

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO.20731 OF 2021
WITH
LEAVE PETITION (L) NO. 27454 OF 2021
WITH
COMMERCIAL IP SUIT NO. 389 OF 2021**

M/s. Maharashtra Safe Chemist
and Distributors Alliance Limited ... Applicant/Plaintiff

Versus

Sachin Bhausahab Bhalekar & Anr. ... Defendants

Mr. Gaurav Sharma, Mr. Akshay R. Kulkarni i/b Ashutosh M. Kulkarni for
the Plaintiff.

Mr. Nitin Gaware Patil for Defendant No.1.

Advait M. Sethna a/w Siddhantrao Molankar for Defendant No.2.

CORAM : R.I. CHAGLA, J.

DATED : 5th JUNE, 2023

ORDER :

1 By order dated 03.03.2023 it was recorded that the Registrar
of trademarks i.e. Defendant No.2 had passed an order dated 03.02.2023
whereby the Rectification Petition filed by the Plaintiff was allowed and
the impugned trademark of Defendant No.1 was removed from the
register of trademarks. Accordingly, this Court had by the said order held

that the relief sought for in prayer clauses (a) and (b) was rendered infructuous. It was further recorded that the Plaintiff was pressing for decree in terms of prayer clause (c) which can be granted if Defendant No.1 submits to the decree, in the light of the events that have taken place after filing of the present Suit, particularly the aforementioned order dated 03.02.2023 passed by Defendant No.2.

2 The Court was also of the opinion that in the light of the order dated 03.02.2023 passed by Defendant No.2 i.e. Registrar of Trademarks, the said Defendant is not required to appear in the present proceedings, unless directed otherwise by this Court. Accordingly, the matter has come up today.

3 The learned Counsel appearing for the Defendant No.1 has referred to the affidavit in reply filed on behalf of Defendant No.1 and in particular paragraphs 4, 6 and 7 thereof. In the said affidavit it is stated that the Defendant had sought legal advice by engaging the services of “Grace Consultancy and Services, Pune” and as per the advice had submitted an application on 10.09.2019 with the Registrar of Trademark having trademark as “M + M Medicines Plus More” with image description of device including three circles and M + M written in unique style. The Deponent has further stated that he was unaware of the

disputed trademark being issued to the Plaintiff. The application was duly processed by the Registrar of Trademark and certificate of registration issued by the Registrar of Trademark in favour of the Deponent.

4 Thereafter, the Deponent has stated in paragraph 6 of the said affidavit that after the Certificate of Trademark was issued in favour of the Deponent, there was outbreak of pandemic on account of corona virus and just prior to the lock-down having been declared in India on 26.03.2020, all commercial activities of Defendant No.1 had come to a standstill. Defendant No.1 had suffered financial crunch and could not manage the resources to trigger the business activities as expected and had to put on hold his decision and/or suspend the same. There was also blockage of funds and the family of Defendant was found to be covid positive between the period from November, 2020 to March, 2022. This included the Defendant and he was hospitalized on account of complications and deteriorating health conditions during the period of 03.03.2021 to 25.03.2021 and thereafter had also suffered post covid complications as he is suffering from diabetic mellitus. The Defendant has stated that he has never put in operation/execution the disputed trademark of 'M + M Medicines Plus More' for any commercial activities. The Deponent has stated that no loss has been occasioned to the Plaintiff nor the Defendant has sought any advantage by using the disputed

trademark. Accordingly it is stated that prayer clause (e) to the Suit would be rendered ineffective as no transactions have been undertaken and no business activities were undertaken by the Defendants with respect to the disputed trademark. The Deponent of the said affidavit has affirmed the statement made by his attorney to that extent on 22.03.2022 before this Court.

5 The learned Counsel appearing for the Defendant states that neither the Defendant nor his agent or any other concerned person of the Defendant No.1 including wholesalers, distributors, dealers, retailers, stockists have put in operation/execution the disputed trademark for any commercial activities. The statement made in the said affidavit dated 25.03.2022 by the Defendant is sufficient for a disposal of the Suit and Interim Application.

6 Having considered the submissions, only apprehension of the Plaintiff appears to be that though the mark has been expunged by the Defendant No.2 pursuant to having considered the rectification application which had been disposed of and allowed by order dated 03.02.2023, the wholesalers, distributors, dealers, retailers, stockists and other concerned persons against whom permanent injunction is sought in terms of prayer clause (c) of the Suit may exploit the product and/or in

any manner directly or indirectly use the disputed trademark and/or any mark identical or similar to the Plaintiff's mark, thus infringing the Plaintiff's registered trademark. A comparison of the disputed trademark will show that the trademarks of the Plaintiff and the Defendants are almost identical and, therefore, this relief was sought.

7 However, considering that the Defendants have made the statement in the said affidavit as well as the aforementioned statement, the necessity of granting decree in terms of prayer clause (c) may not arise.

8 In my view since this Court has already held that relief sought for in prayer clauses (a) and (b) of the Suit are rendered infructuous in view of the Rectification Petition filed by the Plaintiff having been allowed and impugned trademark of Defendant No.1 having been removed from the register of trademarks, the statements made in the said affidavit of Defendant No.1 on oath and the aforementioned statement which have been adverted to herein above makes it clear that the Plaintiff is adequately protected since the Defendant as well as the wholesalers, distributors, dealers, retailers, stockists and anyone acting for on behalf of Defendant No.1 have never put in operation/execution the disputed trademark for any commercial activities and no transaction

and no business activities have been undertaken in respect of disputed trademark.

9 In view thereof, nothing survives in the present Interim Application and Suit particularly since the registered trademarks have now been removed from the register of trademarks by Defendant No.2 vide order dated 03.02.2023.

10 Accordingly, Interim Application (L) No.20731 of 2021 with Commercial IP Suit No.389 of 2021 stands disposed of as the prayers are rendered infructuous.

11 In view of disposal of the Suit, Leave Petition does not survive and is disposed of accordingly.

12 Refund of Court fees in accordance with the rules.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
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2023.06.08
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