

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.19 OF 2025

APPELLANT

(Ori. Defendant --- On R.A.)

:- Ifra Sheikh

Trading as Rocket Bidi Works,
Having Office at: Flat No.402, Plot No.5/6,
the Arch Apartment, Raja Ram Society, Opp
Walidain Masjid, Katol Road, Nagpur.

Through Power of Attorney

Mohammad Yaqub s/o Mohammad Ishaque,
aged about 46, R/o Flat No.402, Plot No.5/6,
The Arch Apartment, Rajaram Society,
Opposite Walidain Masjid, Katol Road,
Nagpur. District Nagpur, Maharashtra.

..VERSUS..

RESPONDENTS

(Ori. Plaintiff ---- On R.A.)

:- M/s Mobile Bidi Traders

A partnership Firm, having place of Business
at First Floor, Plot No.3, Beside Indian Oil
Petrol Pump, Ranala, Kamptee Taluka
Kamptee, District Nagpur.

Mr. S. Zia Quazi, Advocate for Appellant.

Mr. D.V. Chauhan, Senior Adv. a/b Mr. A.D. Chaudhari, Adv. for the Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 16.10.2025

DATE OF PRONOUNCING THE JUDGMENT: 04.11.2025

1. Heard.

2. **Rule.** Rule is made returnable forthwith. Heard finally with consent of learned counsel for the respective parties.

3. The present appeal is preferred challenging the order dated 12.08.2025, passed by the learned District Judge-12, Nagpur, on application at Exh.20 in Trademark Suit No.05 of 2024 whereby the present appellant/original defendant is restrained by way of temporary injunction from using trademark of the respondent/plaintiff with respect to trademark, "Online BIDI" till the final disposal of the suit. The parties will be hereinafter referred as "plaintiff" and "defendant".

4. The plaintiff has filed a suit being Trademark Suit No.05 of 2024 against the defendant. The plaintiff's case is that it is engaged in the business of manufacturing, marketing, and selling handmade bidis and matchboxes since 2005. It is contended that, the plaintiff has registered its trademark and copyright under the provisions of the Trade Marks Act, 1999 and the Copyright Act, 1957. It is stated that the application for registration of trademark "Online BIDI" was made on 31.08.2017 and the same was registered on 04.01.2020 in class-34. The plaintiff has also stated

that the design of the label is an artistic work and that the same is registered by the Registrar of Copyrights on 13.06.2024. The plaintiff contends that the label/trade-dress of the Bidis has unique and distinguishing features which provide distinct identification to the product of the plaintiff. It is stated that, because of the blue colour theme of the trade-dress/package/label, the bidis of the plaintiff are famous in the market and are commonly identified and referred as “Asmani Puda”. The plaintiff contends that the defendant is doing business of sale of Bidis under the brand name “ATM BIDI No.07”. The plaintiff states that the colour scheme of the packet and bundle of the defendant is deceptively similar with that of the plaintiff. It is contended that, the end consumer of the product are workers, labours and generally people from illiterate/uneducated strata of the society who are gullible and therefore, susceptible to being misled into buying the product of the defendant believing it to be product of the plaintiff.

5. The plaintiff also filed an application for grant of temporary injunction seeking order restraining the defendant from using the trademark during the pendency of the suit. The said application came to be marked as Exh.20.

6. The defendant filed written statement and reply opposing the suit and the application for grant of temporary injunction. The defendant contends that the two trademarks are not similar as contended by the plaintiff. The defendant stated that whereas the trade-name of the plaintiff is “Online BIDI”, the trade name of the defendant is “ATM BIDI No.07”. The defendant has pleaded that the design appears for trade-dress of the plaintiff and defendant does not bear any resemblance and that the apprehension expressed in the plaint and application for grant of temporary injunction is misconceived. The defendant also contends that it had altered its original design with a view to avoid any dispute, and that after the design was altered, there was no question of any customer being misled, since the designs are in no way similar. Apart from this, the defendant has raised a contention that the outer packet in which the cigarette bundles are packed and sold by the plaintiff does not carry statutory warning as per Rule 3(e) of the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 (hereinafter referred to as “Cigarettes and Tobacco Rules, 2008”) in as much as the outer packaging in which the cigarettes bundle are sold does not have health warning as prescribed under the said

