had been using the mark 'INDIABULLS' for over two decades. The defendants have not provided any explanation for adopting the SAMMAAN marks.

21.3. The dominant part of the marks adopted by the defendants is the word 'SAMMAAN', which is almost identical with the plaintiff's SVAMAAN marks. The competing marks are phonetically, visually and conceptually similar and the only difference in the defendants' SAMMAAN marks is the absence of the letter 'V'.

21.4. The parties are engaged in identical business of granting loans and have received registration from RBI to operate as NBFCs. As per the registrations received from RBI, both parties can grant various categories of loans including housing loans. Hence, the competing businesses of the parties are identical and, at the very least, there is a trade connection in the businesses of the plaintiff and the defendants. In cases of infringement and passing off, the courts must consider not only the present businesses of the parties but also their future expansion plans.



21.5. The customers of the plaintiff are sedentary people and hence, cannot be referred to as sophisticated. Further, the plaintiff carries out its business in rural areas as well as in areas where the prospective customers are more attuned to local languages.

21.6. As the competing marks are almost identical and the business of the parties are also identical, confusion is to be presumed under the provisions of Section 29(1)(c) of the Trade Marks Act, 1999. In any case, in cases of infringement and passing off, there is no requirement to furnish actual proof of confusion. The test in infringement/ passing off actions is of the ‘initial interest confusion’ and mere likelihood of confusion is sufficient.

21.7. The defendants cannot claim that the mark ‘SVAMAAN’ is *publici juris*, descriptive or common to trade as the defendant no.1 itself has sought registrations for the SAMMAAN marks. The defendants, therefore, cannot be permitted to approbate and reprobate.

21.8. The approvals granted by the regulatory bodies such as RBI and RoC cannot amount to an adjudication that use of the defendants’ SAMMAAN marks does not amount to infringement of the plaintiff’s SVAMAAN marks or passing off of their services as those of the plaintiff.

21.9. As per the certificate of Chartered Accountants filed by the defendants no.1, 3 and 4, expenses towards promotion of the SAMMAAN marks have been incurred by the defendant no.1 only since July 2024 (*page 100 of the documents filed by the defendants no.1, 3 and 4 along with their reply to I.A. 41270/2024*).

21.10. Since the defendants commenced use of the SAMMAAN marks only in July 2024, it cannot be said that they have acquired any goodwill or reputation in relation to the same. Merely because the defendants’ business



size is larger than that of the plaintiff, it cannot be a ground to deny the relief of interim injunction in favour of the plaintiff.

21.11. There is no delay in filing of the present suit. The plaintiff, in November 2023, came to know about the defendant no.1's intention to adopt the mark 'SAMMAAN CAPITAL' and issued a legal notice as far back on 20th November, 2023. The plaintiff became aware of the defendant no.1 having received approval from RoC to change its corporate name *vide* news article dated 3rd July, 2024 (*page 91 of the documents filed by the defendants no.1, 3 and 4 along with its reply to I.A. 41270/2024*). Immediately thereafter, the plaintiff filed its applications under Section 16(1)(b) of the Companies Act, 1956 as well as notice of opposition to the defendant no.1's trade mark application for the mark 'SAMMAAN CAPITAL' in July 2024. The present suit was filed on 3rd October, 2024.

21.12. The defendants' use of the SAMMAAN marks began only in July 2024. Further, the defendant no.2 received its fresh certificate of registration from RBI only on 4th October, 2024, which is subsequent to the institution of the present suit. On the other hand, the plaintiff has been using the SVAMAAN marks since the year 2017. Hence, it cannot be stated that balance of convenience is in favour of the defendants.

21.13. In these facts and circumstances, permitting the defendants to use the SAMMAAN marks would cause confusion among the public and would also lead to irreparable loss, harm and injury to the plaintiff.

SUBMISSIONS MADE ON BEHALF OF THE DEFENDANTS

22. Mr. Mukul Rohatgi, Mr. Rajiv Nayar and Mr. Dayan Krishnan, learned senior counsel appearing on behalf of the defendants, have made the following submissions:



22.1. Both the competing marks ‘SVAMAAN’ and ‘SAMMAAN’ are common Hindi words which mean ‘self-respect’ and ‘honour’ respectively and a monopoly cannot be claimed over common Hindi words. Therefore, the registrations granted for the SVAMAAN marks in favour of the plaintiff are erroneous.

22.2. Section 29(1)(c) of the Trade Marks Act, 1999 can be invoked only if the competing marks are identical. In the present case, the defendant’s mark ‘SAMMAAN’ is not identical with the plaintiff’s mark ‘SVAMAAN’ and the competing marks are also phonetically different. Further, the logos adopted by the plaintiff and the defendants are entirely different.

22.3. Mere presence of a few common alphabets in the competing marks does not render them similar to each other. The dissimilarity between the competing marks is further evident from the fact that the SVAMAAN marks were not cited in the defendant no.1’s trade mark applications for the SAMMAAN marks.

