



2025:DHC:11707-DB



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

Judgment reserved on: 05.08.2025
Judgment pronounced on: 22.12.2025

+ **FAO (COMM) 15/2024 & CM APPL. 46503/2025**
DINDAYAL INDUSTRIES LTD.Appellant
Through: Ms. Rajeshwari H. and Ms.
Nupur A. Goswami, Advs.

versus

DINDAYAL AYURVED
BHAWAN. & ANRRespondents
Through: Mr. Suhail Sehgal, Mr. Prashant
Drolia, Mr. Lakshay Singh, Mr. Ronald Raj
Datt, Mr. Akash Jiangra, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT
22.12.2025

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OM PRAKASH SHUKLA, J.

INTRODUCTION

1. The appellant has preferred the present appeal under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) of Code of Civil Procedure, 1908¹, challenging the impugned order dated 18.09.2023 passed by the learned District Judge (Commercial Court-03), South East district, Saket Courts, Delhi, whereby the

Signature Not Verified¹ "GPC" hereinafter

Signed By: RAJEEV DHANKHAR
FAO (COMM) 15/2024
Signing Date: 22.12.2025
17:48:03

Page 1 of 48



application filed by the appellant under Order XXXIX Rules 1 and 2 of the CPC seeking interim injunction was dismissed.

2. For the sake of convenience, the parties to the present appeal would be referred to by the same status and name as they have been referred to as before the learned District Judge. Thus, the “appellant” would be addressed as “plaintiff” and the “respondent” would be referred as “defendant”.

3. The appellant hereinafter referred to as the “plaintiff” is a company incorporated under the Companies Act, 1956, and is engaged in the business of manufacturing ayurvedic and herbal medicines and supplements under the trade name “M/s Dindayal Industries Limited”, earlier known as “Dindayal Aushadhi Pvt. Ltd.” The plaintiff claims to be the prior adopter and continuous user of the name/mark

“DINDAYAL”,   and its formative variants in respect of its goods since 1927. The plaintiff claims to be the registered proprietor of several trademarks comprising or containing the mark “DINDAYAL” across multiple classes under the Trade Marks Act, 1999².

4. It is the case of the plaintiff that, by virtue of long, extensive and widespread commercial use, the trademark “DINDAYAL” has acquired substantial goodwill, reputation, distinctiveness and secondary meaning in relation to the plaintiff’s ayurvedic products throughout



2025:DHC:11707-DB



India.

5. The respondents hereinafter referred to as the “defendants”, are also engaged in the business of manufacturing and selling ayurvedic products under the trade name “**DINDAYAL AYURVED BHAWAN**”. Defendant No. 2, Mr. Ravi Kumar, is stated to own and control Defendant No. 1, which operates from Main Bazar, Ellenabad, District Sirsa, Haryana.

6. It is the case of the plaintiff that the defendants have adopted and



are using the marks “**DINDAYAL**”, “



” and the domain name www.dindayalayurved.com (hereinafter, “impugned marks”) , which, according to the plaintiff, are phonetically, structurally and conceptually identical to the plaintiff’s trademark “**DINDAYAL**”,



”, “**Aushadhi Pvt. Ltd.**” and its formative variants. The plaintiff further claims that the defendants have not only copied the plaintiff’s trademark but have also replicated the plaintiff’s ayurvedic product range with the intent to ride upon the goodwill, reputation and distinctiveness that the plaintiff alleges to have acquired in the mark “**DINDAYAL**” owing to its continuous use since 1927.

7. Briefly stating the facts leading up to the present appeal, the

Signature Not Verified

Signed By: RAJEEV DHANKHAR
Signing Date: 22.12.2025
17:48:03

Page 3 of 48



plaintiff instituted the suit seeking, *inter alia*, a decree of permanent injunction for restraining the defendants from manufacturing, selling, importing, offering for sale, advertising and directly or indirectly dealing in goods containing impugned marks on the grounds of trademark infringement and passing off. Alongside, the plaintiff filed an interlocutory application under Order XXXIX Rules 1 and 2 of the CPC, seeking temporary injunction to restrain the defendants from using the impugned marks during the pendency of the suit.

8. By way of an order dated 17.01.2022, the learned District Judge initially granted an *ad-interim ex parte* injunction to the plaintiff till the next date of hearing and also allowed the plaintiff's prayer for appointment of a Local Commissioner to visit the premises of the defendants with certain directions. However, the said *ad-interim ex parte* injunction in favour of the plaintiff was vacated *vide* impugned order dated 18.09.2023, whereby the plaintiff's application under Order XXXIX Rules 1 and 2 of the CPC was dismissed.

9. Aggrieved by the impugned order, the plaintiff prays through this present appeal to set aside the order dated 18.09.2023 passed by learned District Judge in CS (COMM) No. 544/2021 titled as "M/s Dindayal Industries vs M/s Ayurved Bhawan" and its consequential effect of refusal to grant temporary injunction.

FACTS



10. **Plaint**

10.1 As per the plaint, the plaintiff, claimed to be formerly known as Dindayal Aushadhi Pvt. Ltd., a company incorporated in 1992 under the provisions of Companies Act, 1956, having its registered office in Gwalior, Madhya Pradesh and engaged in the business of manufacturing ayurvedic and herbal medicines and supplements. It was averred that the plaintiff and its predecessors have a long-standing association with ayurvedic treatment and practice. Shri Anand Mohan Chhaparwal, the Managing Director is stated to be the great-great-grandson of Late Shri Dindayal Chhaparwal, who founded the family's ayurvedic healing tradition nearly 250 years ago and was honoured as Raj Vaidya by Late Shri Srimant Mahadji Scindia, the then ruler of the province.

10.2 The plaintiff stated that the Chhaparwal family had adopted the name/mark “**DINDAYAL**” in 1927 to honour their ancestor and to promote their long-standing ayurvedic tradition and has since then continuously used the said trademark. The details of trademark registrations in favour of plaintiff are mentioned below:

S. no	Trademark	Trademark No.	Class	Date of Application
1.		742630	3	09/06/1997



2025:DHC:11707-DB



2.		742631	5	09/06/1997
3.		742632	30	09/06/1997
4.		742633	32	09/06/1997
5.	DINDAYAL AUSHADHI	3033615	5	17/08/2015
6.		3075082	5	12/10/2015
7.	DINDAYAL BALVIKAS	3033597	5	17/08/2015
8.	DINDAYAL BREATHEZEE	3033594	5	17/08/2015
9.	DINDAYAL CARE	3033612	5	17/08/2015
10.	DINDAYAL CHATPAT	3033603	5	17/08/2015
11.	DINDAYAL COUGH CARE	3033585	5	17/08/2015
12.	DINDAYAL FEMICARE	3033595	5	17/08/2015
13.	DINDAYAL LIVCARE	3033592	5	17/08/2015
14.	DINDAYAL SANJEEVAN	3062838	5	24/09/2015
15.	DINDAYAL SLEEPEZEE	3033605	5	17/08/2015
16.	DINDAYAL SLIMTRIM	3033583	5	17/08/2015

10.3 As per the plaint, the plaintiff offers “complete Ayurvedic solutions” and manufactures over 500 medicines and related products under the trademark “**DINDAYAL**”. Its formulations cover multiple therapeutic categories and are produced at state-of-the-art facilities with

Signature Not Verified

Signed By: RAJEEV DHANKHAR
Signing Date: 22.12.2025
17:48:03

Page 6 of 48



stringent quality standards. By virtue of the aforesaid facts and continuous use, the plaintiff claims that the trademark “**DINDAYAL**” has acquired the status of a well-known trademark in the field of Ayurveda.

