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

Date of Decision: 30th September, 2019

+ **CM (M) 1409/2019 & CM APPL. 42656/2019**

M/S PSYCHOTROPICS INDIA LTD. Petitioner
Through: Mr. Ashok Mittal & Ms. Palak Arora,
Advocates. (M:8218736895)
versus

M/S SYNCOM HEALTHCARE LTD. Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner - M/s Psychotropics India Ltd. is aggrieved by the impugned order dated 30th August, 2019, by which an application seeking appointment of Local Commissioners in the execution proceedings has been rejected by the Trial Court.
2. The background of the case is that the Petitioner/Decree Holder (*hereinafter 'Decree Holder'*) filed a suit for infringement of trademark against the Respondent/Judgment Debtor - M/s Syncom Healthcare Ltd. (*hereinafter 'Judgement Debtor'*). The said suit was decreed vide order dated 22nd December, 2018. The operative portion of the decree reads as under:

“8. For the aforesaid reasons, the plaintiff is entitled to relief of permanent injunction restraining infringement of trademark, passing off and rendition of account etc. against the defendant as claimed in the suit. Accordingly, the suit of plaintiff is decreed. Plaintiff is, hereby, entitled to followings:-

- *Decree of permanent injunction restraining the defendant, his principal officers, directors, agents, franchisees, servants, licensees and all other acting for and on behalf, from making, selling, offering for sale, advertising and in any manner dealing in any goods or services using the plaintiff trademark CTZ-10 or any other mark/name which is identical or deceptively similar to the plaintiff's trademark CTZ-10 or containing the word CTZ-10 otherwise and from doing any other thing, whereby directly or indirectly infringing the plaintiff's registered trademarks CTZ-10 as claimed in the plaint.*
- *Decree of rendition of accounts of profits illegally earned by the defendant by reason of passing off their goods and/or business as the goods and business of the plaintiff.*
- *Cost of the suit is awarded in favour of plaintiff."*

3. It is the submission of Id. counsel for the Decree Holder that the Judgment Debtor did not abide by the decree, leading to the filing of the execution petition. In the execution petition, the Decree Holder sought appointment of Local Commissioners in order to conduct a seizure of the infringing goods. The said application was rejected by the Trial Court on the ground that there was no justified reason for appointment of Local Commissioners. The operative portion of the impugned order is set out hereinbelow:

"However, I am of the considered opinion that such appointment should always be in consonance with the object of the order to be executed, directions which are mentioned in the decree. It is submitted by the counsel for the DH that at this stage, he is not pressing for the execution of relief of rendition of account and only

other relief i.e. decree for injunction are to be pressed at this stage.

Considering the submissions made by the DH, it is therefore, reflected that whatever order is required to be passed for facilitating the execution of decree, it has to commensurate with its object which is in consonance with the procedure to be followed for execution of decree for injunction. As per Order XXI Rule 32 CPC, a decree of injunction can be executed by issuance of warrants of attachment of property or by issuance of warrants of arrest. Hence, Local Commissioner can be appointed but to facilitate the procedure for achieving the execution of warrant of attachment or warrant of arrest, as the case may be. It does not include, in my considered opinion, appointment of Local Commissioner to seize the goods of JD which are infringing the trademark of the DH. Such an attempt is always made during pendency of a trial to collect evidence pertaining to infringement done by JD/defendant. That stage is now over. More so, DH himself is not pressing his relief for rendition of account, at this stage, as alleged by him. Above all, JD is residing outside the territorial limits of this Court for which only option available to this Court is to proceed ahead as per Section 39 CPC. Hence, no Local Commissioner for the purpose alleged by the DH can be appointed by this Court. Prayer is, therefore, declined.

Put up for further proceedings on 04.10.2019.”

