IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-COM No.9 of 2022 (O&M)
Date of decision: May 19th, 2022

Steadcare Lifesciences Private Limited, SAS Nagar, Mohali

....Appellant

Versus

Steadfast Medishield Private Limited, New Delhi

....Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Maninder Arora, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the order dated 09.12.2021 passed by Additional District Judge, S.A.S. Nagar (Commercial Court) disposing of an application filed by the respondent-plaintiff under Order XIII-A of CPC for summary judgment in the suit filed by respondent-plaintiff for passing of Mark 'Farostead' under Section 27 (2) read with Sections 134 and 135 of the Trademark Act, 1999, whereby conditional order under Rule 6 (1) (b) read with Rule 7 has been passed directing the appellant-defendant to submit account of sale of its product 'Faro-sted-200' on quarterly basis to the Court during the pendency of the suit so as to assess profits earned by it and damages, if any, suffered by respondent-plaintiff due to action of the appellant-defendant in case of the respondent's suit succeeding. Further direction has also been issued to the appellant-defendant to furnish security to the tune of Rs.25 lakh within a period of one month from the date of the order for restitution of cost and damages, if any, found to be suffered by the respondent-plaintiff. In case of failure to comply with such condition, the appellant-defendant has been restrained from using trademark 'Faro-sted-200' during the pendency of the suit.

2. It is the contention of learned counsel for the appellant-defendant that the trial Court has exceeded its jurisdiction while dealing with the preliminary objection raised by the appellant to the effect that the suit is not maintainable as the respondent-plaintiff had not affixed the *ad valorem* Court fee, though the respondent has valued the suit to the extent of Rs.80 lakh. He asserts that the admitted facts are that the appellant-defendant has applied for registration of trademark 'Faro-sted-200' on 21.07.2020 which is a few days subsequent to the application submitted by the respondent-plaintiff i.e. 07.07.2020. It is also an admitted position that both the appellant and respondent are using the respective mark since mid of 2019. There is a significant difference between the two products, especially the package as well as the appearance of the medicine. Even the name is different. Packing size of the appellant's medicine is six tablets, whereas the packing size of respondent's medicine is 21 tablets. These aspects have not been taken into consideration by the trial Court. The trial Court has failed to appreciate that once the claim is disputed and a written statement has been filed in this regard, without there being any evidence on record, the order under Order XIII-A CPC could not have been passed. In view of these submissions, counsel contends that the impugned order cannot sustain and deserves to be set aside.

3. We have considered the submissions made by the counsel of the appellant and with his assistance, have gone through the pleadings as also the impugned order.

4. As regards the plea that the trademark has been applied for by both the parties simultaneously and as it is admitted that the respondent-plaintiff has a registered trademark, whereas the appellant had

applied for the trademark to which an objection has been raised by the respondent-plaintiff and, therefore, the appellant has not yet been issued a trademark, thus, the respondent *prima facie* is placed better. It would not be out of way to mention here that both appellant and defendant are pharmaceutical company. The respondent company was registered in the year 2008, whereas the appellant company was registered in the year 2014. It is also not in dispute that the respondent has been using the mark 'Farostead' prior in time than the appellant, which has started using the same at a later stage. Therefore, the respondent is prior user of the trademark.

5. The trial Court, on the basis of the pleadings, has come to the conclusion that the marks used by the appellant and the respondent are similar. Placing reliance upon ***C.S. (O.S.) No.605/2007*** titled as ***Cadila Healthcare Ltd. Versus Gujarat Co-operative Milk Marketing Federation Ltd. and Ors.*** decided on 23.10.2007, the trial Court had proceeded to deal with the aspect of medical products and the confusion which is likely to cause, where similar trademarks in respect of medical products are available in the market. In the present case, both the products which are being manufactured by the appellant as well as the respondent relate to the same ailment and has the same effect. Therefore, the likelihood of there being a confusion cannot be ruled out. Since there are disputed questions of fact and law, which can be decided only on the basis of oral and documentary evidence which is to be led by the parties, the trial Court has rightly proceeded to pass the conditional order to safeguard the interest of the parties.

6. We do not find any illegality in the order which has been passed by the trial Court calling for interference in the present appeal.

7. The present appeal, therefore, stands dismissed.

8. In the light of the dismissal of the appeal, CM No.30-FACOM of 2022 for stay stands disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

May 19th, 2022
Puneet

Whether speaking/reasoned	Yes
Whether reportable	No