22.4. Since the competing marks are not identical, the plaintiff ought to establish the ‘likelihood of confusion’ with regard to the competing marks under Section 29 of the Trade Marks Act, 1999. The plaintiff, however, has failed to make out a *prima facie* case of confusion as it has not pointed out even a single instance of actual confusion in the market.

22.5. The defendants have incurred huge expenditure to announce their change of names from INDIABULLS to SAMMAAN-formative names and in all such advertisements and promotional material, they have clearly referred to themselves as ‘*formerly known as INDIABULLS*’. This eliminates any likelihood of confusion in the market or association of the SAMMAAN marks with the plaintiff. There also cannot be any confusion between the



customers of the plaintiff and the defendants inasmuch as the scale of their respective businesses are totally different.

22.6. The consumer base of the defendants consists of sophisticated and literate consumers who possess high familiarity with the Hindi language and are capable of distinguishing common Hindi words and their pronunciation, meaning and usage. They would be able to differentiate between the plaintiff and the defendants and are unlikely to get confused between the competing marks. Further, the present case pertains to a specialized and niche sector of financial services, where customers are accustomed to conduct thorough due diligence before making any decision, which will rule out any likelihood of confusion.

22.7. The nature of the businesses carried out by the plaintiff and the defendants is different. The plaintiff is in the business of providing micro-finance/ unsecured loans, whereas the defendant no.1 provides macro-finance/ large mortgaged-backed loans. The defendant no.1 is also the 7th largest company among the 2300 NBFCs in India, whereas the plaintiff is a small entity. Therefore, there is a huge difference in the average loan ticket size of the plaintiff and the defendants.

22.8. The defendants have adopted the mark 'SAMMAAN' in a *bona fide* manner after conducting primary and secondary research and fully complying with the regulatory process.

22.9. The defendants have obtained all the regulatory approvals under their SAMMAAN-formative corporate names including fresh certificates of incorporation, GST registration certificates, RBI registrations and NSE/BSE registrations. Therefore, balance of convenience is in favour of the defendants and against the plaintiff.



ANALYSIS AND FINDINGS

23. I have perused the material on record and heard the submissions made on behalf of counsel for the parties.

24. The plaintiff was incorporated as '*Svamaan Financial Services Private Limited*' on 31st October, 2017. The plaintiff registered the domain '*www.svamaan.in*' on 30th November, 2017. The plaintiff received its NBFC-MFI license from RBI on 24th September, 2018 and soon thereafter, commenced its operations of lending. The plaintiff has placed on record documents to show that it has been using the SVAMAAN marks since it commenced its business operations in 2019. The plaintiff is also the registered proprietor of the SVAMAAN marks in classes 9, 16, 35, 36 and 42 with the earliest registration with effect from 8th October, 2018, claiming use since 31st October, 2017.

25. On the other hand, the defendants, incorporated in or around 2005, have been doing business under the name of INDIABULLS. It was only in the year 2023 that the defendants decided to adopt the name 'SAMMAAN' and its variants in respect of their services. The defendant no.1 applied for the registration of the SAMMAAN marks on a '*proposed to be used*' basis between the period from February 2024 to May 2024. It was only in or after May 2024 that the defendants received their fresh certificates of incorporation with the word 'SAMMAAN' forming a part of their corporate names.

26. In light of the aforesaid undisputed facts, there cannot be any doubt that the plaintiff is the prior adopter, user and the registered proprietor of the SVAMAAN marks.

COMPARISON BETWEEN THE COMPETING NAMES/ MARKS



27. The table below gives the previous corporate names of the defendants along with their corresponding current corporate names:

Defendant No.	Previous Corporate Name	Current Corporate Name
1	Indiabulls Housing Finance Limited	Sammaan Capital Limited
2	Indiabulls Commercial Credit Limited	Sammaan Finserve Limited
3.	Indiabulls Collection Agency Limited	Sammaan Collection Agency Limited
4	Indiabulls Advisory Services Limited	Sammaan Advisory Services Limited

28. From a perusal of the table above, it is evident that the word ‘SAMMAAN’ is common to the current corporate names of all the contesting defendants.

29. Since both the plaintiff and the defendants are in the business of lending and financing, the words/ phrases ‘CAPITAL’, ‘FINANCE’, ‘FINSERVE’ and ‘FINANCIAL SERVICES’ used as a part of their corporate names/ trademarks describe their services and are common to trade. The dominant part of the plaintiff’s corporate name/ trademarks is the word ‘SVAMAAN’. In a similar manner, it is the word ‘SAMMAAN’ which is the dominant part of the defendants’ corporate names/ trademarks. It is, in fact, to be noted that the defendants, in their replies, have stated ‘SAMMAAN’ to be their brand/ trade mark (*paragraphs no.7, 7.2, 11.1 of the reply filed by the defendants no.1, 3 and 4 and paragraphs no.9 and 11 of the reply filed by the defendant no.2*).

