

Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Murad-A-Mowla Sohel

First Appeal No.37 of 2025

Dabur Bangladesh Private Limited appellant
-Versus-
Marico Limited and others and others
..... respondents

with
Civil Rule No.255 (F) of 2025

Dabur Bangladesh Private Limited petitioner
-Versus-
Marico Limited and others and others
..... opposite parties

Mr. Imran A Siddique, Senior Advocate with Mr.
Md. Mahbubur Rahman, Advocate
..... for the appellant
(Appellant in the appeal and petitioner in the Rule)

Mr. Aneek R. Haque, Senior Advocate with Mr.
Neoaz Morshed, Mr. Uzzal Bhowmick and Mr.
Akbar Ahmed, Advocates
..... for respondents 1 and 2
(In the appeal and opposite parties in the Rule)

Judgment on 12.03.2026

Bhishmadev Chakrabortty, J:

The Hon'ble Chief Justice has sent this appeal with Rule to this
Bench for hearing and disposal.

Since the Rule has arisen out of the aforementioned first appeal
and the parties thereto are same, both have been heard together and
are being disposed of by this judgment.

The appeal at the instance of defendant 1 is directed against the
judgment and decree of the Additional District Judge, Court 1, Dhaka
passed on 09.04.2025 in Title Suit 30 of 2020 decreeing the suit for

permanent injunction restraining defendant 1 and its servants, employees, workers, agents, franchises, distributors and sellers from infringing the registered trademarks “PARACHUTE” and “PARACHUTE ADVANSED” with its bottle design, shape, colour scheme, arrangement of artistic elements, get-up and trade-dress on blue coloured bottle in respect of coconut oil and hair oil of the plaintiff as described in schedule-‘A’ to the plaint. Defendant 1 and its servants, employees, workers, agents, franchises, distributors and sellers are also permanently restrained from using, manufacturing, importing, marketing, advertising, distributing, storing, showing, allowing CM license, selling, offering for sale “DABUR GOLD COCONUT OIL” and passing off coconut oil/hair oil by using blue coloured bottle as trade mark with trademark/trade-dress as shown in schedule-‘B’ to the plaint or any other copyright design, trademark along with trade-dress which are deceptively or confusingly similar to resembles or is identical with the products of the plaintiffs.

After filing of the aforesaid appeal the appellant filed an application for staying the operation of the impugned judgment and decree upon which a Bench of this Division issued Rule on 02.06.2025 and stayed operation of the impugned judgment and decree for a limited period. Against which defendants 1 and 2 moved to the Appellate Division and the Hon’ble Judge-In-Chamber by order passed on 23.06.2025 in Civil Petition for Leave to Appeal No.2354 of 2025 stayed the order passed by this Division for 3(three) months

and directed respondent 1 to withdraw the goods namely ‘DABUR GOLD COCONUT OIL’ from market for the time being and also directed the Rule issuing Bench to dispose of the Rule expeditiously preferably within 3(three) months from the date of receipt of the order. Thereafter both the appeal and Rule were made ready for hearing and eventually the Hon’ble Chief Justice has sent both to this Bench for disposal.

The plaint case, in brief, is that plaintiff 1 Marico Limited is the leading Fast-Moving Consumer Goods (FMCG) company of India operating in more than 26 countries across Asia and Africa. Among various products, it produces and sells/markets high quality coconut oil and/or hair oil under the brand name of “PARACHUTE” and “PARACHUTE ADVANSED”. Plaintiff 2, Marico Bangladesh Limited, under the licence from plaintiff 1 is engaged in the production, marketing and sale of the said products in Bangladesh. The trademarks “PARACHUTE” and “PARACHUTE ADVANSED” are registered both in India and Bangladesh. Plaintiffs 1 and 2 are the exclusive licensee of all rights and title of those trademarks in Bangladesh. Plaintiff 1 started selling coconut oil in blue plastic bottles since 1979 and in the year of 1997 after extensive research plaintiff 1 came up with a new look and logo on a blue coloured bottle having blue-green-white flag device with ‘parachute’ word and coconut splash for selling and marketing coconut hair oil. Plaintiff 1 obtained copyright registration of that artistic work on 19 Aug 2003

vide Copyright Registration A-64997/2003 and Design Registration vide Registration 04047, 04787 and 08643 for the said bottle in Bangladesh. Plaintiff 1 had also obtained registration of its trade dress including the bottle with blue colour and distinctive shapes vide registration nos. 182024 and 182025. Plaintiff 1 had also obtained trademarks registration in respect of “PARACHUTE” and “PARACHUTE ADVANSED” from the Registrar, Department of Patents, Designs and Trade Marks of the Government of Bangladesh vide registration nos. 45634 (dated 13.12.1995), 75614 (dated 03.06.2002), 45636 (dated 13.12.1995) in respect of coconut oil and related products in class 03, 05 and 29. In Schedule “A” to the plaint the specimen of the plaintiffs’ registered trademark has been shown. To protect and safeguard the right, title and interest of the trademark with the trade dress plaintiff 1 had obtained trademark registration for various labels/get-up associated with the registered trademarks “PARACHUTE” and “PARACHUTE ADVANSED” vide Registration Nos.191137 and 191131 in Class 03. The shape of bottle, cap, configuration, design, blue colour get-up of the bottle is the hallmark of the plaintiffs’ products and they constitute the trade dress of the plaintiffs. Plaintiff 2 is the market leader, more specifically almost 80 % of the shares in the coconut oil and coconut hair oil market in Bangladesh. The plaintiffs have widely publicized its products under the brands/marks “PARACHUTE” and “PARACHUTE ADVANSED” with ubiquitous blue bottle and/or

blue coloured trade dress/get-up through the print as well as the electronic media but not limited to newspapers, periodicals and newspaper channels, television which have a wide circulation and viewership. In the financial year of 2019-20 alone plaintiff 2's advertising expenditure was Taka 121.30 crores and plaintiff 2 paid Taka 327 crores to the National Exchequer against the sales of its products. While the plaintiffs were dominantly selling and marketing the coconut oil or coconut hair oil in Bangladesh under the goodwill and abovestated registered trademarks, defendant 1 by launching their products of coconut oil, namely 'DABUR GOLD COCONUT OIL' started infringing the registered trademarks and trade dress of the plaintiffs' products using similar blue bottle, colour, scheme, arrangement of design element, artistic and graphical representation which are deceptively similar to the registered trademarks of the plaintiffs and confusingly similar to the trade dress and get-up of the plaintiff's products as evident in Schedule-B to the plaint. The plaintiffs came to learn about the infringing products of defendant 1 on 17.08. 2020. Plaintiff 2 then published a cautionary notice in the Daily Samakal and the Daily Swadesh Pratidin, two Bengla dailies on 04.09.2020 stating that the actions of defendant 1 in selling their products under the brand 'Dabur Gold Coconut Oil' which is confusingly similar in shape, size, colour, configuration, design and get-up to the plaintiffs' "PARACHUTE" & "PARACHUTE ADVANSED" amounting to a breach of the provisions of the

Trademarks Act, 2009 and causing irreparable damage to the plaintiffs and requested to stop such illegal and unauthorized activities. But defendant 1 did not pay any heed to it and continued to produce and sell the infringing products, hence the suit for permanent injunction as prayed for.

