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C.S.No.1581 of 1991

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **04.11.2022**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.1581 of 1991

1. Smithkline & French Laboratories Limited
Mundells, Welwyn Garden City
Hertfordshire AL7 1 EY
England.
Rep. by Power of Attorney R.Sampathkumar
2. Eskayef Limited
Devanahalli Road
Off Old Madras Road
Bangalore - 560 049
Rep. by Power of Attorney and Vice President
Mr.V.Subramony

.. Plaintiffs

Vs.

1. Srushthi Pharmaceuticals (P) Ltd.,
154, 10th Main Road,
Peenya Phase-III
Bangalore - 560 058.
2. Eros Pharma (Private) Ltd.,
Eros House,
No.64, Industrial Area
Rajaji Nagar,
Bangalore - 560 010.
3. M/s.Gundecha Distributors
8, Nyniappa Naicken Street
Madras-600 003.



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4. M/s.Shanti Medical Agencies
5th Trust Cross Street
Trustpuram, Madras - 600 024.

5. M/s.Rau & Co.,
274, Mint Street,
Madras - 600 003.

.. Defendants

This Civil Suit is preferred, under Order IV, Rule 1 of O.S. Rules read with Sections 27, 29, 105 & 106 of the Trade and Merchandise Marks Act, 1958, praying

(a) Granting a permanent injunction restraining the defendants, their servants, agents or any one claiming through them from manufacturing and selling any medicinal preparation using the name "ZIFOL" in any form or using any other trade name in the course of manufacture for sale or trade which is in any way deceptively / phonetically similar to first plaintiff's registered trade mark "FEFOL" under No.261202 in part-A in class-5 infringing in any manner the first plaintiff's aforesaid registered trademark;

(b) Granting a permanent injunction restraining the defendants by themselves, their servants, agents or any one claiming through them from passing off their medicinal preparation by using the name "ZIFOL" in the course of manufacture for sale or enabling others to pass off as and for the medicinal preparations of the plaintiffs "FEFOL" or doing any act or deed calculated to deceive the consumers;

(c) A preliminary decree be passed in favour of the plaintiffs, directing the defendants to render an account of the profits made by them



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by use of the impugned trademark "ZIFOL" or any mark similar to the plaintiff's trademark "FEFOL" and a final decree be passed in favour of the plaintiffs for the amount of the profits found to have been made by the defendants after the latter have rendered accounts;

(d) The defendants be ordered to surrender to the plaintiffs on oath all products, pouches, labels, cartons, dies, printing blocks, stationery, invoices and other documents bearing the trademark "ZIFOL";

(e) For costs of the suit;

For Plaintiffs : Ms.T.Hemalatha
representing Ms.Gladys Daniel

J U D G M E N T

This judgment and decree will now dispose of the captioned suit.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 31.10.2022 and 03.11.2022 which read as follows:

Proceedings dated 31.10.2022:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.10.2022, which reads as follows:

*'Ms.J.Vennila, learned counsel
representing Ms.Gladys Daniel, counsel on
record for plaintiffs is before this Commercial*



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Division but there is no representation for the defendants though Defendants 1 and 2 (Mr.N.S.Sivan and co-counsel), Defendants 3 and 4 (Mr.C.R.Prakash and co-counsel) and Defendant No.5 (Mr.K.Balakrishnan and co-counsel) have entered appearance through counsel and their names are duly shown in the cause list. To be noted, there are five defendants in all. Effectively, there is no representation for defendants, inter alia with the intention of giving opportunity to the defendants and defendants' counsel, list this matter a fortnight hence.

List on 31.10.2022.'

2. Adverting to aforementioned earlier proceedings Ms.Gladys Daniel, learned counsel who is before this Commercial Division submits that she is not the counsel on record for two plaintiffs but she is representing Mr.C.Daniel, first named counsel on record for the two plaintiffs. Likewise, adverting to earlier proceedings made on 17.10.2022, learned counsel points out that Mr.N.S.Sivan, first named counsel for Defendants 1 and 2 is no more. Therefore, Registry to show the name of his co-counsel Mr.G.Anbumani and any other co-counsel, if any in the next listing.

3. Be that as it may, learned counsel submits that she has no instructions from the plaintiffs and has made in the



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endorsement in the case file, a scanned reproduction of which is as follows:

The Plaintiff's counsel has
no instructions in the
matter.
Gladys Daniel
for Counsel for P/R.

4. As regards 5 defendants, they have entered appearance through three sets of counsel i.e., Mr.G.Anbumani learned counsel for Defendants 1 and 2, Mr.C.R.Prakash and his co-counsel for Defendants 3 and 4 and Mr.K.Balakrishnan and his co-counsel for Defendant No.5. All these names are duly shown in the cause list today but there is no representation for the defendants today also.

5. Be that as it may, with the intention of giving opportunity to all concerned, Registry to list this matter again day-after-tomorrow by showing the names of both plaintiffs and all five defendants together with their full/complete addresses as in the short and long cause titles of the plaint and written statements.

List day-after-tomorrow. List on 02.11.2022.'

Proceedings dated 03.11.2022:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 31.10.2022.



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2. Today, Ms.J.Vennila, learned counsel representing the counsel on record for plaintiffs is before this Commercial Division. Learned counsel reiterates what has been captured in the earlier proceedings dated 31.10.2022. There is no representation for defendants today also.

3. In the light of the earlier proceedings and the trajectory today, Registry to list the captioned matter under the cause list caption 'FOR DISMISSAL' tomorrow.

List on 04.11.2022.'

3. Aforementioned proceedings made in the previous listings are telltale qua the trajectory the matter has taken. The proceedings also speak for themselves.

4. Pursuant to the aforementioned earlier proceedings, captioned suit is listed under the cause list caption 'FOR DISMISSAL' but position is no different today.

5. Ms.T.Hemalatha, learned counsel representing the counsel on record for plaintiffs reiterates the contents of earlier proceedings made on 31.10.2022 and 03.11.2022 (extracted and reproduced supra).



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6. To be noted, there is no representation for defendants today also though names of three sets of counsel for five defendants have been duly shown in the cause list.

7. In the light of stated position of the counsel who was representing plaintiffs i.e., no instructions and in the light of no alternate arrangements by plaintiffs, captioned suit is dismissed for default / non-prosecution. There shall be no order as to costs.

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Index : Yes/No
Speaking/Non-speaking order
mk



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M.SUNDAR, J.

mk

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