30. Therefore, in order to determine infringement, a comparison would have to be made between the words/ marks ‘SVAMAAN’ and ‘SAMMAAN’.



WHETHER THE COMPETING MARKS ARE IDENTICAL/ DECEPTIVELY SIMILAR

31. In *Ruston & Hornsby v. Zamindara Engineering*¹, the Supreme Court observed that in an infringement action, the only issue to be decided is whether the defendant is using a mark which is the same as, or is a colourable imitation of, the plaintiff's registered trade mark. The competing marks in the aforesaid case were 'RUSTON' and 'RUSTAM INDIA'. It was held that the competing marks are deceptively similar and therefore an injunction was granted in favour of the plaintiff. The Supreme Court also held that the word 'INDIA' added to the impugned mark is of no consequence.

32. In *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*², the Supreme Court, while highlighting the difference between an infringement action and an action for passing off, observed where the similarity between the plaintiff's and the defendant's marks is so close, either visually, phonetically or otherwise, no further evidence is required to make out a case for infringement. Any added material in the impugned mark would be of no consequence where the essential feature of the plaintiff's mark has been adopted by the defendant. The relevant extract from *Kaviraj Pandit* (supra) is set out below:

“28. ...In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and

¹ (1969) 2 SCC 727



² 1964 SCC OnLine SC 14



other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.”

[Emphasis is mine]

33. With this background, it is relevant to see the comparison of the competing marks, which is provided at page 3 of the reply of the defendant nos. 1, 3 and 4, and is set out below:

DEFENDANTS TRADE MARK/ NAME	PLAINTIFF'S TRADE MARK/ NAME
SAMMAAN CAPITAL	SVAMAAN
	
SAMMAN CAPITAL LTD.	SVAMAAN FINANCIAL SERVICES PVT. LTD.

34. The comparison above shows that the competing marks ‘SVAMAAN’ and ‘SAMMAAN’ are phonetically and structurally very similar to each other. The only difference between the two marks is of a single letter, *i.e.*, the letter ‘V’ has been removed and an additional ‘M’ has been added in the defendants’ mark, which, in my opinion, would not make any significant difference. The aspect of phonetic similarity has to be assessed from the point of view of the consumer, who is a person of average intelligence and imperfect recollection and he cannot be treated as one who is over-familiar with either of the marks.



35. In ***Corn Products Refining v. Shangrila Food Products***³, the competing marks were GLUCOVITA and GLUVITA and the Supreme Court found the competing marks to be similar. The relevant extract from ***Corn Products*** (supra) is set out below:

“18. ...It is well recognised that in deciding a question of similarity between two marks, the marks have to be considered as a whole. So considered, we are inclined to agree with Desai, J., that the marks with which this case is concerned are similar. Apart from the syllable 'co' in the appellant's mark, the two marks are identical. That syllable is not in our opinion such as would enable the buyers in our country to distinguish the one mark from the other.

19. We also agree with Desai, J., that the idea of the two marks is the same. The marks convey the ideas of glucose and life giving properties of vitamins. The Aquamatic case (Harry Reynolds v. Laffeaty's Ld.) [1958 RPC 387] is a recent case where the test of the commonness of the idea between two marks was applied in deciding the question of similarity between them. Again, in deciding the question of similarity between the two marks we have to approach it from the point of view of a man of average intelligence and of imperfect recollection. To such a man the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause a confusion between them.”

[Emphasis is mine]

36. In ***K. R. Chinna Krishna Chettiar v. Shri Ambal***⁴, the competing marks were SRI AMBAL and SRI ANDAL. The Supreme Court upheld the decision of the Madras High Court, wherein it was observed that a trade mark does not only comprise the visual elements contained therein but also its descriptive name, *i.e.*, the word(s) forming a part of the trade mark. A copy or a colourable

³ 1959 SCC OnLine SC 11

⁴ (1969) 2 SCC 131



imitation of such descriptive name would, therefore, constitute an infringement of the mark containing the name.

37. The aforesaid observations of the Supreme Court were also relied upon by this Court in *Institut Europeen D. Administration Des Affaires v. Fullstack Education*⁵, where the competing marks were composite marks including the words INSEAD and INSAID and it was observed as under:

“38. Where, therefore, there is marked phonetic similarity between INSEAD and INSAID, mere fact that, in the overall logos of the two marks, there may be accompanying pictorial representations or other features which may distinguish the marks as device marks, cannot detract from the confusingly similar nature of the two marks.”

[Emphasis is mine]

38. The defendants, therefore, cannot argue that their marks are visually dissimilar from the plaintiff’s marks on account of the accompanying logo or other visual elements, when the competing marks are structurally and phonetically similar.