Defendant 1 contested the suit by filing written statement contending that mark dabur has been registered in class 3, 5, 29 and 30 in India as well as in other countries including Bangladesh in the name of parent company of the defendant 1. It has been openly and continuously selling coconut oil in India since 1992. It has been selling and marketing coconut oil continuously and uninterruptedly bearing the brand name "Dabur Gold Pure Coconut Oil" since 2006 and having various distinctive and unique features including 'DABUR' written in an eye logo in green colour background. The words 'GOLD' and 'Pure Coconut Oil' written in golden colour/background, placement of coconuts and all necessary statutory declarations printed/labeled on blue colour bottle (in brief "defendant's packaging"). The current defendant's packaging has been using for coconut oil in India and other countries since 2014. It has a trade license agreement with its parent company. Defendant 1 has started producing coconut oil/hair oil in Bangladesh under the 'Dabur Gold Pure Coconut Oil' brand using blue bottles and packaging which have been in use in India and various other countries since 2014. Moreover, defendant 1's parent company has already secured

trademark registration under No.249527 & 249528 in class 29 in Bangladesh. Besides, there are no similarities between the products of the plaintiffs and defendant. Marks “PARACHUTE” and “PARACHUTE ADVANCED” are not in any manner similar to the mark 'Dabur Gold Pure Coconut Oil' and “Dabur গোল্ড বিশুদ্ধ নারিকেল তেল”. The names are phonetically and visually different. Further, the elements displayed, the picture, colour and drawings on the bottle are different to the plaintiffs’. Additionally, Dabur eye logo is prominently displayed on the bottle. There is no scope for Dabur products to be mistaken for or confused with the products of any other manufacturer. Therefore, the allegation against defendant 1 for infringing of trademark and passing off goods by using the deceptively similar colour and design is completely false and baseless. It was further stated that defendant 1 and the plaintiffs’ product have coexisted in India since 2014 but the plaintiff has never alleged any confusion or deception against the defendant's product. Further, the plaintiff has not even objected to the registration of the “DABUR GOLD” marks of defendant 1 in India. There exists no confusion/similarity between the rival products and the plaintiff is falsely attempting to create on business rivalry. The suit, therefore, would be dismissed.

The trial Court on pleadings framed the following issues-

1. Is this suit maintainable in its existing form and nature?

2. Is the suit is barred by principles of estoppel, waiver and acquiescence?
3. Are the plaintiffs owners of the trademark mentioned in Schedule-A to the plaint?
4. Are the defendants' product/trademark as described in plaint Schedule-'B' identical with or deceptively similar to plaintiffs' 'A' trademark?
5. Are the plaintiffs entitled to get the remedy they have prayed for?
6. Was this suit filed by unauthorized person and is the subsequent change of the authorized representative lawful?

In the trial, the plaintiffs examined 1 witness and produced their documents exhibits 1-13 and material exhibits I and II. On the other hand, defendant 1 also examined 1 witness and produced their documents exhibits A-B and D-M and material exhibits C(I)-C(II). However, the Additional District Judge decreed the suit for permanent injunction restraining defendants 1 and 2 from selling, marketing, advertising and distributing coconut oil in the bottle and out look described the schedule 'B' to the plaint.

Being aggrieved by defendant 1 preferred this appeal and subsequently filed an application for staying the impugned judgment upon which the Rule was issued with an interim order of stay which was subsequently stayed by the Appellate Division.

Mr. Imran A Siddique, learned Senior Advocate for the appellant taking us through the materials on record both oral and documentary and provisions of law relating to trade mark, infringement of trade mark and passing off submits that the judgment of the trial Court suffers from serious errors of fact and law, and is liable to be set aside because the trial Court held that the products of defendant 1, as shown in schedule-B to the plaint is 'identical, similar, deceptively similar or confusingly similar' with the products of the plaintiff as shown in schedule-A to the plaint which is found in open eyes that defendant 1 has used not only the blue colour on the bottle of the product, it has also used almost similarly sized bottle having confusingly similar shape; it has deceptively used the combination of blue, white and green colours in a very confusing way. The splash of broken coconut is also used by defendant 1 in the lower part of the bottle just under the logo. The trial Court committed serious error of law in dissecting the constituent elements of the logos of the plaintiff and the defendant to determine whether similarities exists between the constituent elements of the two logos. As per anti-dissection Rule in trademark law, marks must be compared as a whole, and not by dissecting them into individual components. The consumers will perceive trademark based on their overall impression, encompassing appearance, sound, structure and commercial impression. The correct test to be applied is whether when considered in its entirety, the defendants' mark is deceptively similar to the plaintiffs' registered

mark. The true test is whether the totality of the disputed trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons accustomed to the existing trade mark. He refers to the cases of (i) *Peroud Richard India Private Limited and others vs. Kasawcer Singh Chhabra*, 2025 INSC 981, para 32, (ii) *Cadila Health Care Ltd. vs. Codila Pharmacestichas Ltd.* (2001) 5 SCC 73, (iii) *Aravind Laboratories A. Samy Chemical Warks*, AIR 1987 Madras 265 and *Hofflmann-La Roche and Co. Ltd. vs. Geoffrey Nanners and Private Ltd.* AIR 1970 (SC) 2062 and relied on the principles laid therein. Mr. Siddique adds that in the plaint the plaintiffs stated that they have been using the marks “PARACHUTE” and “PARACHUTE ADVANCED” continuously, extensively and exclusively along with the ubiquitous trade dress of a blue bottle along with the distinctive colour scheme, arrangement of elements such as blue green flag device, coconut splash, graphics and other design elements in respect of coconut oil and hair oil products. PW 1 also led evidence by violating the aforesaid Rule. Instead of focusing on the overall impression of the mark he tried to dissect the two marks and show the resemblance between the marks. The trial Court failed to consider the overall impression regarding the marks on the two bottles, and as such, arrived at an erroneous finding. If the marks used in the two bottles, taken as a whole, are found to be confusingly or deceptively similar, then only the plaintiff may be entitled to an injunction. However, the trial Court erred in law failing to consider whether the

mark of the defendant– when considered as a whole- is confusingly similar or deceptively similar to that of the plaintiff. Having failed to apply such test, the learned Court arrived at an incorrect decision which is liable to be set aside by this Hon’ble Court.