10.4 It was further stated that the plaintiff has registered the domain name www.dindayalaushadhi.com, which hosts its website displaying products sold under the plaintiff’s trademark and its variants along with details of its business operations. The plaintiff’s products are also available on e-commerce websites such as indiamart.com.

10.5 The plaintiff contends that the trademark “**DINDAYAL**”, by virtue of continuous use since 1927 and extensive commercial presence, has acquired substantial goodwill, reputation and distinctiveness in respect of ayurvedic products as well as acquired the status of well-known trademark under Section 2(z)(g) of the Trade Marks Act. It was further stated that the trademark “**DINDAYAL**” functions as a house-mark of the plaintiff. To demonstrate this, the plaintiff relied on the following indicia:

- (i) long and uninterrupted use of the mark since 1927;
- (ii) annual turnover and sales figures (Rs. 2,818.88 lakhs in 2017–18, Rs. 1,448.01 lakhs in 2018–19 and Rs. 1,643.63 lakhs in 2019–20, and aggregate revenues in excess of Rs. 110 crores from 2016-2021)
- (iii) a wide consumer base stated to exceed 80 lakh customers;
- (iv) extensive product range of over 500 formulations manufactured at state-of-the-art facilities in Gwalior and



2025:DHC:11707-DB



Malanpur;

- (v) registrations of approx. 36 patents and trademarks across a wide range of its products
- (vi) regulatory certifications by government authorities to manufacture ayurvedic products
- (vii) substantial investments in marketing and brand-building activities (running into crores)
- (viii) industry recognition and celebrity endorsements, including awards such as the “Captain of Industry Award 2016” and endorsements by actors Saif Ali Khan and Anupam Kher.

10.6 As per the plaintiff, in or about the year 2015, the defendants had filed application No. 2885787 to register the device mark “**Dindayal Ayurveda Bhawan**”, claiming prior use since 2014. The plaintiff’s trademark agent notified the Trade Marks Registry by letters dated 11.08.2015 and 04.12.2015, informing about its prior registered similar marks in Class 5. On 13.07.2016, the Examiner had objected to the defendants’ application based on the plaintiff’s prior registration for the trademark containing the mark “**DINDAYAL**”. Subsequently, the mark was published on 21.08.2017 and thereafter, the plaintiff filed notice of opposition on 17.11.2017. It was further stated that the defendants operate a website under the domain name www.dindayalayurved.com registered in 2018.

10.7 In 2019, the plaintiff’s representatives first noticed the defendants’ products under the impugned marks and thereafter, a legal notice sent on 05.10.2019, which went unanswered. Further, market



inquiries suggested that the defendants had stopped using the mark and as such no action was taken by the plaintiff during the COVID-19 lockdowns. Subsequently, in August 2021, a distributor informed the plaintiff that the defendants have started selling products under the impugned marks in Delhi NCR, Punjab, Haryana and other regions. Upon inquiry, the plaintiff found goods bearing the impugned marks and received reports of supplies without invoices as well as rumours implying an association between the parties. Therefore, the plaintiff alleged that the defendants' adoption of the impugned marks containing the trademark "**DINDAYAL**" was wholly unexplained and intended to ride on the plaintiff's claimed long-established goodwill.

10.8 The plaintiff also alleged that the defendants have dealers and distributors in Delhi and other regions, offering ayurvedic products under the impugned marks. The plaintiff contended that such use is likely to confuse the public into believing these goods having been originated from the plaintiff. The defendants' adoption of the mark is claimed to be *mala fide* and dishonest, intending to exploit the plaintiff's goodwill. In view of the above, the plaintiff further alleged that they have suffered, and is likely to continue to suffer, incalculable loss to its goodwill and reputation as a result of the defendants' acts of infringement and passing off.

11. WRITTEN STATEMENT

11.1 In the written statement, the defendants contended that the plaintiff had referred "**DINDAYAL**" as a registered trademark and that



2025:DHC:11707-DB



this had been noted in the order dated 17.01.2022, whereas no such registration existed for the name “**DINDAYAL**”. It was submitted that the plaintiff had filed document showing such registration and that registration No. 742631 corresponded to a different mark i.e.



, and not to the standalone mark “**DINDAYAL**”.

11.2 The defendants asserted that the name “**DINDAYAL**” was actually adopted by them from the name of Defendant No. 2’s grandfather, who was a *vaid*³, born in the 1910s, and relied upon his death certificate dated 01.08.1983 to substantiate the name of the Defendant No.2 grandfather’s name. They also referred to Defendant No.2’s Aadhaar Card to show his residential address described as “Gali Din Dayal Wali”. The defendants further relied upon the family practice of adopting the mark “**DINDAYAL**” by citing examples such as “Dindayal Gopal Krishan” and “Dindayal Ankit Kumar”. The defendants also asserted that they possess a licence to manufacture ayurvedic formulations since 2014 and that their mark “**DINDAYAL**” had been adopted and used, in one form or another, since the 1920s, through which they claimed to have developed an independent reputation over the years.

11.3 It was further contended that the plaintiff’s own pleadings acknowledged that the defendants’ trademark application had been published in the Trade Marks Journal on 21.08.2017 and continues to remain pending adjudication before the Trade Marks Registrar, thus,

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Signed By: RAJEEV DHANKHAR FAO (COMM) 15/2024

Signing Date: 22.12.2025
17:48:03

Page 10 of 48



the present suit in respect of the same mark was untenable in law. They also submitted that the plaintiff's company had itself been incorporated only in 1992 and that the plaintiff's claim of manufacturing medicines for 250 years was inconsistent with the requirements of the Drugs and Cosmetics Act, 1940, particularly since no manufacturing licence had been placed on record with the plaint.

11.4 The defendants further drew attention to the alleged inconsistencies in the plaint. They submitted that, although the plaintiff claimed use of the name "**DINDAYAL**" since 1927, its earliest



trademark registration for bearing trademark registration No. 742631, claimed prior use since 1980. They also stated that the plaintiff's assertion of manufacturing more than 500 products had not been supported with particulars, and contended that the defendants' own product range was, in fact, wider than that of the plaintiffs.

