

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2020

Pronounced on : 06.08.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

O.A.No.258 of 2020

and

A.No.1532 of 2020

and

A.No.1533 of 2020

in

C.S.No.163 of 2020

O.A.No.258 of 2020:-

M/s.Arudra Engineers Private Limited
represented by its Managing Director,
Mr.R.Natraj,
Having its office at No.79, Valmiki Street,
Thiruvanmiyur, Chennai – 600 041. ... Applicant/Plaintiff

Amended as per order dated
23.07.2020 in Appln.No.1535 of
2020.

Vs.

1.M/s.Pathanjali Ayurved Limited,
Represented by its Director,
Having its registered office at D-26,
Pushpanjali Bijwasan Enclave,
New Delhi – 110061, India.

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2.Divya Yog Mandir Trust

Rep by its Trustee,

Having office at Patanjali Yog Peeth

Maharishi Dayanand Gram,

Delhi Haridwar National High way,

Near Bahadrabad,

Haridwar – 249 402, Uttarkhand.

... Respondents / Defendants

impleaded as per order dated 23.07.2020,
in Appln.No.1539 of 2020.

A.Nos.1532 & 1533 of 2020:-

M/s.Pathanjali Ayurved Limited,

Represented by its Director,

Having its registered office at D-26,

Pushpanjali Bijwasan Enclave,

New Delhi – 110061, India.

...Applicant/Respondent/Defendant
(in both the A.Nos.1532 & 1533 of 2020)

Vs.

M/s.Arudra Engineers Private Limited

represented by its Managing Director,

Mr.R.Natraj,

Having its office at No.79, Valmiki Street,

Thiruvannamipur, Chennai – 600 041.

...Respondent/Applicant/Plaintiff
(in both the A.Nos.1532 & 1533 of 2020)

Prayer in O.A.No.258 of 2020:- This application filed under Order XIV Rule 8 of O.S Rules R/w. Order XXXIX Rule 1 and 2 of C.P.C., praying to pass an order of interim injunction restraining the respondent, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc., or anyone associated with them from infringing the applicant's registered trademarks bearing the name "Coronil" and from using the objectionable trademarks and/or deceptive variation of the applicant's aforementioned trademarks singularly or in conjunction with any word/s or monogram/s/logo/s upon and in relation to their products/business in any manner whatsoever pending disposal of the suit.

Prayer in A.No.1532 of 2020:- This application filed under Order XIV Rule 8 of the Madras High Court O.S Rules R/w. Section 151 of C.P.C., prayed to,

- (a) treat this application as urgent,
- (b) suspend the order dated 17.07.2020, passed by this Court in O.A.No.258 of 2020 in the present suit, and
- (c) pass such further or other orders as this Court may deem fit and necessary in the facts and circumstances of the case.

Prayer in A.No.1533 of 2020:- This application filed under Order XIV Rule 8 of the Madras High Court O.S Rules R/w. Order XXXIX Rule 4 of C.P.C., prayed to,

- (a) treat this application as urgent,

(b) vacate the order dated 17.07.2020, passed by this Court in O.A.No.258 of 2020 in the present suit and dismiss O.A.No.258 of 2020 in the present suit, and

(c) pass such further or other orders as this Court may deem fit and necessary in the facts and circumstances of the case.

For plaintiff : Mr.P.R.Raman, Senior counsel,
for Mr.C.Seethapathy.

For defendants : Mr.Sathish Parasaran, Senior Counsel,
Assisted by Mr.Simranjeet Singh,
for Mr.P.Giridharan & Mr.S.Santhosh.

ORDER

The suit had been filed by M/s.Arudra Engineering Private Limited, subsequently, amended to M/s.Arudra Engineers Private Limited, having office at Thiruvananthapuram, Chennai, originally against M/s.Pathanaili Ayurved Limited, having office at New Delhi, and subsequently, by amendment also against Divya Yog Mandir Trust, having office at Haridwar, Uttarakhand, seeking a judgment and decree against the defendants for grant of permanent injunction against infringement of the plaintiff's registered trademark bearing the name "Coronil" by restraining the defendants or anybody acting under them

from using the said trademark or deceptive variation of the said trademark in their products / business and for a direction to the defendants to deliver-up to the plaintiff for destruction the entire stock of products or any other materials bearing the objectionable trademark “Coronil” either identical or with deceptive variations of the plaintiff's trademark “Coronil” and for costs of the suit.

2. Along with the suit, the plaintiff had filed O.A.No.258 of 2020, seeking an order of interim injunction restraining the defendants from infringing the registered trademark “Coronil” and from using the trademark or any variation in relation to their product / business. This Court granted an ex-parte order of interim injunction on 17.07.2020 and directed compliance of the stipulations under Order XXXIX Rule 3(a) of C.P.C.

3. On receipt of notice, the 1st defendant filed A.No.1532 of 2020 seeking to suspend the order dated 17.07.2020 and A.No.1533 of 2020 seeking to vacate the order dated 17.07.2020. Both sides filed their respective counters to the applications and also documents to substantiate their rival stands.

4. Arguments advanced by Mr.P.R.Raman, learned senior counsel for the plaintiff and Mr.Sathish Parasaran, learned senior counsel for the defendants were heard at length through video conferencing. Mr.Sathish Parasaran, learned senior counsel also presented his arguments through a power point presentation.

The plaint:

5. The plaintiff, a Private Limited Company registered under the Companies Act, 1956, claimed to be carrying on business for over 20 years and that they have a significant reputation within the industrial fraternity. They had registered the trademarks “Coronil-92 B and Coronil-213 SPL” in the year 1993 and have also renewed the marks, which are in force till 2027. The product Coronil is a chemical agent that undertakes to sanitize and clean heavy industrial machinery and containment units at factories with minimal corrosion, thus reducing the overall depreciation in the units during the cleaning process. The plaintiff claimed that they have, as clients, heavy industrial establishments like BHEL, NTPC Ltd, Reliance Industrial Limited, Indian Oil Corporation and National Productivity Council.

6. The plaintiff has also filed as documents along with the plaint, a list of national and international customers and their sales turnover from the financial year 2015 - 2016 to the financial year 2019 - 2020. The plaintiff claimed that the trademark Coronil was representative of its products, brand identity, business reputation and public identification, throughout India and in countries outside India. It is a well known chemical cleaning agent and the plaintiff has claimed that it is a valuable intellectual property.

7. The plaintiff has further stated in the plaint, that they came to know through news reports that the defendants were marketing their product as a cure for Coronavirus using the name "Coronil". The plaintiff had stated that reports regarding the same were published and advertised in various electronic and press media and stated that the defendants were deriving unjust pecuniary benefits at the cost of the plaintiff's reputation and exclusivity to use the trade mark "Coronil".

8. The plaintiff claimed that the defendants were infringing the plaintiff's registered trademark, were diluting the distinctiveness of the trademark, were diminishing the value, goodwill, reputation and the proprietary right, which was exclusively in favour of the plaintiff. It was also apprehended that this would encourage other potential infringers to violate the statutory and proprietary rights of the plaintiff and putting public interest to jeopardy.

9. In view of all these facts, alleging that their registered trademark was being infringed by the defendants, the suit had been filed for the reliefs as stated above.

O.A.No.258 of 2020:

10. The plaintiff filed this Original Application seeking interim injunction restraining the defendants from infringing their registered trademark "Coronil". In the affidavit filed in support of the said application, it had also been stated that even though the products of the plaintiff and the defendants are dissimilar, the registered trademark of the plaintiff would be protected under Section 29(4) of the Trade Marks Act, 1999. The plaintiff again claimed that they have an impeccable

reputation within the country as well as around the globe. It was claimed that the usage of the mark by the defendants was without due cause. It was specifically claimed that the defendants were exploiting the current pandemic, to profiteer out of the immense mental and physical hardships faced by the general public. It was further claimed that the actions of the defendants would not come within the purview of the stipulations laid down in Section 30 of the Trade Marks Act, 1999, as the defendants are not using the plaintiff's registered trademark in accordance with honest practices in industrial or commercial matters. It was claimed that the plaintiff had made out a prima facie case for grant of interim injunction.

A.No.1532 of 2020 and A.No.1533 of 2020:

11. These applications were filed by the defendants to suspend and to vacate the order of an interim injunction granted on 17.07.2020.

12. In the affidavit, it had been stated that the suit is vitiated by bad motives and that the pleadings in the plaint clearly reveal the intention of the plaintiff, which according to the defendants was part of a larger conspiracy against the Patanjali group with aim to scuttle their business following the launch of “Coronil tablet”, which is an Ayurvedic

medicine. It had been stated that the plaintiff had not raised any objection at the initial time when the defendants had obtained approval for the processing of Coronil tablet and also till the stage of grant of license by the Government of Uttarakhand under the scrutiny of the Ministry of Ayush.

13. It had been stated that vested interests including the plaintiff are attempting to interfere with the honest trade and business of Divya Pharmacy. It was stated that the Coronil tablets were manufactured by Divya Pharmacy owned by Divya Yog Mandir Trust and that the said trust had applied for registration of the trademark “Coronil Tablet” in A.No.4532424 dated 16.06.2020, before the Trademark Registry, New Delhi. It was stated that the word “Divya” in Devanagiri script is a registered trademark of Divya Pharmacy owned by Divya Yog Mandir Trust.

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14. It was also stated that contradictory averments had been made in the plaint, regarding launch and availability of Coronil tablet for sale in the open market. It was further stated that the turnover of the 1st defendant was about Rs.100 crores in 2010 – 11 and had increased to

Rs.9500 crores in 2018 – 19. It had been stated that more than Rs.100 crores had been spent in setting up a state of the art infrastructure to conduct research, in relation to ancient Indian knowledge of Ayurveda.

15. It had been further stated that the application for registration of the trademark “Coronil Tablet” is in the status of “Marked for Exam”. It was further stated that the Government of India, Ministry of Ayush by letter dated 06.03.2020 had issued an advisory about intervention using Ayush system of medical treatment. It was also stated that the said Ministry of Ayush, recommended immunity boosting measures after consulting various experts including Acharya Balkrishna, who is on the Board of the defendants. A further letter was issued on 02.04.2020, by the Ministry, to complete the licensing/approval/renewal process of the manufacturers within a week, provided the prescribed standard and relevant provisions of the Drugs and Cosmetics Rules, 1945 are fulfilled. A further letter was issued on 20.04.2020. It was specifically claimed that on 12.06.2020, the Licensing Authority for Ayurveda and Unani Services, Uttarakhand, had issued permission to Divya Pharmacy, for three tablets namely, (i)Divya Coronil Tablet, (ii)Divya Saswari Vati 540 MG and (iii)Divya Saswari Vati 350 MG.

16. It was stated that Coronil Tablet was specified as an Immunity Booster. It was further stated that the Patanjali Research Foundation Trust, had issued a letter dated 23.06.2020, to the Ministry of Ayush informing them about clinical trials conducted by using Ayurvedic medicines for Coronavirus treatment at the NIMS University, Jaipur, and that Coronavirus infected persons recovered after using certain Ayurvedic medicine. The Licensing Authority in Uttarakhand, issued a letter dated 24.06.2020, calling for clarifications and a reply was also issued on 26.06.2020. It was further stated that on 30.06.2020, the Ministry of Ayush, issued an E-mail to the Licensing Authority in Uttarakhand, that Patanjali Research Foundation Trust, may continue clinical trials by following the provisions as notified in the Gazette Notification No.L.11011/8/2020/AS dated 21.04.2020. It was stated that after the e-mail of the Ministry of Ayush, dated 30.06.2020, Divya Pharmacy started to commence sales of the product Coronil from 01.07.2020.