Rules. It will be pertinent to mention that the said Rules are framed in exercise of powers conferred by the Sections 7(1), 8(2), 10 and 31 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as “Act of 2003”). It is contended that since the business is not conducted by the plaintiff in accordance with statutory rules, it is not entitled to claim discretionary relief of temporary injunction.

7. It will be pertinent to mention that, the defendant had filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint on the ground that the plaintiff was not conducting the business in accordance with the aforesaid rules. The said application for rejection of plaint is rejected by the learned trial Court. The learned trial Court has allowed the application for grant of temporary injunction vide order dated 12.08.2025. The learned Trial Court held that the trademarks in question have a common colour scheme and blue flash and therefore, it would be difficult for a customer to identify and differentiate one product from the other. The learned Trial Court

further observed that bidis are products generally purchased by customers who identify them by their appearance and, therefore, are susceptible to confusion and deception on account of similarity in the appearance of the products. In view of such observations, the application for temporary injunction came to be allowed. The said order dated 12.08.2025 allowing the application for grant of temporary injunction is subject matter of challenge in the present case.

8. Mr. Zia Quazi, learned Advocate for the appellant/defendant has contended that, the dispute between the parties was with respect to earlier design/trade-dress of the defendants, which was discontinued by the defendants w.e.f. 01.07.2024. He contends that although the earlier design was also not similar to the design of the plaintiff, the defendants in order to avoid any dispute, altered the design of their label. He has referred to the paragraphs 19 and 25 of the plaint to draw attention to the earlier trade-dress of the defendant and the trade-dress, which is being used by them since 01.07.2024.

9. Mr. Quazi, learned Advocate contends that the learned trial Court should have rejected the application for grant of

temporary injunction having regard to the distinguishing features in the trade labels. He states that the trade name of both the products viz., “Online BIDI” of plaintiff and “ATM BIDI No.07” of defendant has no resemblance. He further states that, the words “Online BIDI” are written in a blue colour elliptical/oval which is towards the right top side of the packet of the plaintiff, as against which, in the packet of the defendant, the words “ATM BIDI No.07” are written in a rectangular hyperbola. The photo of Bidi is displayed in rectangular portion whereas in the label of defendant, the photo of Bidi is displayed in a semi circular portion. He further contends that at the bottom of the packet, the words “Special Kadak Bidi” are prominently displayed on the defendant’s packet, which is not the case with the plaintiff’s packet.

10. He further states that in order to seek order of injunction, the plaintiff must establish his goodwill and reputation in the market on the basis of the registered trademark. He contends that although the registered trademark is claimed to be with respect blue coloured label, the plaintiff is selling product in labels bearing three to four different colours. He states that although the sale figures referring to turnover are mentioned in the plaint, the breakup of the

sale figures is deliberately not provided and therefore, it cannot be ascertained what sales are achieved by the plaintiff in respect of bidis sold in blue-coloured packets. He contends that the learned trial Court has not taken into consideration these aspects of the matter and therefore, the impugned order deserves to be quashed and set aside by allowing the appeal.

11. *Per contra*, Mr. D.V. Chouhan, learned Senior Advocate for the respondent/plaintiff contends that there is striking similarity between the trade-dress of the plaintiff and that of the defendant. He contends that the blue coloured conical hash is the principle theme of design of the product of the plaintiff and the defendant has adopted the same design with a view to sell his product by misleading customers into believing that the said product is product of the plaintiff. He emphasizes that the customers are generally poor labours who are not adequately educated to differentiate between the two products due to similarity in design.

