



2025:DHC:2208-DB



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

+ **FAO (COMM) 60/2025 & CM APPL. 12191/2025**

**IMAX HEALTHCARE PRIVATE
LIMITED & ANR.**

.....Appellants

Through:

versus

**MAX HEALTHCARE
INSTITUTE LIMITED**

.....Respondent

Through: Ms. Abhilasha Nautiyal, Mr.
Siddharth Varshney and Mr. Yash Raj,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER (ORAL)

26.03.2025

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C. HARI SHANKAR, J.

1. This appeal is directed against order dated 19 December 2024 passed by the learned District Judge (Commercial)¹, on an application filed by the respondent under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908² in CS (Comm) 247/2024³.

2. The respondent was the plaintiff before the learned Commercial Court. The respondent alleged that the appellant had infringed the registered trademarks of the respondent. The suit was accompanied by

¹ "learned Commercial Court" hereinafter

² "CPC" hereinafter

³ **Max Healthcare Institute Ltd v Imax Healthcare Pvt Ltd and Anr**



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an application under Order XXXIX Rules 1 and 2 of the CPC for interlocutory injunction.

3. The application was initially rejected by the learned Commercial Court by order dated 15 May 2024. Aggrieved thereby, the respondent had approached this Court by way of FAO (Comm) 117/2024⁴. The said FAO was disposed of by this Court by order dated 25 September 2024. We deem it appropriate to reproduce paras 3 to 12 of the said order thus:

“3. Before us, it is not disputed that the mark of the plaintiff appellant has been duly acknowledged by courts as being a “well-known trademark”. We in this respect firstly take note of the following declaration which came to be made in the suit instituted by the appellant being CS (COMM) 603/23:-

“9. Insofar as the claim of plaintiff regarding declaration of well known trademark is concerned, the plaintiff has filed several cases and has got injunction from this Court itself. Injunction granted in one of the cases filed by plaintiff was upheld up-till Hon’ble Supreme Court within the knowledge of the Court.

10. In view of facts discussed hereinabove, the judgments cited on issue; continuous presence of plaintiff in healthcare services for more than 23 years; recognition of the mark for healthcare services by various benches including Hon’ble supreme Court and also considering the revenue of plaintiff of last 4-5 years, it being INR 185,446 lacs in 2021 itself; the plaintiff can safely be declared as “well known” mark in respect of health care services and is declared as such.

The suit is decreed in above terms. File be consigned to record room.”

4. Of equal significance are the following observations rendered by this Court in *Max Healthcare Instituted Ltd. v Sahrudya Healthcare Pvt. Ltd*⁵:-

⁴ **Max Healthcare Institute Ltd v Imax Healthcare Pvt Ltd & Anr**
⁵ **2019 SCC OnLine Del 9036**



“13. No merit is found in any of the elaborate contentions of the senior counsel for the defendant and the plaintiff is found entitled to interim injunction. I herein below record my reasons therefor:

A. First I have considered de hors the legalities, whether adoption by the defendant, admittedly much after adoption by the plaintiff, of the trade marks/trade name MAXCURE/MAXKURE/MAXCURE MEDICITI, for the purposes of its hospital and/or healthcare services, is likely to confuse public at large and whether it is likely to result in the public at large believing the hospital and healthcare services provided by the defendant to be those of the plaintiff under the mark MAX HEALTHCARE, MAX HOSPITAL, MAX MEDCENTRE, DR. MAX CLINIC and MAX HEALTHSTAFF. I have not an iota of doubt that the two marks are similar/deceptively similar and are likely to cause confusion, resulting in the hospital/healthcare services of the defendant being confused by public at large and/or persons in need thereof as hospitals/healthcare services of the plaintiff