Mr. Siddique then submits that in case like this the ‘dominant feature’ of the goods is of prime concern. In determining whether a mark is deceptively similar to another, courts often consider the dominant feature of the mark, *i.e.*, the element which is most distinctive, memorable and likely to influence consumers’ perception. Despite anti-dissection Rules courts may still place emphasis on certain prominent or distinguishing elements, specially where such features significantly contribute to the overall commercial impression of the mark. The trial Court failed to appreciate that identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks. An infringing component may overshadow the remainder of the mark to such an extent that confusion or deception becomes virtually inevitable. In trademark analysis, the presence of common elements across marks does not automatically indicate a likelihood of confusion but the relative prominence and distinctiveness of the elements witness. The trial Court failed to apply the ‘Dominant Feature’ test, *i.e.*, it failed to give due consideration to the dominant features or essential features of the two logos in determining whether the two logos were deceptively similar. As such, the judgment of the Court below is bad in law and liable to be set

aside for ends of justice. He refers to the previous cited cases and the case of Parle Products vs. J.P. & Co., Mysore AIR 1972 (SC) 1359 and submits that on perusal of the two bottles of two different companies it is clear that the dominant features of both logos are the word marks which are prominently shown in the respective bottles. The dominant features of the two trademarks of the contesting parties are visually and phonetically different. There is no similarity between “PARACHUTE”, “PARACHUT ADVANCED” and “DABUR GOLD COCONUT OIL” let alone similarity or deceptive similarity. The difference of dominant feature of the two products has been affirmed by PW 1 in his evidence as “সাক্ষী বস্তু আলামত নিজহাতে নিয়ে বলে আলামত সামনে আনার পর দেখাযাচ্ছে ১ টা বাদীর পণ্য যার Brand Name প্যারাসুট ১ টা পণ্য বিবাদীর যার Brand Name ডাবর”। As such, comparing the dominant features of the marks on the bottles of the plaintiff and the defendant, it can be said that the same bear no similarity whatsoever.

Mr. Siddique further submits that the trial Court did not apply the ‘average consumer test’ in determining whether the marks of the plaintiff and the defendant were deceptively similar. It assesses whether there exists a likelihood of confusion between two marks, or whether a mark lack distinctiveness. The test is grounded in the perception of the average consumer- a person who is reasonably well informed, observant and circumspect, but not an expert or overly analytical. He refers to the case of Britannia Industries Ltd. vs. ITC Ltd. and others, 2021 (86) PTC 618 (Del) with the *ratio* of the

previous cited cases. If the average consumer test applied to the present case it would clearly indicate absence of any confusion with regard to the marks of the two products. The trial Court failed to appreciate that the issue for consideration is the overall similarity of the composite words, having regard to the circumstances that the goods are the preparation of the same description. The use of a mark is not to be refused merely because “fools” or “idiots” may be deceived. Furthermore, the trade mark is the entire mark which has to be considered as a whole. It would be a dangerous method to adopt to divide the word up and seek to distinguish a portion of it from a portion of the other word. The marks of the two products are substantially different such that the average consumer of reasonable intelligence would not find them confusingly or deceptively similar. Moreover, in order to form a perception that a trade mark may be found deceptively similar to another it is not necessary to place the registered trade mark along with the offending mark and the figures adopted in the carton side by side and then proceed to ascertain the difference in features and come to the conclusion as to whether there is a possibility of deception. The Court has to consider the overall aspects placing itself in the place of unwary purchaser. (reliance placed on *Aravind Laboratories v. Vs. A. Samy Chemical Works*, AIR 1987 MADRAS 265). The respondent has failed to show how a unwary purchaser may be deceived at the time of purchasing their products from any shop. The trial Court incorrectly attributed the

evidence of PW1 to the DW1 and arrived at a finding that prospective consumers may be deceived by the use of Dabur's logo/mark, as under- “আমি বাদী ও বিবাদী দুই পক্ষের পণ্য দেখলে আমি চিনতে পারি। বস্তু আলামত দেখে বিজ্ঞ কৌশলীর হাতে বাদী এবং বিবাদী পক্ষের দুইজনের পণ্য আছে, যা সাদৃশ্যপূর্ণ। দেখে দুইটা পণ্যই মনে হচ্ছে আমার পণ্য”। However, in the judgment of the trial Court, mistakenly took the said deposition of PW1 as of DW1 and took decision and held there are profound similarities between the bottle and close scrutiny needs to be made to identify such making it abundantly clear that the bottle of defendant 1 is deceptively and confusingly similar to that of bottle of the plaintiff. Such finding of the trial Court that the unwary consumer will be deceived or confused by the appellant's marks is based on an erroneous factual premise.

Mr. Siddique further submits that the plaintiff brought a case that it came up with the idea of using ‘blue’ as the colour of their bottles/package for coconut oil. During cross examination DW1 was suggested, “blue colour is so strictly and exclusively associated with the plaintiff's coconut hair oil and the get up is recognised by the public as distinctive and that the colour blue is not the basic colour of the ingredient of coconut oil, and this blue colour (is) not a common trend for packaging coconut oil”. As such, the plaintiff is seeking to claim a propriety right in respect of the colour ‘blue’. But section 2(23) of the Trademarks Act, 2009 defines “Mark” as including a “device, brand, heading, label, ticket, name, signature, word, letter,

symbol, numeral, figurative elements, combination of colours or any combination thereof”. Therefore, a single colour cannot be protected as a trademark, however, a ‘combination of colours’ may be so protected as a trademark under the Act of 2009 and the plaintiff cannot claim the exclusive right to use blue coloured bottles to package its product. He refers to the cases of *Christan Louboutin SAS vs. Abubaker and others* 2018 (74) PTC 301 (Del), *Cipla Ltd. vs. MK Pharmaceuticals* 2008 (36) PTC 166 (Del) submits that a particular colour (such as blue/red) or combination of colours can be commonly used for any particular product or goods, yet the same would not result in a trademark right in respect of the single colour in question. Thus, ‘red’ is a basic colour and the ‘red and white’ colour combination is common to the tooth paste trade in the domestic as well as the international market and as such may not be monopolised by any party. In the case of *Colgate Palmolive Co. Limited and others Vs. Patel and others*, (MANU/ DE/1641/2005) Delhi High Court held that the red and white colour combination which in essence is really a red colour printing in white font, is not on its own an essential feature which would reserve the red and white colour scheme to the plaintiff exclusively, and that the same would amount to stretching the meaning of the word “essential feature” to artificial limits not warranted by or contemplated under the provisions of the Act. The plaintiff alleges that the shape and size of the bottles of the plaintiff and the defendant are deceptively/confusingly similar and the trial

Court taking similar view held that defendant 1 has used not only the blue colour on the bottle of the product it has also used almost similarly sized bottle having confusingly similar shape. The shape and size of the bottle of the plaintiff cannot be the subject matter of trademark registration. It is clear from the definition of 'mark' in section 2(23) of the Act of 2009 that the shape or size of a bottle, does not fall within the definition of 'mark' and, therefore, the same may not be protected under trademark laws of Bangladesh.

Mr. Siddique Submits that the essential characteristics of a passing off action are stated in the words of Lord Diplock in *Erven Warnink B. vs. V.J Townend and Sons (Hull) Ltd*, 1980 RPC 31, 1979(2) ALL ER 927. According to Lord Diplock, the characteristics of passing off are (1) misrepresentation, (2) made by a person in the course of trade (3) to prospective customers of his or ultimate consumers of goods and services supplied by him (4) which is calculated to injure the business or goodwill of another trader (5) which causes actual damage to the business of a trader, by whom the action is brought. He refers to the cases of *Laxmikant V. Patel vs. Chetanbhai Shah*, 2002 (3) SCC 65; *Birhan Karan Ingar Syndicate Private Limited vs. Yashnantra Muhali Krishana Sakhar Kan-Khana* AIR 2023 (SC) 4321 and *Bata India Limited vs. M/s Pyare Lal & Co.*, Meerut City, AIR 1985 (All) 242 and submits that the question whether all these characteristics have been established in the present case or not will be considered only after evidence has been led. In a

passing off action, misrepresentation by the defendant to the public must be established. The word misrepresentation does not mean that the plaintiff has to prove any *mala fide* intention on the part of the defendant. What has to be established is the likelihood of confusion in the minds of the public (public being understood to mean actual or potential customers or users) that the goods or services offered by the defendant are the goods or the services of the plaintiff. In assessing the likelihood of such confusion the courts must allow for the imperfect recollection of a person of ordinary memory.

