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

Date of Decision: 8th April, 2022

+ **CM (M)-IPD 8/2022**

MAX HEALTHCARE INSTITUTE LTD. Petitioner
Through: Ms. Abhilasha Nautiyal and Mr.
Siddharth Varshney, Advocates.
(M:7727860808)

versus

M S MAX 24X7 MEDICOS & ORS. Respondents
Through: Mr. Rakesh Kakkar and Ms. Varsha,
Advocates. (M:9810383620)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition, which is now numbered as **CM (M)-IPD 8/2022**, was filed challenging the order dated 24th March, 2021, in **CS(COMM) 291/19** titled **Max Healthcare Institute Ltd. v. M/s Max 24X7 Medicos**, passed by the Ld. District Judge (Commercial Court)-02, South-East District, Saket, Delhi (*hereinafter* “*Commercial Court*”), by which the application under Order XXXIX Rule 2A CPC was filed by the Plaintiff/Petitioner (*hereinafter* “*Plaintiff*”), was re-notified and the Commercial Court permitted the Defendants/Respondents (*hereinafter* “*Defendants*”) to tender an unconditional apology and undertaking within 7 days, so that contempt is not repeated.
3. The present petition arises out of a suit filed by the Plaintiff seeking a permanent injunction against the Defendants from using the trading style



‘MAX 24X7 MEDICOS’ for the chemist shops. **CS(COMM) 291/19** had been filed seeking permanent injunction restraining use of the Plaintiff’s trade mark ‘MAX’ by the Defendants under the name ‘MAX 24X7 MEDICOS’. The Plaintiff is the registered proprietors of the mark ‘MAX’. Vide order dated 6th June, 2019, the Defendants were restrained in the following terms by the Commercial Court:

“Today adjournment prayed by proxy counsel for respondents on the ground that main counsel has gone out of Delhi for Eid celebration.

Heard. Let objection / reply be filed on behalf of respondents within one month from today with advance copy to the opposite counsel.

Now, be put up for arguments on interim injunction application on 08.08.2019.

In the meantime, respondents are hereby restrained from using plaintiff's trade mark 'Max' in any manner.”

4. The case of the Plaintiff is that the Defendants were continuing to violate the order passed by the Court and hence the application under Order XXXIX Rule 2A CPC was filed by the Plaintiff. In the said application, the impugned order was passed by accepting the apology of the Defendants and disposing of the contempt application. The operative portion of the order dated 24th March, 2021 passed by the Commercial Court is set out herein below:

“Keeping in view totality of circumstances specially in fact that the parties were still exploring possibilities of settlement till 20.01.2020 and thereafter because of lockdown



on account of Covid19 Pandemic, some delay was caused in removing the signage/bill boards. It is a matter of common knowledge that even labour was not easily available during that period. The submission of Ld. Counsel for contemnors that the delay was not intentional can not be brushed aside. Also that defendant is ready and willing to tender unconditional apology to the petitioner. Let defendant tender unconditional apology to the petitioner with an Undertaking within 7 days that contempt shall not be repeated. Application of plaintiff is accordingly disposed off.”

5. This is the order which is under challenge in the present petition.
6. The Plaintiff's grievance is that the Defendants were brazenly violating the injunction order and the Court ought not to have accepted their unconditional apology. The submission of Ld. Counsel for the Plaintiff is that the reasons, which are given in the order for accepting the apology, are not justified, inasmuch as contempt was being committed by the Defendants even prior to the outbreak of the COVID-19 pandemic. Thus, the Court ought not to have accepted the apology. In the contempt application, the Plaintiff had placed on record the photographs of the shops of the Respondents, which were continuing to use the trademark 'MAX' in their name.
7. Notice in this petition was issued on 20th May, 2021. Ld. Counsel for the Defendants, Mr. Rakesh Kakkar, submits that all the Defendants have tendered unconditional apology and have, in fact, filed undertakings to this effect. They have also placed on record photographs showing the removal of the word 'MAX' from their display boards and the premises also.



8. Insofar the Defendants themselves are concerned, it is submitted by Id. Counsel for the Defendants, that the Defendants are all Afghani migrants and have suffered during the pandemic period owing to various difficulties faced by their family members based in Afghanistan. Thus, it is submitted that the Court may take a compassionate view in the matter. He also raises objections *qua* the Plaintiff's conduct.

9. The Court has perused the affidavit filed on behalf of Mr. Tanwant Singh Malhotra - Defendant No.6, who is one of the partners of the firm MAX 24X7 Medicos. A perusal of the said undertaking shows that the same is unconditional and reads as under:

"Dear Sir/Ma'am,

In compliance to the order dated 24.03.2021 passed by the Hon'ble Court of Ms. Raj Rani Mittra, District Judge (Commercial Court)-02, South East District, Saket, Delhi and vide said order the application order 39 rule 2-A CPC has been disposed off. According to the said order the defendant herein Tendered their unconditional apology and further undertakes that they will not repeat the contempt.