B. I now proceed to consider, whether notwithstanding the same, a case of infringement under the Trademarks Act is made out. Ordinarily, in the light of the conclusion aforesaid, the law cannot be without remedy therefor and/or ought not to be interpreted as having no cure for the purpose for which it has been enacted. The argument of the senior counsel for the defendant, of the remedy being in an action for passing off and not in an action for infringement, assumes the statutory law of trade mark, enacted to protect rights in trade marks and in public interest of preventing consumers from being misrepresented/cheated, to be weaker than the common law of trade marks whereunder an action for passing off lies. It would be a travesty of law making and would render law making into an ass (as echoed by Mr. Bumble in Oliver Twist), if it were to be held that inspite of the trade marks of the plaintiff being registered under the provisions of the Trademarks Act, and the defendant also having applied for registration of its trade mark, and inspite of the two trade marks being similar/deceptively similar and having potential of causing misrepresentation/cheating the public and consumers, the remedy would be under the common law and not the statutory law. I reiterate that statute laws cannot be so rendered to make them toothless and weak, defeating the very purpose of enactment thereof.



.....

E. MAX is not an abbreviation in English language of the word 'maximum' and can at best be said to be used in slang language. It is also not as if the word MAX, in relation to hospital and healthcare services, is a generic or a laudatory word. Moreover, the plaintiff admittedly holds registration for MAX in relation to hospital and healthcare services and it is not in the jurisdiction of this Court to hold the registration to have been wrongly granted. The exclusive jurisdiction therefor is with the Registrar of Trade Marks and/or with the Intellectual Property Appellate Board (IPAB). The defendant did not take any objection to registration sought by the plaintiff of the label/device marks with the word MAX in relation to hospital/healthcare services in the last 16 years since when the marks of the plaintiff have been registered. On the contrary, the defendant, also in the business of providing hospital/healthcare services under the name of Sunshine, when desirous of changing the said name, chose the word MAX and also applied for registration of label/device marks with the said word. The consistent view of this Court in *Automatic Electric Ltd. v R.K. Dhawan*⁶, *The Indians Hotel Company Ltd. v Jiva Institute of Vedic Science and Culture*⁷, *Anchor Health & Beauty Care Pvt. Ltd. v Procter & Gamble Manufacturing (Tianjin) Co. Ltd.*⁸, appeal preferred whereagainst was dismissed vide judgment reported as *Procter & Gamble Manufacturing (Tianjin) Co. Ltd. v Anchor Health & Beauty Care Pvt. Ltd.*⁹ and SLP(C) No. 15928-15929/2014 preferred where against were dismissed on 3rd July, 2014, and *Vega Auto Accessories (P) Ltd. v S.K. Jain Bros Helmet (I) Pvt. Ltd.*¹⁰ has been that a defendant who has itself applied for registration of a mark is stopped from contending the mark to be not registrable, when faced with an action for infringement. The said argument is thus not available to the defendant.

F. The mere fact that others, also providing hospital/healthcare services may be using the word MAX is no ground for depriving the plaintiff of injunction against the defendant if otherwise a case therefor is made out. I have in *Sunil Mittal v. Darzi On Call*¹¹. *Insecticides*

⁶ 77 (1999) DLT 292

⁷ (2008) 37 PTC 468 (Del) (DB)

⁸ 2014 SCC OnLine Del 2968

⁹ 211 (2014) DLT 466 (DB)

¹⁰ 2018 SCC OnLine Del 9381

¹¹ 242 (2017) DLT 62



*(India) Ltd. v Parijat Industries (India) Pvt. Ltd*¹², *H&M Hennes & Mauritz AB v HM Megabrandts Pvt. Ltd*¹³ and *Purshotam Keshwani v Nishant Mitrasen Mahimtura*¹⁴ held that the owner of a registered trade mark is not expected to indulge in the business of litigation of suing each and every person adopting the same/similar mark, irrespective of impact thereof on the business of the plaintiff. It is in the discretion of a plaintiff, whom to sue and whom not to sue and merely because a plaintiff in a suit for infringement of trade mark has not sued another, is no ground to defeat the suit against the infringer against whom the plaintiff has chosen to act.