17. It was stated that various cases have been filed against the defendants including a Public Interest Litigation before the Uttarakhand

High Court, Writ Petition in Rajasthan High Court, a complaint before the Muzaffarpur District Court (Bihar) under Section 156(3) of Cr.P.C., for registration of FIR and another complaint before the District Court at Chandigarh under Section 156(3) of Cr.P.C., for registration of FIR and a further complaint before the District Court at New Delhi, also under Section 156(3) of Cr.P.C., for registration of FIR, which according to the defendants had been dismissed.

18. With respect to the averments made in the affidavit filed in support of O.A.No.258 of 2020, it had been stated that the goods/products sold by the plaintiff and the Coronil tablet sold by Divya Pharmacy are altogether different and belong to different classes and that it is settled law that a proprietor of trademark cannot enjoy monopoly over the entire classes of goods.

19. The defendants also raised legal submissions stating that there is no similarity between the Coronil tablet sold by Divya Pharmacy and the chemical products sold by the plaintiff which are used for sanitizing and cleaning heavy industrial machinery and containment units at factories. It was stated that the products sold by the plaintiff fall under

Class 1 and the Coronil tablet sold by Divya Pharmacy fall under Class 5. It was therefore stated that there is no similarity between the products. It was further stated that there was no bar to register a trademark and continue to operate, even if the goods come under the same class. It was also further stated that the claim of the plaintiff that there has been dilution is unsustainable.

20. It was stated that the pre-conditions that the mark of the plaintiff is a well known mark and has a wide reputation have to be proved by the plaintiff. It was stated that apart from an unverified client list and an unaudited and unverified table of sales figures, the plaintiff had not produced any other evidence to show that the plaintiff's products have gained reputation in the market. The name "Coronil" was also justified stating that it is common practice in the field of pharmaceutical drugs to name the drug after the ailment/organ/medical compound. It is stated that the determination of the mark Coronil is bonafide, since it is used as an immunity booster against the Coronavirus.

21. It was stated that the class of goods for which the plaintiff has obtained registration and the class of customers, the market and the

mode of sales are completely different from that of the defendants. It was also stated that a perusal of the two marks would reveal that even on visual appearance, the two marks are different and they also relate to different products. It was stated that an average man of ordinary intelligence would not associate the goods of the plaintiff with the goods of the defendant. It was also stated that the plaintiff cannot divide one word from their mark and seek an order of injunction against the defendants. It was also stated that the plaintiff have not filed even a single document to show that the mark is distinctive or has attained significance.

22. It was also stated that the plaintiff are aware that they have a weak case on hand, and it was for that reason that they have not challenged the registration of the “Coronil tablet” mark applied by Divya Pharmacy. It was also stated that the order of injunction is causing immense prejudice and hardship to the defendants, as it would damage the reputation and brand of the defendants which have been built all these years. It was again reiterated that the turnover of the defendants which was Rs.100 crores in 2010-11 had increased to Rs.9500 crores in the year 2018-19. It was also stated that more than Rs.100 crores has

been spent in setting up the state of art infrastructure in conducting research in relation to ancient Indian knowledge of Ayurveda. It was also finally submitted that in the troubled times of Covid-19 pandemic, Divya Pharmacy had created an immunity booster for the benefit of the general public, which is sold through the stores of the defendants.

23. It was also stated that large number of public will not be able to take advantage from the immunity booster tablets. It was stated that Divya Pharmacy had distributed their products to all their agents across the country and recalling the goods would cause immense prejudice and hardship to the defendants. It was stated that the defendants have a prima facie case and that the balance of convenience is in favour of the defendants. It was therefore stated that the order of interim injunction should be suspended in the first instance and vacated entirely and that the applications should be allowed.

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Counter affidavit of 2nd defendant in O.A.No.258 of 2020:-

24. The 2nd defendant who had been newly impleaded filed a counter affidavit. They adopted the averments made in the affidavit filed in support of A.Nos.1532 and 1533 of 2020. It was stated that the

products of the plaintiff namely, “Coronil 92 B” and “Coronil 213 SPL” are used for industrial purposes for machine use, whereas, the “Coronil tablet” manufactured by the defendants is used for human consumption. It was therefore stated that the two products operate in different spheres and classes. It was stated that the customers are also completely different. It was stated that a perusal of the brochure of the plaintiff company would reveal that the plaintiff is only a dealer of foreign products using the brand name “Duromar” and that the brochure does not even use mark Coronil SPL 213 or Coronil 92. It was also stated that the plaintiff’s mark is only a registered mark, but is neither a recognized mark nor a reputed mark and is certainly not a well known mark. It was stated that the plaintiff has not filed any material to show the packing of their products. It was stated that the plaintiff has no right over the mark across various classes. It was stated that several other registrations are pending in the name, Coronil and the list was also given in the affidavit. It was further stated that the trademark Divya had been registered under various classes for as many as 91 different products. It had been stated that the mark has to be seen as a whole and not in a selective manner. It was stated that the statutory protection granted under the Trade Marks Act, 1999, would be applicable to the defendants also.

Common reply affidavit in A.Nos.1532 and 1533 of 2020, filed by the plaintiff:

25. The plaintiff reiterated that they had knowledge of the infringing product only in June, when reports emerged of a “Cure” being touted by the defendants. It was stated that the publicity for the product Coronil by the defendants canvassed the name of the defendants alone and that the tablet is associated only with the defendants and not with Divya Pharmacy. It was stated that both the entities are part of the same Pathanjali group and therefore any order would bind the management of both the companies. It was stated that only an application has been filed by the defendants for registration of the mark “Coronil Tablet”. The press reports have been reiterated and it had been stated that the infringed tablet box was easily available in online. It was stated that application for trademark by the defendants has no bearing on the infringement claimed by the plaintiff. It had been stated that the plaintiff had already pleaded that the products are dissimilar and do not fall within the same class. However, it was further stated that even in dissimilar class and industries, a registered trademark is protected under law. It was stated that the name Coronil was chosen by the defendants as an immunity

booster against Coronavirus, but it was marked as a 'cure' that had '100% favourable results' and that these claims were without due cause. It was stated that reference to an average man's confusion are irrelevant, since it is not an action for passing off, but to protect the statutory right granted against infringement. It was also stated that the defendants having applied for the mark 'Coronil' cannot state that the plaintiff's mark is not distinctive. It was stated that the defendants had attempted to market the infringed products through their stores. It was stated that economic considerations cannot outweigh the law. It was stated that the defendants had not checked the names of the marks already registered and protected by law and therefore cannot plead equity.

Documents filed by the plaintiff:-

26. Along with the plaint, the plaintiff filed a copy of their Registered Trademark Certificate dated 14.06.1993, for class 1, under No.599279 for “acid inhibitor for industrial cleaning, chemical preparation for industrial use”, with respect to trademark “CORONIL-92 B” and also for “CORONIL-213 SPL” under No.599281. They also filed a copy of the defendants' product namely “CORONIL TABLET” box. The plaintiff also filed the list of their customers and also the sales

turnover from 2015 – 2016 to 2019 – 2020. The plaintiff also filed the copies of India TV news report dated 14.06.2020, Times Now news report dated 23.06.2020, Financial Express news report dated 24.06.2020, Live Mint news report dated 25.06.2020, India Today news report dated 27.06.2020 and Express Pharma news report dated 02.07.2020.

27. The plaintiff also filed an additional set of documents giving the plaintiff's list of customers and the plaintiff's sales invoice from 2015 – 2016 to 2019 – 2020, certified by the plaintiff and by an auditor respectively. They also filed a copy of the “Divya Corona Kit” wherein, the name of the defendants has been embossed on the packaging. They also filed an article from the India Today dated 25.06.2020, an article from Zee News dated 03.07.2020, an article from India Today dated 03.07.2020, an article from the New Indian Express dated 15.07.2020 and an article from the Deccan Chronicle dated 16.07.2020.

28. Since the defendants in their counter and in the affidavit filed in support of A.Nos.1532 and 1533 of 2020 had questioned the authenticity of the list of customers of the plaintiff, a second additional

set of documents was filed along with an additional affidavit, in which the brochure of the Coronil product of the plaintiff was enclosed and the contracts with NTPC for chemical cleaning at Barh and Khargone, chemical cleaning for BHEL at Tuticorin, chemical cleaning for Samsung Engineering, chemical cleaning tender for Indian Oil Corporation, chemical cleaning at AES-MASINLOC, Philipines and the approval of Engineers India of “Coronil” as their inhibitor and the work completion report on chemical cleaning issued by Reliance Industries Ltd., and the inspection report of chemical cleaning for Salalah-2 Independent Power Project were also enclosed.

Documents filed by the defendants:

29. The defendants filed the copies of correspondence with the Ministry of Ayush dated 06.03.2020 and an Advisory issued in April – 2020 and a letter dated 02.04.2020 and a Notification dated 21.04.2020. They also filed the letter by the Licensing Authority, State of Uttrakhand, dated 12.06.2020 and also a copy of the application made by Divya Yog Mandir Trust for registering the trademark “Coronil Tablet”. The letter sent by Patanjali Research Foundation Trust to the Drug Policy Section of Ayush Minsitry, dated 23.06.2020, was also filed. The notice by the

Licensing Authority dated 24.06.2020, and the reply by Divya Pharmacy dated 26.06.2020, were also enclosed. The E-mail dated 30.06.2020 sent by the Ministry of Ayush was also filed. The tax invoice dated 01.07.2020 was also filed. The Certificate issued by the statutory auditor of the defendants and the Company master data of the defendants and the label of “Coronil Tablet” and the Board Resolution dated 09.05.2020, were also filed.

30. The 2nd defendant also filed an additional typed set of papers, which included the brochure of the plaintiff company and the certificate issued by the Statutory Auditor of the 2nd defendant and a copy of the news article from the website Indiatoday.in dated 01.07.2020. They also filed the authorization letter dated 03.07.2020, authorizing the signatory to file the counter affidavit of the 2nd defendant.

The arguments – on facts:-

31. Mr.P.R.Raman, learned senior counsel, on behalf of the plaintiff, stated that the plaintiff / a Private Limited Company registered under the Companies Act, 1956, is in the business of chemical cleaning and manufacturing of Material Handling Systems and Polymeric Epoxies for various factories in India and abroad. The learned senior counsel

stated that the plaintiff had been carrying on business for over 20 years and has a very significant reputation in the nature of business in which it is involved. The plaintiff had registered two trademarks namely, “Coronil – 92 B” and “Coronil - 213 SPL”. The registration is in force till 2027.

32. The learned senior counsel also pointed out the list of national and international customers of the plaintiff and further stated that the plaintiff has approximately 90% of the market share of pre-commissioning chemical cleaning opportunities of new power plants in the private sector. It also undertakes chemical cleaning work in refineries and petrochemical units in India. The learned senior counsel stated that the plaintiff had also undertaken jobs overseas in countries such as Oman, Vietnam, Uganda, Malaysia, Singapore, Kuwait, Sri Lanka, and Phillipines. It was therefore pointed out that the plaintiff has built and established a substantial repute over their product Coronil.

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33. In this connection, the learned senior counsel pointed out the additional documents filed relating to contracts with NTPC, BHEL, Samsung Engineering Company Limited, Indian Oil Corporation and Reliance Industries to mention a few companies, and stated that as a

matter of fact, that apart from other chemical agents used for such as cleaning purposes which are named acids, it is only, the plaintiff's registered trademark "Coronil" which have been uniquely and distinctively mentioned as one of the cleaning agents. The learned senior counsel also stated that usage of the products of the plaintiff 'coronil' has also been placed as a pre-condition to participate in tenders invited by major industrial units for huge machineries like Power Plant Boilers. The learned senior counsel was therefore emphatic in his submission that the plaintiff has established a substantial goodwill and reputation. The sales figures quoted in the documents filed along with the plaint, were 3rd party sales alone and learned senior counsel stated that the value of the contracts entered into by the plaintiff would run into substantially higher amounts.

