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

+ **CS(COMM) 563/2017**

MANKIND PHARMA LIMITED Plaintiff
Through: **Ms.Ishanki Gupta with**
Mr.Harsh Vardhan, Advocates.

versus

SHAM LAL & ORS Defendants
Through: **None**

% **Date of Decision: 06th November, 2017**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A. 12855/2017

1. Present application has been filed under Order VIII Rule 10 read with Section 151 CPC.
2. It is pertinent to mention that the present suit has been filed seeking a permanent injunction for passing off, infringement of trademark, rendition of accounts, delivery up etc. against the defendants. At the outset, learned counsel for plaintiff stated that she is pressing only prayers 42(a), (b), (c) and (f) of the plaint. The said prayers are reproduced hereinbelow:-

“(a) A decree for perpetual injunction restraining the defendants either by themselves or through their dealers, distributors, stockiest agents, associates, employees servants, and/or assigns from infringing the plaintiff’s trade mark/trade name MANKIND and series of marks with the suffix/prefix ‘KIND’ in any manner whatsoever;

(b) A decree for perpetual injunction restraining the defendants either by themselves or through their dealers, distributors, stockiest agents, associates, employees servants, and/or assigns from trading and/or selling and/or dealing and/or advertising including advertising and selling on internet and/or rendering services under the trade name MANKIND MERCHANDISE PRIVATE LIMITED and/or any other mark/trade name with the word element MANKIND and/or KIND in any manner whatsoever;

(c) An order directing the defendants either by themselves or through their dealers, distributors, stockiest agents, associates, employees servants, and/or assigns for and/or on their behalf at their own expense to take any and all steps necessary to remove any other indicia whatsoever to show any association of the defendants’ products and/or services under the trade name with MANKIND MERCHANDISE PRIVATE LIMITED with the goods and/or services of the plaintiffs’ under the well-known trade name/trade mark MANKIND and series of marks with suffix/prefix KIND.

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(f) An order directing the defendants to immediately file with the Registrar of Companies an application to record the change of name of the company from MANKIND MERCHANDISE PRIVATE LIMITED to any other name nor similar to the plaintiff’s well-known trade name/trade

mark MANKIND and/or series of marks containing the word element KIND.

3. Vide order dated 2nd May, 2016, this Court allowed the plaintiff to serve the defendants through publication, which came to be published in the English daily newspaper 'The Statesman' (Kolkata Edition) on 10th January, 2017 and Bengali newspaper 'Bhartman Patrika' (Kolkata Edition) on 10th February, 2017.

4. Since despite service through publication, defendants did not appear, they were proceeded ex parte vide order dated 04th May, 2017. On the said date, this Court also granted an *ex-parte ad interim* injunction in the plaintiff's favour. The relevant portion of the injunction order dated 04th May, 2017 is reproduced hereinbelow:-

“Accordingly, till the disposal of the suit, the defendants, either by themselves or through their dealers, distributors, stockist, agents, associates, employees, servants, and/or assigns are restrained from:

(a) Infringing the plaintiff's/applicant's trade mark/trade name MANKIND; and series of marks with the suffix/prefix KIND in any manner whatsoever; and

(b) Trading; and/or selling; and/or dealing; and/or advertising, including advertising and selling on Internet; and/or rendering services, under the trade name MANKIND MERCHANDISE PRIVATE LIMITED and/or any other mark/trade name with the word element MANKIND and/or KIND, in any manner whatsoever.”

5. In the plaint, it is stated that the plaintiff is the fourth largest pharmaceutical company in India, which was incorporated as Private Limited Company in the year 1991 and subsequently converted into a

Public Limited Company. The plaintiff is involved in manufacturing and/or marketing medicinal, pharmaceutical and veterinary preparations, under various well known brand names.

6. It is stated that the trademark **MANKIND** of the plaintiff is registered, inter alia, under Classes 1 to 23, 27, 28, 30, 31, 34, 36, 38, 39, 40, 42 and 45 of the Trade Marks Act, 1999. It is further stated that the plaintiff's group is stated to have more than 150 trade marks registered with suffix/prefix **MANKIND** and/or **KIND**.

7. It is stated in the plaint that the plaintiff's predecessors were the first in the market to adopt the trading style **MANKIND** in any field of activity in the year 1986.

8. The plaintiff is also stated to be the registered owners of websites: www.mankindpharma.com, www.mankindunwanted.com, www.mankindmanforce.com, www.mankinddontworry.com, www.mankindkaloree1.com, www.futuremankind.com, www.vetmankind.com, www.caremankind.com, www.petmankind.com, www.mankindpharma.net, www.magnetmankind.com, www.specialmankind.com, www.mankindpharma.asia, www.mankindpharma.cn, www.mankindpharma.org, www.mankindpharma.us and www.mankindpharma.edu.

9. It is averred in the plaint, that the plaintiff's group achieved a consolidated (unaudited) turnover of Rs. 3359.13 Crores for the year ending March 31, 2015 and that the plaintiff has gained tremendous goodwill and reputation in the trade and amongst the public.

10. Learned counsel of the plaintiff states that the defendants by using the identical and/or deceptively similar trade name, **MANKIND MERCHANDISE PRIVATE LIMITED**, to the plaintiff's corporate

name/trade name **MANKIND PHARMA LIMITED**, seeks to encash upon the goodwill and reputation of the latter in the market by infringing and/or passing off its goods and services as those of the latter; and cause deception and confusion in the minds of the public. She states that, the continuous use of the impugned trade name **MANKIND MERCHANDISE PRIVATE LIMITED** by the defendants, containing the element **MANKIND**, seriously jeopardizes and dilutes the status of the plaintiff's well-known trade mark/trade name **MANKIND PHARMA LIMITED** and the series of marks with the suffix/prefix **KIND**.

11. Learned counsel for the plaintiff states that despite issuance of a cease and desist notice by the plaintiff to the defendant no.2 company, the latter has failed, neglected and avoided to respond to the said notice; or to withdraw its goods from being sold under the trade mark **MANKIND MERCHANDISE PRIVATE LIMITED**.

12. The defendants' failure to file its written statement till date demonstrates their lack of justification or defence of their infringing activities involving the plaintiff's trade mark/trade name.

13. This Court while dealing with a similar application under Order VIII Rule 10 CPC in **CS(OS) 873/2015 Samsung Electronics Company Limited & Anr. Vs. Mohammed Zaheer Trading As M/s. Gujarat Mobiles & Ors.** has culled out the relevant law as under:-

"10. The Supreme Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:-

"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which

has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."

11. A Coordinate Bench of this Court in *Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta and Ors.*, 235 (2016) DLT 354 has held as under:-

"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

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28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."

12. Another Coordinate Bench of this Court in *Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd.*, 2013 III AD (Delhi) 176 has held as under:-

"4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of

examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record....."

14. Considering the aforesaid mandate of law and the fact that the plaintiff is the prior and registered user, this Court is of the opinion that the defendants have no justification for the adoption and use of virtually identical trade name as that of the plaintiff. In any event, the defendants have not even placed a written defence on record.

15. Accordingly, the present application is allowed and the suit is decreed against the defendants in accordance with prayers 42(a), (b), (c) and (f) of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

NOVEMBER 06, 2017
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MANMOHAN, J

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