11.5 It is the case of the defendants that there is a clear distinction between the products of the plaintiff and the defendants, as was also apparent from the packaging itself. In order to demonstrate the said distinction, the defendants had provided packaging illustrations of various products, including the following non-exhaustive comparison of the plaintiff's and defendants' packaging:



Plaintiff's products	Defendants' Products
	
	

11.6 The defendants also raised objections regarding the acts of the Local Commissioner. They asserted that the Local Commissioner, appointed pursuant to the order dated 17.01.2022 by the learned District Judge, conducted a visit to the company along with the plaintiff and its Counsel, however, the Local Commissioner was alleged to have inspected the premises belonging to the Defendant No. 2's father instead of those identified in the said order, and also highlighted irregularities in the preparation of the inspection report and *supurdarinama*. It was further alleged that the plaintiff did not comply with the requirements of Order XXXIX Rule 3(b) of the CPC, as no affidavit of service of a copy of the inspection report was supplied. The



defendants further contended that the filing of the inspection report was delayed and, in their view, stood completely compromised and untenable.

11.7 The defendants further pleaded delay, laches, and acquiescence, contending that the plaintiff had been aware of the defendants' trademark existence since 2015, yet no proceedings were initiated until 2021. The plaintiffs' knowledge of the defendants' use of the impugned marks since 2015 is, in fact, admitted in their own plaint. This is also evident from the plaintiff's awareness of the defendants' trademark application No. 2885787 dated 20.01.2015 for registration of the device mark "**Dindayal Ayurveda Bhawan**".

Impugned Order

12. Having recorded the rival contentions of the parties, the learned District Judge proceeded on the following grounds to vacate the *ex-parte ad interim* injunction granted in favour of the plaintiff in the impugned order dated 18.09.2023.

- (i) The defendants possessed a licence to manufacture medicines since 2014.
- (ii) The plaintiff was aware of the defendants' trademark since 2015 and his objections before the Trade Marks Registry had been rejected.
- (iii) Although the plaintiff issued a notice in 2019, the suit was



filed only in 2021.

(iv) The defendants were using the mark “**Dindayal Ayurved Bhawan**”, whereas the plaintiff was using “**Dindayal Aushidhi Private Limited**”.

(v) The word “**DINDAYAL**” was considered a common name and not a standalone registered trademark of the plaintiff.

(vi) The defendants had obtained a search certificate, a copyright – No Objection Certificate⁴, and a label approval for “**Dindayal Ayurved Bhawan**”.

13. RIVAL CONTENTIONS BEFORE THIS COURT

13.1 Ms. Rajeshwari, learned Counsel for the plaintiff challenged the impugned order dated 18.09.2023, contending that the learned District Judge had committed grave errors in dismissing the application for interim injunction under Order XXXIX Rules 1 and 2 of the CPC. Learned Counsel submitted that the mark/device/label in dispute is the defendants’ use of the mark “**Dindayal Ayurved Bhawan**” as it prominently reproduces the mark “**DINDAYAL**” which is the essential, dominant, and source-identifying feature of the plaintiff’s registered device marks.

13.2 It was submitted that the plaintiff is the registered proprietor of



the multiple device marks containing the prominent feature

“DINDAYAL” in its registered composite marks



, primarily in Class 5. These registrations include device labels where the word “DINDAYAL” forms the eye-catching and source-indicating element of the overall mark.

13.3 The learned Counsel submitted that the plaintiff and its predecessors have been using the mark “DINDAYAL” continuously and uninterruptedly since 1927, derived from the name of their great-great-grandfather, Late Shri Dindayal Chhaparwala, a renowned Ayurvedic *Vaid* honoured as “*Raj Vaidya*”.

13.4 It was further submitted that the business was originally carried on as a proprietorship under *M/s Dindayal Aushadhalaya* from 1927 to 1992, after which *M/s Dindayal Aushadhalaya Pvt. Ltd.* was incorporated, and in 2008 it was converted into a public limited company under the name *M/s Dindayal Industries Ltd.*

13.5 It was submitted that defendants manufacture identical goods to those of the plaintiff and are doing so under the impugned marks/device/labels.

13.6 Learned Counsel specifically identified the defendants’ mark/device/label in dispute, including the impugned device mark “**Dindayal Ayurved Bhawan**” which prominently reproduces the



mark “**DINDAYAL**”, claim to be the essential, dominant, and source-identifying feature of the plaintiff’s registered trademarks.

13.7 It was further contended that the defendants, by using the mark “**DINDAYAL**” in their impugned marks, are passing off their goods as those of the plaintiff, thereby engaging in deceptive practices and misleading stockists by falsely representing that the plaintiff has changed its packaging. It was also alleged that the defendants had made disparaging remarks regarding the plaintiff’s products.

13.8 The learned Counsel argued that the defendants had merely obtained a NOC from the Trade Marks Registry for the limited purpose of a copyright proceeding, yet the learned District Judge erroneously assumed in paragraph 17 of the impugned order that the said NOC constituted approval of the defendants’ trademark and, on that basis, concluded that the parties’ marks were not deceptively similar and that no case of passing off was made out.

13.9 It was further contended that, in arriving at its conclusion, the learned District Judge had totally ignored the plaintiff’s long-standing and continuous use of the mark “**DINDAYAL**”, as evidenced *inter alia* by its brochures referring to plaintiff’s history and its first manufacturing unit dating back to 1927, advertisements issued as early as 1933, historic licences, trademark certificates, invoices and Chartered Accountant⁵ certified turnover records from 2009 to 2012 and 2017 to 2020.



2025:DHC:11707-DB



13.10 Learned Counsel also alleged *mala fide* conduct on the part of the defendants. It was substantiated by pointing out that despite the direction in the order dated 17.01.2022 requiring the defendants to file an affidavit disclosing their sales under the marks “**DINDAYAL**” / “**DINDAYAL AYURVED BHAWAN**” along with their written statement, no such disclosure was ever made, rendering the defendants liable for contempt. Further, it was substantiated with the fact that the defendants made allegations against the Local Commissioner’s character and competence who was duly appointed *vide* learned District Judge order dated 17.01.2022.

13.11 Learned Counsel also alleged that the defendants were operating their business illegally without issuing invoices and also drew attention to the Local Commissioner’s report, which records that, even in the presence of the police, the defendants had failed to produce their accounts or cash records, while claiming that defendants’ business was conducted solely in cash.

13.12 It was further contended that, despite the *ex-parte ad interim* injunction, the defendants had continued to use the impugned marks by operating their website, selling products both online and offline, and participating in business fairs.