34. With respect to the registration of the trademark, the learned senior counsel pointed out the certificate of registration for both "Coronil – 92 B" and "Coronil - 213 SPL" and stated that the unique portion of the trademark in both the instances were the word 'Coronil' and that was the distinctive portion of the registered trademark also. The learned senior counsel stated that infringement of the word Coronil would

seriously affect the reputation of the plaintiff, since the very word had been coined originally by the plaintiff for the abbreviated form of 'Corrosion + Nil'. He pointed out that the chemical agent is used to prevent corrosion and therefore the trademark and name Coronil is directly connected with the nature of business in which the plaintiff is involved.

35. The learned senior counsel then stated that to the shock of the plaintiff, a series of reports came about in the press and electronic media about launching of a product to cure the dreaded viurs Coronavirus, which is prevalent across the length and breadth of the country and in the world. But however, conflicting reports with respect to the nature of the product and its performance would indicate that infringement of the trademark Coronil by the defendants would seriously harm the reputation of the plaintiff. The reports indicated that there was a shift in the stand by the defendants from first projecting their product as a cure for Coronavirus, and then to it being an immunity booster against cough and fever and not a drug for cure of Coronavirus. The learned senior counsel wondered that if the product of the defendant is not related to Coronavirus, why there was an insistence to retain the name Coronil. He

imputed that it was to mislead people into believing that the tablets marketed by the defendants would in fact cure Coronavirus which as a fact is not true.

36. In this connection, the learned senior counsel took the Court through the various press reports, primarily for the purpose, to establish that the defendants have no due cause to use the trademark Coronil. The learned senior counsel stated that the term “due cause” should be interpreted as “just cause” and stated that the defendants have been neither honest in their projection of the efficacy of the treatment for the cure of Coronavirus nor have been honest in admitting that it is not actually a cure.

37. However, the packaging of the defendants product was pointed out and the popular image of the Coronavirus was pointed out by the learned senior counsel and stated that while it was meant to be only an immunity booster, the actual intention was to mislead the general public into a belief that the tablets were for cure of Coronavirus. Not only was the word 'Coronil' used but also a pictorial representation of the Coronavirus was also imprinted on the label of the box containing the tablets.

38. The learned senior counsel stated that Section 29(4) of the Trade Marks Act, 1999, protects the owner of a registered trademark, even when there is an attempt to use the very same trademark for dissimilar industries. There has been a diluting of the distinctiveness of the plaintiff's trademark by the defendants' usage of the very same word 'Coronil'. This had effectively diminished the value of the plaintiff's trademark.

39. The learned senior counsel also pointed out that if the defendants were to be permitted to use the trademark, then there would be a mushrooming effect, with other similarly placed establishments, attempting to mislead the public by using the name Coronil, as a cure for Coronavirus. when as a fact, there is no cure as on date for the said virus. The learned senior counsel also stated that public interest will be put to jeopardy if the defendants were to be allowed to project their tablets as a cure for Coronavirus. The learned senior counsel stated that the defendants can market their immunity booster tablets in any name they want, but permitting them to use the trademark 'Coronil' which is registered by the plaintiff would not only erode the value of the plaintiff's

trademark, but would also encourage the misleading attempt at projecting a cure for the Coronavirus.

40. The learned senior counsel pointed out the communication from the Ministry of Ayush, wherein, they have very specifically stated that there was no approval for marketing the tablets as a cure for Coronavirus treatment. He further pointed out that the defendants had admitted that they have effected sales of the Coronil tablet and stated that the Coronil kit is available at any place in the country. The learned senior counsel stated that the plaintiff had made out a prima facie case for confirming the order granting interim injunction.

41. Mr. Sathish Parasaran, learned senior counsel, on behalf of the defendants, disputed the arguments put forth and stated that the defendants are a Rs.10,000 crores company and wondered at the incongruity of the statement that a Rs.10,000 crores company would ride on the reputation of a Rs.10 crores company. The learned senior counsel stated that the defendants had established their name in national as well as international markets and 'Pathanjali' is a well known trademark recognized by the Registry. The learned senior counsel stated that the

suit itself is part of a larger conspiracy against the defendants. He stated that though the suit had been filed seeking protection of the plaintiff's trademark from infringement, the pleadings reveal the actual intention of the plaintiff, as part of a larger conspiracy against the Pathanjali group to scuttle their business immediately following the launch of the Coronil tablet which is an Ayurvedic medicine. The learned senior counsel repeatedly pointed out that the defendants are a 10,000 crores company, manufacturing Mineral and Herbal Products and also pointed out that the defendants had spent nearly Rs.100 crores in establishing a state of the art infrastructure for research in Ayurvedic medicines.

42. The learned senior counsel pointed out that the defendants had also applied for registration of the trademark 'Coronil Tablet' by A.No.4532424 dated 16.06.2020, before the Trademark Registry at New Delhi. The learned senior counsel stated that the plaintiff can always oppose such registration, and therefore stated that the suit itself is not maintainable. The learned senior counsel also stated that it is common in the field of Pharmaceutical industries to name a drug after an ailment and in this case, since the tablet can be used as an immunity booster against the Coronavirus, the defendants had coined the name Coronil. He

also stated that on a visual look at both the marks, it would be evident that they are not similar. Moreover, the plaintiff's marks are composite marks having a droplet ending with the letter 'A' and then the name 'Coronil' and then the suffixes '92 B' and '213 SPL' respectively. Therefore, he stated that it being a composite mark, the plaintiff cannot seek protection of a single word in the composite mark.

43. The learned senior counsel also stated that the industry in which the plaintiff and the defendants operate are totally different and therefore, there was no possibility of there being any confusion in the minds of any individual over the usage of the name Coronil by the defendants. The learned senior counsel also stated that the plaintiff has no reputation whatsoever and pointed out the sales figures as projected and stated that the plaintiff sales has actually been diminishing from year to year and the plaintiff has only 31 customers, whereas, the defendants have a turnover of nearly Rs.10,000 crore and nearly a million customers.

44. The learned senior counsel also pointed out that the claim of the plaintiff that their mark is being diluted is unsustainable, since the

plaintiff will have to prove, that their mark is a well known mark and has a wide reputation within India. It has been stated that the sales figures and the list of clients produced are unverified and contrasted that with the extreme extravagance enjoyed by the defendants. The learned senior counsel stated that the plaintiff does not have any prima facie case and since the defendants have also commenced marketing and packaging their products and distributing the same across the length and breadth of the country, the balance of convenience is entirely in favour of the defendants. He also stated that in these troubled times when the general public are yearning for a cure for Coronavirus, the defendants have produced such a cure and it would be of great benefit to the general public if 'Coronil Tablets' are sold to them. The learned senior counsel therefore stated that on facts, the plaintiff has not made out any case for confirmation of the grant of injunction.

The arguments - on law:-

45. Mr.P.R.Raman, learned senior counsel for the plaintiff took the Court through Sections 28 and 29 of the Trade Marks Act, 1999, and also pointed out Section 30 of the said Act. The learned senior counsel stated that protection granted in Section 29 of the Trade Marks Act, 1999, was

not prevalent in the earlier 1958, Act, particularly, Section 29(4) of the said Act, was not in the statute book in the earlier Trade Marks Act, 1958. According to the learned senior counsel, Section 29(4) of the Act, provides for protection from infringement of a registered trademark by a person who is not a registered proprietor and uses a mark which is identical or similar to the registered trademark and uses it in relation to goods which are not similar to the one for which the trademark is registered and the use of the unregistered mark is without due cause and takes unfair advantage of the reputation of the registered trademark and is detrimental to the distinctive character of the registered trademark.

46. In this connection, the learned senior counsel pointed out that the plaintiff had registered their trademark as early as 1993 and stated that the further condition, that the unregistered mark of the defendants relates to a dissimilar industry is also satisfied and further pointed out that the unregistered mark is identical and similar to the registered trademark, in view of the very fact, that it is the very same word 'Coronil'. With respect to the distinctiveness, he pointed out that the very act of the defendants in applying for registration of their name 'Coronil' shows that the word 'Coronil' is distinctive. The learned senior counsel

pointed out that the shift in the stand from initially projecting a treatment for Coronavirus to later stating it as an immunity booster, but retaining the pictorial representation of the Coronavirus in the label and retaining the name 'Coronil' shows that the defendants are infringing the registered trademark without due cause and without a just cause.

47. The learned senior counsel pointed out that Section 30 of the Trade Marks Act, 1999, which is a limiting provision and stated that the defendants can never take recourse to that section. The learned senior counsel pointed out Section 11 of the Trade Marks Act, 1999 and stated that the defendants had only applied for registration and the procedure for registration is a long drawn process and only after publication will the plaintiff have an opportunity to oppose registration. He stated that the suit was for infringement of the registered trademark and the learned senior counsel brushed aside all allegations of the plaintiff being part of a larger conspiracy to scuttle the business of the defendants.

48. Mr.Sathish Parasaran, learned senior counsel, on the other hand, stated that Section 11(2) of the Trademarks Act, stipulates that the earlier trademark should be a well known trademark in India and

lamented that the legislatures have unfortunately used the words “has a reputation in India” in Section 29(4)(c). This was compared with the words used in the UK Trademarks Act, 1994, were under Section 5(3) and under Section 10(3), the words used were consistent and related only to “reputation in the UK”.

49. The learned senior counsel stated that the plaintiff will have to establish that they have a reputation in the community and that the defendants are taking unfair advantage of its distinctive character and that the usage by the defendants would be detrimental to the distinctive character or repute of the trademark and that the defendants are using it without due cause. The learned senior counsel pointed out the absurdity in the construction of Section 29(4)(c) of the Trade Marks Act, 1999, wherein, if registration of a trademark is applied and there is an opposition by the proprietary of an identical mark, even for dissimilar goods, then the Registry would examine, whether the opponent's mark is a well known mark and if not, then registration cannot be denied.

50. The learned senior counsel pointed out that however a Civil Suit by the unsuccessful opponent for infringement would be based on

'reputation' under Section 29(4)(c) of the Trademarks Act, 1999, and injunction can be sought and even granted. This parody in the legislation was pointed out by the learned senior counsel. The learned senior counsel also pointed out Sections 15 and 17 of the Trade Marks Act, 1999, and stated that the plaintiff has not registered parts of the mark and specifically pointed out that the registration of the plaintiff contained droplets ending with the letter 'A', the word 'Coronil' and '92 B' or '213 SPL' as the case may be and stated that the plaintiff cannot seek protection of one word 'Coronil' which is not permitted.

51. The learned senior counsel further pointed out that there could be no confusion in the mind of any individual over the usage of the product of the plaintiff 'Coronil', which is used as an anti-corrosion chemical agent for industrial purposes and the 'Coronil Tablet' of the defendants which are used for human consumption as an immunity booster for the Coronavirus. The learned senior counsel further also stated that the plaintiff's mark is known only to a very small number in the industrial fraternity and that the plaintiff also has a very small market of only 31 customers and stated that the plaintiff, by no stretch of imagination can claim either dilution of their mark or damage to

reputation or even tarnish of reputation. The learned senior counsel therefore stated that the provisions of law support the case of the defendants and having applied for registration under Section 11 of the Act, the plaintiff must be directed to oppose such registration and the suit for infringement is not maintainable and particularly, grant of interim injunction is not warranted.

Precedents Cited:-

52. Mr.P.R.Raman, learned senior counsel placed reliance on ***(2011) 4 CTC 417 (DB), Blue Hill Logistics Private Ltd., Vs. Ashok Leyland Limited***. Reliance was also placed on the order of the learned Single Judge in the very same case in ***Ashok Leyland Limited Vs. Blue Hill Logistics Pvt. Ltd and Ors.***, reported in ***MANU/TN/3562/2010***.

