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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 25/2024 & CM No.9831/2024

SGS PHARMACEUTICALS PRIVATE LIMITED..... Appellant

Through: Mr. Manoj Kumar Garg, Mr. P. Atal &
Mr. Sachin Kaushik, Advs.

Versus

DR. REDDYS LABORATORIES LIMITED Respondent

Through: Mr. Ranjan Narula, Ms. Aishani Singh,
Mr. Shashi Ojha & Ms. Shivangi
Kohli, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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27.02.2024

CM No.9832/2024 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

FAO(OS) (COMM) 25/2024

3. The appellant has filed the present appeal impugning an order dated 05.01.2024 passed by the learned Single Judge in IA No.24584/2023 in C.S.(COMM) No.873/2023.

4. The respondent had filed the said suit, *inter alia*, praying for permanent injunction restraining the appellant (defendant in the suit), its Directors, officers, servants, employees, dealers and other persons acting on its behalf from manufacturing, marketing, selling, supplying, offering for sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under identical strip packaging being sold under the name of 'Cyproheptadine' and/or any colourable imitation or substantial reproduction of the respondent's (plaintiff in the suit) product – PRACTIN strip



packaging/trade dress/getup/lay out as described in the suit. The respondent had also filed the said application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) seeking interim orders to the aforesaid effect.

5. It was the respondent's case that the colour scheme of its packaging is distinctive of the appellant's products and it serves as a source identifier. It is also claimed that the packaging including an overall get up or a trade dress is protected as an artistic work within the meaning of Section 2(c) of the Copyright Act, 1957. It is alleged that the appellant's product 'Cyproheptadine-4' adopts a substantially similar packaging and trade dress. The learned Single Judge had considered the same and *prima facie* found the said contentions to be merited. Accordingly, this Court had passed an *ad interim* order restraining the appellant from selling its product 'Cyproheptadine-4' using the trade dress (including colour, artistic style & layout) as the respondent's product PRACTIN or using any other trade dress which was deceptively similar. Although, the names of the two registered products are different. However, the packaging is almost identical. One side of the strip is 'white' and mentions the MRP, manufacturing date and the expiry date. The same is not easily distinguishable from the rear side of the packaging of the respondent's product. The other side of the strip is in saffron colour which is substantially similar, if not identical. Some of the data on the same is highlighted in deep red bands. This feature is also common in the packing of both the products.

6. Although, the names of the drugs are entirely different. However, when one looks at the packaging it is apparent that the similarities in the packaging overpowers the same. On applying the test of an average



consumer with imperfect recollection, the inescapable conclusion is that the appellant's packaging of the product is likely to be confused with that of the respondent. Even on somewhat closer examination, the packaging of the two products is not distinguishable and the propensity to cause confusion is evident.

7. The learned counsel for the appellant submits that since the drug is prescribed by doctors and are dispensed by chemists, there is no possibility of confusion. We find no merit in the said contention. The Supreme Court in ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.:* (2001) 5 SCC 73** had in the context of medicinal products observed as under:

“27. As far as the present case is concerned, although both the drugs are sold under prescription but this fact alone is not sufficient to prevent confusion which is otherwise likely to occur. In view of the varying infrastructure for supervision of physicians and pharmacists of medical profession in our country due to linguistic, urban, semi-urban and rural divide across the country and with high degree of possibility of even accidental negligence, strict measures to prevent any confusion arising from similarity of marks among medicines are required to be taken.”

8. The learned Single Judge followed the *ratio decidendi* of the aforesaid decision and the impugned order is duly informed by cogent reasons. We are unable to accept that the learned Single Judge has disregarded the settled principle or has misapplied the same. On the standards as laid down by the Supreme Court in ***Wander Ltd. & Anr. v Antox India P. Ltd.:* 1990 SUPP SCC 727**, no interference with the impugned order is warranted.

9. The learned counsel appearing for the appellant referred to the decision in ***Sun Pharmaceutical Laboratories Ltd. v. Hetero Healthcare Ltd. & Anr.:*2022:DHC:3265-DB**. He submitted that on the tests as applied on the



said case, the impugned order is liable to be set aside. The said contention is misconceived. In that case, the issue involved was in regard to similarity of the name of the drugs. The Court had found that it was common practice of naming the drugs by drawing few letters from the active ingredients from the name of the drugs. In the present case even on a somewhat careful examination of the packaging of the competing products, it is difficult to distinguish the same. Further, there appears to be no credible explanation for using a similar trade dress.

10. No interference with the impugned order is warranted. The appeal is unmerited and is accordingly dismissed. Pending application is also dismissed.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

FEBRUARY 27, 2024

‘gsr’

[Click here to check corrigendum, if any](#)