13.13 In support of their assertions, the learned Counsel relied upon the following judgments: *M/s South India Beverages v. General Mills*



2025:DHC:11707-DB



*Marketing Inc*⁶, *M/s Power Control Appliances & Ors. v. Sumeet Machines Pvt. Ltd.*⁷, *Laxmikant v. Patel Vs Chetanbhai Shah & Anr.*⁸, *Goenka Institute of Education & Research v. Anjani Kumar Goenka & Anr.*⁹, and *Montari Overseas Ltd. v. Montari Industries Ltd*¹⁰.

13.14 *Per contra*, Mr. Suhail Sehgal, learned Counsel for the defendants contended that the plaintiff had incorrectly asserted throughout the suit that it possessed a registered trademark in the standalone word “**DINDAYAL**” whereas a bare perusal of the registered trademarks relied upon would show that no such standalone mark exists in the plaintiff’s favour and that the registrations pertain only to composite trademarks containing the mark “DINDAYAL”.

13.15 It was submitted that an *ex parte* order dated 17.01.2022 was also passed under a mistaken premise, as it referred to registration nos. 742630, 742631, 742632 and 742633, even though the plaintiff had not filed the corresponding registration certificates along with the suit. Thus, it was contended that an *ex parte* interim order was issued without the Court having examined the actual registered marks.

13.16 The learned Counsel further contended that the plaintiff could have applied for registration of any part of its composite trademark under Sections 15 and 17 of the Trade Marks Act but had chosen not to do so and therefore, at this stage could not now claim exclusivity over

⁶ 2014 SCC Online Del 1953.

⁷ (1994) 2 SCC 448.

⁸ (2002) 3 SCC 65.

⁹ 2009 SCC OnLine Del 1691.

¹⁰ 1995 SCC Online Del 865.



the mark “**DINDAYAL**”.

13.17 It was further submitted that the plaintiff’s plea that “**DINDAYAL**” constituted the prominent or dominant part of the mark was raised only at the appellate stage and was not urged before the learned District Judge. It was also submitted that splitting a composite trademark and claiming exclusive rights over a single word was untenable and unknown to judicial precedent.

13.18 The learned Counsel submitted that the plaintiff’s logic would imply that even the word “*Ayurveda*”, which also appears in the plaintiff’s registered mark, must be treated as monopolised by the plaintiff, which would plainly be untenable. In this regard, reliance was placed on decisions in *Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities Pvt. Ltd.*¹¹, *Duke Fashions (India Ltd.) v. Girish Hosiery & Ors.*¹² *PhonePe Private Limited v. Ezy Services & Ors.*¹³ to submit that no exclusivity can be claimed over individual elements of a composite trademark.

13.19 Learned Counsel further submitted that while the plaintiff claimed a 250-year-old family history and a lineage of ayurvedic practice, its assertion of having “predecessors” was legally untenable, since a company, in law, cannot claim a natural person as its predecessor in title.

¹¹ 2011 SCC OnLine Del 4422

¹² CS(OS) No. 2500/2007, decided on 02.07.2010; 2010:DHC:3213

¹³ 2021 SCC OnLine Del 2635



13.20 It was argued that the entire narrative concerning the alleged forefather Late Shri Dindayal Ji, was unsubstantiated, as no material had been filed to establish his existence, and that the claim of possessing invoices from 1980 was absurd given that the plaintiff company did not even exist at that point of time.

13.21 It was further contended that the adoption of the mark “**DINDAYAL**” by the defendants was *bona fide* and genuine, being derived from their family lineage, as their grandfather Late Dindayal, was a well-known *Vaid* and respected *persona* in the Ayurvedic field. In support thereof, reliance was placed on the death certificate of the grandfather of defendant No. 2, evidencing his name as “Dindayal”; the Aadhaar cards of defendant No. 2 and his father, which reflect the said name as well as the street name “Gali Dindayal Wali” and an electricity bill dated 2013 describing the property as “Dindayal ki Haveli”, situated in “Gali Dindayal Wali”. Therefore, learned Counsel asserted that defendants are entitled to protection under Section 35 of the Trade Marks Act.

13.22 Learned Counsel for the defendants also disputed the plaintiff’s claim that the mark “**DINDAYAL**” is a well-known mark, submitting that such an assertion was baseless as it did not satisfy the requirements of Section 2(zg) of the Trade Marks Act, and further that no court had ever recognised the mark “**DINDAYAL**” as well-known. Reliance, in this respect was placed on *Om Logistics Ltd. v. Mahendra Pandey*¹⁴,



and *P.P. Jewellers Pvt. Ltd. v. P.P. Buildwell Pvt. Ltd.*¹⁵

13.23 Learned Counsel also submitted that the plaintiff's objections to the defendants' trademark application filed in the year 2015 had been rejected and the mark was published in the Trade Marks Journal on 21.08.2017, yet the plaintiff chose not to challenge the Registrar's decision before the competent forum. Reliance was placed on the judgment of this Court in *Dabur India Ltd. v. Alka Ayurvedic Pvt. Ltd.*¹⁶, to contend that a party who fails to challenge an adverse order of the Registrar, and thereafter approaches the civil court suppressing material facts, is not entitled to equitable relief of injunction.

13.24 It was further submitted that the plaintiff's own application for the mark "**DINDAYAL AYURVEDIC**" had been rejected by the Registry and ultimately abandoned on 29.10.2018, and that the plaintiff was now attempting, through the present suit, to achieve indirectly what it had failed to obtain from the Trade Marks Registry.

13.25 It was also contended that the plaintiff's own pleadings in paragraphs 30 and 41 of the plaint reflects that they had knowledge of the defendants use at least since 2015, yet the plaintiff approached the Trial Court only in December 2021 to obtain an *ex parte* injunction, and that, according to the defendants, the claim of the plaintiff was tainted with delay, laches and acquiescence. Reliance was placed on the judgment of this Court in *Consolidated Contractors International Co.*

¹⁵ 2010 SCC OnLine Del 932

¹⁶ 2009 SCC OnLine Del 3102



S.A.L. v. Consolidated Construction Consortium Ltd.¹⁷ to submit that such delay and laches disentitled the plaintiff to discretionary relief particularly as the plaintiff has pleaded both infringement and passing off simultaneously without clarifying the legal basis of its claim, whereas infringement lies only when there is a registered trademark covering the goods and passing off lies only when the claim is based on prior use and goodwill. Learned Counsel argued that delay may have limited effect in an infringement action, but it is fatal to a passing-off action.

13.26 It was further contended that the word “**DINDAYAL**” is a common name in India and, in law no exclusivity can be claimed over names of common usage or over expressions having religious or cultural associations. Reliance was placed on ***Om Logistics Ltd. (supra)***, ***Rajinder Kumar Aggarwal v. Union of India***¹⁸, ***Rhizome Distilleries Pvt. Ltd. v. Pernod Ricard S.A. France***¹⁹, and ***IHHR Hospitality Pvt. Ltd. v. Bestech India Pvt. Ltd***²⁰.