I Tanwant Singh Malhotra on behalf of 24x7 Medicos here by Tendered unconditional apology' & undertakes that the contempt will not repeat in future.

Yours.

Tanwant Singh Malhotra"

10. The photographs of the Defendants' shops, which are also placed on record, show that the word 'MAX' has now been removed from the display board and the hoardings of the shops of the Defendants. Id. Counsel for the Defendants now submits that the Defendants have also stopped using the



word 'MAX' on the invoices and other stationery of the shops. He also submits that due to the immense difficulty faced by the Defendants, in fact, the chemist shops have themselves been closed.

11. Considering the facts of this matter and the difficult situation in which the Defendants have had to close their business, while there can be no doubt that the orders of the Court ought to have been adhered to scrupulously, the subsequent events show that the Defendants have tendered an unconditional apology and have also changed the name of their shops. Further, the present position is that the said shops themselves have been shut down. The Defendants do not wish to use the mark MAX as part of their chemist shops or their businesses related to health and allied services.

12. Accordingly, since the Defendants do not wish to use the mark MAX and their shops have already been shut down, it is deemed appropriate to accept the undertaking and apology given by the Defendants, especially due to their extenuating circumstances.

13. The contempt is accordingly, disposed of, accepting the undertakings and apology given by the Defendants.

14. Considering the nature of the matter, since the Defendants do not intend to use the mark 'MAX' for their pharmacist/chemist business, the suit is decreed in terms of the paragraphs 37(a) and (b) of the plaint. Let the decree sheet be drawn accordingly by this Court.

15. No further orders are called for in this matter.

16. A copy of this order be communicated to the Ld. District Judge (Commercial Court)-02, South-East District, Saket, Delhi in **CS(COMM) 291/19** titled **Max Healthcare Institute Ltd. v. M/s Max 24X7 Medicos**.



17. Both the counsels for the parties also point out that the practice in Commercial Courts is to not record the name of the actual counsel, who appears in the matter. With regard to this practice, this Court has also observed in ***Veena Gupta v. Bajaj Allianz Life Insurance Co. Limited***, [CM(M) 1555/2019, decided on 30th October, 2019], as under:

“6. Further, it is noticed that in the District Courts, junior counsels, who appear from the chambers of the counsels who file vakalatnamas, are reflected as "Proxy Counsel". From this, it is not clear as to whether the junior counsels, who appear, are ready to assist the Court or not. The term "Proxy Counsel" ought to be used only when the counsels, who appear, are not able to assist the Court in the matter or are merely seeking an adjournment. Junior counsels, who work in the filing counsel's chamber, and are aware of the facts and assist the court, ought not to be described as proxy counsels. In the practice of law, courts have a duty to encourage junior counsels who may not have filed vakalatnamas and ought to hear them if they are ready to assist the court. They cannot be simply treated as proxy counsels, as such a treatment, is not only discouraging to such junior advocates but also creates delays in the dispensation of justice. When junior counsels appearing before the court are prepared and are ready to assist, they ought to be heard and effective orders can be passed. Filing counsel or the counsel in whose favour the client has given the vakalatnama ought to encourage junior advocates and counsels to make submissions and argue matters. Of course, there is a word of caution. There are some orders such as withdrawal of a suit, recordal of settlement in a suit, etc., which essentially require the filing counsel to be present. Except in such situations, court proceedings can continue with the appearance of junior counsels so long as they have the necessary express/implied permission to make submissions from their seniors.



When junior counsels working in the chambers of filing counsels appear and assist the court, instead of describing them as 'proxy counsels' alternative terminology such as "_____, Advocate appearing for Ld. Counsel for the Plaintiff/Defendant" can be adopted. Only in case a junior or other counsel who is completely unrelated and/or unprepared in the case, the terminology of 'proxy counsel' can to be used. This would also enable junior counsels to ensure that they are not merely taking passovers and adjournments but also get prepared in the matters and are ready to make submissions."

18. Accordingly, it is directed that the Commercial Courts and Trial Courts ought to ensure that even if any junior or proxy counsel is appearing in the matter, the counsel's name ought to be recorded along with some contact details of the said counsel so that the lawyer, who has appeared and made submissions, is clearly identified instead of using a generic name such as 'proxy counsel' or 'junior counsel' or 'advocate'.

19. This order be circulated to all the District Judges, through the worthy Registrar General of this Court, for ensuring complete compliance.

20. The present petition is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

APRIL 8, 2022/dk/ms

(corrected & released on 13th April, 2022)