4. A perusal of the Order XXVI Rule 18A CPC makes it clear that the provisions of Order XXVI apply even to execution proceedings. Ld. counsel for the Decree Holder also relies upon various judgements, which have been mentioned in the impugned order, to the effect that Local Commissioners can be appointed even in execution proceedings. The purpose of appointing a Local Commissioner is, firstly, to ensure that a

proper investigation is effected into the activities of the Defendant, and secondly, also to ensure that the orders of the Court can be given effect to, if there is any violation of the order and the same can be brought to the notice of the Court. The appointment of the Local Commissioner would also assist the Court in passing appropriate orders in respect of monetary damages, if any, which the Court may consider awarding at the final stage. Further, in matters relating to trademark infringement, the permanent injunction already granted, would be rendered completely ineffective if Local Commissioners are not appointed in execution petitions despite continuous violations of the judgement/decreed.

5. In the present case, which involves pharmaceutical and medical preparations, use of the infringing mark would be in the violation of the Decree Holder's rights and would also be contrary to the interests of consumers and the general public, inasmuch as patients may continue to buy the medicinal preparations of the Judgment Debtor, which are infringing in nature, resulting in passing off the Judgment Debtor's products as those of the Decree Holder. Ld. counsel for the Decree Holder has shown to the Court the cash memo dated 28th September, 2019 to submit that the Judgment Debtor is continuing to sell infringing products under the mark "CTZ-10". Ld. counsel for the Decree Holder has also brought the original packaging of the Judgment Debtor dated January, 2019.

6. As held in ***Cadila Healthcare v Cadila Pharmaceuticals (2001) 5 SCC 73***, a stricter test must be applied in trademark matters concerning pharmaceuticals. This was a fit case for appointment of Local Commissioners. Accordingly, considering the provisions of Order XXVI Rule 18A CPC and the overwhelming interest of the consuming public and

patients, this Court is of the opinion that Local Commissioners ought to be appointed to visit the premises of the Judgment Debtor and seize the infringing products, if any. Accordingly, **Mr. Sumit Rajput, Advocate (M:9999333350)** and **Ms. Srishti Kumar, Advocate (M:9956344953)**, who are present in Court today, are appointed as the Local Commissioners to visit the premises of the Judgment Debtor at the following addresses:

S. No.	Local Commissioner	Defendant's Premises
1	Ms. Srishti Kumar, Advocate (M:9956344953)	502, Advent Atria, Chincholi Bunder, Malad (W), MUMBAI - 400 064
2	Mr. Sumit Rajput, Advocate (M:9999333350)	D-42, II E Sidcul, Selaqui, Dehradun - 248 197 (Uttarakhand)

7. The Local Commissioners are directed to visit the above premises of the Judgement Debtor and to carry out the following:

- a) Make an inventory of the products and any packaging or advertising material bearing the Decree Holder's marks CTZ-10 or any other deceptively similar mark.
- b) Upon making inventory, seize the said products and hand over the same to the Judgement Debtor on *superdari*, upon the Judgment Debtor furnishing an undertaking.
- c) Inspect the accounts of the Judgment Debtor to ascertain the sales it has made of goods bearing the Decree Holder's mark. If the accounts are in electronic form, the same shall be copied on a pen

drive/hard drive. After copying the data, the computers shall be released to the Judgement Debtor. If the accounts are in hard copy form, the registers of accounts shall be signed and sealed. Photocopies of the same is permitted to be taken, and the registers shall be handed over to Judgement Debtor on *superdari*.

d) Take photographs, if required.

8. The SHO(s) of the area(s) concerned are directed to assist the Local Commissioners, if a request in that respect is made by the Local Commissioners. One counsel and one representative on behalf of the Decree Holder is permitted to accompany the Local Commissioners. The Judgement Debtor shall cooperate with the Local Commissioners during the execution of the Commissions. The reports of the Local Commissioners be now filed before the Trial Court within two weeks after execution of the commission. The Trial Court to proceed in the execution petition in accordance with law. The fee of the Local Commissioners is fixed at Rs.75,000/- each, to be paid by the Petitioner/Decree holder.

9. The petition and all pending applications are disposed of in the above terms. *Dasti*.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 30, 2019/dk