Both the learned Single Judge and the Division Bench had affirmed the right of the plaintiff, Ashok Leyland Limited to seek protection from infringement of their registered trademark 'Luxura'. The plaintiff was engaged in the manufacture and sale of commercial vehicles and had coined and adopted the trademark Luxura in the year 2006, with respect to commercial vehicles / comfort buses equipped with distinctive features catering to the needs of the passengers relating to comforts and

luxurious travel. The mark Luxura was also registered on 20.04.2007, in class 12 relating to Motor Vehicle Chassis and such other apparatus for commercial vehicles. The Luxura bus was launched in January, 2006 and had been sold to various customers across the country. The 2nd defendant, Dilip Chhabria Design Private Limited, had designed and engineered a business class bus under the mark 'Luxuria'. The plaintiff had issued a legal notice and thereafter had instituted a suit seeking protection of their registered trademark Luxura from infringement.

53. The learned Single Judge, in order dated 21.12.2010, reported in *MANU/TN/3562/2010*, had confirmed the grant of interim injunction granted earlier and had also dismissed the applications seeking to vacate the interim injunctions. The matter was taken up on appeal before the Division Bench, reported in *2011 4 CTC 417 (DB)*, *Blue Hill Logistics Private Ltd., Vs. Ashok Leyland Limited*. The learned senior counsel pointed out the reasoning of the Division Bench and stated that the Division Bench had held that even though the words Luxura and Luxuria are derivated from the word 'luxury', the 1st defendant cannot be said to have adopted the mark 'luxuria' with due cause. The Division Bench had also examined the issue with respect to Section 29(4)(c) of the Trade

Marks Act, 1999, and had held that there would be confusion in the minds of the common man owing to the two similar marks.

54. The learned senior counsel also placed reliance on the order of the Division Bench in ***O.S.A.Nos.4 to 12 of 2020, M/s.Matrimony.com Limited vs. Kalyan Jewellers India Limited***, particularly to paragraph 7, wherein, the Division Bench had extracted relevant portions of an earlier judgment in ***Orchid Chemicals & Pharmaceuticals Ltd., Vs. Wockhardt Limited***, reported in ***2013 (56) PTC 558***, wherein, relationship between Sections 29 and 30 of the Trademarks Act, 1999, along with their respective scope and ambit had been considered. It had been held that, in a case, where a party used a registered trade mark belonging to another one and if it is in accordance with honest practices or (not) detrimental to the distinctive character of the different trademark, then there would be no infringement. The learned senior counsel therefore pointed out that the Court should examine, whether the defendants' usage can be termed as honest practice or whether the usage is detrimental or not to the distinctive character of the registered trademark.

55. The learned senior counsel then relied on ***ILR (2010) 2 Del 455, ITC Limited Vs. Philip Morris Products SA and Ors.*** It must be pointed out that this judgment was also relied on by the learned senior counsel for the defendants. Even before examining the ratio laid down, it must be pointed out that in the said judgment reference had been made to the judgment in ***General Motors Corporation Vs. Yplon SA***, in case ***C-375/97***, in the Court of Justice of European Union, in Luxembourg, from a reference from the Tribunal of Commerce and Trade, Belgium, under Article 177 of the EC Treaty (subsequently Article 324 of EC Treaty) seeking a preliminary ruling on the interpretation of Article 5(2), which was as follows:

“2.Any Member State may also provide that the proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trade mark in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the Member State

*and where use of that sign without due cause
takes unfair advantage of, or is detrimental to,
the distinctive character or the repute of the
trade mark.”*

56. It is seen that a plain reading of the said article states that the proprietor shall be entitled to prevent all third parties from using any sign similar to the trademark, even with relation to goods which are not similar for which the trademark had been registered and for which the registered trademark holder has a reputation in his State and when usage of such registered trademark without due cause takes unfair advantage or is detrimental to the distinctive character or reputation of the registered trademark. The Court of Justice of European Union at Luxembourg, had answered the reference stating that interpretation to Article 5(2) should be such that the registered trademark must be known by a significant part of the public concerned in relation to the products or services which it covers. This judgment, as stated above has been referred in ***ITC Limited Vs. Philip Morris Products SA and Ors***, reported in ***ILR (2010) 2 Del 455***, in paragraph 38.

57. The learned senior counsel also referred to ***Bloomberg Finance LP V. Prafull Sakiecha and Ors.***, reported in (2014) 207 DLT 35, wherein, a learned Single Judge had, among other reasons, opined in paragraph 65, that the reason given by the defendants for adopting 'Bloomberg' as part of their corporate name is prima facie not convincing, since they themselves had applied for and obtained registration of the said mark and therefore cannot doubt its distinctiveness. The learned Single Judge had held that it was difficult to accept that adoption of the name 'Bloomberg' was honest.

58. In paragraph 55, the learned Judge had also observed about the spree of registration of companies using 'Bloomberg' as part of their corporate name and had held that they were trying to encash on the goodwill and reputation attached to that mark. Further in paragraph 57, the documents placed by the plaintiff which showed that the activities of the defendants had attracted negative publicity was also noted by the learned Single Judge.

59. The learned senior counsel also referred to ***Dharampal Satyapal Limited V. Suneel Kumar Rajput & Anr.***, reported in (2013)

204 DLT 348, wherein, while examining the provision under Section 29(4) of the Trade Marks Act, 1999, the learned Single Judge had observed that it may not be necessary for the proprietor of a registered mark to show that it is a 'well-known trademark' as defined in Section 2(zg). It was also stated that the presumption of distinctiveness is a rebuttable one. But whether the elements are satisfied would depend on the evidence led by the parties at trial. Again in paragraph 18, the learned Single Judge had observed that since admittedly, the defendants have applied for registration of their mark, they cannot plead that the mark of the plaintiff was not a distinctive mark.

60. The learned senior counsel then relied on ***JSB Cement LLP V. Assam Roofing Limited and Others***, reported in ***AIR 2017 Cal 226***, wherein, the Division Bench while examining the distinction between actions for infringement and passing-off had held that mere registration of a mark would entitle the registered proprietor to bring an action for infringement, but the claimant in a passing off action has to establish the goodwill in the mark or in the business pertaining to the mark. The observations in the said judgment was also referred by Mr.Sathish Parasaran, learned senior counsel for the defendants.

61. Mr.P.R.Raman, learned senior counsel for the plaintiff also referred to the reference answered by the Full Bench of the High Court of Bombay in ***Cipla Ltd., Mumbai Vs. Cipla Industries Pvt. Ltd., Delhi and Anr.***, reported in ***AIR 2017 Bom 75***, wherein, the Full Bench had examined the distinctions between Section 29(4) and Section 29(5) of the Trade Marks Act, 1999. It must be pointed out that Section 29(5) relates to Registration of a Trademark, which is used as a trade name and reference had arisen, since a learned Single Judge had doubted the judgment of the Division Bench in ***Raymond Limited V. Raymond Pharmaceuticals Pvt. Ltd, 2010 (44) PTC 25(Bom) (DB)***.

62. The learned senior counsel also relied on ***Colgate-Palmolive (India) Ltd. V. Anchor Health & Beauty Care Private Ltd.***, reported in ***2008 (4) CTC 675***, wherein, in paragraph 67, the learned Single Judge had observed that the very basis of the law relating to Trademarks is also the protection of public interest and that the same logic should also form the basis for an action in respect to disparaging advertisements. The learned Single Judge had also opined that it was doubtful if false claims about superiority of products in comparison with the products of their rivals is permissible in law.

63. The learned senior counsel also relied on the judgment of a learned Single Judge of this Court in ***N.S.Krishnamoorthy and Another V. Afru Hearing Aid Centre, C.S.No.942 of 2017***, wherein, the learned Single Judge had held that a registration of a composite mark confers upon the registered proprietor, the monopoly over the trademark taken as a whole. The learned Single Judge had examined the registered mark and the infringing mark with respect to the trademark 'Hearing Aid Centre' and had held that the defendant by merely adding the word 'Afru' in smaller print cannot put forward a case of distinctiveness and had decreed the suit, granting the relief sought by the plaintiffs.

64. Mr.Sathish Parasaran, learned senior counsel for the defendants pointed out the facts in ***(2011) 4 CTC 417 (DB), Blue Hill Logistics Private Ltd., Vs. Ashok Leyland Limited***, and stated that both the plaintiff and the defendants were in practically allied industries. The plaintiff is a manufacturer of luxury buses and the defendants had also designed a luxury bus. Both the buses were used for passengers to travel in luxury. The learned senior counsel pointed out that in the instant case, the plaintiff and defendants are operating in separate orbits and therefore

stated that the said judgment should be distinguished and the observations therein cannot be held to directly binding on the facts of the instant case.

65. The learned senior counsel also relied on *ITC Vs. Philip Morris* reported in *ILR (2010) II Delhi 455*, wherein, the ingredients to constitute dilution under Section 29(4) of the Trade Marks Act, 1999, had been given and pointed out that among the ingredients, the registered mark must have a reputation in India, which the plaintiff does not have and the defendants mark should be without due cause, but pointed out that it is with due cause that the defendants have adopted the mark 'Coronil', since it is directly related to ailment for which it provides treatment, namely, Coronavirus. The learned senior counsel stated that it would be improbable to hold that the defendants would take unfair advantage of the reputation of the plaintiff, since they are in a different business altogether and it is a Rs.10,000 crores company and the plaintiff is hardly Rs.10 crore company.

66. The learned senior counsel also relied on the judgment in *General Motors Corporation V. Ypion SA Case, C-375/97 ECJ*, and

particularly to paragraphs 20-28 and stated that 'repute' would mean that it is known by a substantial portion of the public with the products covered by that mark and that knowledge would lead the public to make a connection between the two marks, even for dissimilar products and only then damage can be stated to have occurred.

67. The learned senior counsel pointed out that in this case, it is highly doubtful that the plaintiff has a reputation in the field in which they are functioning, as the plaintiff had been able to produce a list of at the most 31 customers and a decreasing turnover in successive financial years and stated that even the general public associated with the trade of the plaintiff can never draw a connection between the mark of the plaintiff and the mark of the defendants for the simple reason that the plaintiff's mark is used for industrial purposes, while the defendants' mark is used for human consumption.

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68. The learned senior counsel also relied on ***Hollywood SAS V. Souza Cruz***, reported in ***2002 ETMR 64***, wherein, the applicant had sought to register the trademark 'Hollywood' in respect of cigarettes, tobacco products, lighter and matches, which was opposed by the

opponent, citing a prior registration of 'Hollywood' in France for chewing gum. Among other grounds, the opponent had raised a ground that their mark was associated with youth, health and dynamism and this would be damaged, if the mark were to be used in respect of the products, which had a negative impact insofar as health was concerned. The learned senior counsel pointed out that the difference between reputation and repute had been examined and it had been held that reputation would indicate knowledge by a significant part of the relevant public, while repute would refer to the mark.

69. The learned senior counsel also pointed out the judgment reported in (2009) 156 DLT 1, *Ford Motor Company & Anr., V. C.R.Borman & Anr.*, wherein, the Division Bench of the Delhi High Court had stated that the intention of the Parliament while introducing the Trade Marks Act, 1999, was to extend protection for 'well known trademarks' and stated that the Court should read 'well known trademark' in the place of 'reputation' as provided in Section 29(4)(c) of the Act.

70. The learned senior counsel also relied on *Premier Brands UK Ltd., V. Typhoon Europe Ltd., 2000 FSR 767*, and stated that the phrase

'without due cause' should be read in a commercially sensible manner.

