

# Intellectual Property Rights

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## 1. Introduction

This survey presents a synthesis of the Allahabad High Court's reported decisions from 2024 concerning diverse aspects of intellectual property rights (IPR). The selected judgments are examined thematically and doctrinally, analyzing the courts' reasoning on key legal issues, procedural developments and administrative trends. Although the Allahabad High Court contributes fewer IPR decisions compared to other major high courts such as Delhi, Bombay, and Madras, the cases from the review period reflect significant judicial engagement with core and peripheral intellectual property (IP) questions. The survey encompasses disputes directly implicating IPRs as well as cases that touch upon them tangentially. Significantly, the survey period did not record any judgments concerning patents, plant varieties, geographical indications, or protection of confidential information. However, few trademark-related decisions merit particular attention for their discussion on complex questions of law, including the relationship between prior user and registered proprietor, the distinctiveness of packaging and trade dress, passing off, get-up, and the likelihood of consumer confusion or deception. Some cases also made incidental references to copyright and design law, illustrating the expanding contours of IP jurisprudence within the high court's docket. An interesting feature of the survey year is the court's engagement with issues at the intersection of IP and allied domains such as taxation, criminal liability, procedural compliance, and the duty to provide reasoned judicial orders. Furthermore, the court's interventions extended to adjacent areas with implications for IP enforcement, particularly in curbing the misuse of criminal proceedings arising from commercial disputes and interpreting exceptions to pre-litigation mediation requirements under the Commercial Courts Act, 2015. Collectively, these decisions illustrate the evolving landscape of commercial and IP adjudication in the Allahabad High Court, amply reflecting an emerging jurisprudential coherence and an increasing judicial sensitivity to the complex interplay between IP norms and broader legal frameworks.

## 2. Interface Between IPR and Taxation

Dismissing a revision petition preferred by the Commercial Tax Department U.P. against M/s Pan Parag India Ltd., a Single Bench of Shekhar B. Saraf, J. in *Commissioner Commercial Tax, U.P. at Lucknow v. Pan Parag India Ltd.*,<sup>1</sup> held that franchise agreements are principally licensing agreements, rather than sales of goods and hence, payments

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<sup>1</sup> MANU/UP/1923/2024; 2024: AHC: 94356: (2024) ILR 5 All 1083.

received by Pan Parag India Ltd. under a trademark franchise agreement were subject to service tax, not value added tax. The court further observed that such agreements, granting non-exclusive licenses, do not constitute a 'transfer of the right to use goods' for VAT purposes and a transaction already subject to service tax cannot be simultaneously subjected to VAT. Holding this, the court observed thus:<sup>2</sup>

Franchise agreements have become a ubiquitous feature of modern commerce, facilitating the expansion of businesses across diverse industries and geographies. However, the tax treatment of franchise agreements poses intricate challenges, with implications for both franchisors and franchisees. Transfer of the right to use a trademark does not necessitate the physical handover or control of the trademark. Instead, it can be affected by authorizing the transferee to use the trademark in accordance with the law. This underscores the intangible nature of trademark rights and their transferability without the need for physical possession. Franchise agreements primarily grant a representational right rather than an exclusive right to sell or manufacture goods, thereby categorizing such transactions as services rather than sales of goods. Franchise agreements are fundamentally licensing agreements rather than sales of goods. At first glance, franchise agreements may appear analogous to sales of goods, as they involve the transfer of rights and benefits from one party to another in exchange for monetary consideration. However, a deeper examination reveals crucial distinctions that warrant disparate tax treatment. Unlike conventional sales transactions, which involve the transfer of tangible property, franchise agreements primarily entail the licensing of intangible assets, such as trademarks, trade secrets, and proprietary knowhow. One of the central aspects of franchise agreements is the grant of intellectual property rights from the franchisor to the franchisee. These rights include trademarks, trade names, logos, and proprietary business methods. Unlike tangible goods, which can be bought and sold outright, intellectual property rights are licensed for use under specific terms and conditions. Another key factor that distinguishes franchise agreements from sales transactions is their non-exclusive nature. Franchise agreements typically grant franchisees the right to operate a business using the franchisor's brand and system within a defined territory. However, this right is not exclusive, as the franchisor may grant similar