Mr. Siddique adds that the marks used on the two products are neither confusingly nor deceptively similar. The marks are visually and phonetically different. Furthermore, “DABUR” is well-known and highly respected in the Indian sub-continent and there is no scope for DABUR’s products to be mistaken for or confused with the products of any other manufacturer. Thus the plaintiff has failed to establish ‘misrepresentation’ on the part of the defendant. Furthermore, in a passing off action, the additional element that is required to be established by the plaintiff is loss of goodwill. The plaintiff by oral and documentary evidence has failed to establish goodwill in respect of the relevant products of the plaintiff. For establishing goodwill of the product, it was necessary for the plaintiff to prove not only the figures of sale of the product, but also the expenditure incurred on promotion and advertisement of the product. The plaintiff-respondent has failed to establish its goodwill as to the

effect that how Marico Limited has gained their stated goodwill through their product “PARACHUTE” and “PARACHUT ADVANCED” ; and how their goodwill has been affected/damaged or threatened to be affected/damaged by the production, selling, marketing of the defendant-appellant’s product “DABUR GOLD PURE COCONUT OIL”. Plaintiff has tried to establish its goodwill through the deposition of PW1 in the following words: “বাংলাদেশের বাজার আমরা অনুসন্ধান করে দেখেছি যে, প্রতি ৫ টি পরিবারের মধ্যে ৪ টি পরিবার আমাদের পণ্য পেয়েছি। আমরা প্রিন্ট ও ইলেক্ট্রনিক মিডিয়াতে প্রচুর অর্থ ব্যয় করে বিজ্ঞাপন দিয়েছি। বাংলাদেশে বাৎসরিক বিক্রি ১৭০০ কোটি টাকা”। However, they have failed to produce any documentary evidence to prove the aforesaid statements. It will not suffice merely to state the sale account of a product, it has to be supported by the statement of sales along with expenditure for advertisement and promotion of the product. Since the right of the plaintiffs and passing off goods have not been proved and as such the trial Court erred in law in decreeing the suit. The appeal, therefore, would be allowed and the judgment and decree passed by the trial Court be set aside.

Per contra, Mr. Aneek R. Haque, learned Senior Advocate for respondents 1 and 2 submits that for the trade mark stated in Schedule ‘A’, plaintiff 1 has obtained registration of its trade dress including the bottle with blue colour and distinctive shape vide registration nos. 182024 and 182025 exhibit-3 series. Plaintiff 1 has also obtained trademark registration of the artistic work of “broken coconut device”

(coconut splash) vide trademark registration nos. 191131 and 191137 (exhibit-4 series). Plaintiff 1 has further obtained copyright registration of the artistic work on 19 Aug 2003 vide copyright registration no. CRA 21892, CRA-21894 & CRA-18605 (exhibit-5 series) and design registration vide registration nos. 04047, 04787 and 08643 (exhibit-6 series). It has also obtained trademarks registration in respect of “PARACHUTE” and “PARACHUTE ADVANSED” from the Registrar, Department of Patents, Designs and Trademarks of the Government of Bangladesh vide registration nos. 45634 (dated 13.12.1995), 75614 (dated 03.06.2002), 45636 (dated 13.12.1995) in respect of coconut oil and related products in class 03, 05 and 29. According to section 2(8), (23) and (24) of the Trademarks Act, 2009 shape of goods, their packaging and combination of colours constitute trademark. Section 2(8) defines trademark, where mark has been included, section 2(23) defines mark, where labels and combination of colours are included and section 2(24) defines packaging, where labels are included. Further section 7(1) of the Trademark Act, 2009 permits a trademark to be limited wholly or in part to one or more specified colours and as such the blue colour, shape of the bottle, label and packaging of plaintiffs’ trademarks PARACHUTE and PARACHUTE ADVANSED are entitled to be considered as trademark and get protection under law. Since the plaintiffs have been using the trademarks ‘PARACHUTE’ and ‘PARACHUTE ADVANSED’ as well as the colour scheme, labels, get-up and trade

dress of all these marks from long period of time, *i.e.*, since 1996, they have attained the status of being well known under sub-section (6) of section 10 of the Trademarks Act, 2009 and are, therefore, entitled to the protections granted to well-known trademarks. The blue colour along with its blue get-up, colour combination, and placement of elements and trade dress is so strongly and exclusively associated with the plaintiffs' coconut oil or hair oils that all products marketed under the 'PARACHUTE' or 'PARACHUTE ADVANSED' franchise embody trade-dress/get-up with various pantones of blue keeping in line with the heritage and hallmark of blue bottle, colour scheme and reputation of the PARACHUTE mark/brand is such the get-up, colour combination, placement of elements as a whole is recognised by the public as distinctive character of the plaintiffs' goods.

The above named hair oils were introduced in Bangladesh in 1996 in blue bottles. Prior to that there was no entity in India as well as in Bangladesh who used blue bottles for selling coconut oil. Plaintiff 1 was the first to invent blue bottle in relation to coconut oil as well as coconut hair oil both of which by virtue of extensive use, has become ubiquitous identification of the products. In case of Colgate Palmolive Company And Anr vs. Anchor Health And Beauty Care Pvt. Ltd. 2003 (27) PTC 478 (Del) Delhi High Court held that colour combination, shape and packaging as trademark and trade dress is the soul for identification of goods to their source or origin and a customer forms an overall impression of the source of origin of the

goods from a visual impression of the colour combination as well as from the shape of the container and packaging. Defendant 1 in their written statement as well as DW1 in the evidence stated that both the plaintiff 1 and defendant 1's parent company along with other companies openly and continuously selling and marketing coconut oil interruptedly in blue packaging in India and other various countries, by which defendant 1 has to establish that as there is co-existence, the instant suit is barred by plaintiffs' acquiescence. But as the rights of a trademark's proprietor is a territorial right and the suit is instituted under the provisions of the Trademarks Act, 2009 of Bangladesh and not by any other law, the Court ought not to determine this suit beyond territorial jurisdiction of Bangladesh. Though Defendant 1 in their written statement as well as the DW1 suggests co-existence, but no material evidence in support of that proposition of co-existence was brought. Defendant 1 tried to establish that in Bangladesh several other companies like Meem, Modern and Kumkum are selling and marketing coconut oil in blue packaging. DW1 exhibited three bottles, marked as material exhibit C-Series, however, during cross-examination DW1 failed to identify the source of those bottles and after examining the manufacturing dates of all the three bottles it was discovered that all of them were manufactured post institution of the suit. Further, defendant 1 failed to exhibit any website or any identifying source to show that those coconut oils are actually in the market for sale or the other companies are selling those to public.