71. The learned senior counsel also relied on *Astrazeneca UK Limited & Anr. Vs. Orchid Chemical & Pharmaceuticals Ltd.*, reported in *ILR (2007) I Delhi 874*, wherein, a Division Bench of the Delhi High Court had observed that in the trade of drugs, it is a common practice to name a drug by the name of the organs or ailments, treatments for which are the main ingredients of the drug. The learned senior counsel pointed out that the mark used by the defendants 'Coronil' is directly related to the treatment to the Coronavirus and therefore, justified the usage of the mark 'Coronil'.

72. The learned senior counsel also relied on *Pebble Beach V. Lomboard Brands Ltd.*, reported in *(2003) E.T.M.R.21*, wherein, the applicant who operated the Pebble Beach golf course and resort in California, were proprietors of the community trade mark for the words '253 Pebble Beach' and raised an objection against the defendants, who were a company registered in the Isle of Man and sold a range of whisky products to the retail whisky trade in UK other than beer. The Court examined whether the use of the mark by the defendants took unfair

advantage or was detrimental to the plaintiff's mark without due cause. The concept of dilution together with blurring and tarnishing were examined and it was held that it was highly unlikely that even if there is detriment to the distinctive character or repute of the plaintiff's community trademark, such detriment will be more than de minimis namely, very negligent. The Court also examined the term 'without due cause' and found as a fact, that the plaintiff did not object to the registration of the mark and that the defendants have therefore, acquired the right to use the mark. It was therefore held that the plaintiff had not made out a prima facie case that the use by the defendants were without due cause.

73. The learned senior counsel pointed out that even in the instant case, the sphere of market for both the plaintiff and defendants were entirely different and the defendants have also applied for registration and it is for the plaintiff to contest such registration. The learned senior counsel pointed out that, then the plaintiff will have to establish that their mark is a 'well known mark'. But under Section 29(4)(c) of the Act, it had been stated that the plaintiff will have to establish 'reputation in India' and stated that this anomaly between the two provisions is very

startling in nature. However, the learned senior counsel stated that the plaintiff should prima facie establish that the defendants had used the mark 'Coronil' without due cause and that by such usage, they had caused detriment to the mark of the plaintiff.

74. In this connection, the learned senior counsel also relied on ***Premier Brands UK Ltd., V. Typhoon Europe Ltd.***, reported in **2000 FSR 767**, wherein a lis was instituted with respect to the marks Ty.phoon and Typhoon. It was claimed that there was a likelihood of confusion and violation of the reputation of the trademark and there was a tarnishing of the reputation of the trademark. This judgment was heavily relied on in ***Pebble Beach*** referred supra. It was found that even though the words appeared to be quite similar, there is a distinction namely, the letter 'N' as a last letter in the word Typhoon and it was held that it was quite a distinguishing feature. The concepts of blurring and tarnishing were also examined and it was held that the proprietor of the registered trademark cannot object, as a matter of course, to the use of a sign which may remind people of his mark. The words 'being without due cause' had also been examined and it was held that though that the words are opaque, they had to be read as not merely governing the words “the use of the

sign”, but also as governing the words “takes unfair advantage of, or is detrimental to”.

75. The learned senior counsel stated that therefore the entire section must be taken as a whole and unless a prima facie case is established by the plaintiff that by the use of the word 'Coronil', the defendants had diluted the mark of the plaintiff in the eyes of the general public, it cannot be said that the defendants have no due cause.

76. The learned senior counsel also relied on the judgment of the learned Single Judge of this Court in ***A.No.2920 of 2019 in C.S.No.33 of 2019, M/s.Patanjali Biscuits Pvt. Ltd., & Anr., V. Hatsun Agro Product Ltd.*** The said application had been filed by the defendants to pass a summary judgment under Order XIII A of C.P.C., as amended by Commercial Courts Act. It had been found that the plaintiff therein was registered holder of the mark “Arokya” and the defendant had commenced to market biscuits under the trademark “Patanjali Aarogya”. The learned Single Judge had stated that the plaintiff's mark is not a well known mark and had sales only in South India and had stated that to attract Section 29(4)(c) of the Trade Mark Act, 1999, the registered

trademark must have reputation in India and that the use of the mark without due cause takes unfair advantage or is detrimental to the distinctive character or repute of the registered trademark. It was found that by usage the word 'Aarogya' along with the word 'Patanjali' for the biscuits manufactured by the defendants can, in no way be detrimental to the milk or milk products of the plaintiff marketed in the name "Arokya". The application was allowed. A summary judgment was passed dismissing the suit.

77. The learned senior counsel also pointed out the note of **J.Thomas McCarthy** in his note of caution in the book, **Trademark and Unfair Competition, 2006**, wherein, it had been stated as follows:

"Once one leaves the reasonable certainty of the likelihood of confusion test and enters the domain of dilution, it is difficult to know where to draw the line. The cases give little guidance, and plaintiffs are continually pressing for more and more protection. One important point is that under the present wide scope of protection afforded by the

modern “return goods” rule of likelihood of confusion, there is not the great need for a dilution doctrine that existed under more restrictive confusion tests that prevailed in earlier days.”

78. The learned senior counsel finally stated that no stretch of imagination could it be implied that the defendants are attempting to ride on the reputation of the plaintiff, since the defendants are 10,000 crores companies and that there was necessary for them to even attempt to ride on the back of a 10 crores company with just 31 customers. The learned senior counsel pointed out the difference in the sphere of operation of both the plaintiff and the defendants and further stated that the defendants are justified in using the mark 'Coronil', since it was a cure for Coronavirus and that in pharmaceutical industry, it is only common that a drug is named after an ailment or an organ for which it is a cure. The learned senior counsel therefore stated that this Court should vacate the order of injunction.

Analysis, Discussion and Determination of the points raised:-

79. I have carefully considered the matters on record and the arguments advanced.

80. Even though this order is passed in O.A.No.258 of 2020, which is an application seeking interim injunction pending disposal of the suit and in A.Nos.1532 and 1533 of 2020, which are applications seeking to suspend and vacate the order of interim injunction, for the sake of convenience, the parties would be referred as plaintiff and defendants.

81. The plaintiff M/s.Arudra Engineers Private Limited, a company registered under the Companies Act, 1956, are in the business of chemical cleaning and manufacturing of Material Handling Systems and Polymeric Epoxies for various factories in India and abroad.

82. It has been contended in the plaint, that the plaintiff has been in the business for the past 20 years and has built a reputation within the industrial fraternity. The plaintiff has also registered the trademarks

“Coronil-92 B” and “Coronil-213 SPL”, in the year 1993. The documents relating to such registration have been filed along with the plaint and they are reproduced below:





83. The said products are used as chemical agents to sanitize and clean heavy industrial machinery and containment units at factories with minimal corrosion thus reducing the overall depreciation in the value of the units. Since the products are an anti-corrosion products, the plaintiff had devised the mark 'Coronil' and had also registered the same. The registration was originally in the year 1993, and it has been renewed and is in force till 2027.

84. The defendants have also introduced a product in the market called 'Coronil Tablet' and it had been alternatively claimed either a cure for Coronavirus, which is prevalent across the world today and / or as an immunity booster to prevent cough and cold. The following is the pictorial representation of the defendants' product:-



85. It is seen that the defendants had also used the very same word 'Coronil', but claimed that it is used since it would cure Coronavirus and therefore they have used the word 'Coronil'.

86. The suit has been filed seeking protection of the registered mark of the plaintiff from infringement. The plaintiff has drawn advantage of Section 29(4) of the Trade Marks Act, 1999. Section 29(4) of the Trade Marks Act, 1999, is as follows:

“29. Infringement of registered trade marks.

1.

.....

.....

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person. using by way of permitted use, uses in the course of trade, a mark which-

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.”

87. Much arguments were advanced on behalf of the defendants that Parliament should have used the words “well known mark in India” instead of what actually is given in Section 29(4)(c) namely, “has a reputation in India”. The said issue will be discussed later.

88. But I will draw inspiration on a very recent judgment of the Hon'ble Supreme Court of the United States in ***Bostock V. Clayton Country, Georgia***, decided on 15.06.2020 and reported in ***2020 U.S.LEXIS 3252***, albeit on an entirely different issue, but wherein, plain interpretation of the words of the statute have been very succinctly stressed by Hon'ble Mr.Justice Gorsuch. I once again repeat that the subject matter in the issue before the Hon'ble Supreme Court of the United States does not relate to trademarks, but that portion wherein, interpretation is given to the reading of the words of a statute are

instructive here. In that case and I would repeat again, which is not related to a trademark infringement, the issue was with respect to expansion of the terms of a statute relating to prohibition of sex discrimination in employment. The employers had agitated interpreting that sex discrimination based on homosexuality and transgender status should be excluded. It was urged before the Court that a plain reading of the statute should not be applied and consideration must be given for undesirable policy consequences which would follow. This was answered in the following manner:-

“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people’s representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations.”

.....

If we were to apply the statute's plain language, they complain, any number of undesirable policy consequences would follow. Cf. post, at 44–54 (ALITO, J., dissenting). Gone here is any pretense of statutory interpretation; all that's left is a suggestion we should proceed without the law's guidance to do as we think best. But that's an invitation no court should ever take up. The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress. When it comes to statutory interpretation, our role is limited to applying the law's demands as faithfully as we can in the cases that come before us. As judges we possess no special expertise or authority to declare for ourselves what a self-governing people should consider just or wise. And the same judicial humility that requires us to refrain from adding to statutes requires us to refrain from diminishing them."

89. Even before proceeding further, a plain and simple reading of

Section 29(4) of the Trademarks Act, 1999, shows that the provision is applicable under the following circumstances:

- (i) the plaintiff's trademark must be a registered trademark.
- (ii) It must be infringed by a defendant who is not a registered proprietary of a mark.
- (iii) the defendant however uses his mark in the course of trade.
- (iv) such a mark used by the defendant should be identical or similar to the registered trademark.
- (v) such a mark should be used in relation to goods which are not similar to the class of goods for which the plaintiff has registered his trademark.
- (vi) the plaintiff's trademark must have a reputation in India.
- (vii) the use of the mark by the defendant without due cause
 - (a) takes unfair advantage, or
 - (b) is detrimental to the distinctive character or repute of the registered trademark.

90. Since at this stage, it has to be examined whether the plaintiff has established a prima facie case for grant of injunction, the plaintiff will have to satisfy the following ingredients:-

(i)that the plaintiff's trademark is registered.

(ii)that the defendants' mark (unregistered) is similar to the plaintiff's registered trademark.

(iii)that the defendants operate/seek to use their mark in a different business altogether.

(iv)that the plaintiff's registered trademark has a reputation in India.

(v)that usage of the said unregistered trademark by the defendants is without due cause.

(vi)that such usage of the mark without due cause takes unfair advantage or is detrimental to either the distinctive character or the repute of the plaintiff's mark.

91. Even before examining further, the lamentation of Mr.Sathish Parasaran, learned senior counsel, that the intention of the Parliament is not reflected under Section 29(4)(c) of the Trade Marks Act, 1999, has to be addressed. The learned senior counsel stated that Parliament actually intended to use the word “well known mark in India” but the enactment contains the words “has a reputation in India”.