39. The word ‘SVAMAAN’ is a Hindi word which means ‘self-respect’ and the word ‘SAMMAAN’ is also a Hindi word which means ‘honour’/ ‘respect’. Since both the competing marks are based on the broader theme of ‘respect’, they are also conceptually/ semantically similar to each other.

40. In *Shree Nath Heritage Liquor v. Allied Blender & Distillers*⁶, the competing marks were OFFICER’S CHOICE and COLLECTOR’S CHOICE. A Division Bench of this Court observed as under:

“31. ...marks containing words with the same sense relation (or falling in the same semantic field, or conveying the same or

⁵ 2023 SCC OnLine Del 3016

⁶ 2015 SCC OnLine Del 10164



similar idea in the mind) as that of previously existing marks are likely to be considered so similar as to be refused registration or deemed to constitute infringement of the previously existing trademark.”

41. The Division Bench in the aforesaid case observed that the word COLLECTOR is a hyponym of the word OFFICER and both are synonyms of the phrase/ idea of ‘a person holding an office of authority’ and therefore, despite the labels and get up of the competing products being dissimilar, held that the two marks are similar and will lead to confusion.

42. Reliance has been placed on behalf of the defendants on the following judgments in support of their submission that their mark ‘SAMMAAN’ is not similar to the plaintiff’s mark ‘SVAMAAN’ so as to result in infringement or passing off:

- (i) ***F. Hoffmann-La Roche v. Geoffrey Manners***⁷ – the competing marks were PROTOVIT and DROPRVIT;
- (ii) ***Fox & Co.***⁸ – the competing marks were FILTRATE and MOTRATE;
- (iii) ***Mount Mettur Pharmaceuticals v. Ortha Pharmaceuticals***⁹ – the competing marks were UTOGYNOL and ORTHOGYNOL;
- (iv) ***Living Media India v. Alpha Dealcom***¹⁰ – the competing marks were INDIA TODAY and NATION TODAY;
- (v) ***Phonepe v. EZY Services***¹¹ – the competing marks were PHONEPE and BHARATPE;

⁷ (1969) 2 SCC 716

⁸ (1920) 37 RPC 37 at 41

⁹ 1974 SCC OnLine Mad 64

¹⁰ 2014 SCC OnLine Del 768

¹¹ 2022 SCC OnLine Del 2635



(vi) **GUFIC v. Clinique Laboratories**¹² – the competing marks were CLINIQUE and SKINCLINIQ.

43. I have given my anxious consideration to the aforesaid judgments relied upon on behalf of the defendants. In all the aforesaid judgments, the first word/ syllable/ alphabet in the competing marks were different, which is not the case in the present suit. In the normal enunciation, the initial syllable(s) of the words are the most important and the accentuation would be upon the initial word/ syllable/ alphabet {refer **Mount Mettur** (*supra*), followed by this Court in **CFA Institute v. Brickwork Finance Academy**¹³}. This is a significant aspect that distinguishes the aforesaid judgments from the case at hand.

44. The defendants have also relied upon the judgment in **Vasundhra Jewellers v. Kirat Vinodbhai Jadvani**¹⁴, wherein the plaintiff claimed exclusivity over the word VASUNDHRA despite having no registration for the word mark VASUNDHRA. The Court held in favour of the defendant, whose mark was visually different from the plaintiff's marks. In the present case, the plaintiff has valid registrations for the word mark 'SVAMAAN'. Therefore, the aforesaid judgment cannot come to the rescue of the defendants in the present case.

45. The position that emerges from the aforesaid legal precedents is that the impugned mark need not be completely identical with the registered trade mark of the plaintiff and any minor difference therein would be of no consequence. In view of the aforesaid, I am of the considered view that the

¹² 2010 SCC OnLine Del 2322

¹³ 2020 SCC OnLine Del 2744

¹⁴ 2022 SCC OnLine Del 2996



competing marks are structurally, phonetically and conceptually so close to each other, which renders the defendants' SAMMAAN marks deceptively similar to the plaintiff's SVAMAAN marks and the added matters including the words CAPITAL/ FINANCE/ FINSERVE, a different logo and other visually different elements would not make any difference.

46. The defendants have further contended that in all their advertisements and promotional material, they use the phrase '*formerly known as INDIABULLS*' and this addition distinguishes the SAMMAAN marks from the plaintiff's SVAMAAN marks. However, the reference to INDIABULLS is during the transition phase and the usage of the aforesaid phrase is temporary. The defendant no.2 in its reply has confirmed the fact that reference to INDIABULLS along with the defendants' SAMMAAN marks is to comply with the requirements of Section 12(3) of the Companies Act, 2013. Therefore, addition of the phrase '*formerly known as INDIABULLS*' would not distinguish the defendants' SAMMAAN marks from the plaintiff's SVAMAAN marks.