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<sup>2</sup> Paras. 24 and 25 of MANU/UP/1923/2024.



rights to other franchisees within the same or overlapping territories. Franchise agreements also entail an ongoing relationship between the franchisor and franchisee, characterized by training, support, and ongoing assistance. Unlike a one-time sale of goods, which concludes once the transaction is complete, franchise agreements involve continuous interaction and collaboration between the parties. The financial aspects of franchise agreements further underscore their distinction from sales transactions. Franchise fees and royalties are payments made by the franchisee to the franchisor in exchange for the right to use the franchisor's brand and system. These payments are not for the purchase of goods but rather for the ongoing support and benefits provided by the franchisor.

The court's observations on intricacies involved in the taxation treatment of IPR franchise agreement and the need to develop nuanced tax policies are noteworthy. In the opinion of the court,<sup>3</sup> “the taxation of franchise agreements and sales of goods represents a complex and multifaceted issue that defies easy categorization. While both involve commercial transactions, they embody distinct economic realities and legal considerations that necessitate differential tax treatment. By recognizing the unique characteristics of franchise agreements, including the prevalence of intangible assets and the importance of intellectual property, tax authorities can develop nuanced tax policies that promote fairness, efficiency, and compliance. Ultimately, a balanced approach that takes into account the economic substance of franchise transactions and the need to prevent tax arbitrage and avoidance will ensure the integrity and effectiveness of the tax system.”

### **3. Criminal Proceedings and Inherent Jurisdiction of High Courts**

In *Mohd. Abdul Momin v. The State of U.P. & Ors.*<sup>4</sup> a petition was filed under section 482 of the Code of Criminal Procedure, invoking the inherent jurisdiction of the high court to quash criminal proceedings arising from allegations intertwined with an IP and commercial dispute. The petitioners contended that the underlying controversy was essentially civil and commercial in nature, and that the initiation of criminal proceedings constituted an abuse of the legal process - an attempt by the complainants to exert pressure through penal prosecution. They accordingly sought quashing of the charge sheet and further proceedings instituted under sections 103 and 104 of the Trade Marks Act, 1999, and sections 64 and 65 of the Copyright Act, 1957, asserting that continuation of such

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<sup>3</sup> *Id.* at para. 26.

<sup>4</sup> MANU/UP/3366/2024; 2024:AHC-LKO:61632.

proceedings would be illegitimate, vexatious, and serve no meaningful purpose. The court examined whether the continuation of the criminal case would serve any legitimate public interest, or whether the matter was better confined to the realm of civil adjudication. It noted that the commercial dispute between the parties concerning the trademark *Kaveri* had already been settled through a settlement deed executed in 2016 in *Prem Mehandi Center through its Proprietor v. Mohd. Abdul Momin Mohd. Hakeen*. In that settlement, the defendant had undertaken, *inter alia*, not to adopt any trademark, logo, packaging, trade dress, or copyright that was identical or deceptively similar to the plaintiff's existing IP, including its essential features and get-up. Upon considering the nature of the allegations and the existence of the prior settlement, the court concluded that the continuation of criminal proceedings would amount to misuse of the penal process in the context of a civil and commercial controversy. Consequently, it allowed the petition under section 482 Cr.P.C., observing: "The present application is liable to be allowed as chances of ultimate conviction are extremely bleak and hence no useful purpose would be served by allowing the criminal proceedings."<sup>5</sup> The judgment reaffirms a well-established judicial principle that criminal law must not be employed as a tool to coerce or pressure parties in civil or intellectual property disputes. It underscores that criminal sanctions are justified only when public interest warrants their invocation, and that disputes grounded primarily in private rights - whether commercial, contractual, or IPR related - should appropriately be resolved before civil courts. Nevertheless, the judgment must be contextually applied. In cases involving IP, copyright, or trademark violations, certain acts, *viz.*, counterfeiting or wilful infringement may legitimately attract criminal liability. An overly broad or mechanical application of this precedent could risk prematurely quashing prosecutions that genuinely warrant penal adjudication.