G. That brings me to the star argument of the senior counsel for the defendant, of the label/device mark of the plaintiff being entirely different from the label/device mark of the defendant. I must admit that I myself being a resident of Delhi since birth, and familiar as any other citizen of Delhi with Max Hospitals, having not only visited patients therein but having also umpteen times passed in front of Max Hospitals/Healthcare Services. had never noticed the device of a single/double cross appearing on the label/device marks of the plaintiff or even the words Healthcare or Health Staff. If at all any other word besides MAX stuck to the mind, that was of Super Speciality as one of the twin MAX hospitals in Saket is called. My mind always identified the hospitals of the plaintiff with the word MAX. and not necessarily along with the word Healthcare or Hospital or Medcentre or Health Staff or with the medical cross. I can well imagine others, not having dealings with the plaintiff also associating plaintiff only with MAX and with no other device or word. In addition, what my mind was familiar with, was the earlier names of the hospitals, management whereof has been taken over by the plaintiff and/or management whereof was taken by the plaintiff and on which take over, the plaintiff invariably adds MAX to the earlier/existing names. Mention in this context can be made of Janki MAX and MAX Centre for Liver & Biliary Sciences also. The same would be the position of others. Again, I have wondered whether the legislators of Trademarks Act providing for registration of label/device marks can be presumed to be ignorant of human psychology and/or the way the human mind perceives such marks. The answer is again no. It has been held in *Allied Blenders & Distillers Pvt. Ltd. v. Shree Nath*

¹² 252 (2018) DLT 129

¹³ 2018 SCC OnLine Del 9369

¹⁴ 2019 SCC OnLine Del 7392



*Heritage Liquor Pvt. Ltd*¹⁵. affirmed by the Division Bench in *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd*¹⁶., *Prathiba M. Singh v Singh & Associates*¹⁷ and *Gillette Company LLC v Tigaksha Metallics Pvt. Ltd*¹⁸. that the test for infringement of a label/word mark is the test of prominent word of the mark. Besides the judgment cited by the senior counsel for the plaintiff, mention may be made of *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*¹⁹ where it has been held that adoption by the defendant of a prominent word in the label/device mark of the plaintiff amounts to infringement. The label/device marks may be of different kinds. Those with words only as prominent part thereof with a not so prominent device, have in *Keshav Kumar Aggarwal v NIIT Ltd.*²⁰, *Jagdish Gopal Kamath v Lime & Chilli Hospitality Services*²¹, *Mallcom (India) Ltd. v Rakesh Kumar*²² and *New Balance Athletics, INC v Apex Shoe Company Pvt. Ltd*²³., appeal preferred whereagainst was dismissed vide order dated 26th March, 2019 in FAO(OS) (COMM) No. 59/2019 titled *Apex Shoe Company Pvt. Ltd. v New Balance Athletics, INC*, held to be infringed by the defendant who in his label/device adopts the same word/s by making only variation in the not so prominent device. The nature of business/services also are of several kind. A label/device mark in relation to some businesses, as of textile and/or prints, may invite the attention of the public and/or the consumer to the brand of the label/device mark but not so in others. The business of providing hospitals/healthcare services is such, where people/consumers pay least attention to the device or the label mark and read generally the first word of the label mark by which the hospital/healthcare services come to be known and recognized.

H. I am also unable to accept the contention of the senior counsel for the defendant, that the test of infringement is not in the mark or its use but on paper. The same cannot possibly be. The Courts adjudicate trade mark disputes applying the test of similarity/deceptive similarity, and which test has to be in relation to how

¹⁵ 211 (2014) DLT 346

¹⁶ 221 (2015) DLT 359

¹⁷ 2014 SCC OnLine Del 1982

¹⁸ 251 (2018) DLT 530

¹⁹ (2006) 8 SCC 726

²⁰ 199 (2013) DLT 242

²¹ 2015 SCC OnLine Bom 531

²² 2019 SCC OnLine Del 7646

²³ 2019 SCC OnLine Del 7393



similarity/deceptive similarity is perceived in the minds of the concerned persons and not on paper. Moreover it is only in Courts that the two marks are available side by side, for comparison. Not so in the market. The test to be applied is of the market place.