13.27 The learned Counsel submitted that consumers of ayurvedic products, unlike those purchasing allopathic medicines casually, are typically discerning and familiar with established ayurvedic brands, and therefore less prone to confusion. It was argued that individuals who consciously choose alternative medicinal systems such as Ayurveda display heightened brand awareness because they rely on the perceived

¹⁷ 2012 SCC OnLine Del 4297

¹⁸ 2007 SCC OnLine Del 952

¹⁹ 2009 SCC OnLine Del 3361

²⁰ 2012 SCC OnLine Del 2713



efficacy and reputation of specific ayurvedic manufacturers.

13.28 Learned Counsel for the defendants also produced samples of the plaintiff's and defendants' products for ocular view of this Court to contend that the packaging and overall get-up and/or trade-dress are entirely different, and therefore no likelihood of confusion exists for the consumers.

13.29 Further reliance was placed on the CARE Rating Report filed by the defendants along with their written statement, which, according to them, demonstrates the plaintiff's negligible market presence in North India and reflects a severely weakened financial position with a negative net worth. On this basis, it was argued that consumers in the said region are unlikely to associate the defendants' goods with those of the plaintiff. In support of this argument, reliance was placed on ***P.P. Jewellers Pvt. Ltd. (supra)*** to emphasise that where parties operate in distinct geographic markets and the plaintiff's commercial presence is minimal, the probability of confusion is significantly diminished.

13.30 The learned Counsel also submitted that the plaintiff itself had presented an extensive list of the defendant's products, while its own product range was considerably narrower. A comparison of the product portfolios of both parties revealed that the defendant manufactures a significantly broader array of goods, many of which are not produced by the plaintiff, and therefore the allegation of passing off is inherently unsustainable as the parties do not even operate in overlapping product categories. Moreover, it was asserted that following the vacation of the



interim injunction, the plaintiff had sought to delay the proceedings by filing frivolous applications.

13.31 In view of the above assertions, the learned Counsel for the defendants submitted that no ground exists for grant of an injunction and that the learned District Judge had rightfully dismissed the plaintiff's application.

ANALYSIS AND FINDINGS

14. This Court has considered the rival submissions advanced on behalf of both parties, the judgments relied upon, and the entire material placed on record.

15. The present appeal interdicts the order dated 18.09.2023, by way of which the learned District Judge dismissed the application of the plaintiff under Order XXXIX Rule 1 and 2 of the CPC and declined to continue the *ex-parte* interim injunction restraining the defendants from using the impugned marks on allegations of infringement and passing off. As per the record, it is evident that no party holds standalone registration for the mark “**DINDAYAL**”. The plaintiff holds a valid registration of the composite trademarks including the device marks produced above in which “**DINDAYAL**” is only one of the components of it. However, the defendants have not demonstrated any registration in their favour containing the mark “**DINDAYAL**”

16. The present *lis* assumes significance as it raises a broader



2025:DHC:11707-DB



question in trademark jurisprudence as to whether and to what extent a proprietor of composite trademark registrations may restrain another from using a personal or common name when no standalone registration exists for that part. The Trade Marks Act recognises the *bona fide* use of one's own name but, at the same time, guards against attempts to monopolise expressions that are descriptive, generic or commonly used. The balance lies in ensuring that such use does not misappropriate another's goodwill or cause confusion in trade. Thus, the issues for consideration in this appeal may be limited and confined to the following core questions:

- i) Whether the plaintiff, being the registered proprietor of composite trademarks containing the mark “**DINDAYAL**” can maintain an infringement action against the defendant's use of the impugned marks?
- ii) Whether the word “**DINDAYAL**” is a common name being incapable of claiming exclusive right?
- iii) Whether the defendants' adoption and use of the impugned marks is honest and *bona fide*, or constitute an attempt to ride up the plaintiff's alleged reputation and goodwill?
- iv) Whether, in the facts and circumstances, the learned District Judge was justified in vacating the *ex parte ad-interim* injunction and in refusing to grant temporary relief under Order XXXIX Rules 1 and 2 of the CPC?



Infringement And Analysis of Essential Features of Composite Trade Mark

17. The principal question is whether the plaintiff has established a *prima facie* proprietary right in the mark “**DINDAYAL**” as the essential and source-identifying feature of its registered composite trademarks in Class 5, and whether the defendants’ use of the impugned marks in relation to identical ayurvedic products amounts to infringement under Section 29(2)(b) of the Trade Marks Act.

18. Section 29(2)(b) of the Trade Marks Act lays down certain foundational conditions for a claim of infringement to succeed. It applies where the plaintiff holds a registered trademark, the defendant uses a similar mark in relation to identical or similar goods or services, and such use gives rise to a likelihood of confusion or an impression of association in the minds of the public.

19. In the present case, the defendants are using the impugned marks in connection with ayurvedic products for which the plaintiff’s trademark is registered in Class 5. The defendants’ impugned marks incorporate only the mark “**DINDAYAL**” from the plaintiff’s registered composite trademarks. Therefore, the rival marks are not identical in nature per se. When marks are not identical or some part of it is identical or similar, it would be relevant to refer to the celebrated judgment of the Hon’ble Supreme Court in the case of *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical*,²¹ wherein the Court held as herein under:

²¹ AIR 1965 SC 980



“29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff’s mark is shown to be “in the course of trade,, the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the, plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiffs registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide s. 21). A point has sometimes been raised as to whether the words “or cause confusion” introduce any element which is not already covered by the words “likely to deceive” and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words “likely to deceive”. But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks-the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiffs mark. The purpose of the comparison is for determining whether the essential features of the plaintiff’s trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.”

(emphasis supplied)

20. As the present case also involves a comparison of similarity between two device marks, reference to the judgment of this Bench



speaking through one of us (C. Hari Shankar, J.), in *Wow Momo Foods Pvt. Ltd. v. Wow Burger and Anr.*²², becomes relevant, wherein we analysed the judgment of Hon'ble Supreme Court in *K R Chinna Krishna Chettiar v. Shri Ambal and Co.*²³ In *Wow Momos Foods Pvt. Ltd. (supra)*, it was opined that “even if the rival marks are visually completely dissimilar, replication of one or more of essential features of one mark in the other, so as to result in likelihood of confusion in the mind of the average consumer, would result in infringement.”

21. At the outset, the legal position that emerges from the above is that where the rival marks are not identical, the plaintiff must establish that the defendant's mark so nearly resembles the plaintiff's registered trademark as to be likely to deceive and/or cause confusion. This assessment is to be undertaken from the perspective of the average consumer, with reference to the likelihood of confusion or the impression of association as to the source of the goods or services. In examining such resemblance, it must be determined whether the essential and dominant features of the plaintiff's trademark are present in the mark used by the defendant. The identification of such essential features is essentially a question of fact, to be decided on the basis of evidence regarding the use and perception of the mark. The core issue, therefore, boils down to whether the use of the part of the plaintiff's composite trademark (say “DINDAYAL”) renders the impugned marks deceptively similar to the plaintiff's registered composite trademarks within the meaning of Section 29(2)(b) of the Trade Marks

²² 2025 SCC OnLine Del 6545.