#### **4. Reasoned Orders and Review Jurisdiction**

The trademark dispute in *M.M.I. Tobacco Pvt. Ltd. & Another v. Iftikhar Alam*<sup>6</sup> highlights the judicial emphasis on reasoned orders in interlocutory proceedings. The Allahabad High Court reaffirmed that when a trial court grants a temporary injunction without adequately recording its reasoning on the three essential ingredients - *prima facie* case, balance of convenience, and irreparable harm - the appellate court is justified in remanding the matter for reconsideration. Such remand, the court emphasized, is not for deciding the matter on merits but to ensure that judicial orders meet the standards of reasoned adjudication. The plaintiffs, M.M.I. Tobacco Pvt. Ltd., filed a suit in 2022 against Iftikhar Alam seeking relief under sections 29, 134, and 135 of the Trade Marks Act, 1999,

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<sup>5</sup> *Id.* at para. 11.

<sup>6</sup> MANU/UP/1283/2024: 2024:AHC:73463.



and section 62 of the Copyright Act, 1957. The dispute concerned the mark *Musa-Ka-Gul*, used for tooth powder, alleging infringement by the defendant's mark *Asli Musa-Ka-Gul*. The plaintiffs claimed long and continuous prior use of the mark since 1974, asserting proprietary rights and goodwill in the brand name *Musa-Ka-Gul*. They sought an interim injunction restraining the defendant from manufacturing, selling, or distributing goods bearing a confusingly similar mark or trade dress.

The trial court granted a temporary injunction restraining the defendant from using *Asli Musa-Ka-Gul* and related logos, wrappers, containers, and packaging for tooth powder and allied goods. The defendant, however, challenged this order before the Allahabad High Court in 2023. The high court allowed the appeal and remanded the matter to the trial court for fresh consideration, holding that the trial court's order was cryptic and failed to properly apply the three legal tests governing interim injunctions - *prima facie* case, balance of convenience, and irreparable injury. Upon remand, the trial court reconsidered the injunction application and, in 2024, rejected the plaintiffs' prayer for interim relief. The plaintiffs thereafter filed an appeal against this rejection and also moved a review under section 114 C.P.C., challenging the earlier remand order dated 07.08.2023. They argued that the high court's remand order had impermissibly considered the issue of prior user - a defense the defendant had not explicitly pleaded; thereby exceeding the permissible scope of appellate scrutiny at the interlocutory stage. The plaintiffs further contended that the defendant had suppressed material facts concerning earlier trademark proceedings, such as rectification and appeal cases, and that this concealment ought to vitiate the remand order.

On the question of maintainability, the high court held that a review application against a remand order was indeed maintainable, even though the trial court had already acted upon that remand and delivered a fresh decision. The court clarified that the mere implementation of a remand order does not extinguish the right to seek its review. However, upon examining the merits, the court found no error apparent on the face of the record to justify interference. It reiterated that the trial court's initial order lacked detailed findings on the essential injunction parameters, thereby warranting the remand for clearer reasoning. The high court further clarified that alleged errors in the trial court's fresh order dated 30.01.2024 - such as failure to consider documents or misinterpretation of evidence - should be challenged through the regular appellate route, not by seeking review of the remand order itself. Consequently, the review petition was dismissed, leaving all substantive issues, including prior user, assignment, withdrawal, and proprietary trademark rights *etc.*, open to be adjudicated in the pending appeal. In the subsequent appeal against the trial court's 2024 order, the plaintiffs ultimately succeeded. The Allahabad High Court set aside the rejection of interim relief and granted an injunction restraining the defendant from further use of *Asli*

*Musa-Ka-Gul* or any deceptively similar name, label, or packaging during the pendency of the suit.