I. A person visits a hospital or a healthcare facility in an anxious state of mind, whether for himself or for near and dear ones and is not prone to pay minute attention to all the contents of the label/word mark and is prone to identify the hospital by the most prominent word on the label/device mark and which in the case of the label/device mark of the plaintiff is, MAX. As aforesaid, the hospitals of the plaintiff are known as MAX, and mere mention of MAX, even without the word hospital or healthcare, brings to mind the hospital/healthcare services of the plaintiff and nothing else. unless mention is in the context of insurance and/or financial services. When I was told for the first time that Malhotra Heart Institute. Lajpat Nagar. New Delhi was being taken over by 'Metro', I asked, why would Delhi Metro Rail Corporation take over a heart hospital, only to be told of Metro Hospitals, till then not having presence in Delhi, though having hospitals outside.

K. The business of hospitals/providing healthcare services today is such which is no longer territorial. Though a doctor practicing medicine individually may have his medical practice confined to a particular region, but once the hospitals/healthcare services have been corporatized, the business of providing medical facilities is no longer territorial. The plaintiff in the plaint has already listed a large number of hospitals under its umbrella and it is not as if the defendant also is a one man show. The structure on which the defendant has designed itself appears to be the same as the plaintiff. Thus merely because presently the plaintiff does not have a hospital/services in Andhra Pradesh and Telangana and the defendant today is confined to Andhra Pradesh and Telangana is no reason to deny injunction. Neither can the plaintiff be restrained from expanding, nor the defendant. Moreover, today we are living in an era of medical tourism where each of such corporate as the plaintiff and the defendant vie with each other to earn maximum foreign exchange by providing cheaper and better medical treatment than available in a large number of other countries. In such an atmosphere, when a prospective patient desires to avail of services of the plaintiff and scouts on the internet for the most convenient hospital from the plaintiff's stable from his/her perspective,



the possibility of ending up confusing the hospital/healthcare of defendant for that of the plaintiff. is writ large. Moreover, once the registration of trade mark granted is valid throughout India, it is no ground to deny injunction that the defendant for the time being has no intent to enter National Capital Region where presently the hospitals/healthcare centres of the plaintiff are primarily located.

L. Merit is also found in the contention of the senior counsel for the plaintiff, of the mala fides of the defendant being evident from the adoption by the defendant of the same marks with same prominent word as in the marks of plaintiff. in relation to same services as offered by plaintiff. It is not the case of the defendant and indeed it cannot be of anyone claiming any knowledge of providing hospital/healthcare services, that the defendant did not know of the plaintiff. The defendant, in spite thereof, when desirous of changing the name of its hospitals/healthcare services from that of Sunshine, chose to adopt impugned marks similar to that of the plaintiff's and which can be nothing else but in an attempt to ride over the goodwill of the plaintiff and to make patients believe that they were getting treatment of the same standard/quality, for which the plaintiff has identified itself. There is no explanation, why the defendant chose to adopt the same name for its hospitals as that of the hospitals of the plaintiff.”

5. The appellant had also set out in the plaint the details of the injunctions, ex parte, interim and final granted by this Court in various suits instituted by it. This becomes evident from a reading of paragraph 16 of the plaint which is extracted below:-

“16. The Plaintiff has been vigilant in protecting its rights and interest in its intellectual property in India and has consistently monitored and taken appropriate measures to tackle misuse of its trade marks by unrelated third parties in different forums. The Plaintiff has obtained several interim injunctions, including ex-parte ad interim injunctions and decrees of permanent injunctions from the Delhi High Court and this Hon'ble Court restraining the following third parties from using the trade mark MAX in any manner.

- i. Max Care Hospitals, Hyderabad
- ii. Max Health Hospitals, Hyderabad
- iii. Max Care Hospital, Warangal
- iv. Max Care Hospital, Trichy
- v. Max Care Hospital, Ahmednagar



- vi. Max Care Hospital, Gwalior
- vii. Maxcare Hospital, Pune
- viii. Max Care Hospital & Hemodialysis Centre, Bijnor
- ix. Maxcure Hospital / Maxkure Maxcure Mediciiti, Telangana
- x. Max Hospital, Varanasi
- xi. Max Global Pharmacy, Delhi
- xii. Max 24x7 Medicos, Delhi
- xiii. Max Hospital, Moradabad
- xiv. Max Associates, Kannur
- xv. Max Care Hospital/ New Max Care Hospital, Patna
- xvi. Care Max Superspeciliatiy Hospital, Jalandhar
- xvii. New Max Care Hospital, Patna
- xviii. Max Care Chemist, New Delhi
- xix. Caremax Hospital, Jalandhar
- xx. Max Aid Hospitals, Hyderabad
- xxi. Maxicure Hospitals, Hyderabad”

6. The District Judge, however, has made the following observations while rejecting the application for temporary induction:-

“So far as plaintiff's case is concerned, there is no doubt that plaintiff is claiming itself to be a user of this trademark "Max" since 2000 and has also got the registration in its favour, however, all the registrations which the plaintiff holds are of "composite trademark" and not in respect of singular word "Max" alone. Since plaintiff as well as defendant both are operating in the same area of health care, hence plaintiff cannot claim any exclusive right or domain over the use of word “health care”.

Even the composition and structure of both the entities is also different as plaintiff herein is a limited company whereas defendant is a private Ltd. Company having different composition and constitution.

So far as the deception is concerned, though the word “IMAX” used by the defendant within the territory of state of Tamil Nadu may prima facie gives an impression, as if it is a part of plaintiff company, however, since the plaintiff is not operating in the said State at any place whatsoever, hence, this possibility is also ruled out.”

7. As is evident, the District Judge appears to have been



influenced by a perceived distinction between the "composition" and "structure" of both the entities. We find ourselves unable to fathom or comprehend how the perceived distinction in the corporate composition of the appellant and the defendant could have constituted a factor relevant or germane for the purposes of examining whether the grant of an injunction was warranted.

8. The District Judge further, and while accepting that the use of the word 'IMAX' may prima facie give an impression that it was connected with the plaintiff company and lend credence to the assertion of deceptive similarity, held against the appellants solely on the ground that the defendant was not operating in the State. This finding is rendered ignoring the allegation of the appellants of sales being in fact affected within its territorial jurisdiction as well as its online presence.

9. Equally unsustainable are the following observations entered by the District Judge in the order impugned before us:-

“Lastly it has been submitted and argued that plaintiff had already more than 21 injunction (including ex-parte injunctions) in its favour is also of no use and avail as the orders passed by coordinate benches of this court are not binding as a precedent on this court and law of injunction is very clear and provides that injunction is purely a discretionary relief and even if the plaintiff or the defendant as the case may be, is able to successfully establish a prima facie case, balance of convenience as well as irreparable loss and injury being caused to it, then also the court has the discretion to refuse and decline the injunction.”

10. The aforesaid finding is yet again demonstrative of a complete non-application of mind bearing in mind the indisputable fact of some of those injunctions having been granted by this Court and which were clearly not orders made by "coordinate benches" of the trial court. The District Judge also chose to ignore the final decree which had come to be passed in the suit instituted by the appellant and details whereof have been noticed hereinabove. Equally unsustainable is the understanding of the District Judge that since the grant of injunction is "discretionary", it could be refused even if factors such as prima facie case, balance of convenience and irreparable injury are established. The District Judge clearly fails to bear in consideration that when courts chose to describe the grant of injunction in exercise of jurisdiction conferred upon a court to be discretionary, those precedents clearly did not intend to lay down a precept that the refusal or grant could be arbitrary.



11. We would hope and trust that, in the future, the District Judge would be more circumspect and cautious in the exercise of the salutary power and jurisdiction vested in it.

12. We for reasons aforementioned allow the instant appeal and set aside the order dated 15 May 2024. The application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 shall consequently stand revived on the board of the concerned District Judge to be disposed of afresh and in accordance with law. All rights and contentions of respective parties on merits are kept open.”

4. The impugned order has come to be passed by the learned Commercial Court purportedly in compliance of the directions contained in para 12 of the aforesaid judgment dated 25 September 2024 in FAO (Comm) 117/2024.

5. The learned Commercial Court has, unfortunately, treated the observations of the High Court as having foreclosed the issue and that nothing was left for consideration in the appeal.

6. This is apparent from the manner in which the impugned order has been structured. The learned Commercial Court has initially noted the fact that the respondent was seeking an injunction against the appellant and has, thereafter, proceeded to refer to the order dated 15 May 2024 passed by his predecessor whereby the respondent’s application for injunction was rejected. The impugned order, thereafter, proceeds to refer to the judgment dated 25 September 2024 in FAO (Comm) 117/2024, which already stands extracted substantially hereinabove. Thereafter, the impugned order proceeds thus:



“In view of the observations as made by the Hon’ble Division Bench, this court finds that in order to implement the observations made by Hon’ble High Court of Delhi, an interim injunction is warranted in the given facts and circumstances of this case.

Sh. Parish Mishra, Ld. Counsel for defendant has drawn my attention to page no. 12 of his reply, wherein he had mentioned about five trademarks registered with the word “MAX” namely “IMAXX HAIR, Pathmax, maxvision, Clumax Diagnostics and LiMax”, and has stated that since all those trademarks have been duly registered, the Plaintiff cannot claim any exclusive domain over the word “MAX”.

These observations had already been made by this court in the impugned order dated 15.05.2024 and had already been dealt by the Hon’ble High Court of Delhi in its order setting aside the order of this court.

Hence, no further deliberations are called upon on this issue at this stage.

Accordingly, Plaintiff’s application u/o XXXIX rule 1 & 2 CPC r/w 151 CPC stands allowed and defendants, their partners, directors, proprietors if any, franchisees, officers, servants, agents, distributors, stockists, representatives and anyone acting for or on their behalf, are hereby restrained from using the trademark “IMAX” or any other trademarks similar to that of Plaintiff either visibly or phonetically till disposal of the present suit.”

(Emphasis supplied)

7. Clearly, the learned Commercial Court has not performed the task assigned to it by para 12 of the judgment dated 25 September 2024, inasmuch as there is no consideration on the merits of the respondent’s application. The learned Commercial Court has, in a somewhat peculiar fashion, observed that, *in order to implement the observations of this Court* in its judgment dated 25 September 2024, there was no option but to grant interim injunction to the respondent.

8. We do not understand the judgment dated 25 September 2025 of the Division Bench of this Court as completely foreclosing the



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aspect of the merits of the matter. The learned Commercial Court ought to have adverted to the merits and arrived at a decision one way or the other.

9. We note the submission of Ms. Abhilasha Nautiyal, learned Counsel for the respondent that the appellant had resorted to filing fabricated documents, including a bill pertaining to a COVID test kit nearly a year before COVID hit the country. She has further sought to contend that the appellant has relied on material which was never placed before the learned Commercial Court.

10. We do not express any opinion on these aspects. It would be open for the respondent to raise all these contentions and any other that it may choose before the learned Commercial Court.

11. We, however, expect that the learned Commercial Court would consider all these aspects while taking a *de novo* decision in the matter.

12. In order to expedite matters, we direct both sides to appear before the learned Commercial Court on 3 April 2025. The learned Commercial Court would re-consider the respondent's prayer for interim injunction uninfluenced by the observations contained in the order impugned before us.

13. Both sides undertake not to take any adjournment on the said date.



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14. We request the learned Commercial Court to decide the application either on the same day or as expeditiously as possible thereafter preferably within two weeks thereof. The learned Commercial Court would also adjourn the contempt petition filed by the respondent to a date after the decision on the interim application.

15. Should either side be aggrieved by the order that may come to be passed in the *de novo* proceeding, the remedy available in law would stand reserved. This appeal stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 26, 2025

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Click here to check corrigendum, if any