WHETHER THE DEFENDANTS' ADOPTION OF SAMMAAN MARKS WAS *BONA FIDE*

47. It has not been pleaded by the defendants that they were not aware about the plaintiff's existence at the time of adoption of the SAMMAAN marks. It is also an undisputed fact that the plaintiff, upon becoming aware of the defendant no.1's intention to change its identity to 'SAMMAAN CAPITAL', which was reported in a news article dated 5th October, 2023, sent a legal notice to the defendant no.1 on 20th November, 2023 claiming its registrations for the SVAMAAN marks and calling upon it to refrain from adopting and using the mark 'SAMMAAN' as the same would amount to



infringement of the SVAMAAN marks. Therefore, the defendants cannot possibly take the defence that they were not aware about the plaintiff's SVAMAAN marks prior to their change of corporate names and commencement of use of the SAMMAAN marks.

48. Despite having been put to notice by the plaintiff, the defendants proceeded to change their corporate names, obtained regulatory approvals under the new names and applied for trade mark registrations for the SAMMAAN marks. No satisfactory explanation has been given by the defendants for adopting the mark 'SAMMAAN', despite being made aware of the SVAMAAN marks used by the plaintiff in relation to its services.

49. In view of the aforesaid, I am of the considered opinion that the defendants have failed to establish that their adoption of the SAMMAAN marks was *bona fide*.

WHETHER THE SERVICES OF THE PARTIES ARE IDENTICAL/ SIMILAR

50. The plaintiff is the registered proprietor of the SVAMAAN marks, *inter alia*, in Class 36 with respect to '***financial affairs; monetary affairs; insurance; real estate affairs; and consultancy in relation to the aforesaid services***'. The defendant no.1 has also applied for registration of the SAMMAAN marks in Class 36 with respect to identical services, *i.e.*, '***insurance; financial affairs; monetary affairs; real estate affairs***'.

51. It is also true that the plaintiff and the defendants no.1 and 2 have been registered by RBI to operate as NBFCs. The primary/ ancillary services of the plaintiff and the defendants of granting loans, on a broad perspective, are identical with each other. The defendant no.3 is engaged in the field of finance and insurance, which services are also offered by the plaintiff.



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

53. In ***Corn Products*** (supra), competing products were ‘*biscuits*’ and ‘*dextrose (d-glucose powder mixed with vitamins) used as an ingredient in food*’. The Supreme Court observed that there exists a trade connection between the competing products of the parties and held if a trade connection can be established between the products bearing similar trademarks, there exists a likelihood of confusion or deception among the consumers and the members of trade and public.

54. The observations of the Supreme Court in ***Corn Products*** (supra) were relied upon by me in ***Mayo Foundation for Medical Education & Research v. Bodhisatva Charitable Trust***¹⁵, wherein the plaintiff had a registration for

¹⁵ 2023 SCC OnLine Del 3241



the mark MAYO with respect to ‘*medical journals and printed matter*’ and the defendant was engaged in the business of running hospitals and disseminating education in the medical field. It was held as under:

“14. In the present case also, the plaintiff had registration under Class 16. Applying the ratio of the aforesaid judgments to the facts of the present case, in my view, ‘hospitals’ and ‘education services providing courses of instruction in medicine and health care’ would be allied and cognate to ‘medical journals and periodicals’ as all of them relate to the healthcare and medical education sector. Since, the defendants are using identical marks in respect of services that are similar to the services of the plaintiff, it is likely to cause confusion in the public and is also likely show an association with the registered trademarks of the plaintiff. Therefore, a prima facie case of infringement in terms of Section 29(2)(a) of Trade Marks Act, 1999 is made out.”

55. I am, therefore, unable to accept the submission on behalf of the defendants that their services are different from those of the plaintiff or that they operate in different fields. It cannot be denied that there exists, at the very least, a trade connection between the competing services of the parties.

56. In ***Laxmikant V. Patel v. Chetanbhai Shah***¹⁶, the Supreme Court held that the ground for the relief of injunction is not to be limited to the date of the proceedings. In addition to the present businesses of the parties, regard must be given to the scope of their expansion in the future.

57. Reliance is also correctly placed by the plaintiff on the judgment of a Coordinate Bench of this Court in ***Somany Ceramics v. Shri Ganesh Electric***¹⁷. Relying upon the judgment of the Supreme Court in ***Laxmikant*** (supra), it was held as under:

¹⁶ (2002) 3 SCC 65

¹⁷ 2022 SCC OnLine Del 3270



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

[Emphasis is mine]

58. Therefore, the difference in the size and scale of businesses of the parties would not be relevant in determining the identity/ similarity between the competing businesses.

LIKELIHOOD OF CONFUSION

59. The defendants have contended that a consumer in the financial service sector is not an average consumer with imperfect recollection, but is sophisticated and literate, who will not get confused between the competing marks.