²³ (1969) 2 SCC 131.



Act and whether such use is likely to generate a likelihood of confusion or an impression of association in the minds of the relevant class of consumers

22. It is well settled that principles of the anti-dissection and the dominant feature rule co-exists and complement each other and there is no embargo on the Court to look into dominant part of the mark to make an assessment of the overall similarity. We deem it relevant to reproduce the following from *M/s South India Beverages India Private Limited v. General Mills Marketing Inc. & Anr.*²⁴, wherein a Division Bench of this court while referring to the author of *McCarthy on Trademarks and Unfair Competition* observed that:

“21. The view of the author makes it scintillatingly clear, beyond pale of doubt, that the principle of ‘anti dissection’ does not impose an absolute embargo upon the consideration of the constituent elements of a composite mark. The said elements may be viewed as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, the principle of ‘anti-dissection’ and identification of ‘dominant mark’ are not antithetical to one another and if viewed in a holistic perspective, the said principles rather compliment each other.”

(emphasis supplied)

23. In the present case, the mark “**DINDAYAL**” is the common and prominent element across the plaintiff’s composite trademark registrations in Class 5 for ayurvedic related goods. The mark “**DINDAYAL**” is consistently used alongside phrases such as “A Trusted Name in Ayurveda”, “Aushadhi Private Limited”, product



specific suffixes, descriptive taglines, and accompanying graphics. However, these additional expressions do not function as distinctive source identifiers of the plaintiff's goods, as they are merely descriptive in nature with respect to the trade and products.

24. Therefore, the mark “**DINDAYAL**” operates as the essential feature of the plaintiff's registered composite trademarks. There is no doubt that a consumer of average intelligence with imperfect recollection, who is familiar with the plaintiff's products bearing registered composite trademarks containing the mark “**DINDAYAL**,” would, upon later encountering the defendants' products marketed under the impugned marks and the trade name “**Dindayal Ayurved Bhawan**”, naturally assume an association with the plaintiff. In the ayurvedic market, products are ordinarily purchased from chemists and general stores with minimal scrutiny. A consumer who has previously purchased the plaintiff's *chyawanprash*, syrups or other ayurvedic preparations bearing the plaintiff's registered trademarks containing the mark “**DINDAYAL**” is likely, on encountering the defendants' products, to assume and have a telling effect that they emanate from the same source. This likelihood is heightened by the fact that both parties offer an extensive range of ayurvedic goods running into hundreds of products, making it plausible that an average purchaser would regard the impugned marks on the defendant's products as extension of the plaintiff's product line. This likelihood of association is bolstered by the fact that the defendants prominently display the impugned marks containing the mark “**DINDAYAL**” at the top of their products. This presentation closely mirrors the plaintiff's style and gives rise to real



likelihood in the mind of an ordinary consumer to logically assume the defendants' goods originate from or are connected with the plaintiff. This impression is reinforced by the fact that both parties operate in the same product categories and use the same distribution channels. In view of the above facts, the defendants' adoption of the essential element of the plaintiff's registered trademarks renders the impugned marks deceptively similar and give rise to a real likelihood of confusion or at least an assumption of association with the plaintiff's mark. Therefore, the conditions prescribed under Section 29(2) of the Trade Marks Act are satisfied.

25. In our view, the learned District Judge apparently erred in denying the injunction relying on the fact that the plaintiff does not have a standalone registration for the mark "**DINDAYAL**". The absence of a standalone registration, by itself, does not disentitle a registered proprietor of composite trademarks from seeking protection against infringement, where the essential and dominant feature of registered trademark is alleged to have been used.

26. Further, the defendants also raised the contention that to claim rights on the mark "**DINDAYAL**", the plaintiff must have obtained registration of the standalone mark "**DINDAYAL**" under Section 15 and 17 of the Trade Marks Act. However, this Court is of the view that the above contention is not of significant relevance because once the essential features of the mark are identified, the ultimate question is as to whether the defendant's mark, when viewed as a whole, is deceptively similar to the plaintiff's registered trademark or not. In the



present case, upon a comparison of the marks in its entirety, the impugned marks are deceptively similar to the plaintiff's registered trademarks. The absence of a standalone registration for the mark "**DINDAYAL**" merely disentitles the plaintiff from asserting exclusive rights over "**DINDAYAL**" in isolation; however, it does not preclude the plaintiff from enforcing its statutory rights in the composite registered trademarks in which "**DINDAYAL**" constitutes the essential feature, which shatters the focal point of the argument led by the learned Counsel for the defendants.

27. It was also contended by the defendants that the plaintiff did not challenge the Registrar's decision after its objections were rejected and the defendants' mark was published in the year 2017. However, this Court finds that the plaintiff filed a notice of opposition dated 17.11.2017 to prevent the registration of the defendants' mark, which is a subsequent remedy available once a mark is published. Further, we also do not find ourself in agreement with the contention of the learned Counsel for the defendants that the plaintiff's abandonment of its application for the word mark "**DINDAYAL AYURVEDIC**" on 29.10.2018 undermines its present claim, as no relief is sought in respect of that mark.

DINDAYAL is a common name vis-a-vis bona fide adoption by the Defendants

28. The learned Counsel for the defendants placed significant emphasis on the contention that "**DINDAYAL**" is a common personal



name and, therefore, the plaintiff cannot claim any exclusive rights over it. This submission cannot be accepted as an absolute proposition.

29. In this regard, we find it apposite to refer to Section 17(2) of the Trade Marks Act which stipulates that any claim of exclusivity over a part of composite trademark that is neither separately registered or distinctive is barred.

30. Further, Section 35 of the Trade Marks Act, stipulates that where a defendant uses their own name as a mark, in a *bona fide* manner, then no relief under the Trade Marks act would be available to restrain such *bona fide* use.

31. Keeping the above provision in mind, we find that the mark “**DINDAYAL**” as a standalone mark per se may not be distinctive or protectable, being a common name. However, when used in combination with the ayurvedic items, it acquires distinctiveness as a mark in relation to that particular class of goods and consumers.

32. Therefore, we do not agree with the submission of learned Counsel for the defendants that plaintiff cannot allege infringement by claiming use of the mark “**DINDAYAL**”. The use of “**DINDAYAL**” in conjunction with ayurvedic items is undoubtedly unique because of the way it is applied, since anyone who sees the mark in an ayurvedic product is likely to associate it with the plaintiff's products.