92. In this connection, the learned senior counsel placed reliance on the following portion in **(2009) 156 DLT 1 (DB), Ford Motor Company & Anr. Vs. C.R.Borman & Anr**, wherein, it was held as follows:

“16. The learned Single Judge has interpreted Section 29(4) in a manner that would afford protection to a Plaintiff only in respect of the class in respect of which registration of the trademark has been carried out. The learned Single Judge has opined that the primary objective of the Act is to restrict protection to trademarks in respect of the Class under which it has been applied and registered. The view of the learned Single Judge is that the intendment of the Act could not be for a blanket protection to be made available to a trademark in respect of the entire gamut of classes. What should not be lost sight of is the fact that Section 29(4) is palpably an exception to the scheme of the Act and applies only to those trademarks which have earned a reputation in India. If it is, prima facie, clear or it is proved through evidence that the concerned trademark enjoys and commands a reputation in India, the

Plaintiffs do not have to prove deception on the part of the Defendants or likelihood of the customer being misled because of the use of the challenged trademark. Once the Plaintiffs have made out a case that the offending trademark is identical with or similar to its registered trademark, relief would be available even if the purveyed goods are not similar and/or fall in the same category or class. On a careful comparison of Section 29(4) with other provisions of that section as well as the Act, this legal position commends itself to us. It is impermissible to ignore all these features of Section 29(4) only because they may be seen as running counter to other provisions of the Act. This is the very purpose of inserting an exception. It would be advantageous to reproduce the sentence from 'Parliamentary Discussion on the Trademarks Act, 1999' which reads thus—'The proposed Bill seeks to introduce protection for registration of trademarks for services in addition to goods. It also seeks to extend protection for well known trademarks and to do away with the system for registration in Parts A and B and to provide for a single computerised register with a simplified procedure for registration with equal rights' Well-known trademarks, it is worthy of reiteration, have

been specifically dealt with in Section 29(4) and it would be jurally impermissible to dilute or water down the intendment of the Legislature.”

93. The learned senior counsel further expanded his arguments by pointing out Section 11(2) of the Trademarks Act, 1999, which provides that a trademark which is identical with or similar to an earlier trademark and is sought to be registered for goods which are not similar for which the earlier trademark had been registered in the name of a different proprietor shall not be registered if the earlier trademark is a well known trademark. The learned senior counsel stated that this provision raises a parody in law, whereby registration of a subsequent trademark could be refused only if the earlier trademark was a “well known trademark”, but, an injunction can be granted by the Courts from usage of a trademark, even if the earlier registered trademark is not necessarily a “well known trademark”, but simply “has a reputation in India”. The learned senior counsel stated that this grading down in Section 29(4)(c) of the Act, seriously affects the prospects of the defendants because, the trade name of the defendants 'Patanjali is a well known trademark and contrasted that with the trademark registered by the plaintiff namely, 'Coronil',

which is not a well known trademark and lamented that a lower degree of appreciation is cast upon the Courts, since the Court will have to examine only whether the plaintiff's mark has a 'reputation in India', notwithstanding the fact, it is not at all a 'well known trademark'.

94. With due respects I differ.

95. With respect to **Ford Motor Company** referred supra, the Division Bench of the Delhi High Court, had extracted a single sentence from the Parliamentary discussion on the Trade Marks Act, 1999, wherein, it had been stated that the proposed bill seeks to introduce protection for 'well known' trademarks and had thereafter stated that well known trademarks have been specifically dealt with in Section 29(4) of the Act and it would be jurally impermissible to dilute or water down the intendment of the Legislature.

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96. The discussion on the Trade Marks Bill, 1999, took place on 22.12.1999, in the Lok Sabha and the Minister of Commerce and Industry, Shri. Murasoli Maran, while moving the bill stated as follows:

“That the Bill to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks of goods and services and for the prevention of the use of fraudulent marks, as passed by Rajya Sabha, be taken into consideration.”

97. Later on, the Minister further stated with respect to registration that protection for 'well known' trademarks is also extended. It must be kept in mind that a 'well known' trademark is defined under Section 2(1)(zg). Section 2(1)(zg) of the Trademarks Act, 1999, is reads as follows:

Sec.2(1)(zg):Definitions and interpretation.-

(1) In this Act, unless the context otherwise requires,-

.....

.....

.....

(zg). “well-known trade mark”, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services be likely to be taken as indicating a connection in the course of trade or rendering of services between those

goods or services and a person using the mark in relation to the first-mentioned goods or services.”

98. In the earlier Act, namely, Trade Marks Act, 1958, there was no comparative definition since there was no concept of a 'well known' trademark. A 'well known trademark' simply did not exist in the statute books. It is not mentioned in Section 29 4(c) of the Trade Marks Act, 1999.

99. The words used by the Parliament are a mark which “has a reputation in India”. It is very consciously used. A careful look at Section 11 of the Act, would indicate that prior to classification as a 'well known mark', under Section 11(6), the Registrar has to taken into account all the following facts:

“11. Relative grounds for refusal of registration:-

.....

.....

.....

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers

relevant for determining a trade mark as a well-known trade mark including -

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any publication for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular, the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.”

100. Further, the Registrar also has to examine the stipulations

under Section 11(7) of the Trade Marks Act, 1999, which are as follows:

“11. Relative grounds for refusal of registration:-

.....

.....

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services, to which that trade mark applies.

101. Thereafter, Section 11(8) of the Trade Marks Act, 1999, is as

follows:-

“11. Relative grounds for refusal of registration:-

.....

.....

(8) Where a trade mark has been

determined to be well-known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.

102. Then Section 11(10) of the Trade Marks Act, 1999, provides as follows:-

“11. Relative grounds for refusal of registration:-

.....

.....

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall -

(i) protect a well-known trade mark against the identical or similar trade marks;

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.”

Thus, when the Registrar after considering a whole gamut of factors recognises a trademark as a “well known mark”, then there is a mandatory and statutory limitation placed on the Registrar to protect that

mark against the registration of an identical or similar trademark.

103. This distinction has been kept in mind by the Parliament, while examining Section 29(4)(c) of the Trade Marks Act, 1999. Section 29 of the Trade Marks Act, 1999, gives protection against infringement of registered trademarks. The various circumstances are given. Section 29(1) of the Trade Marks Act, 1999, is when an identical mark is used for the class of goods, which are similar to the same class for which the registration has been effected. Under Section 29(4) of the Trade Marks Act, 1999, protection is granted even when the offending mark is used for a different class of goods. The only pre-condition is that the plaintiff's mark should have a "reputation in India".

104. In ***AIR 1957 SC 907, Kani Lal Sur V. Paramnidhi Sadhukhan***, it had been held as follows:

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"6. it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words

used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise.”

In the instant case, the words specifically used are “reputation in India”. It means only “reputation in India” and does not mean “well known mark”.

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105. In ***AIR 1970 SC 755, Hansraj Gordhandas V. H.H.Dave, Assistant Collector of Central Excise Customs, Surat and Ors.***, a Constitution Bench of the Hon'ble Supreme Court, while examining whether the appellant was entitled to exemption from excise duty and in

that connection, had an occasion to further examine the language of the notification, held as follows:

“5.It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notificatlon. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co. [(1897) AC 22, 38] :

“Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what

the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.”

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner [6 Moo PCC 8].

“... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there”.

106. It is thus seen that to maintain the sanctity of judicial discipline, the Court cannot by any stretch of imagination impute words not in the provision or in the statute. To reiterate the words are “reputation in India”, nothing more, nothing less.

107. In **1992 Supp(1) SCC 21, Mangalore Chemicals and Fertilizers Limited V. Deputy Commissioner of Commercial Taxes and**

Others, the Hon'ble Supreme Court held as follows:

“24.The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.”

108. Therefore, it is impermissible to zoom the words in a statute to suit the convenience of the defendants. As a matter of fact, the entire discussion itself should not have arisen, but since the proposition was advanced by the learned senior counsel for the defendants, I had an obligation to examine them in detail.

109. It is now obligatory to examine whether the other conditions under Section 29(4) of the Trade Marks Act, 1999, have been satisfied by

the plaintiff herein. The plaintiff has produced as documents along with the plaint, the registration certificates for both the marks, namely, “Coronil-92B” and “Coronil-213 SPL”. Both the trademarks have been registered on 14.06.1993 in class 1 namely, “Acid Inhibitor for industrial cleaning, Chemical Preparations for industrial use” with Registration Nos.599279 and 599281 respectively. These registrations have been renewed lastly for a period of 10 years from 14.06.2017, which in effect means that the plaintiff has a registered Trademark till 2027. The registered trademark of the plaintiff had been extracted above. This has been the subject of attack by the learned senior counsel for the defendants who pointed out the registrations and stated that it is a composite registration, of droplets leading to the letter 'A' and then the name 'CORONIL' and then the suffix ' - ' with digits '92' and '213' and 'space' and the letters 'B' and 'SPL' respectively.

110. The learned senior counsel therefore stated that the plaintiff cannot seek protection of a single portion of the mark namely, 'Coronil' alone. The learned senior counsel stated that the mark has to be infringed as a whole by the defendants and only if such infringement is found can the plaintiff be stated to have established a case for protection. In this

connection, the learned senior counsel relied on Sections 15 and 17 of the Trade Marks Act, 1999. Section 15 relates to **Registration of parts of Trademarks** and Section 17 relates to **Effect of Registration of parts of Trademarks**.

111. In the instant case, it has been pointed out by the learned senior counsel for the defendants that the plaintiff has not registered their trademark in parts, but as a whole. They have not registered the word 'Coronil' independently, though they could have, under the provisions of the Act. It was therefore, stated that the plaintiff cannot seek protection from the defendants' usage of the mark 'Coronil Tablet'.

112. Along with their applications, the defendants had also filed documents. One of the document is an application made by the 2nd defendant, Divya Yog Mandir Trust, for registering the trademark 'Coronil Tablet'. The trademark had been applied for the combination of both the words and not separately. This may be a minor issue, but the one fact which the Court has to decide is whether the prominent name under which the plaintiff markets his products is Coronil, which is an abbreviation for Corrosion + Nil or not. The droplets leading to the

letter 'A' probably signifies the name of the plaintiff company. The mark is not registered as a trade name. It is a trademark for the product 'Coronil'. The suffixes is 92B and 213 SLP independently convey no meaning at all. The only word which conveys some meaning directly relating to the business of the plaintiff is the word 'Coronil'. Naturally, the plaintiff has come to Court to protect that distinctive name, which they have coined namely, a product to erode corrosion leading to a state of 'Coro-Nil' or rather 'Corrosion – Nil'. It signifies, the quality of their product.

113. In this connection, it would be worthwhile to examine the judgment in *C.S.No.942 of 2017*, pronounced on 30.10.2019, *N.S.Krishnamoorthy and Hearing Aid Centre, represented by its partner, K.G.Ganesh V. Afru Hearing Aid Centre*. The plaintiffs in that case were carrying on business in wholesale and retail trading and marketing of 'Hearing Aids and Apparatus' under the name and style of 'Hearing Aid Centre' with 'HAC' logo for the past 36 years. They claimed reputation and goodwill. They had registered the trade name 'Hearing Aid Centre' with 'HAC' logo under the Trade Marks Act, 1999. The defendant was also in the same business of Hearing Aid and Apparatus.

They conducted their business under the name of 'Afru Hearing Aid Centre'. In a suit for infringement brought by the plaintiffs, the defendant had contended that the words 'Hearing Aid Centre' have not been independently registered and therefore, there was no infringement. It was also the contention of the defendant that the registration had been obtained by the plaintiff only for the composite mark and unless the plaintiff had applied for registration of each mark, the plaintiff cannot claim exclusive right over the entire mark and that the term 'Hearing Aid Centre' is a mark commonly used in the trade.

114. The learned Single Judge had rejected that argument and had held that the significant portion was 'Hearing Aid Centre' and had therefore found as a fact that the plaintiff had made out a case for grant of permanent injunction and protection from infringement.