60. I am unable to agree with the aforesaid submission made on behalf of the defendants. Persons who avail loans may come from any background, be it rural or urban, literate or illiterate, Hindi-speaking or non-Hindi speaking. Both the plaintiff and the defendants operate on a pan-India basis. The plaintiff has also filed newspaper publications/ advertisements in regional languages such as Bengali, Odia and Marathi to substantiate its operations



across India including in rural areas (*pages 804-805, 889, 892-894, 896-898 of the documents filed with the plaint*). There is a high probability that consumers, who are illiterate, semi-literate or non-Hindi speaking, would find the competing marks ‘SVAMAAN’ and ‘SAMMAAN’ very similar or nearly identical and therefore get confused between the two. Therefore, I cannot accept the submission that the class of consumer in the financial service sector is sophisticated or is capable of differentiating between the competing marks.

61. In *Shri Ambal case* (supra), the appellant also contended that the words AMBAL and ANDAL had distinct meanings and therefore the customers would not get confused between the two marks. The Supreme Court however rejected this contention and observed as under:

“10. ...The Hindus in the south of India may be well aware that the words Ambal and Andal represent the names of two distinct Goddesses. But the respondent’s customers are Christians, Parsees, Muslims and persons of other religious denominations. Moreover, their business is not confined to south of India. The customers who are not Hindus or who do not belong to the south of India may not know the difference between the words Andal and Ambal. The words have no direct reference to the character and quality of snuff. The customers who use the respondent’s goods will have a recollection that they are known by the word Ambal. They may also have a vague recollection of the portrait of a benign goddess used in connection with the mark. They are not likely to remember the fine distinctions between a Vaishnavite goddess and a Shivaite deity.”

[Emphasis is mine]

62. The defendants, in support of their contention of potential consumers being knowledgeable/ sophisticated, have relied on the judgments of this Court in *CFA Institute* (supra) and *Trustees of Princeton University v.*



Vagdevi Educational Society¹⁸. In both the aforesaid judgments, however, the rival parties were running educational institutes and their target consumers were students having at least a graduate qualification or seeking such qualification, who would not qualify as ordinary persons on the street. As noted above, persons availing loans may not be educated. Therefore, these judgments do not advance the case of the defendants.

63. On behalf of the defendants, it is also contended that the plaintiff has not produced any evidence to show actual confusion in the market. However, the test to be established in cases of infringement and passing off is of likelihood of confusion, and not actual confusion. It is settled that once a trade connection is established between goods and/or services bearing similar trademarks, there exists a likelihood of confusion or deception among the consumers and the members of the trade and public. The use of the SAMMAAN marks by the defendants is therefore likely to cause confusion among the members of trade and public.

64. In view of the discussion above, the plaintiff has made a *prima facie* case for infringement in terms of Section 29(2)(b) of the Trade Marks Act, 1999.

WHETHER THE PLAINTIFF'S MARK 'SVAMAAN' IS DESCRIPTIVE/ PUBLICI JURIS/ COMMON TO TRADE

65. It is vehemently contended on behalf of the defendants that the plaintiff's mark 'SVAMAAN' is descriptive, *publici juris* and a Hindi word common to trade and, therefore, is incapable of registration.

66. In my opinion, use of the mark 'SVAMAAN' in relation to financial services is completely arbitrary and inherently distinctive in nature. It would

¹⁸ 2023 SCC OnLine Del 5524



be farfetched to assume that the word ‘SVAMAAN’, in any manner, suggests or is indicative of the financial services rendered by the plaintiff or is common to trade.

67. The aforesaid stand of the defendants is also at variance with their statement that the mark ‘SAMMAAN’, which is conceptually similar to the plaintiff’s mark ‘SVAMAAN’, is coined/ arbitrary (*paragraphs no.11.1 and 11.2 of the reply to I.A. 41270/2024 filed on behalf of the defendants no.1, 3 and 4*). It also contradicts their act of seeking trade mark registration for the SAMMAAN marks. Therefore, it does not lie in the mouth of the defendants to contend that the plaintiff’s mark ‘SVAMAAN’, which is based on a similar theme of respect, is descriptive. Reference in this regard may be placed on the judgment of a Division Bench of this Court in ***Indian Hotels Company v. Jiva Institute of Vedic Science & Culture***¹⁹. The Division Bench observed that the appellant/ defendant itself applied for registration of the mark JIVA as a trade mark and hence rejected its contention that the JIVA is a descriptive word and cannot be protected as a trade mark by a civil court.

68. The defendant no.2, in its reply, has contended that there exist several trade mark registrations in Class 36 containing the words ‘SAMMAAN’/ ‘SVAMAAN’/ ‘SWABHIMAAN’/ other similar Hindi words. However, it has failed to show any proof of use of such third-party marks. Mere existence of a mark on the Register of Trade Marks is not sufficient to contend that the same is *publici juris* or common to trade.