From an IPR standpoint, this verdict demonstrates the interplay between procedural rigor and substantive justice in IP matters and especially in trademark disputes. The court's approach reflects a steadfast commitment to ensuring transparency from the very stage of interlocutory adjudication, particularly in commercial and IPR matters. The court's insistence on a reasoned analysis of the three injunction tests serves to prevent frivolous litigations imposing arbitrary restraint of trade. The decision also provides insights into the true scope and limitation of high court's review jurisdiction in IPR litigation. The power of judicial review is to be invoked only when there is an error apparent on the face of the record. It is not a tool for re-evaluating evidence or reconsidering the merits of an appellate order. Any grievance arising from the trial court's subsequent decision must be pursued through 'appeal' rather than through a 'collateral review'. The demarcation demonstrated by the court between two judicial processes, review and appeal, ensures procedural integrity and precludes parties from treating review petitions to bypass settled hierarchical appellate procedures.

The verdict also demonstrates the delicate balance between protection and overprotection in IP disputes including trademark litigations. While the court safeguards the plaintiffs' long-standing goodwill in *Musa-Ka-Gul*, it also highlights the potential risk of overbroad interlocutory orders in cases where counterarguments, namely, legitimate prior use or honest concurrent use, are under-tested at the interlocutory stage of a trademark litigation. Nevertheless, the court's determination to keep substantive questions open for trial ensures that adjudication remains truly evidence-based. *M.M.I. Tobacco Pvt. Ltd.* thus reinforces underlying principles of judicial process such as well reasoned adjudication, procedural clarity, and the calibrated exercise of jurisdiction in IP disputes. The court's remarkable handling of remand, review, and appeal reflects a steady maturing IPR jurisprudence in India streamlining systematic and ordered IPR enforcement within the legal framework of due process and judicial accountability.

## **5. Misuse of Criminal Law and Abuse of Process**

*Sanjay Gupta v. State of U.P.*<sup>7</sup> has a relatively peripheral IPR relevance, though its core lies in criminal jurisprudence. The case involves allegations of extortion under section 387 I.P.C., but the petitioner contended that the proceedings were motivated by pressure in a separate trademark and copyright dispute between the parties. Both the parties are in litigation on the issue of trade mark and copyright with regard to packaging of Supari which

<sup>7</sup> MANU/UP/2343/2024: 2024(3)ACR744, 2024:AHC:105492.



is pending before appropriate court. It was alleged that the complainant has initiated the present proceedings only to put pressure on him to compromise in the case. This implies that while the criminal case itself does not directly concern IPRs, it is interlinked with an underlying IPR dispute, possibly as a strategy to influence or coerce the petitioner in a civil IPR matter. The court noted that the criminal proceedings appeared to be initiated to pressure the petitioner in a separate civil dispute relating to trademarks and copyrights.

The court observed that, to establish an offence under section 387 I.P.C., pertaining to extortion by threat of death or grievous hurt, two essential ingredients must be satisfied: There must be a threat to cause death or grievous hurt, and such threat must result in the delivery of property or security by the victim. In the present case, the complainant had not alleged that any property or security was delivered to the petitioner. Consequently, one of the key elements necessary to constitute the offence of extortion was missing. On this basis, the court held that no *prima facie* case was made out against the petitioner under section 387 I.P.C. Accordingly, exercising its powers under section 482 Cr.P.C., the court quashed the proceedings, preventing any further action against the petitioner under section 387 I.P.C. The decision emphasizes that criminal provisions cannot be misused to coerce parties in unrelated civil or IPR disputes and that courts must ensure that all essential elements of an offence are present before allowing proceedings to continue. The case is relevant in examining how IPR disputes can intersect with criminal proceedings, particularly in situations where alleged criminal complaints may be used to influence or intimidate parties in commercial or IP litigation. It highlights the potential misuse of criminal law in the context of ongoing IPR enforcement or disputes, making it relevant for discussions on IPR litigation trends and strategy and abuse of process.

