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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th February, 2018

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RFA 695/2014

SOS PHARMA

..... Appellant

Through: Mr. Kawal Jyot Singh & Mr. Yogesh Gupta, Advocates (M-9888884444, 9872179223).

versus

SAS PHARMACEUTICALS

..... Respondent

Through: Mr. A. K. Goel, Advocate (M-9910658078).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This is an appeal against the final decree and judgment dated 11th December, 2014 by which a permanent injunction has been granted against the appellant in the following terms :-

“Vide separate judgment announced today, the plaintiff’s suit is decreed as follows:

- (i) the plaintiff’s suit for perpetual injunction is decreed in favour of plaintiff and against the defendant by restraining the defendant/its proprietor, its servants, dealers, representatives and agents/marketing and/or advertising of pharmaceutical or medicinal products or any other goods under the mark REGULATOR or any other mark identical or deceptively similar to the Plaintiffs registered trade mark REGULIN FORTIS amounting to infringement of the Plaintiff’s trade mark REGULIN FORTIS registered under No. 1306019 with Trade Marks Registry;*
- (ii) the plaintiff’s suit for perpetual injunction is*

further decreed in favour of plaintiff and against the defendant by restraining the defendant, its proprietor, servants, dealers, representatives and all other persons acting on their behalf from selling and/or marketing and/or advertising of pharmaceutical or medicinal products or any other goods under the impugned mark SOS PHARMA.

(iii) However, suit for delivery up of goods or of accounts of profits or damages/compensation in lieu of accounts for profits is dismissed.”

2. Counsel for the Appellant/Defendant (*hereinafter, ‘Defendant’*) submits that the Trade Mark “REGULATOR” has never been used by the Defendant and they are willing to give up the same rather than suffer an injunction for the mark. Submissions have been made only qua the trade name “*SOS Pharma*”, which is also used in a logo and device form. The trade mark application filed by the Defendant is for a device which uses the letter ‘S+S’ in a square form with the words ‘SOS Pharma’ below the same, and as follows:



3. Counsel for the Defendant submits that the trade mark application filed by the Defendant is prior to the trade mark application of the

Respondent/Plaintiff (*hereinafter*, 'Plaintiff'). The Plaintiff's trade mark application for "SAS Pharmaceuticals" is dated 6th September 1999, whereas the Defendant's application for the above 'SOS Pharma device' is dated 19th March, 1999. He submits that his client is, therefore, entitled to use the mark 'SOS Pharma'. On a query from the Court, counsel for the Defendant submits that 'SOS' stands for 'Save our Soul'.

4. Mr. A.K. Goel, counsel for the Plaintiff submits that 'SAS Pharmaceuticals' is a registered trade mark and stands for Subhash and his son Sandeep who are the promoters of the company. Counsel for the Plaintiff further submits that the trade mark of the Plaintiff being registered, since both the parties are using it for the same class of products i.e., ayurvedic medicines, there is bound to be a confusion. He, accordingly, submits that the impugned decree is liable to be upheld.

5. After hearing some arguments, counsel for the Defendant upon instructions from the Defendant, Mr. Hitesh Dua, who is the proprietor of SOS Pharma, is agreeable to change the name and mark of his firm as "Save our Soul Pharma" instead of "SOS Pharma". He also submits that his client may be given time to change over the name/mark.

6. After hearing the parties, it is clear that the Plaintiff's mark "SAS Pharmaceuticals" is a registered trade mark. The parties are engaged in selling Ayurvedic products and hence they are in the same trade. Thus, "SOS Pharma" is likely to create confusion with "SAS Pharmaceuticals". However, at the time of admission of the appeal, this Court, had on 24th December, 2014 granted a stay in respect of the injunction qua 'SOS Pharma'. That stay order continues. In view of the order dated 2nd March, 2016 passed by this Court, the Defendant has been filing regular accounts

before this court.

7. Since the Defendant is now agreeable to change the mark/name from “SOS Pharma” to “Save our Soul Pharma”, the impugned judgment and decree is modified in the following terms, with the consent of the parties :-

- (a) The permanent injunction qua the trade mark “REGULATOR” as contained in part (i) of the decree is made absolute and is confirmed.
- (b) The permanent injunction in para (ii) is confirmed, subject to the Defendant being permitted to use “Save our Soul Pharma” as the firm’s name and as trade mark.
- (c) The Appellant shall be permitted to use the “S+S” device as contained in the trade mark application. However, in place of “SOS Pharma”, the words “Save our Soul Pharma” would be used both as a trade mark and as a trade name by the Defendant.
- (d) The Defendant is permitted to use the present name ‘SOS Pharma’ till the end of the financial year 2018-19 i.e. 31st March, 2019.
- (e) All the products and stocks as also the stationery shall be changed in accordance with the present consent terms and the Defendant shall not use the words ‘SOS Pharma’ in any manner whatsoever w.e.f. 31st March, 2019. If there are any left-over labels, stocks, stationery bearing the name “SOS Pharma” after 31st March 2019, the same be destroyed.
- (f) The Defendant shall file an application under Form TM 16 within a period of eight weeks from today with the Registry of Trade Marks, amending its device in conformity with the present order. Upon the said application being filed, with an advance copy to the

counsel for the Plaintiff, the Trade Mark Registry shall take the same on record and dispose of the opposition proceedings. The application of the Defendant shall then proceed for registration no.846424 in Class 5 with the device of S+S along with 'Save our Soul Pharma'.

(g) The Defendant shall not adopt or use any name for its pharmaceutical preparation which is identical or deceptively similar to the Plaintiff's trade mark "SAS Pharmaceuticals". However, as contained above, the Defendant shall be entitled to use "Save our Soul Pharma" in the device.

(h) Subject to the above undertakings being complied with by the Defendant, the Plaintiff shall not press for the relief of damages or rendition of accounts or costs.

8. The Defendant shall, by 15th March, 2019 write a letter intimating to the Plaintiff that they have changed their name/mark in all their products, stationery, display boards etc. from "SOS Pharma" to the new device with "Save our Soul Pharma". The impugned judgment and decree stands modified, accordingly.

9. The appeal is disposed of as settled in the above terms.

PRATHIBA M. SINGH
Judge

FEBRUARY 19, 2018
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