115. In the instant case, I hold that the primary word relied on by both the plaintiff and defendants are 'Coronil'. The plaintiff uses it as 'Corrosion – Nil' and defendants used it for 'Coronavirus – Nil'. Therefore, I hold, on a plain reading of the statute that a prima facie case has been made out by the plaintiff that once they have a prior registration

of a trademark in which the primary word is 'Coronil', then protection has to be afforded to them from its infringement albeit for a different class of goods. It is not always obligatory that the whole or part must be registered as separate trademarks.

116. Section 15(1) of the Trademarks Act, uses the word “may apply”. It is also be noted that each separate trademark should satisfy all the conditions of an independent trademark. By no stretch of imagination can the digits 92 and 213 be independently registered by the plaintiff, they being common numerical digits. Therefore, it would be highly impossible to expect that the plaintiff should have subdivided their trademark into separate parts and registered them independently and as a whole. The plaintiff has registered them as a whole and they are entitled for protection of their primary word in their registered trademark namely, 'Coronil'.

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117. It had been contended by Mr.Sathish Parasaran, learned senior counsel for the defendants that the defendants have applied for registration and the plaintiffs can always oppose such registration and therefore, the suit will not lie. I am not able to agree to such contention.

The stages leading to registration are enumerated in the Act itself. It has been very clearly stated that opposition to registration would commence only after publication has been effected.

118. It had been stated in Section 21 of the Trade Marks Act, 1999, that any person, within four months, from the date of advertisement can give a notice regarding opposition to the registration. That cause has still not arisen. It would be extremely violative of the provisions under Section 29(4) of the Trade Marks Act, 1999, to call upon the plaintiff to wait till the application for registration of the defendants has been processed and then oppose such registration. Section 29(4) of the Trade Marks Act, 1999, provides relief from a judicial forum from infringement of a registered trademark and the cause arises the minute, the plaintiff comes to know, that there has been an infringement of their registered trademark.

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119. In the instant case, the plaintiff had come to know about the possibility of infringement from reports in various print and electronic-media. This had been pointed out by the learned senior counsel who urged that the oscillating stand of the defendants from initially projecting

their product 'Coronil' as a treatment for Coronavirus and later back tracking to it being an immunity booster for cough and cold shows that the defendants have infringed upon the registered trademark of the plaintiff 'without due cause' and have caused substantial damage to the reputation of the mark of the plaintiff with respect to its quality. The apprehension of the plaintiff is that projection of the 'Corona Tablet' initially as a treatment for Coronavirus and later stating it to be an immunity booster for cough and cold would lead a common man also to doubt whether the Coronil chemical agent marketed by the plaintiff would actually also water down to being something inferior in quality than what it had been actually projected namely, as an agent to remove corrosion or prevent corrosion.

120. At any rate, at this stage of proceeding, the plaintiff will have to establish only a prima facie case. Whether the product of the defendants actually cures Coronavirus or does not cure Coronavirus is a matter of evidence and beyond the purview of this Court. But even if there is a slight doubt in the minds of the defendants themselves that their product will not cure Coronavirus, then I hold that the defendants have not shown due cause to still insist upon using the word 'Coronil'.

Obviously it does not cure Coronavirus. Permission has not been granted to the defendants to market the product and hold out that it cures Coronavirus. When it does not cure Coronavirus, then the defendants could have used any name to signify their product as an immunity booster and market the same to the general public rather than play upon the fear and panic among the public by introducing a product ostensibly to cure Coronavirus, when as a fact, it does not and later stating it is an immunity booster. The stand of the defendants does not augur well with their statement that they have a due cause. They do not have a due cause. It must be kept in mind, that there is no cure for Coronavirus anywhere in the world as on date. People are dying. In these tragic times, the defendants seek to make money, money, money. They seek to exploit the fear among the people by projecting that they could cure Coronavirus. There is no cause much less due cause, and much less just cause to permit the defendants from using the word 'Coronil'.

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121. Along with the plaint, documents have been filed relating to various press and electronic media reports about the purported launch of “Corona Tablet”. These are subject to proof. However, a perusal of the said documents reveal very interesting facts. It is stated that the

defendants had originally projected a cure for Coronavirus through Ayurvedic medicine, yogasanas and pranayam. That Ayurvedic medicine, yogasanas and pranayam are beneficial cannot be doubted and is not doubted. But the issue is whether the defendants have actually discovered the cure of Coronavirus. It is also stated that the medicine has passed clinical trials successfully. That details given relate to testing of Covid-19 patients by Patanjali Ayurvedic medicines by Patanjali Research Institute, Haridwar and National Institute of Medical Science (NIMS) University, Jaipur and that a medicine had been manufactured by Divya Pharmacy, Haridwar and Patanjali Ayurvedic Limited, Haridwar and an outcome disclosure of randomized, placebo controlled clinical trials on Covid-19 patients by an advertisements was also produced as a document by the defendants. They have also stated that the protocol and sample size are available with CTIRI approval. It was stated that there was 69% of recovery at day 3 PCR, in treatment group and 100% recovery at day 7, which is 35% better recovery than placebo group. It is however seen that a communication had been received on 30.06.2020, from the Drug Policy Section to the Licensing Authority, Ayurvedic and Unani Services, Uttarakhand, drawing attention to the said report stating that Ministry of Ayush had taken cognizance of the report and had called

for a report from Patanjali Research Foundation Trust, Haridwar, of the following:

“i).Name and composition of the medicines being claimed for COVID treatment.

ii).Site(s)/hospital(s), where the research study was conducted for COVID-19.

iii).IEC clearance and CTRI Registration.

iv).Protocol, sample size and results data of the study (ies).

122. It was further stated that the Ministry of Ayush, had directed the Patanjali Research Foundation Trust, Haridwar, to stop publicity of this drug through print/electronic media till the matter is duly examined by the Ministry. It was further stated that the Patanjali Research Foundation Trust had submitted the details and that the same were duly examined by the Ministry of Ayush. It was further stated that it had been observed that the proposed drug Divya Coronil Tablet is registered by State Licensing Authority, Uttarakhand, for use as immunity booster especially against respiratory tract involvement and all types of fever. It was further stated that it should be ensured that on the package and label displayed on the medicines, no claim for the cure of

COVID-19 should be mentioned.

123. When this is the factual position and it had been made clear that the Coronil Tablet projected by the defendants is not a cure for Coronavirus. I am not able to find any link between the proposed tablet and the Coronavirus infection as such. Consequently, use of the very name 'Coronil' by the defendants is without any due cause and as a matter of fact, it is taking unfair advantage of the term 'Coronil' which is a registered trademark of the plaintiff. Taking such unfair advantage is specifically prohibited under Section 29(4)(c) of the Trade Marks Act, 1999.

124. In **(2011) 4 CTC 417 (DB), Blue Hill Logistics Private Ltd., Vs. Ashok Leyland Limited**, the Division Bench, even with respect to the words 'Luxura' and 'Luxuria' which are the variants of the descriptive term 'Luxury' had held that the usage of the word Luxuria by the defendants was without due cause. In paragraph 50, the Division Bench had stated as follows:

“50. One of the essential facts to be

established by the Plaintiff under sub-section (4)(c) of Section 29 is about the use of the impugned mark by the 1st Defendant being “without due cause”. The purpose of Section 29(4) is to protect the value and goodwill of trade marks, particularly in cases where they are well known from being unfairly taken advantage of or unfairly harmed. Use of the words “without due cause” requires the 1st Defendant to show that not merely the use of infringing mark is in connection with the 1st Defendant's services but “with due cause”. It requires the 1st Defendant to establish justifiable reason and to show that use of the mark “Luxuria” is not “without due cause”. In our considered view, adding one “I” to the word “Luxura” and displaying the same on the bus in the same position as that of the Plaintiff cannot be said to be “with due cause”. More so, in the light of the conduct of the 1st Defendant which we have elaborated infra. Even though the words “Luxura” and “Luxuria” are derivative word of “Luxury”, 1st Defendant cannot be said to have adopted the mark “Luxuria” with due cause.”

125. It must be pointed out that the facts in that case are that

Ashok Leyland limited had designed a business class bus and had coined and adopted a trademark 'Luxura' in the year 2006, in relation to the commercial vehicle/comfort buses equipped with distinctive features catering the needs to the travelling passengers to have comforts and a luxurious travel. The 2nd defendant had also designed and engineered a business class bus. The 1st defendant proposed to operate the bus services under the trademark 'Luxuria'. Even though both businesses may be related to a little extent and even though both the words Luxura and Luxuria had as a root the word 'Luxury', still the Division Bench had held that the adoption of the mark by the 1st defendant was without due cause.

126. In the instant case, the defendants have directly infringed upon the very word 'Coronil' used by the plaintiff. As stated above, there is no evidence that it is a cure for Coronavirus. Then most certainly coinage of the term 'Coronil' by the defendants is without due cause and in fact that intention to mislead the general public. They can always market the products, but they should be honest and declare that it is not a direct cure for Coronavirus, but rather an immunity booster. Usage of the word 'Coronil' and usage of the common pictorial image of Coronavirus are to put it very mildly, misleading and cannot be permitted and is

therefore prohibited.

127. In **Colgate-Palmolive (India) Ltd. V. Anchor Health & Beauty Care Private Ltd.**, reported in **2008 (4) CTC 675**, a learned Single Judge had observed as follows:

“67.As a matter of fact the very basis of the law relating to Trade Marks is also the protection of public interest only, since the Courts think of an unwearied purchaser, who may buy a spurious product on the mistaken impression that it was brand 'x'. The same logic should form the basis for an action in respect of disparaging advertisements also.”

128. Profiteering by tapping on panic is not a new phenomenon. Very early in law course, every student is introduced to **Louisa. Carlill Vs. Carbolic Smoke Ball Co. (1893) 1 QB 256**. Of course it is on interpretation of a contract, binding unilateral offer and its acceptance. But, Lord Lindley, had also succinctly put the vagaries in an advertisement for treatment of a epidemic flu in the following words:

“.....First of all it is said that this advertisement is so vague that you cannot really

construe it as a promise — that the vagueness of the language shews that a legal promise was never intended or contemplated. The language is vague and uncertain in some respects, and particularly in this, that the £100. is to be paid to any person who contracts the increasing epidemic after having used the balls three times daily for two weeks. It is said, When are they to be used? According to the language of the advertisement no time is fixed, and, construing the offer most strongly against the person who has made it, one might infer that any time was meant. I do not think that was meant, and to hold the contrary would be pushing too far the doctrine of taking language most strongly against the person using it. I do not think that business people or reasonable people would understand the words as meaning that if you took a smoke ball and used it three times daily for two weeks you were to be guaranteed against influenza for the rest of your life, and I think it would be pushing the language of the advertisement too far to construe it as meaning that. But if it does not mean that, what does it mean? It is for the defendants to shew what it does mean; and it strikes me that there are two, and possibly three, reasonable constructions to be put on this advertisement, any one of which will

answer the purpose of the plaintiff. Possibly it may be limited to persons catching the “increasing epidemic” (that is, the then prevailing epidemic), or any colds or diseases caused by taking cold, during the prevalence of the increasing epidemic. That is one suggestion; but it does not commend itself to me. Another suggested meaning is that you are warranted free from catching this epidemic, or colds or other diseases caused by taking cold, whilst you are using this remedy after using it for two weeks. If that is the meaning, the plaintiff is right, for she used the remedy for two weeks and went on using it till she got the epidemic. Another meaning, and the one which I rather prefer, is that the reward is offered to any person who contracts the epidemic or other disease within a reasonable time after having used the smoke ball. Then it is asked, What is a reasonable time? It has been suggested that there is no standard of reasonableness; that it depends upon the reasonable time for a germ to develop! I do not feel pressed by that. It strikes me that a reasonable time may be ascertained in a business sense and in a sense satisfactory to a lawyer, in this way; find out from a chemist what the ingredients are; find out from a skilled physician how long the effect of such

ingredients on the system could be reasonably expected to endure so as to protect a person from an epidemic or cold, and in that way you will get a standard to be laid before a jury, or a judge without a jury, by which they might exercise their judgment as to what a reasonable time would be. It strikes me, I confess, that the true construction of this advertisement is that £100. will be paid to anybody who uses this smoke ball three times daily for two weeks according to the printed directions, and who gets the influenza or cold or other diseases caused by taking cold within a reasonable time after so using it; and if that is the true construction, it is enough for the plaintiff.