## 6. Real and Immediate Necessity of Pre-litigation Mediation

The Allahabad High Court in *Pankaj Rastogi v. Mohd. Sazid and Ors.*<sup>8</sup> upheld the trial court's decision, thereby reinforcing the necessity of pre-litigation mediation in commercial disputes. The primary issue before the court was whether a prayer for urgent interim relief could justify bypassing the mandatory pre-litigation mediation requirement under section 12A of the Commercial Courts Act, 2015. The court emphasized that section 12A mandates statutory pre-institution mediation unless the suit showcases a claim for urgent interim relief. Any suit instituted in violation of section 12A is liable to be rejected. Pretentious claim of illusory urgency unsupported by facts is insufficient and cannot be

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<sup>8</sup> 2024:AHC:15223.

considered as a justifiable ground to bypass the statutory mandate. There has to be a real and immediate necessity as established by the evidence in the pleading to evade Section 12A.

The court referred to *Odisha Slurry Pipeline India Ltd. v. M/s Gangavaram Port Ltd.*, a Calcutta High Court, where it was held that “in the absence of a prayer for urgent interim relief, a suit cannot be instituted without complying with section 12A; and merely filing an application for urgent relief is not enough.” Moving away from the adversarial character of traditional litigation, the prerequisite of pre litigation mediation as stipulated under section 12A clarifies the legislative intent to promote alternative dispute resolution mechanisms, particularly mediation, as a preferred mode for resolving commercial disputes. It confirms to the broader global trend toward consensual and collaborative approaches to conflict resolution. Section 12A is thus a legislative attempt to institutionalizes a shift toward a mediation-friendly litigation landscape, fostering a culture of amicable settlement.

The decision also demonstrates judicial gatekeeping, with the verdict highlighting court's role in examining the genuineness of claims of urgency. The true test, as underscored by the Court, is whether the facts and pleadings reveal an immediate and substantive need for judicial intervention or not. The Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*<sup>9</sup> had earlier affirmed that any suit filed in contravention of section 12A must be rejected. In *Pankaj Rastogi*, since the appellant's claim of urgency was unsubstantiated and no specific interim relief had been sought, the Allahabad High Court directed him to approach the designated mediation centre in compliance with section 12A, reaffirming the importance of adhering to statutory procedures. The decision thus reinforces the legislative intent behind section 12A - to promote alternative dispute resolution, reduce judicial burden, and cultivate a culture of mediation in commercial jurisprudence.

## **7. Preventing Consumer Confusion**

In the case of *M/s Sai Chemicals v. M/s Jai Chemical Works*,<sup>10</sup> the Allahabad High Court addressed a trademark dispute concerning the use of the mark *HARA PATTI* by the plaintiff, M/s Jai Chemical Works, and the defendant's use of a similar mark. Both plaintiff and defendant are in the same business of manufacturing and selling detergent washing powder. The plaintiff had got his trade mark registered in the year 2002 though, he claimed to be in the business since 1996. The defendant got his trade mark registered in the name of *TAZZA PATTI* in the year 2019, and under the Copyright Act in the year 2017. The commercial court had granted a temporary injunction in favour of the plaintiff, restraining

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<sup>9</sup> 2022 SCC OnLine SC 1028.

<sup>10</sup> MANU/UP/0130/2024; 2024:AHC:7630.



the defendant from using the disputed mark. The defendant appealed this decision, challenging the injunction. The high court upheld the trial court's decision, emphasizing the importance of protecting registered trademarks and preventing consumer confusion. The court found that the plaintiff had established a *prima facie* case of infringement and that the balance of convenience favoured granting the injunction to prevent irreparable harm to the plaintiff's business reputation. The court observed thus: "Submission that PATT A being commonly used trade name, no exclusive right could be granted, cannot be accepted as the registration of trade mark which does not suffer from any of the handicaps envisaged by section 9, or section 11 cannot therefore be recorded as *publici juris*, and at the *prima facie* stage at least its validity would be entitled to be presumed in view of section 31(1). The defendant-appellant is not seeking that HARA PATT A mark which the plaintiff is ascertaining in the present case, is *publici juris*. The *publici juris* character is being attributed only to the latter PATT A, part of plaintiff's mark. In view of the said fact, the defendant's TAZZA PATT A mark is deceptively similar to the plaintiff's HARA PATT A mark."<sup>11</sup>

This decision underscores the judiciary's commitment to enforcing IPRs and ensuring fair competition in the marketplace. It illustrates the courts' proactive stance in safeguarding IP and the significance of maintaining distinctiveness in branding to avoid legal disputes.

