



\$~75

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

% **Date of Decision : 09.09.2024**

+ **FAO(OS) (COMM) 203/2024, CM APPL. 52329/2024 (Stay), CM APPLs.52330/2024, 52332/2024 & 52331/2024**

REBANTA HEALTHCARE PVT LTDAppellant
Through: Mr. Nikhil Chawla and Mr. Om Ram,
Advocates.

versus

DR REDDY'S LABORATORIES LTD & ANR.Respondents
Through: Mr. Ranjan Narula, Mr. Shakti
Priyam Nair, Ms. Shivangi Kohli and
Mr. Aishani Singh, Advocates for
R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning an *ex parte ad interim* order dated 09.07.2024 (hereafter *the impugned order*) passed by the learned Single Judge, restraining the appellant from using the mark 'REBAHEAL' (hereafter *the impugned trademark*).
2. The learned Single Judge has found that the impugned trademark used by the appellant is identical to the respondent's trademark and accordingly, granted an *ad-interim ex-parte* injunction restraining the appellant from manufacturing, marketing, supplying, selling and offering for sale including online, advertising, directly or indirectly medicinal, ayurvedic and pharmaceutical preparations under the impugned trademark 'REBAHEAL'.
3. Respondent no.1 had adopted the mark REBAHEAL in June, 2023.



Prior to that, respondent no.1 had applied for registration of the said mark on 'proposed to be used' basis in February, 2023.

4. It is the appellant's case that respondent no.1 has copied the impugned trademark and not *vice versa*. It claims that respondent no. 1 has copied the font and colour scheme of the impugned mark as well.

5. The appellant was incorporated as a company on 06.03.2017 as "Rebanta Healthcare Private Limited". The appellant states that during the years 2017-2019, it had launched several products with names including the initial four letters 'REBA': 'REBADOX-CAP', 'REBAFEX-3D', 'REBAFEX-M TAB', 'REBAXIDE TAB'. It is stated that the first four letters are derived from the appellant's company name. The appellant states that it had adopted the impugned trademark 'REBAHEAL' in July, 2019 and has been using the same since.

6. Respondent no.1 had filed a suit, *inter alia*, restraining the appellant from using the said trademark without taking any prior steps. Admittedly, respondent no.1 had not served a Cease-and-Desist notice on becoming aware that the appellant has been using the said trademark.

7. The learned counsel for the appellant submits that it is impossible to believe that respondent no.1, which is one of the leading pharmaceutical companies, would not have been aware of the appellant's use of the trademark 'REBAHEAL' prior to the year 2023.

8. Respondent no.1 had also not initiated any pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, on the ground that the suit involves urgent reliefs. Thus, the suit had been filed without any recourse to the appellant and without verifying the date from which the appellant had adopted the impugned trademark.



9. The appellant has produced invoices which indicate that medical stores have been retailing the appellant's products under the impugned trademark at least since 30.07.2019.

10. The learned counsel for respondent no.1, who appears on advance notice, states that respondent no.1 had taken adequate steps to make appropriate enquiries prior to institution of the suit. He states that apart from conducting a search with the Registrar of Trademark, the respondent had also conducted a Google search, which did not reveal the appellant's trademark REBAHEAL.

11. However, the learned counsel for the appellant stoutly contests the same. He submits that the appellant's products were available on the website '1mg.com' as well as on its website at the relevant time. He states that the appellant is ready to produce evidence to the aforesaid effect.

12. Clearly, the appellant has produced sufficient material to indicate that it is the prior user of the impugned trademark 'REBAHEAL'. It is also apparent that the said facts were not available before the learned Single Judge.

13. In view of the above, we consider it apposite to stay the impugned order.

14. At this stage, the learned counsel for respondent no.1 states that the appeal may be disposed of and parties may be relegated to the learned Single Judge for decision on its application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) on merits after hearing the appellant herein. He also suggests that the parties be referred to mediation. The learned counsel for the appellant is agreeable to the same.

15. In view of the above, the impugned order is set aside.



2024:DHC:6926-DB



16. The parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 17.09.2024 at 03:00 PM.

17. In the meanwhile, the appellant shall file a written statement in the suit and a reply to respondent no.1's application under Order XXXIX Rules 1 and 2 of the CPC. The parties will ensure that the pleadings in the suit are completed before the next hearing before the learned Single Judge, which is now scheduled on 13.11.2024.

18. The appeal is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 09, 2024

r