Even if it is true that those three companies are selling and marketing coconut oil in blue packaging, the plaintiffs at all times are entitled to exercise its discretion in initiating legal proceedings against them upon finding any product to be infringing or passing off the plaintiffs' products. Plaintiffs ought not to be expected to sue all small type infringers who may not be affecting the plaintiffs' business.

The defendant 1 appellant has used not only the blue colour on the bottle of its product, it has also used almost similar sized bottle having similar shape and further used the combination of blue-white-green colours and the splash of broken coconut at the lower part of the bottle right after the brand name. These similarities have been admitted by the PW1 during cross-examination, save the fact that he denied the similarities about the shape and size after holding and examining both the bottles when the bottle was shown at a distance from him to identify, as there is likely to be a distance when the products will be placed on shelves in different shops, PW1 requested the bottle to be handed over to him to make such identification. This action of PW 1 of taking the bottle in his hand to examine clearly indicates that there are profound similarities between the bottle and close scrutiny needs to be made to identify such making it abundantly clear that the bottle of defendant 1 is deceptively and confusingly similar to that of the bottle of plaintiff. Defendant 1 in their written statement as well as through the evidence of DW1 tries to suggest that there are many dissimilarities between the mark of defendant1 and

trademark of plaintiffs. However, some of the dissimilarities as identified by defendant 1 cannot be distinguished by plain eye and from normal distance like shape, size and colour of the bottles. In deciding infringement, it is to be considered whether the idea left in the mind for presenting both the products are same or not. Though there are some dissimilarities between the products of plaintiffs and defendant 1, two representations, the same idea when used as trademarks by different persons in relation to same goods, will undoubtedly cause confusion or deception. The comparison of trademarks from the perspective of a person of average intelligence and imperfect recollection the product of the defendant is deceptively and confusingly similar to that of the plaintiffs' and it has been intentionally done to attract the goodwill of the plaintiffs and to grab some portion of the market of the plaintiffs and as such commits infringement of registered trademark or well-known mark under sub-sections (2), (3) and (7) of section 26 of the Trademark Act, 2009.

Mr. Haque adds that in deciding whether a particular mark is similar to another registered mark, the court needs to focus on the similarities and not the dissimilarities. The broad and essential features of the two marks are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark

as would be likely to mislead a person usually dealing with one to accept the other if offered to him. The Supreme Court of India has established this standard to evaluate whether two trademarks are deceptively similar in the case of *Parle Products (P) Ltd vs J. P. & Co. Mysore*, AIR 1972 SUPREME COURT 1359. A similar view has been taken by the Supreme Court of Pakistan in the case of *Messrs Western Brand Tea, Karachi versus Messrs Tapal Tea (Pvt.) Limited Lahore* and another, PLD 2001 Supreme Court 14. The consumers of coconut hair oil are very ordinary and mostly unwary. It is known to everyone that most of the customers of this type of coconut oil are very ordinary people and such people do not purchase a particular coconut oil by meticulously comparing two labels of two products of two different entities. Rather, they purchase it merely relying on normal visual representation of such products. It is for the court to decide whether there is an infringement. Evidence given by purchasers to the effect that they were or were not deceived by the infringing mark is generally not of much assistance to the court. The dissimilarities may outnumber the similarities, but on account of general get up, colour scheme, design and other features of the two marks, the court may rightly reach the conclusion that the offending mark is likely to deceive the unwary purchaser. Considering these principles, the High Court of Sindh at Karachi held that there is no doubt several dissimilarities between the two match boxes exist if the two are placed side by side, and even an unwary purchaser will notice

the difference, but the test is whether a person will be deceived when he sees one trade mark in the absence of another mark. (reliance placed on Messrs Burney's Industrial and Commercial Co. Ltd versus Messrs Rehman Match Works, PLD 1983 Karachi 357). Therefore, even though there might be dissimilarity found while scrutinizing both bottles meticulously just as was done by PW1, but in absence of the other bottle it is likely that the consumers of average intelligence are likely to be confused or deceived by the defendant 1's bottle thinking it as plaintiffs' product. The colour combination and general get-up in the two cartons of both the parties are likely to confuse the ordinary and unwary customers. [reliance placed on M/S A.B. Biscuit Co. Ltd. vs Haque Brothers Ltd. 36 DLR (1984)107]. Even the consumers of a particular product are educated and rich, the test to determine likelihood of deception will not be changed and the court will consider all the relevant circumstances. In the case of Anil Kumar Ghosh vs. Shamir Kumar Ghosh, 54 DLR 273 it has been held that while considering the trademark applications all the surrounding circumstances must be taken into consideration so that each of the trademarks used in a normal way may not create confusion in the mind of the people. It was further held that similarity in names with the same label of cow, colour scheme and other details are bound to cause confusion in the minds of public. The main emphasis should be put on the interest of the public, so that there is no confusion regarding the production of the Gawa Ghee. In the case of Jamal

Uddin Ahmed vs Abdul Haque, 55 DLR (2003) 102 a similar view has been taken. Upon comparison of both the products of the plaintiffs and defendant¹ through normal eyes, it will be clearly found that defendant 1 has used not only the blue colour on the bottle of the product, it has also used almost similar sized bottle having confusingly similar shape. Not only that, it has deceptively used the combination of blue, white and green colours in a very confusing way. The splash of broken coconut is also used by defendant 1 lower part of the bottle just under the logo. In view of the above legal principles laid down by the highest Courts of our sub-continent including ours it is quite clear that the products of defendant 1 is identical, similar, deceptively similar or confusingly similar with the products of the plaintiffs.

Mr. Haque then submits that to establish the right of passing off, the claimant must show three elements sometimes referred to as the 'classic trinity' as enunciated by the House of Lords in the case of *Reckitt & Colman Products Ltd. v Borden Inc.* [1990] 1 All ER 873 (this case is better known as the Jif Lemon case). The three elements are: (i) The goods or services have acquired goodwill or reputation in the marketplace that distinguishes such goods or services from competitors; (ii) The defendant misrepresents his goods or services, either intentionally or unintentionally, so that the public may have the impression that the offered goods or services are those of the claimant; and (iii) The claimant may suffer damages because of the

misrepresentation. To get remedy for passing off the plaintiff must prove goodwill first. In the instant case the plaintiffs started selling coconut oil in Bangladesh since 1996 under the brand name of “PARACHUTE” & “PARACHUTE ADVANSED” and they have gained a goodwill over the bottle design, shape, colour scheme, arrangement of artistic elements, get-up and trade-dress on blue coloured bottle associated with the registered trademarks. PW1 has stated that 4 households out of 5 uses their product. He also said that they have spent huge amount of money for advertisement and they yearly sale goods of Taka 1700 crores. These statements were admitted by defendant 1 as they didn’t cross-examine PW1 on this material issue.