69. The defendant no.2 has also contended that several companies, governments, organisations use various versions of the word ‘respect’

¹⁹ 2008 SCC OnLine Del 1758



including ‘SVAMAAN’ and ‘SAMMAAN’ as their names, marks, promotional phrases or a part thereof. In support of its above contention, the defendant no.2 has provided a list of schemes/ programs launched by banks/ Central and State Governments in India, which is set out hereinbelow:

- a. Pradhan Mantri Kisan Sammaan Nidhi Scheme by Government of India
- b. Mahila Sammaan Savings Certificate Scheme by Government of India
- c. Maiya Sammaan Yojana by Government of Jharkhand
- d. Swabhimaan – State Financial Inclusion Plan by Government of India
- e. Swabhimaan program for financial literacy launched by Rang De

70. I am unable to agree with the aforesaid submission. The schemes/ programs listed above, as rightly pointed out by the plaintiff, are government welfare schemes and do not constitute the business of finance and lending. Therefore, any use thereof cannot qualify to be use as a ‘trade mark’ within the meaning of Section 2(1)(zb) of the Trade Marks Act, 1999.

71. The defendant no.2 has also failed show if any of the schemes/ programs listed above is in relation to granting loans. Therefore, the words ‘SAMMAAN’ or ‘SVAMAAN’ cannot be said to have become common to the business of granting loans.

DELAY AND LACHES

72. The defendants have also contended that there has been a delay on the part of the plaintiff in bringing the present suit as the plaintiff was admittedly aware about their intention to adopt the mark ‘SAMMAAN CAPITAL’ at least since November 2023, however, it instituted the present suit only in October 2024, *i.e.*, after nearly a year.



73. In *Midas Hygiene Industries v. Sudhir Bhatia*²⁰, the Supreme Court has held that in an action for infringement of trade mark, mere delay in instituting the suit is not sufficient to deny the relief of injunction. The relevant extract from the aforesaid judgment is set out below:

“5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.”

[Emphasis is mine]

74. In *Hindustan Pencils v. India Stationery Products*²¹, it has been observed if the defendant uses an identical/ deceptively similar mark with the knowledge about the plaintiff's rights in its prior trademarks, the relief of injunction, including an injunction at the interim stage, cannot be denied even if there is an inordinate delay on the part of the plaintiff in taking action against the defendant.

75. The aforesaid observations in *Midas* (supra) and *Hindustan Pencils* (supra) are fully applicable in the present case. The plaintiff, as soon as it became aware of the defendant no.1's intention to adopt the name 'SAMMAAN CAPITAL', sent a legal notice to the defendant no.1 on 20th November, 2023. The issuance of legal notice by the plaintiff itself clearly communicated that it did not intend to permit the defendants to adopt and use the SAMMAAN-formative corporate names and trademarks.

²⁰ (2004) 3 SCC 90

²¹ 1989 SCC OnLine Del 34



76. In its interim reply to the aforesaid legal notice on 8th December, 2023, while denying the contents of the said notice, the defendant no.1 stated that ‘SAMMAAN CAPITAL’ is proposed to be used as its corporate name.

77. Despite taking the aforesaid stand, the defendant no.1 applied for registration of the SAMMAAN marks between February 2024 and May 2024.

78. Not only did the plaintiff send the aforesaid legal notice to the defendant no.1, but it also sent emails to RoC and RBI calling upon them not to grant registration to the defendants under the name incorporating the word ‘SAMMAAN’ on the ground that the same is deceptively similar to its SVAMAAN marks.

79. Further, when the plaintiff came to know that the defendants no.1 and 2 have got approvals for their SAMMAAN-formative corporate names from RoC, it immediately filed applications under Section 16(1)(b) of the Companies Act, 2013 and intimated RBI and SEBI regarding the same. It also filed notice of opposition against the trade mark application for the mark ‘SAMMAAN CAPITAL’ filed by the defendant no.1.

80. The defendants have placed reliance on the judgment in the case of *Intex Technologies v. AZ Tech*²² wherein the plaintiff, without any plausible explanation, filed the suit belatedly and allowed the defendant’s business to grow. The plaintiff therein did not even issue a cease-and-desist notice to the defendant therein prior to the institution of the suit. The Division Bench in the aforesaid backdrop observed that an improper and unexplained delay in instituting the suit allowing the defendant to build a large trade is fatal to an application for an interlocutory injunction.

²² 2017 SCC OnLine Del 7392



81. In the facts and circumstances of the present case, the defendants' reliance on the aforesaid judgment is misplaced as there is no improper or unexplained delay in instituting the present suit. It cannot be said that the plaintiff slept over its rights at any stage. The plaintiff, in fact, took prompt actions and every possible corrective measure to prevent the defendants from adopting and using the SAMMAAN-formative corporate names and trademarks, including issuance of a cease-and-desist notice.

82. Therefore, in my considered view, it cannot be said that there was any delay or laches on behalf of the plaintiff. In any event, the adoption of the SAMMAAN marks by the defendants despite the plaintiff's legal notice was not *bona fide* and therefore disentitles them to take the defence of delay.

