



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. 10260 of 2026
(Arising out of SLP (C) No.26887 of 2026)**

SHABU KN ACHARY

.... APPELLANT (S)

Versus

DHARAMPAL PREMCHAND LIMITED . RESPONDENT(S)

O R D E R

Leave granted.

2. The short question arising in the above case is as to whether the defendant, the appellant herein, was entitled to put a question with respect to the brand name asserted by the plaintiff, infringement of which was the foundation of the relief of damages claimed by the plaintiff in the suit.

3. The High Court finding the question to be a purely factual question beyond the permissible cross-examination; since the defendant's written statement was not taken on record, expunged it from the record.

4. We have heard Sri Ankur Chhibber, learned Senior Counsel for the appellant and Sri Gagan Gupta, learned

Senior Counsel for the respondent.

5. The prayers in the suit, produced along with the memorandum as Annexure P-1 are multifarious. *Inter alia* plaintiff seeks permanent injunction restraining the defendant from infringing the trade-dress used by the plaintiff in its product in any manner, declaration that the two trademarks are the exclusive marks of the plaintiff, within the meaning of Section 2(1)(zg) read with Section 11 (6) of the Trade Marks Act, 1999, as also damages.

6. The specific contention raised was that the defendant's written statement not being on record, he was not entitled to put that question. We are unable to agree.

The disputed question as such, is seen thus:

'Is it correct that you have no document to show that since when mark BABA is being used?'

7. We need only notice the affidavit of the plaintiff accompanying the prayer for injunction which specifically speaks of the defendant using the brand name of the plaintiff with a similar packaging/trade-dress, which is identical to the unique trade dress and packaging of the plaintiff's product. The averments also are with respect to infringement of the plaintiff's registered copyright and trademark, as we noticed hereinabove.

8. When the plaintiff affirms trademark infringement, even if the written statement is not on record, the defendant is entitled to put the question which queries the plaintiff on the document, to substantiate the time from which such brand name was used by the plaintiff.

9. On the above reasoning, we reverse the impugned order of the High Court and direct the trial to be proceeded with after recalling the plaintiff and recording his answer.

10. We make it clear that we have not made any observations on the merits of the matter and the parties would be entitled to agitate their respective contentions in the trial.

11. The appeal is allowed.

12. Pending application(s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
AUGUST 07, 2026.**