If an illiterate, unwary and gullible customer gets confused as to the source and origin of the goods which he has been using for longer period by way of getting the goods in a container having particular shape, colour combination and getup, it amounts to passing off. In other words if the first glance of the article without going into the minute details of the colour combination, getup or lay out appearing on the container and packaging gives the impression as to deceptive or near similarities in respect of these ingredients, it is a case of confusion and amounts to passing off one's own goods as those of the other with a view to encash upon the goodwill and reputation of the latter. [reliance placed on Colgate Palmolive Company And Anr. vs Anchor Health And Beauty Care Pvt. Ltd. 2003 (27) PTC 478 (Del)]

Although the defendant is not using the trade mark of the plaintiff, the get up of the defendant's goods may be so much like the plaintiff's that is a clear case of passing off. Defendant 1 has copied the idea of the plaintiffs in packaging their goods, though smartly added some elements which are not similar. However, when a mark becomes household item as the case of plaintiffs' coconut hair oil, any attempt to imitate as nearly as possible, without infringing the Trademarks Act, will be attempt to register the mark by fraud. This particular view was adapted in the case of Nabisco Biscuit and Bread Factory Ltd. vs Baby Food Products Ltd and another, 58 DLR (2006) 287. The trademarks of the plaintiffs have acquired wide popularity, goodwill and reputation in Bangladesh, India and other Asian countries, which establishes in the mind of the common consumer a connection between the goods bearing the trademark of the plaintiffs and there is, therefore, every likelihood of deception and confusion, if the same is used by defendant 1. The concept and principle on which passing off action is grounded is that a man is not to sell his own goods under the pretence that they are the goods of another man. A trader needs protection of his right of prior user of a trademark as the benefit of the name and reputation earned by him cannot be taken advantage of by another trader by copying the mark and getting it registered before he could get the same registered in his favour. In an action for passing off, it should not matter whether misrepresentation or deception has proceeded from a registered or an unregistered user of a trade mark.

He cannot represent his own goods as the goods of somebody else. Plaintiffs are in the business for long period of time and by selling coconut oil in the blue coloured bottle has acquired great reputation and goodwill though which distinctiveness can be established. Defendant1 appellant without any clear innovation copied the idea of the bottle with *mala fide* intention to grab some of the market portion of the plaintiffs. PW1 emphasized that for using the same get-up, packaging and blue colour bottle defendant 1 appellant has caused serious injury to their business, which clearly indicates damage. Blue colour has not acquired a common use and/or become a well-known colour in respect of coconut oil or coconut hair oil as blue is not connected to any generic colour of coconut and none other than the plaintiffs use blue for selling or marketing the coconut oil or coconut hair oil in Bangladesh. DW1 has admitted during cross-examination that colour blue is not the basic colour of the ingredient of the coconut oil and blue colour is not a common trend for packaging coconut oil and as such there is no question of monopoly as advanced by defendant 1. The plaintiffs thus have acquired distinctiveness in their product for using blue colour bottle, which cannot be questioned by defence of monopoly. The defendants chose to use the same coloured bottle for their goods with a *mala fide* intention to grab the market share enjoyed by the plaintiffs to gain financial benefit from an established and secured consumers.

Learned Trial Judge considered the facts, the evidence and the established legal principles and decreed the suit. The claim of the plaintiffs' is based on the rights guaranteed under the provisions of the Trademarks Act, 2009 more precisely infringement of registered trademarks under section 26, passing off under section 24(2) of the Act. Section 2(20) of the Trademarks Act, 2009 defines deceptively similar mark as a mark which is likely to deceive or cause confusion and nearly resembles another registered mark. The trademarks must be registered for getting relief for infringement of trademark and for passing off the mark registration is not mandatory. It has been proved that the bottle, design, colour scheme, arrangement of design of artistic elements, get-up, trade dress on blue coloured bottle of defendant 1 are identical, deceptively similar or confusingly similar to that of the plaintiffs and section 8(c) and sub-section (5) of section 10 of the Trademarks Act, 2009 prohibits registration of any trademark which is identical, deceptively similar or confusingly similar of any existing trademark or well-known mark. The plaintiffs' continuous, extensive and exclusive use of the trade dress/get-up of a blue coloured bottle in Bangladesh has garnered so much goodwill and appeal in the mind of the consumers that the blue bottle is exclusively associated with the brands/marks PARACHUTE and PARACHUTE ADVANSED. On the other hand, defendant 1 long after its inception, intended to launch coconut oil as a product in Bangladesh in the year of 2020, which is admitted by DW1 during cross-examination.

Therefore, the defendant had clear knowledge about the long-standing goodwill and the market strength of the plaintiffs' trademark before launching their product. By using the identical, deceptively similar or confusingly similar trade dress/get-up of the plaintiffs' defendant 1 takes unfair advantage of, or is detrimental to the distinctive character or the repute of the trademark and as such the trial Court correctly decreed the suit granting permanent injunction against defendant 1. The appeal, therefore, would be dismissed and the Rule be discharged.

We have considered the submissions of both sides, gone through the evidence and other materials on record, the provisions of law of Trademarks Act, 2009 and *ratio* of the cases cited by the parties.

The suit was instituted praying for permanent injunction restraining defendant 1, his servants, employees, workers, agents, franchises, distributors and sellers from infringing the trademarks 'PARACHUTE' and 'PARACHUTE ADVANSED' along with its bottle, design, shape, colour scheme, arrangement of artistic elements, get-up and trade dress on blue colour in respect of coconut oil/hair oil schedule-A or any other goods of the plaintiffs and from passing off coconut oil/hair oil by using blue coloured bottle as trade mark with trademark/trade-dress as shown in schedule-B to the plaint or any other copyright design, trademark, along with trade-dress which are similar, deceptively or confusingly similar to, resembles or is identical with the products of the plaintiffs'.

Plaintiff 1, Marico Limited is admittedly a company of India who has been operating a good member of countries in Asia and Africa its various products. It produces and sells in the market coconut oil or hair oil under the brand name 'PARACHUTE' and 'PARACHUTE ADVANSED'. Plaintiff 2 is a licensee of plaintiff 1 who is engaged in the production, marketing and sale of the said products in Bangladesh obtaining copyright registration. It also obtained trademark registration in respect of 'PARACHUTE' and 'PARACHUTE ADVANSED' from Registrar, Department of Patents, Designs and Trademarks of the Government of Bangladesh through registration in 1995 and coconut oil of the plaintiff 2 are products in category of class 3, 5 and 29 in this country. Defendant 1, Asian Consumer Care (Pvt.) Limited is also a very old brand company having been manufacturer and seller of large variety of products ranging from pharmaceuticals and medicinal preparations originated in India. Their products are exported abroad, the defendant's business has also goodwill. Defendant 1 started marketing and selling coconut oil in India and other countries continuously in the brand name of "Dabour Gold Pure Coconut Oil" since 2006.

The plaintiffs allege that defendant 1 started selling their products in this Country in 2014 under the brand "Dabour Gold Coconut Oil" in the bottle which is confusingly similar in shape, size, colour, configuration, design and get-up to the plaintiffs' "Parachute" and "Parachute Advansed" in breach of provisions of Trademarks Act,

2009 and causing irreparable damage to them. The trial Court decreed the suit on the finding that it has come out in evidence both oral and documentary that defendant 1 in his product has not only used the blue colour on the bottle but also almost similar sized bottle having confusingly similar shape and it has deceptively used the combination of blue, white and green colour in a very confusing way and as such the product of defendant 1 in 'B' schedule is identical, similar and confusingly similar with the products of the plaintiffs as described in the schedule 'A' to the plaint.