REGULATORY APPROVALS OBTAINED BY THE DEFENDANTS AND THEIR AFFECT

83. It has also been contended on behalf of the defendants that the plaintiff has raised the very same objections in the present suit which were raised before the regulatory authorities such as RBI and RoC and the same have already been rejected by the aforesaid authorities.

84. I do not find merit in the aforesaid submissions. The mandate of determining infringement of trademarks is vested in a civil court. It, therefore, cannot be argued that any decision taken by the aforesaid bodies with regard to identity/ similarity between two marks would be binding on a civil court.

85. In *K.G. Khosla Compressors v. Khosla Extrakting*²³, a Coordinate Bench of this Court has observed that jurisdiction under the Companies Act, 2013 and the jurisdiction of civil courts operate in different fields. While exercising jurisdiction under the Companies Act, 2013, the competent

²³ 1985 SCC Online Del 232



authorities must act in terms of the guidelines laid down therein. There is no such restriction or limitation on the exercise of the jurisdiction by a civil court.

86. It is also to be noted that RBI granted the Certificates of Registration to the defendants no.1 and 2 upon an undertaking on their behalf that while changing their corporate names, they have neither infringed nor will they infringe the plaintiff's registered trademarks under Section 29 of the Trade Marks Act, 1999. Therefore, there has not been any adjudication whatsoever by RBI regarding infringement of the plaintiff's trademarks.

BALANCE OF CONVENIENCE

87. On behalf of the defendants, it has been strongly contended that the plaintiff has failed to satisfy the criteria of balance of convenience in order to be granted a relief of interim injunction. It is stated that the defendants have obtained all regulatory approvals including the fresh certificates of incorporation, GST registration certificates, RBI registration certificates and/or NSE/ BSE registrations pursuant to their name change incorporating the word 'SAMMAAN'. Further, the defendants have also spent huge amount towards advertising and promotion of the SAMMAAN marks and therefore the balance of convenience would be in their favour and against the grant of interim injunction.

88. The plaintiff has been commercially using the SVAMAAN marks at least since 2019. Since the defendants have been using their old names at least till June 2024 (*pages 104-105 and 111-112 of the documents filed by the defendants no.1, 3 and 4*) and started advertising the SAMMAAN marks only with effect from July 2024, clearly, they cannot claim to have acquired goodwill and reputation in the said marks.



89. The plaintiff had objected to the defendants' adoption and use of the SAMMAAN marks at every stage. Despite the same, the defendants went ahead and adopted the SAMMAAN marks.

90. It is evident from the documents filed by the defendants no.1, 3 and 4 along with their reply that they received their fresh certificates of incorporation only in or after May 2024 and incurred expenses on advertising and promotional activities only since July 2024. Despite having been put to notice and objections taken/ opposition filed by the plaintiff before RBI/ MCA and the Trade Marks Registry, if the defendants still went ahead and spent huge monies in advertising and promoting their SAMMAAN marks, it would have to be at their own risk and peril.

91. Therefore, in my considered view, the plaintiff cannot be denied grant of an interim injunction in its favour on the ground of balance of convenience.

CONCLUSION

92. In view of the aforesaid discussion, a *prima facie* case of infringement is made out in favour of the plaintiff as the impugned mark 'SAMMAAN' is deceptively similar to the plaintiff's SVAMAAN marks and the competing marks are used by the parties in relation to identical services, *i.e.*, for granting loans, which is likely to cause confusion in the market.

93. Balance of convenience is also in favour of the plaintiff and against the defendants as any use of the deceptively similar marks 'SAMMAAN', 'SAMMAAN CAPITAL' and other word/ device marks containing the word 'SAMMAAN' is likely to cause confusion in the minds of the consumer. The plaintiff shall continue to suffer irreparable loss, harm and injury if the defendants are permitted to carry on their businesses under the impugned marks.



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94. Accordingly, the defendants, their owners, proprietors, partners, directors, shareholders, officers, servants, affiliates, associates, subsidiaries and all others acting for and on their behalf are restrained from, directly or indirectly, adopting, using, advertising, depicting or displaying in the course of trade, in any manner, any mark/ name identical or deceptively similar to the plaintiff's SVAMAAN marks including the marks 'SAMMAAN', 'SAMMAAN CAPITAL', any other word/ device marks containing the word 'SAMMAAN' or any other deceptively similar trade mark or variant thereof, including the domain name www.sammaancapital.com, till the final adjudication of the suit.

95. Needless to state, any observations made herein are only for the purposes of adjudication of the present application and would have no bearing on the final outcome of the suit.

96. The present application stands disposed of in above terms.

CS(COMM) 871/2024

97. List before Joint Registrar on 27th March, 2025 for completion of pleadings.

**AMIT BANSAL
(JUDGE)**

FEBRUARY 10, 2025