33. Thus, if the defendants use the mark “**DINDAYAL**” as a part of



a combined and composite trademark in relation to ayurvedic products, an impression that the product is associated with the product of plaintiff is bound to arise. At this juncture, we deem it important to refer to the decision in **WOW MOMO** (*supra*) wherein this Court observed that while “WOW” is a common English expression, the concerned party cannot alone exclusivity over the word “WOW” when used standalone, however, when “WOW” used in conjunction with the food items being sold by the user of the mark, it gains distinctiveness. The observation reads as follows:

35. The learned Single Judge has observed, in the impugned judgment, that “WOW” is a common English word, signifying praise denoting excellence in quality. Proceeding from this premise, the learned Single Judge has held the expression “WOW” to be descriptive of the nature of the product in respect of which it is used and, therefore, incapable of monopolisation or any claim to exclusivity.

36. To the extent, that the respondent cannot be enjoined, from solely using the word “WOW”, we have no doubt. “Wow” is, undoubtedly, a common English expression and, in the absence of any evidence of the word “Wow”, per se, having acquired a secondary meaning, linking it exclusively with the appellant, the appellant cannot claim exclusivity over the word “WOW”, if used standalone.

37. The respondent is however not using the word “WOW” by itself, but is using the word in conjunction with “BURGER”. The mark of the respondent is not a mere “WOW” but “WOW BURGER”. When “WOW” is used in conjunction with the food item being sold by the user of the mark, it is, to our mind, certainly distinctive.

38. “WOW” is not an adjective. It cannot, therefore, be said to be descriptive of the item in connection with which it is used. At the highest, “WOW” is an exclamation. The very idea of combining the exclamation “WOW” with the food item being sold by the appellant is itself distinctive. The expressions WOW MOMO or WOW DIMSUMS, by itself, do not make any etymological sense, for the simple reason that WOW is not an adjective. The manner of use of WOW with the name of the food item, however, is so distinctive as to convey, to the person who sees the mark, the fact that the quality



of the food is outstanding.

39. The idea of combining an exclamation with the mundane reference to the food item is inventive and, consequently, distinctive. To our mind, the learned Single Judge has concentrated on whether WOW, seen as a standalone expression, is, or is not, distinctive, and has, in the process, overlooked the fact that, when used in conjunction with the name of the food item, the combined mark becomes distinctive in nature.

40. It is by reason of this distinctive manner of usage of the exclamation WOW with the food item as a combined and composite mark, which is entirely the idea of the appellant, that, if the respondent were to similarly use WOW with another food item, an impression of association between the appellant and the respondent is bound to arise.

34. The mere fact that “**DINDAYAL**” is a personal name does not entitle the defendants to unrestricted use of it in the course of trade in ayurvedic products and particularly in the class where the plaintiff has a registration. As held in *Montari Overseas Ltd. (supra)*, an individual may have no choice in the personal name assigned to him, but a corporate or commercial entity is free to choose any name, and therefore, bears a higher obligation to avoid confusion with existing traders. We find that the defendants’ adoption of the mark “**DINDAYAL**”, which constitutes the essential and dominant part of the plaintiff’s trademarks, and its use as a trading identity in relation to the same class of goods as that of the plaintiff, significantly weakens any presumption of *bona fide* adoption on the part of the defendants.

35. Further, the death certificate and address documents relied upon by the defendants appear to establish family lineage rather than evidencing any use of the mark “**DINDAYAL**” in relation to ayurvedic



goods. Additionally, no cogent and compelling documents have been brought on record to suggest any prior use of the impugned marks prior to that of the plaintiff. Instead, the defendants have deliberately adopted the mark “**DINDAYAL**” with the descriptive suffix “Ayurved Bhawan”, a manner of use that departs entirely from the asserted family practice. This, when viewed alongside the fact that the defendants were admittedly aware of the plaintiff’s longstanding registered trademarks owing to earlier opposition proceedings before the Trade Marks Registry, negates the plea of honest adoption. In these circumstances, the defendants’ adoption of the impugned trademarks containing the mark “**DINDAYAL**” cannot be regarded as *bona fide* within the meaning of Section 35 of the Trade Marks Act and, on the contrary, appears as a calculated move to appropriate and ride upon the plaintiff’s goodwill and established market identity.

Passing off and Prior use of the mark “DINDAYAL”

36. The Hon’ble Supreme Court in *Pernod Ricard India v. Karanveer Singh Chhabra*²⁵ observed that Section 27(2) of the Trade Marks Act, recognizes the common law remedy of passing off, thereby ensuring that rights in an unregistered trademark can still be protected based on prior use. A perusal of the documents filed by the plaintiff shows that the oldest invoice on record is dated 29.04.1997 under the tradename “**DINDAYAL AUSHADHALAYA PVT. LTD**”. The defendants, however claim usage of the mark “**DINDAYAL**” since 2014 on the basis of a manufacturing licence dated 18.07.2014



approving ayurvedic formulations. The earliest invoice of the defendants indicating actual use in commerce is dated 18.04.2020 under the tradename “**DINDAYAL AYURVED BHAWAN**”. Therefore, the plaintiffs’ use of the composite trademark containing the mark “**DINDAYAL**” is indisputably prior to that of defendants, by at least two decades.

37. Thus, in the light of aforesaid finding, the real issue that arises is whether use of the composite trademarks “**DINDAYAL AUSHADHALAYA PVT. LTD.**” and its variants constitutes prior use of the essential element “**DINDAYAL**” even in the absence of standalone use. This court finds that the aforesaid question has been settled by this Court in *Goenka Institute of Education & Research v. Anjani Kumar Goenka & Anr.*²⁶, which reads as follows:

“17. The question which follows now is that whether ‘Goenka’ being only a part of the trade mark/trade name ‘G.D. Goenka Public School’ whether even such part of larger trademark is entitled to protection. Putting it differently, if there is prior use of a larger trade mark will there be a prior use also for a part of the trade mark?”

18. The law in this regard is stated in para 34 to 39 of the impugned judgment. Some of the paras are reproduced below:

34. A trade mark is infringed if a person other than the registered proprietor or authorized user uses, in relation to goods covered by the registration, one or more of the trade mark's essential particulars. The identification of an essential feature depends partly upon the Court's own judgment and partly upon the burden of the evidence that is placed before the Court.

35. In James Chadwick & Bros. Lid v. The National Sewin Thread Co. Ltd. the Court ruled as under: “in an action for infringement what is important is to find out what was the distinguishing or

²⁶ 2009 SCC OnLine Del 1691.



essential feature of the trade mark already registered and what is the main feature or the main idea underlying the trade mark. In Parle Products (f) Ltd. v. J.P. & Co. Mysore. the Supreme Court took the same view.”