The learned Advocate for the appellant mainly submits that in taking the decision the trial Court failed to take into account the Rule of (i) Anti-Dissection, (ii) Dominant Feature Test and (iii) Average Consumer Test. The learned Judge himself overlooked the similarities of two products in dispute of the companies. There is no infringement of trademark right and passing off the goods and there is no ground to decree the suit for permanent injunction. On the other hand, the respondents learned Advocate's concise form of submission is that, if in the open eyes it is found that the goods are deceptively and confusingly similar and it is not possible for a general consumer to make difference of the goods on necked eye at the first instance, it is to be treated that the defendants infringed the provisions of Trademarks Act and deceptively passing off their goods in the name of the plaintiffs' which has been proved in this case by evidence both

oral and documentary and as such the trial Court correctly decreed the suit.

The fate of this appeal in which the judgment and decree of the original suit has been challenged depends on the evidence and materials on record and law of Trademarks Act, 2009 related in this suit. Therefore, we find no necessity to address all the elaborate submissions made by the learned Advocates for the parties. Since the matter relates to infringement of trade mark right and passing off, the relevant provisions of law of Trademarks Act, 2009 are quoted bellow-

Section 2(8) of the Trademark Act, 2009 reads as follows-

(8) Trademark means-

(a) in relation to Chapter X of this Act, other than section 77-

(i) a registered trademark or a mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and the person having the right as proprietor to use the mark;

(ii) a mark used in relation to a service so that it may be indicated that the person has the right as proprietor to use the mark in the course of trade;

(b) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to any service or goods indicating a connection in the course of trade between the goods and the person having the right, either as proprietor or as registered user, to use the mark:

(c) certification trademark:

Section 2(20) of the said Act defined deceptively similar mark as under-

2(20) ‘Deceptively similar mark’ means as a mark which is likely to deceive or cause confusion and nearly resembles another mark registered under this Act.

The mark has been defined in section 2(23) as under-

2(23) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, symbol, numeral, figurative elements, combination of colours or any combination thereof,

The Package has been defined as under-

2(24) "package" includes any case, box, container, covering, folder, receptacle, casket or bottle, wrapper, label, brand, ticket, reel frame, capsule cap, lid, stopper and cork.

The infringement of the trademark has been defined in section 26 of the Act, 2009 as under –

26. Infringement of trademarks-

(1) A registered trademark is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof a trademark which is identical with, or deceptively similar to, any trademark, in relation to goods or services of his own trade.

(2) A registered trademark is infringed by any person who, not being the registered proprietor of the trademark or registered user thereof uses in the course of trade a mark where the mark is-

(a) identical with the trademark and is used in relation goods or services similar to those for which the trademark is registered,

(b) similar to the trademark and is used in relation to goods or services identical with or similar to those which the trademark is registered; or

(c) identical with the registered trademark and is used in relation to goods or services which are identical with those for which the trademark is registered, and

for this reason there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trademark.

(3) A registered trademark is infringed or is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof uses in the course of trade a mark where the mark is-

(a) identical with or similar to the trademark,

(b) used in relation to goods or services which are not similar to those for which the trademark is registered, and

(c) where the trademark has a reputation in Bangladesh and the use of the mark, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

It is admitted position of fact that plaintiff obtained trademark registration in respect of 'Parachute' and 'Parachute Advanced' from the Registrar of Department of Patents, Design and Trademark of the Government of Bangladesh in 1995 in respect of coconut oil and related products in class 3, 5 and 29. Plaintiff 2 obtained registration of copyright registration of that artistic work in new look and logo on a blue coloured bottle having blue green combination white with parachute words and coconut splash for selling marketing of coconut hair oil in Bangladesh in August, 2003. It also obtained design registration for the said mark. The plaintiff also obtained the registration of his trade dress including the bottle, the blue colour and distinctive shape. On the other hand defendant 1 started manufacturing coconut oil under 'Dabur Gold Pure Coconut Oil' brand in similar bottles to the plaintiff since 2014 registered in class 3.

It admitted fact that defendant 1 started marketing 'Dabur Gold Coconut Oil' in this country long after years the plaintiff started business with its getup, colour, size of bottles taking approval and permission, as per law from the concerned authority of this country. Although defendant appellant Dabur has obtained required registration from the concerned authority to sell its product in bottles, but if it is found that it has started marketing the product in the bottle with get up and outlook which is found confusingly or deceptively similar with the products of the plaintiff in that case under provisions of section 96 and 97 of the Trademarks Act, 2009 the defendant may be stopped in doing so by permanent injunction through competent Court as prayed for by the plaintiffs.

It has come out in the evidence of the parties both oral and documentary that there are some dissimilarities as to the get-up, outlook of the bottles, colours and some other features of the disputed products and phonetically and visually the names are different. Similarly it has further come out that it is difficult for a general consumer to make difference of the alleged goods of the plaintiffs' and the defendants' contained in the bottle at the first sight visually on the external outlook of the products. PW 1 (the trial Judge wrongly wrote as DW1) while cross-examined by the defendants failed to identify his product 'Parachute' and 'Parachute Advansed' hair oil with the defendant's product 'Dabur Gold Coconut Oil' looking the bottles from distance while the learned Advocate for the defendants'

pointed those. But while the disputed products were brought to him, he took those into his hands and became able to identify their products and that of the defendants. He stated in cross-examination-“বাদী বিবাদী দুইপক্ষের পণ্য দেখলে আমি চিনিতে পারি। (বস্তু আলামত দেখে) বিজ্ঞ কৌশলীর হাতে বাদী এবং বিবাদীপক্ষের দুইপক্ষের পণ্য আছে, যা সাদৃশ্যপূর্ণ। দেখে দুটো পণ্যই মনে হচ্ছে আমার পণ্য। (সাক্ষী বস্তু আলামত নিজ হাতে নিয়ে বলে) আলামত সামনে আনার পর দেখা যাচ্ছে ১টা বাদীর পণ্য brand name প্যারাসুট এবং ১টা পণ্য বিবাদীর যার brand name ডাবর উভয় বস্তু দেখতে সাদৃশ্যপূর্ণ।” The above quoted evidence of PW 1 in reply to the cross-examination of the defendants goes against the appellant and proves the case of the plaintiffs’ that the products of defendant 1 is deceptively similar and confusingly similar to the mark of the products of the plaintiff. Although ‘Parachute’ and ‘Parachute Advanced’ are not similar with the goods of defendant 1 ‘Dobur Gold Coconut Oil’ and they are phonetically quite distinguishable but visually the forms, colours, logos and designs of the defendant’s product are found deceptively similar and confusingly similar with the products of the plaintiff.

