



\$~27

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

+ **FAO(OS) (COMM) 224/2024, CM APPL. 58655/2024 (stay)**

J. B. CHEMICALS AND PHARMACEUTICALS LIMITED

.....Appellant

Through: Mr. Amit Sibal, Sr. Adv. with
Ms. Shwetasree Majumder, Mr.
Prithvi, Mr. Eashan, Mr.
Vardaan, Advs.

versus

SUN PHARMACEUTICAL INDUSTRIES LIMITED

.....Respondent

Through: Mr. Jayant Mehta, Sr. Adv.
with Mr. Sachin, Mr. Rohit, Mr.
Adarsh, Ms. Prashansa, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

07.10.2024

%

1. The instant appeal impugns the judgment dated 26 September 2024 passed by the learned Single Judge who has proceeded to grant an interim injunction in the following terms:-

“49. Accordingly, for the afore-noted reasoning and analysis, the defendants, their directors, their assignees in business, licensees, franchisee, distributors, dealers, stockists, retailers, chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal & pharmaceutical preparations under the impugned mark RANRAFT or any other trade mark as may be deceptively similar to the plaintiff's registered trade mark RACIRRAFT, amounting to infringement of the plaintiff's registration under no.5288739 dated



17.01.2022, in any manner whatsoever, till the pendency of the present suit.”

2. From the undisputed facts which emerge from the record we note that the principal grievance of the plaintiff/respondent was with respect to the adoption of the mark RANRAFT by the appellant/defendant. The plaintiffs assert themselves to be the first in the market and being engaged in the manufacture and distribution of a drug carrying the trademark RACIRRAFT. The learned Judge has taken note of the aforesaid facts as would be apparent from the conclusions which came to be rendered in this regard in paragraph 33 which reads as follows:-

“33. *Admittedly*, the plaintiff applied for registration of its trademark RACIRRAFT before the Trade Marks Registry, albeit on a ‘*proposed to be used*’ basis on 17.01.2022. On the other hand, the defendant No.1 also applied for registration of its mark RANRAFT before the Trade Marks Registry, on a ‘proposed to be used’ basis on 03.06.2022. Though the Trade Marks Registry cited a third party registration of the mark RINIRRAFT under Registration No.5101827 dated back to 24.08.2021 as a conflicting mark to the mark RANRAFT of the defendant no.1 and not that of the trademark RACIRRAFT of the plaintiff, which may be on account of the same not yet being registered till then as it was registered only later and it was of a recent origin. In any event, the same is not of much significance.”

3. The learned Judge had found that “RAFT” as a technology was *publici juris*. This conclusion stands mirrored in paragraph 34 of the order impugned before us and which reads as follows:-

“34. Since, as per the promotional material filed by the plaintiff ‘RAFT’ is “... ..*optimum levels of sodium alginate, calcium carbonate and sodium bicarbonate are required to achieve suitable liquid suspension formulation possessing good acid neutralization capacity and raft strength.*” and it relates to raft formation process/function of raft formation after consumption of medicine. As such, RAFT *per-se* is *publici juris* as it is being used by other third parties and common to the trade considering the pre-existing marks like DIGERAFT, GAVIRAFT, ARORAFT, ULGERAFT, GASORAFT and EXCERAFT with the suffix RAFT.”



4. However and while evaluating the question of infringement and deceptive similarity, the learned Judge has held as under:-

“39. Even whence comparing RAN of the defendant no.1 and RACI of the plaintiff, the defendant no.1’s mark is too close to the plaintiff’s mark, more so, as the first two syllables ‘RA’ and the last part thereof ‘RAFT’ in both RAFT of the plaintiff have to be compared. **RACIRRAFT** of the plaintiff and **RANRAFT** of the defendants are same. The mere difference being the replacement by ‘CI’ from **RACIRRAFT** of the plaintiff with an ‘N’ in **RANRAFT** by the defendants. Moreover, admittedly though India is a country with a huge population coming from literate, semiliterate as also illiterate backgrounds and even though their dialects/ languages changes after some distance(s), however, the common thread running in all of them is that they all generally give emphasis on the first syllable/ prefix of a word or the last syllable/ suffix of the said word, as the case may be. As per the view enunciated in *South India Beverages (supra)*, this Court is not to apply its minds in hunting for minute differences in the conflicting marks and compare the mark as a whole. Therefore, the said difference being innocuous is too obscure to note for this Court. 40. Since the plaintiff has obtained registration of the trademark **RACIRRAFT** as per Section 23 of the Act, the plaintiff’s mark is “... ..registered as of the date of the making of the said application... ..”. Additionally, also as per Section 29 of the Act, the plaintiff further has a right to protect the said trademark **RACIRRAFT** from being infringed by anyone like the defendants. In such a scenario, as held in *Laxmikant V. Patel (supra)* and *Cadila Pharmaceuticals vs Sami (supra)*, an innocent and/ or honest adoption by anyone is not a defence and injunction must follow considering the factum that the comparing products are similar. 41. Considering the aforesaid, there is a very high degree of resemblance between the conflicting mark(s) involved. An average common man who is of average intelligence with imperfect recollection can hardly be expected to decipher the miniscule difference between ‘CI’ of the plaintiff being replaced with ‘N’ of the defendants. This Court can ignore to proceed with the threadbare analysis and pick and choose them since, at this stage, what is to be seen are the broad contours for arriving at a conclusion i.e., the conflicting marks are deceptively similar to each other.”

5. As is manifest from the above, the learned Judge has essentially rested the grant of injunction on a perceived similarity between the “syllables” of the competing marks. However, as is evident from the findings as recorded what appears to have weighed upon the learned



Single Judge was the commonality of some words as opposed to syllables. This we observe notwithstanding our grave doubt as to whether such a test would itself be sustainable in law and be in accord with principles which must be borne in mind while testing an allegation of infringement.

6. On the Court expressing its doubt as to the correctness of the approach adopted by the learned Single Judge, the respondents submitted that the end of justice would warrant the matter being remitted for consideration afresh by the learned Single Judge subject to all rights and contentions of respective parties being kept open.

7. Accordingly, and for reasons assigned hereinabove, we allow the instant appeal and set aside the order dated 26 September 2024. The application under Order XXXIX Rule 1 of Code of Civil Procedure, 1908 shall stand revived before the board of the learned Single Judge to be called on the date fixed or such earlier date as may be applied for by the plaintiff/respondents.

8. All rights and contentions of respective parties to be kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 7, 2024/neha