12. Mr. Chouhan, learned Senior Advocate for the respondent, submits that the product is sold in retail in a bundle, and therefore, it is the design of the bundle that matters and not the outer packet in which the products are supplied to the retailers.

Mr. Chouhan, learned Senior Advocate places strong reliance on judgments of the Hon'le Supreme Court and this Court in the matter of *Wander Ltd. and another ..vs.. Antox India P. Ltd*, reported in **1990 (Supp) SCC 727** and in the matter of *ITC Limited ..vs.. NTC Industries Ltd*, reported in **2015 SCC OnLine Bom 4976**, to contend that the present appeal is an appeal against a discretionary order of temporary injunction and that the scope of interference in appeal is very narrow. He argues that the learned Trial Court has exercised its discretion having regard to all the material facts and legal provisions and that this Court should not substitute its own discretion for the discretion exercised by the learned Trial Court. As regards the contention with respect to the provisions of the Act of 2003 and Cigarettes and Tobacco Rules, 2008 framed under, Mr. Chouhan, learned Senior Advocate drawn attention to the label of the bundle of the plaintiff on which statutory health warning is printed as prescribed under the packaging Rules. He states that the statutory warning is meant for the end consumers who purchase the bundles and therefore, the provisions of the Packaging Rules must be interpreted meaningfully, having regard to the principle of purposive interpretation. He

submits that, failure to publish statutory warning on outer label will therefore not mean that the product is not sold in accordance with the Packaging Rules.

13. Mr. Quazi, learned Advocate for the appellant in reply would submit that since the Tobacco Act and Packaging Rules framed thereunder deal with cigarettes and tobacco products, the rules must be interpreted strictly, particularly because the Rules deal with statutory health warning. He further states that there is no ambiguity in the Rules and therefore, principle of literal interpretation must be adopted while interpreting the same.

14. Having regard to the principles laid down by the Hon'ble Supreme Court in the matter of *Wander Limited* (Supra), the present appeal cannot be heard like as a first appeal which is the appeal on facts and law. The scope of present appeal will be restricted to ascertain as to whether the learned trial Court has decided the application for grant of temporary injunction having regard to the legal principles, governing interlocutory injunctions and has considered the facts of the case properly. This Court cannot interfere with the discretion exercise by the learned trial Court and/or substitute its discretion for the discretion of the learned trial

Court. The appeal needs to be decided having regard to the aforesaid legal principle with respect to the scope of the appeal.

15. It is not in dispute that the trademark of plaintiff is a registered trademark. The plaintiff also has a registered copyright with respect to design of the trade label. In principle, this Court is in agreement with the learned Senior Advocate for the respondent that comparison of Bidi bundles is required to be made rather than comparison of the packet in which Bidi bundles are sold by wholesaler to retailers. The end consumer will normally purchase Bidis in bundles or loose bidis and not the packet in which the bundles are packed for sale by wholesaler to retailers. Perusal of the conical Bidi bundles of the plaintiff and defendant will demonstrate that both the bundles have statutory health warning which covers most of the surface area. Both the bundles have a blue colour conical hash, in which the trade names are mentioned. The Bidi bundles do appear to be similar due to the conical blue flash design. The learned trial Court while dealing with the application for temporary injunction has taken into consideration the trade dress/packet of the bidi bundles of the plaintiff and defendant and has arrived at *prima facie* satisfaction that the trademark of the defendant is deceptively

similar to registered trademark of the plaintiff. The learned trial Court has also given due regard to the fact that the end consumer of the product is generally a person coming from relatively uneducated and poor class. Such consumer is gullible and identifies product by its design rather than name and as such is likely to be confused by the similarity in the design of the bundle of both the products. The observations made by the learned trial Court appear to be in consonance with the law laid down in the matter of *ITC Limited* (Supra), which is also a case of breach of trademark of a cigarette.