129. In ***Orchid Chemicals & Parmaceuticals Ltd., V. Wockhardt Limited***, reported in 2013 (56) PTC 558, it had been stated that where a party is using a registered trademark belonging to another and if such usage is in accordance with honest practises, then no infringement would occur.

130. In the instant case, it is debatable whether the defendants can be said to be indulging in honest practise in projecting their tablets as a

cure for Coronavirus. That honest practise is at the root of any justification by the defendants has been reiterated by the Division Bench of this Court in ***O.S.A.Nos.4 to 12 of 2020, M/s.Matrimony.com Limited vs. Kalyan Jewellers India Limited.***

131. It had been urged by the learned senior counsel for the defendants that the plaintiff must establish that they have a reputation in India, after they can complaint about any infringement.

132. Along with the plaint, the plaintiff had given a list of national and international customers and it is seen that 31 customers both national and international are using the products of the plaintiff 'Coronil'. These are heavy industries in Tamilnadu, Andra Pradesh, Gurgaon, Karnataka, Mumbai, Ranchi, Srilanka, Oman, Philipines, Vietnam, Uganda, Malaysia, Singapore and Kuwait. This list has been criticized by the learned senior counsel for the defendants by pointing out that the plaintiff has only 31 customers, whereas the defendants has millions of customers. It must be pointed out that the plaintiff is engaged in a unique business of supplying a chemical agent to prevent corrosion. In this our country we have only one BHEL, we have only one Hindalco Industries

Limited, we have only one Lanson & Turbo, we have only one NTPC and we have only one Reliance Industries. We do not have a million of such heavy industries. If those few industries situated across the length and breadth of the country have come to know about the product of the plaintiff, then a reasonable conclusion can be drawn that the plaintiff has established a reputation in India among the industrial fraternity in which they operate and supply their chemical agent. It is also stated in the plaint, that the trademark of the plaintiff is known throughout the globe in the field of chemical cleaning. Therefore, I would hold that the plaintiff has made out a prima facie case of their mark 'Coronil' being a reputed mark in India in the particular field, where it is used.

133. In *Astrazeneca UK Limited & Anr. Vs. Orchid Chemical & Pharmaceuticals Ltd.*, reported in *ILR (2007) I Delhi 874*, the Division Bench of the Delhi High Court had observed that in the trade of drugs, it is a common practice to name the drug by the name of the organs or ailments for treatments the main ingredients of the drug are, Actually quite contrary to that observation, the term 'Coronil' is used by the defendants though Corona tablet is not directly related to the treatment of Coronavirus.

134. The reliance placed on the judgment in ***Pebble Beach V. Lombard Brands Ltd.***, reported in (2003) E.T.M.R.21, wherein, it had been held that even if there is detriment to the distinctive character or repute of the plaintiff's trademark, such detriment will be just deminimis namely, very negligent has also be contrasted on the fact that the defendants' mark itself is misleading in nature since it does not provide a direct treatment for the Coronavirus. Naturally, the plaintiff can raise a prima facie apprehension that a similar imputation would be caused on their trademark 'Coronil' and doubts can be raised whether it is actually effective against corrosion as projected by the plaintiff. Therefore, the harm caused to the plaintiff far outweighs any consideration put forth on behalf of the defendants.

135. In ***A.No.2920 of 2019 in C.S.No.33 of 2019, M/s.Patanjali Biscuits Pvt. Ltd., & Anr., V. Hatsun Agro Product Ltd.***, a learned Single Judge of this Court had found that usage and marketing of business under trademarks 'Patanjali Aarogya' would not be infringing on the registered trademark 'Arokyia'. only because, it was found that the plaintiff market their product only in South India. This is a distinguishing

factor insofar as the plaintiff therein and the plaintiff herein are concerned.

136. In the instant case, the plaintiff has produced a list of customers of heavy industries situated across the length and breadth of the country and also overseas. They have entered into the market in the localities where the heavy industries are present. The plaintiff cannot be faulted for the reason that India does not have heavy industries in huge numbers in every District of the country. The heavy industries which requires anti-corrosion chemical agents use the plaintiff's product. To that extent the plaintiff has established a prima facie reputation.

137. The note of caution in the book, **Trademark and Unfair Competition, 2006, by J. Thomas McCarthy**, is with respect to the uncertainty in the likelihood of the confusion test.

138. In the instant case, the certainty of confusion directly exists, since both the marks are exactly the same. The possibility of dilution also exists, since the defendants have not shown due cause in naming their product 'Coronil', when in fact their product does not cure Coronavirus.

139. In view of all the above reasons, I hold that,

i).The plaintiff has established that their mark “Coronil-92 B and Coronil-213 SPL” are registered and that registration still subsists and are in force till 2027.

ii).The defendants have not established that their mark 'Coronil Tablet' is registered.

iii).The defendants have merely applied for registration and it is in the initial stages.

iv).The defendants have not been permitted by the plaintiff to use the registered trademark 'Coronil'.

v).However, the defendants have projected to use the name 'Coronil Tablet, in the course of their trade namely, apparently to cure Coronavirus.

vi).Both the words 'Coronil' are same and identical.

vii).The word 'Coronil' in the registered trademark of the plaintiff is the significant portion of the mark and consequently, even though it is preceded by a droplets leading to the letter 'A' and succeeded by the digits '92 / 213' and letters 'B / SPL', still, there is a direct infringement on the unique name 'Coronil' by the defendants.

viii).The plaintiff's product is a chemical agent used to eradicate and prevent corrosion. The defendants have projected to use their name 'Coronil Tablet' for a different business altogether and therefore, the stipulation under Section 29(4)(b) is satisfied.

xi).The plaintiff has established a prima facie reputation in India among the heavy industries where chemical agents are used to treat and prevent corrosion. They have also established reputation in industries overseas also.

x).The defendants have not shown due cause in naming their product as 'Coronil', since there is no direct material produced to show that it is a treatment for Coronavirus and even the reports in this connection, projecting such a cure have been adversely noted by the Ministry of Ayush, New Delhi.

xi). The usage of the word 'Coronil' by the defendants will be detrimental to the distinctive character of the mark of the plaintiff, since as stated above, there is no connection between the mark 'Coronil' used by the defendants and their projected statement that it is a cure for Coronavirus.

xii). It is also detrimental to the repute of the registered trademark Coronil of the plaintiff since, there is a prima facie possibility that the

general public might question whether the trademark 'Coronil' of the plaintiff would also not prevent corrosion by drawing the analogy of the 'Coronil' of the defendants, which does not cure Coronavirus.

140. The defendants have invited this litigation on themselves. A simple check with the Trade Marks Registry would have revealed that 'Coronil' is a registered trademark. If they had, and had still, with audacity used the name 'Coronil', then they deserve no consideration at all. They cannot assume they can bulldoze their way and infringe a registered trademark. They must realise there is no equity in trade and commerce. If they had not done a check with the Registry, then they are at fault. They cannot plead ignorance and innocence and seek indulgence from this Court. Either way, indulgence is refused.

141. In view of all these facts,

i). I hold that O.A.No.258 of 2020 is to be allowed and the interim injunction already granted on 17.07.2020, has to be made absolute and accordingly, O.A.No.258 of 2020 is allowed, with costs.

ii). I also hold that A.Nos.1532 and 1533 of 2020 have to be

dismissed and accordingly, they are dismissed, with costs.

iii). Insofar as costs are concerned, the defendants have repeatedly projected that they are 10,000 Crores company. However, they are still chasing further profits by exploiting the fear and panic among the general public by projecting a cure for the Coronavirus, when actually their 'Coronil Tablet' is not a cure but rather an immunity booster for cough, cold and fever. The defendants must realize that there are organisations which are helping the people in this critical period without seeking recognition and it would only be appropriate that they are made to pay costs to them.

142. Accordingly, I hold that, costs of Rs.5,00,000/- (Rupees Five Lakhs only) is to be paid jointly by the defendants to the Dean, Adyar Cancer Institute (WIA), East Canal Bank Road, Adyar, Chennai, and further Rs.5,00,000/- (Rupees Five Lakhs only) is to be paid jointly by the defendants to the Dean, Government Yoga and Naturopathy Medical College & Hospital, Arumbakkam, Chennai – 106. In both the organisations, treatments are afforded free of cost without any claim to either trademark, trade name, patent or design, but only with service as a

moto. Costs to be paid on or before 21.08.2020, and a memo in this regard, to be filed before the Registry, High Court Madras, on or before 25.08.2020.

06.08.2020

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Index : Yes / No

Internet : Yes / No

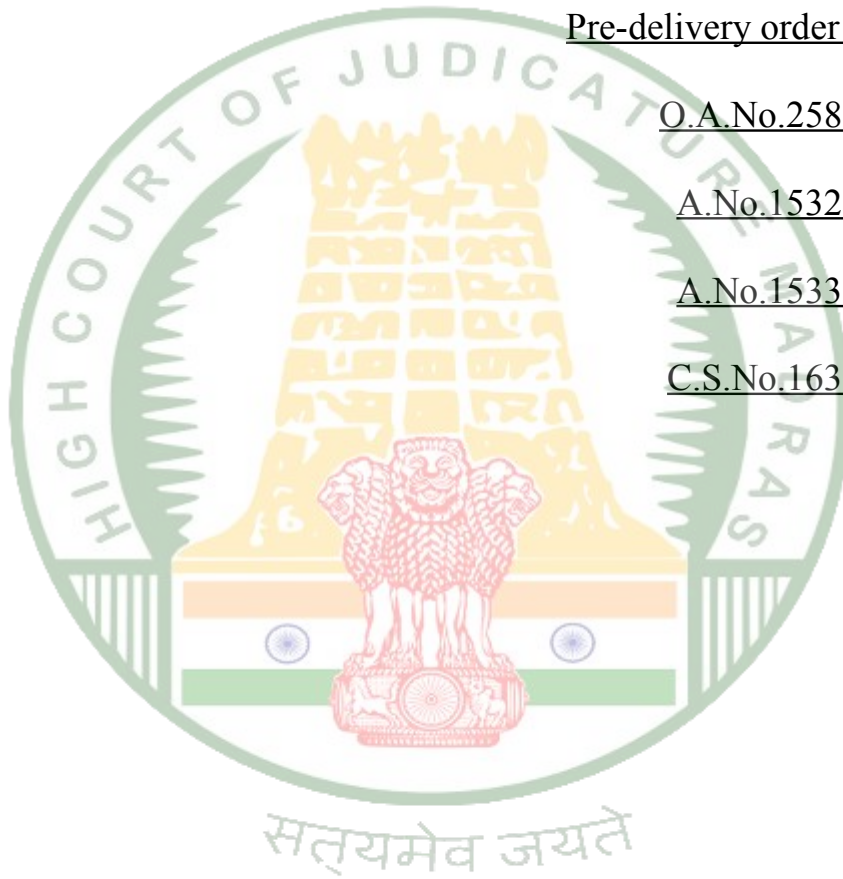
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C.V.KARTHIKEYAN, J.,

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Pre-delivery order made in

O.A.No.258 of 2020

and

A.No.1532 of 2020

and

A.No.1533 of 2020

in

C.S.No.163 of 2020

06.08.2020

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