Deceptively similar mark is a trademark that closely resembles an existing one, causing likely confusion or deception among consumer about the source, quality or affiliation of goods/services, even it not identical; courts assess this by looking at visual (look), phonetic (sound), and conceptual meaning similarities, focusing on the overall impression on an ordinary buyer rather than side by side comparison. Thus the submission of anti-dissection Rule, dominant

feature test and average consumer test made by the learned Advocate for the appellant goes against him. The learned Judge although compared the outlook of the disputed product of the defendant taking the same side by side with the plaintiffs' one but finally took decision on the overall view of the products relying on the evidence on record. Such marks of the defendant are prohibited under trademark law to protect brands and consumers, preventing enter advantage and brand dilution. The plaint, written statement, oral evidence of the parties, the material exhibits and product described in schedules 'A' and 'B' prove that the defendant infringed the trademark rights of the plaintiffs' as defined in section 26 of the Act, 2009.

The legal conception of passing off is where owner of a good misrepresents his goods or services as those of business of another to deceive customers, to exploit his reputation, and gain unfair profit, essentially stealing goodwill and causing damage, even it unintentional. It protects unregistered trademarks and involves elements like goodwill, misrepresentation and damage to the original brand's reputation. The key aspects of passing off are (i) Deception-a trader presents his product as being from or connected to another establish business, (ii) Goodwill/reputation- the original business must have built a recognizable reckonable name or 'get-up'(appearance, logo, packing) in the market, (iii) Misrepresentation- the defendant creates a false impression that their goods are the claimants, (iv) Damage- the original business suffers or is likely to suffer financial or

reputational harm. Since plaintiffs have been selling and marketing his products in the name of ‘Parachute’ and ‘Parachute Advansed’ with blue colour get-up with coconut splash with logo in this country from long ago and they have setup established business in this country and subsequent product of the defendant, if it is marketed with almost similar trade-dress, get-up, colour and shape of bottle, the consumers will be confused in purchasing coconut oil. The consumers (in our country most of them are unwary village uneducated women), unwary purchasers of our Country will rush to the shops and ask to the seller a bottle of coconut oil of blue colour without clarifying the name of the products. The average consumer test shall apply considering the general consumers of this Country not like other developed countries. Therefore, the submissions of the learned Advocate for the appellant about ‘fool’ and ‘idoits’ customers cannot be accepted. We are not considering the ‘fools’ and in ‘idiot’ purchases but the average consumers, unwary purchasers of this country. In cross-examination PW1 stated “দোকানে গেলে ক্রেতা দোকানদারকে বলে ঐ নীল তেলের বোতলটা দেন। প্যারাসুট আমাদের brand name কিন্তু সাধারণ মানুষ মধ্যবিত্ত মানুষ নামকে প্রধান্য দেয় না, তারা পণ্য দেখিয়ে পণ্যের বোতলের কালার দেখিয়ে বলে নীল বোতলের তেল দেন।”

Evidence of PW1 as to the use of their products and yearly sale and payment of revenue as “বাংলাদেশের বাজারে আমরা অনুসন্ধান করে দেখেছি যে, প্রতি ৫ টি পরিবারের মধ্যে ৪ টি পরিবার আমাদের পণ্য পেয়েছি। আমরা প্রিন্ট ও ইলেকট্রনিক মিডিয়াতে প্রচুর অর্থ ব্যয় করে বিজ্ঞাপন দিয়েছি। বাংলাদেশে বাৎসরিক বিক্রি ১৭০০ কোটি টাকা। বাংলাদেশে ২নং বাদী ২০২৩-২৪ করবর্ষে অনুমান ৪০০ কোটি টাকা ট্যাক্স প্রদান

করেছি।” was not challenged by defendant 1 in cross-examination. PW1 further stated “তফসিল ‘বি’ তে বর্ণিত পণ্যটি বিবাদীপক্ষ কর্তৃক বাজারজাত করায় সাধারণ ক্রেতাগন প্রতারিত হয়ে বাদীর পণ্য মনে করে বিবাদীর পণ্য ক্রয় করছে। বাদীর পণ্যের কালার, ডিজাইন ও গেইট আপের সাথে প্রতারণামূলক সাদৃশ্যপূর্ণ হওয়ায় ক্রেতাগন বাদীর পণ্য মনে করে বিভ্রান্ত হয়ে ক্রয় করছেন। এতে বাদীর ব্যবসার ক্ষতি হচ্ছে ও সুনাম ক্ষুণ্ণ হচ্ছে।”

which was also not challenged by the defendants. A colour combination, get-up and layout appearing on the bottle of the defendant gives the impression as deceptive or near similar in respect of the ingredients. This is a case of confusion and amounts to passing one’s goods as those of others with a view to engross upon the goodwill and reputation of the plaintiff.

The proprietor’s right of trademark is a territorial right and this suit was filed in a Court of this Country under the provisions of Trademarks Act, 2009 of Bangladesh and as such whether the defendant has been marketing similar goods with similar get-up and tradedress in India is immaterial here. The trial Court in decreeing the suit relied on an interlocutory order of injunction passed in the suit which was affirmed up to the Appellate Division which he cannot. But the ultimate and final decision passed by the trial Court decreeing the suit is found correct. Although the plaintiff has not acquired any exclusive right to use blue colour only in his product but it has acquired a right on blue colour combination with artistic get-up and outlook in marketing its aforesaid product for using the same for long long years.

It may be noted here that both the parties cited a plethora of cases of the Supreme Court of this country, this subcontinent even of UK and US. We have gone through the principles laid in those cases, but in this case we find no similarities to apply those except the cases of M/S A.B. Biscuits Co. Ltd. vs. Haque Brothers Ltd. 36 LDR 107; Jamal Uddin Ahmed vs. Abdul Haque, 55 DLR 102; Reckitt & Colman Products Ltd. Vs. Borden Inc [1990] 1 All ER 873 (Jif Lemon Case); Anil Kumar Ghosh vs. Samir Kumar Ghosh, 54 DLR 273; Nabisco Biscuit and Bread Factory Ltd vs. Baby Foods Product Ltd. and another, 58 DLR 287 and the case of VICCO Laboratories, Bombay vs. Hindustan Rimmer, Delhi, AIR 1979, DELHI 114 as referred to by the learned Advocate for respondents 1 and 2. The *ratio* laid in those cases goes against the appellant.

On going through the evidence both oral and documentary and the provisions of law of the Act, 2009 and cases as referred to by the learned Advocate for respondents 1 and 2, we are of the view that defendant-appellant by using similar colour combination, shape of the bottle, coconut splash and trade dress in their product has infringed the registered trademark of the plaintiff under sections 2(8)(23)(24) and 26 and passing off under section 2(20) of the Act, 2009 and the plaintiff rightly brought the suit to protect his right praying for permanent injunction upon defendant 1. The mark of defendant 1 as a whole is deceptively similar causing confusion to the plaintiffs' registered trademark. The trial Court correctly assessed the fact,

apprised the evidence and interpreted provisions of law and decreed the suit restraining defendant 1 from selling, marketing and storing their goods as described in Schedule-B to the plaint namely 'Dabur Gold Coconut Oil'. We find no ground to interfere with the judgment and decree passed by the trial Court.

The appeal, therefore, is dismissed and consequently the connecting Rule is disposed of. No order as to costs.

Communicate the judgment and send down the subordinate Court's record.

Murad-A-Mowla Sohel, J.

I agree.