16. As regards the contention of Mr. Quazi, learned Advocate for the appellant, with respect to the distinguishing features of the two labels, the submissions are predominantly in relation to the outer packet, which is meant for use in wholesale trade, and not the bundle, which is meant for retail sale. Apart from that, the contention cannot be accepted in view of the law laid down in *M/s Hiralal Industries Ltd. ..vs.. S.M. Associates and others*, reported in **AIR 1984 Bom 218**, which categorically holds that the distinguishing features between the trade dress of two products should not be given much weight if, on overall view of the two trade dresses, broad similarities emerge that are sufficient to create

confusion in the mind of the end consumer. A perusal of the bundles of the plaintiff and the defendant indicate broad similarities arising from the use of blue colour highlight. It needs to be reiterated that the end consumer of the product is generally not a very literate individual. The controversy needs to be appreciated applying arm chair rule. Moreover, discretion exercised by the trial Court cannot be substituted by that of this Court.

17. The contention with respect to the failure to provide a breakup of the figures relating to the sale of bidis sold under other labels or colours also cannot be accepted, since the registered trademark and the registered copyright pertain to the blue-coloured label. The trademark of the plaintiff is registered and needs to be protected.

18. It is also necessary to deal with contention of the defendant with respect to the provisions of Tobacco Act and the Packaging Rules framed thereunder. The contention of the learned Advocate for the appellant is that the external packaging in which Bidi bundles are packed by the plaintiff does not display specified health warning although it is mandated by the relevant Rules. In support of his contention, the learned Advocate has placed reliance

on Rule 3(e) of the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008, which reads as under :-

“3(e). No product shall be sold unless the package contains the specified health warning:

Provided that the specified health warning shall be printed, pasted or affixed on every retail package in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes and will not include other packaging such as gunny bags.”

19. Perusal of the external packaging of the plaintiff does not disclose specified health warning. However, specified health warning appears on the Bidi bundles of the plaintiff. Section 7 of the Act of 2003, prohibits any person from engaging in the business of cigarettes or other tobacco products unless every package of cigarettes or tobacco products bears the specified health warning, including pictorial warnings. The term “package” is defined under Section 3(i) of the Act of 2003 and the definition is an inclusive definition which includes a wrapper, box, carton, tin, or other container. Section 20 of the Act of 2003, provides that any person who manufactures or sells cigarettes or tobacco products without the specified warning on the package or label shall, on conviction for a first offence, be liable to punishment with imprisonment for a term which may extend to two years or with a fine of upto Rs.Five Thousand or with both; and for a second or subsequent conviction,

with imprisonment for a term which may extend to five years, and with a fine which may extend to Rs.Ten Thousand. Section 14 of the Act of 2003, provides for confiscation of cigarettes or other tobacco products in case of contravention of the provisions of the Act. Section 15 of the Act of 2003, provides that in case of confiscation of any packet of cigarettes or other tobacco products, the Court adjudicating on the confiscation may give the owner of the product an option to pay amount equal to the value of the goods confiscated and release the same on condition that the same shall not be sold without specified warning and other specifications which are required to be incorporated on the packet. Thus, even if the contention of the defendant with respect to breach of the packaging Rules is accepted, the consequence that is provided under Section 15 of the Act of 2003 will also have taken into consideration. Even in case of confiscation, the plaintiff will be entitled to seek release of the bidies and then to sell the same by incorporating appropriate statutory warning on the external packet. Therefore, the alleged breach of provisions of packaging rules will not itself be ground for setting aside the order of temporary injunction. It will be pertinent to mention that, it is not the case of

the defendant that the authorities under the Act have taken any action against the plaintiff on account of failure to display statutory warning on the external packet meant for wholesale business. It is also not in dispute that the bidi bundles display statutory health warning in accordance with the provisions of the Packaging Rules. It must also be stated that orders restraining acts of infringement and passing of benefit off benefit not only to the owner of the trademark but also the end consumer.

20. In light of the aforesaid, in the considered opinion of this Court, no case for interference is made out. The appeal is therefore, liable to be dismissed and is accordingly dismissed.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate