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

+ **CS(COMM) 713/2024 & I.A. No. 4054/2025**

GLAXOSMITHKLINE PHARMACEUTICALS

LIMITED

.....Plaintiff

Through: Mr. Urfee Roomi with Mr. Jaskaran
Singh, Ms. Vanshika Bansal and
Ms. Janaki Arun, Advocates.
(M): 9811600017

versus

CGX HEALTHCARE AND ORS

.....Defendants

Through: Mr. Gyan Shankar Ojha, Advocate for
defendant no. 1 to 4.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

19.02.2025

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1. The present suit has been filed by the plaintiff seeking permanent injunction restraining the defendants in relation to the plaintiff's trademark CALPOL.

2. It is the case of the plaintiff that the defendants are using the mark CALCIPOL-D, which is deceptively similar to that of the plaintiff's mark, 'CALPOL'.

3. This Court notes that in the application filed on behalf of defendant nos. 1 to 4, i.e., I.A. No. 4054/2025, following admissions have been made:

"xxx xxx xxx
(A).....



It is submitted that since the replying defendants have closed their business after a sale of Rs. 25025/- and suffered with huge loss therefore this prayer has no cause of action and having no force liable to be rejected by this Hon'ble Court.

xxx xxx xxx

(B).....

It is also submitted that since the replying defendants have already filed an application for withdrawal of their Trade Mark on dt. 07/03/2024 therefore the present clause of prayer of plaintiff becomes infructuous.

xxx xxx xxx”

4. Perusal of the aforesaid admissions made on behalf of the said defendants, clearly shows that the defendants have closed their business and are not using the mark in question any more.
5. On the last date of hearing, this Court had directed learned counsel appearing for defendant nos. 1 to 4 to take instructions as regards the costs payable by defendant nos. 1 to 4.
6. Today, learned counsel appearing for defendant nos. 1 to 4 submits that he has no objection if the suit is decreed in favour of the plaintiff, since the said defendants are no longer using the mark in question. He further submits that the defendant nos. 1 to 4, are agreeable to pay cost of ₹1,00,000/- to the plaintiff. However, he submits that some time may be granted.
7. This Court notes that there are five defendants in the present matter. The defendant nos. 1 to 4, have filed their written statement beyond the statutory period, therefore, there is no defence on behalf of defendant nos. 1 to 4.
8. Likewise, the right of defendant no. 5 to file written statement has already been closed *vide* order dated 12th February, 2025.



9. Thus, the factual position that emerges is that there is no written statement filed on behalf of the defendants before this Court. Further, the defendant nos. 1 to 4 have made categorical admissions, as recorded above, with regard to not using the infringing mark and have accepted payment of costs by them to the plaintiff. It is also noted that defendant no. 5 is yet to appear till date, and its right to file a written statement also stands closed. Accordingly, there is no defence which has been put up by the defendants, and there exists no real prospect of the defendants successfully defending the plaintiff's claim.

10. Accordingly, this Court is of the view that no useful purpose would be served in putting the matter for trial.

11. Therefore, this Court proceeds under Order VIII Rule 10 of the Code of Civil Procedure, 1908 ("CPC"). Thus, this Court in the case of ***The Christian Broadcasting Network, INC Versus CBN News Private Limited, 2018 SCC OnLine Del 11666***, while elucidating upon the scope of Order VIII Rule 10 CPC, has held as follows:

"xxx xxx xxx

13. *The scope of Order 8 Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been examined by this court in Nirog Pharma Pvt. Ltd. v. Umesh Gupta, (2016) 235 DLT 354. This court held as follows:*

"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

.....



28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. **Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.**

xxx xxx xxx”

(Emphasis Supplied)

12. Considering the submissions made before this Court and on account of the admissions made on behalf of the defendants, the present suit is liable to be decreed in favour of the plaintiff. This Court is further of the view that ends of justice shall be met if cost of Rs. 1,00,000/- is paid jointly by defendant nos. 1 to 4 and further cost of Rs. 1,00,000/- is paid by defendant no. 5 to the plaintiff. It is to be noted that while defendant nos. 1 to 4 have appeared before this Court, no appearance has been put before this Court on behalf of defendant no. 5, despite service of notice.

13. Accordingly, with the consent of the parties, the following directions are issued:

I. The suit is decreed in favour of the plaintiff and against the defendants in terms of Para 56 (a), (b), (c), (d) and (f) of the plaint.

II. The defendants are directed to withdraw the application no. 5964176 for the mark CALCIPOL-D or any application/registration that may have been filed for the said mark or any mark that is nearly identical/deceptively similar to the plaintiff's marks.

III. As and when such an application is filed by the defendants, the Trade Marks Registry shall take expeditious steps, accordingly.



- IV. Cost of ₹1,00,000/- (Rupees One Lac.), shall be paid by defendant nos. 1 to 4, to the plaintiff.
- V. Cost of ₹1,00,000/- (Rupees One Lac.), shall be paid by defendant no. 5, to the plaintiff.
- VI. The aforesaid cost shall be paid by the aforesaid defendants to the plaintiff, within a period of four months, from today.
14. Decree sheet be drawn up, in terms of the aforesaid.
15. The present suit, along with pending application, stands disposed of.
16. The next date of hearing of 07th May, 2025, stands cancelled.

MINI PUSHKARNA, J

FEBRUARY 19, 2025/c