

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..01..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Original Side Appeal Nos.228 and 229 of 2013

and M.P.Nos.1 of 2013

O.S.A.No.228 of 2013

Sun Pharmaceutical Industries Ltd.,
CD Plot No.3, Door No.8,
Old Tower Block Street,
Nandhanam Extension,
Chennai 600 035.

... Appellant

-Versus-

Kivi Labs Ltd.,
No.147/148, GIDC,
Por-Ramangamdi,
Dist. Baroda,
Gujarat - 391 243.

... Respondent

Original Side Appeal under Order 36, Rule 1 of Original Side Rules r/w Clause 15 of Letters Patent, praying to set aside the order and decretal order dated 01.10.2012 made in O.A.No.97 of 2012 in C.S.No.87 of 2012

O.S.A.No.229 of 2013

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... Respondent

Original Side Appeal under Order 36, Rule 1 of Original Side Rules r/w Clause 15 of Letters Patent, praying to set aside the order and decretal order dated 01.10.2012 made in O.A.No.98 of 2012 in C.S.No.87 of 2012

For Appellant in both : M/s.A.A.Mohan &
Original Side Appeals Brinda Mohan

For Respondent in both : Mr.P.C.N.Raghupathy
Original Side Appeals

COMMON JUDGMENT

The appellant filed a civil suit in C.S.No.87 of 2012 against the respondent herein for permanent injunction restraining the respondent/defendant from manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing the appellant's registered trademark AMIXIDE by use of deceptively similar trade mark KIMIXIDE or any mark deceptively similar to appellant's registered trade mark AMIXIDE or in any other manner whatsoever. Pending suit, he filed two original applications in O.A.Nos.97 and 98 of 2012 seeking interim injunction. The original application in O.A.No.97 of 2012 was filed seeking interim injunction restraining the respondent/defendant from manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing the appellant's registered trademark AMIXIDE by use of deceptively similar trademark KIMIXIDE or any mark deceptively similar to appellant,s registered trade mark AMIXIDE or in any other manner whatsoever and the other original application in O.A.No.98 of 2012 was filed seeking interim injunction restraining the respondent/defendant from manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark KIMIXIDE or any other trademark that is identical and/or deceptively similar as that of the appellant's registered trademark AMIXIDE and/or use similar packaging as that of the appellant's products under the mark AMIXIDE so as to pass off the respondent's medicinal preparations as and for the medicinal preparations of the appellant and/or in any other manner whatsoever connected the the appellant. Both the original applications were.

2. We have heard the learned counsel on either side and also perused the records carefully.

3. A perusal of the order of the learned single Judge would go to show that he has prima facie found that there is no similarity between the registered trade mark AMIXIDE and

the trade mark used by the respondent as KIMIXIDE. The learned single Judge has found that there is a vast difference between these two trade marks. The learned single Judge has further held that the manufacturing of drugs by the respondent and selling of the same under the name and style of the registered trade mark AMIXIDE has been in vogue from the year 2002. According to the learned single Judge, the appellant has approached the court after a delay of ten years. These two original applications were dismissed in the year 2013 and there was no interim injunction in favour of the appellant. The respondent has been using the trade mark KIMIXIDE from the year 2002. Whether there is similarity or whether it is deceptive in nature are all matters to be decided during trial based on the evidences being let in by both parties. Since we are of the prima facie view and since the learned Judge has also prima facie come to the conclusion that there is no similarity, we find no reason to interfere with the impugned orders of the learned single Judge. Thus, we do not find any merit at all in these appeals.

4. In the result, both the original side appeals fail and the same are accordingly dismissed. Considering the nature of the claim made and considering the request of the learned counsel for the appellant, we only request the learned single Judge to dispose of the civil suit at the earliest. Having regard to the facts and circumstances of the case, both parties shall bear their respective costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Sub Assistant Registrar,
Original side, High Court, Madras.

+2cc too Mr.Arun C. Mohan Advocate, Sr.2441+2442

+2cc to Mr.Raghupathy Advocate, in SR. 3089

O.S.A.Nos.228 & 229 of 2013

LRS (CO)
VR(23/02/2017)