## 8. Conclusion

The body of judgments examined from Allahabad High Court's 2024 jurisprudence on IPRs, though quantitatively limited, reveals a court gradually attuning itself to the complexities of modern commercial and IP conflicts. The landscape is not yet mature or deeply specialized, but it is gradually evolving. It must be acknowledged that the absence of decisions on patents, geographical indications, plant varieties, or confidential information signals structural and institutional gaps and the lacuna reveals that certain branches of IP remain under-engaged in the region. Trademark domain has proved to be fertile ground for doctrinal development. The court's grappling with competing claims of prior user and registered proprietor, the distinctions drawn around deceptive similarity and confusion, prior user and registered user and the threshold for consumer deception reflect a maturing sensitivity to commercial realities and branding strategies. These decisions cumulatively map the high court's genuine efforts in evolving approaches to IPR jurisprudence.

The survey year's judgments reflect the high court's efforts to transcend doctrinal silos and engage with various IP laws in intersectional ways. In the contemporary world of

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<sup>11</sup> *Id.* at para. 29.

international trade and commerce, where commercial litigation inevitably involves multiple issues of contract, taxation,<sup>12</sup> criminal proceedings<sup>14</sup> procedural compliance,<sup>15</sup> regulatory and criminal dimensions, the decisions discussed above underscore the court's endeavours in not treating IPR matters in isolation but as interwoven with broader legal domains. In *Pankaj Rastogi v. Mohd. Sazid*,<sup>15</sup> the court could act as a gatekeeper against tactical misuse of penal law to pressure IP litigants for compromise. *M/s Sai Chemicals v. M/s Jai Chemical Works*,<sup>16</sup> signals an uncompromisable practice across high courts that procedural regimes must be adapted to the exigencies of IP litigation.

Certain patterns that emerge from the collective reading of the verdicts are: (i) the high court is watchful in ensuring that no relief is grounded on speculative claims;<sup>17</sup> (ii) pleadings must establish sufficient factual muster;<sup>18</sup> trial courts must fully appreciate and state reasoning on the three essential legal tests of interim injunctions;<sup>19</sup> the litigants must be careful about the *inter se* difference, scope and limitation of remand, review and appeal when seeking a certain relief as courts do not compromise on procedural integrity;<sup>20</sup> and (iii) courts will not tolerate illusory claims to short-circuit statutory mandates.<sup>21</sup>

Nevertheless, if not applied prudentially, these approaches may prove as obstacles in fast-moving commercial and digital markets where rights to be protected promptly and delay becomes fatal in IPR enforcement. The scrutiny also provides directions for both practice and reform: Litigants should be fully prepared to sharply plead factual matrices, *viz.*, prior user, goodwill, market reputation, consumer confusion, deceptive similarity and so on; and avoid reliance on sweeping or illusory assertions.<sup>22</sup> Allahabad High Court through its IPR verdicts of 2024 demonstrates that it is not indifferent to its role of IPR enforcement in India's economic and commercial ecosystem, but a sensible and meaningful forum in crafting a robust IPR jurisprudential architecture for *Viksit Bharat*.

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<sup>12</sup> *Supra* note 1.

<sup>13</sup> *Supra* notes 4 and 7.

<sup>14</sup> *Supra* notes 4 and 6.

<sup>15</sup> *Supra* note 8.

<sup>16</sup> *Supra* note 10.

<sup>17</sup> *Supra* note 8.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 6.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Supra* note 8.