36. In the judgment of the Supreme Court in Ruston and Hornby Ltd. v. Zamindara Engineering Co.. The High Court, in appeal, held that the offending trade mark infringed the appellant's trade mark “Ruston”, and restrained the respondent from using the trade mark “Rustam”, but further held that the use of the words “Rustam India” was not an infringement of the registered trade mark, as the appellant's goods were manufactured in England and not in India and the suffix of the word “India” constituted a sufficient distinguishing factor. The Supreme Court, while upholding the first part of the High Court Judgment and reversing the second part, held that an infringement of a registered trade mark takes place not merely by exact imitation but by the use of a mark so nearly resembling the registered mark as to be likely to deceive.

39. As observed by the Privy Council in De Cordova v. Vick Chemical Company, 68 R.P.C. 103, 106 it was held as under: “it has long been accepted that, if a word forming part of a mark has come in trade to be used to identify the goods of the owner of the mark, it is an infringement of the mark itself to use that word as the mark on part of the mark of another trader, for confusion is likely to result.”

19. Therefore, subject to facts and circumstances of each individual case, no one can copy an essential part or predominant part of a trade mark and the benefit of prior use doctrine will also be available to an essential/prominent/predominant part of trade mark i.e. an important part of a trade mark of another person, but, that is however not the end of the matter. When two marks are identical nothing further needs to be seen in the cases of infringement, but if the marks are not identical but only deceptively similar, then, the tests of passing off are to be applied to see if user of a trade mark by a person other than the registered proprietor infringes the trade mark of the registered proprietor i.e. if after adopting an essential feature of a trade mark of a registered proprietor by another person, in the peculiar facts of that case, it is to be seen whether there is deceptive similarity by applying the tests of passing off, and in case there is no passing off of the trade mark, then it cannot be said that there is infringement...”

(emphasis supplied)



38. The legal principle emerging from the above discussion is that prior use is not confined only to cases where a party has used a word as an independent mark. Even where the use is as part of a larger composite trademark, the law recognises that protection may extend to a part, provided that particular part postulates the essential and distinctive feature of the mark. Further, after a perusal of the plaintiff's products placed on record, it is evident that the mark "**DINDAYAL**" is the essential, recurring and dominant mark across all its composite trademarks, while the accompanying suffixes are merely descriptive of the corporate form or product category. Illustratively, some of the products may be demonstrated as herein below:





39. In the composite tradename/trademark “**DINDAYAL**

AUSHADHALAYA PVT. LTD.”, “”, “” and other formative trademarks as well, the mark “**DINDAYAL**” evidently constitutes the dominant and essential element, as it is the only part that operates as the source identifier of the plaintiff and postulates its image in the mind of the public, whereas the expressions *Aushadhalaya* and Pvt. Ltd. are merely descriptive or corporate suffixes that do not indicate commercial origin. It is the mark “**DINDAYAL**” that performs the source-identifying function in the perception of the relevant consumer. Consequently, the plaintiff’s continuous use of its composite trademark amounts to prior use of the essential mark “**DINDAYAL**”, notwithstanding the absence of its use as a standalone trademark.

40. Further, there is no gainsaying in estimating that no action for passing off also presupposes the existence of goodwill and reputation in the plaintiff’s trademark, which is a *sine qua non* for such a claim. As per the material available on the record featuring the mark “**DINDAYAL**” including continuous sales invoices, certifications, turnover figures in crores, the wide range of ayurvedic products marketed under the composite trademark containing the mark “**DINDAYAL**”, and the consumer reach across multiple states, the plaintiff has sufficiently established, at least at the *prima facie* stage, substantial goodwill and reputation in the mark “**DINDAYAL**” for ayurvedic medicines, health supplements and allied products. Although, the defendants seek to dispute the plaintiff’s goodwill by



2025:DHC:11707-DB



relying on a CARE Rating report reflecting a decline in financial performance for FY 2018-19, however, a single year's downturn cannot, by itself, displace the continuous and substantial commercial use of the mark. Goodwill is built over sustained market presence and not measured by an isolated financial fluctuation. The invoices on record further demonstrate that the plaintiff's products are regularly sold to retailers across multiple states, including Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh, thereby reinforcing the plaintiff's wide market presence and goodwill.

41. In any case, it was held by the Hon'ble Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*²⁷ that a stricter standard applies where the rival marks relate to medicinal products, since confusion in such goods may result in serious or even harmful consequences. The Court expressly held that a lesser quantum of proof is sufficient to establish confusing similarity in cases involving medicines or therapeutic preparations. In the present case, the defendants' use of the identical word "**DINDAYAL**" with the descriptive suffix "**AYURVED BHAWAN**" in their trademarks



“”, “**DINDAYAL AYURVED BHAWAN**” or “”

is likely to result in consumer confusion when compared with the plaintiff's trademarks "**DINDAYAL**", "**DINDAYAL AUSHADHI**",



”, “Aushadhi Pvt. Ltd.” and their formatives. A consumer encountering defendants’ trademark would reasonably take it as another formative or variant emanating from the plaintiff. Even the differences in overall packaging and appearance are unlikely to dispel the likelihood of confusion. Consumers of plaintiff’s ayurvedic products cannot be expected to be familiar with the packaging of each of the plaintiff’s product line, so as to distinguish them with the defendant’s product line. Further, both parties use the mark “**DINDAYAL**” for ayurvedic medicinal products sold through identical trade channels, which increases the risk of consumer confusion between the plaintiff’s and defendant’s products and therefore supports a *prima facie* finding of likelihood of confusion.

42. Further, the test of passing off as laid down in *Cadila Health Care Ltd. (supra)*, centres on whether the defendant’s conduct amounts to misrepresentation, made in the course of trade, which is calculated/intended to deceive prospective customers or end consumers and thereby injures the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence), and which causes actual damage to the business or goodwill of the trader by whom the action is brought or (in a *quia timet* action) will probably do so.

43. The plaintiff has further alleged that the defendants approached the plaintiff’s stockists and dealers, who reported instances of solicitation of products by the defendants under the name “**DINDAYAL**”. The plaintiff has placed on record WhatsApp



communications from its stockists', documenting occasions where dealers and stockists were attempted to be misled into believing that the defendants' goods originated from, or were associated with, the plaintiff. These communications *prima facie* reveal a clear misrepresentation by the defendants' in the course of trade, directed at prospective purchasers and end-consumers, which would reasonably be expected to cause harm to the plaintiff's business and goodwill. The material on record *prima facie* establishes that such misrepresentation is causing, or is likely to cause, damage to the plaintiff's reputation and established goodwill and thereby demonstrates an intention to mislead the trade and to ride upon the plaintiff's reputation. Such conduct, when viewed cumulatively, reinforces the conclusion that the defendants' adoption is tainted with *mala fides* and cannot be characterised as honest adoption within the meaning of Section 35 of the Trade Marks Act. Therefore, a *prima facie* case of passing off has been made out by the plaintiff, at this stage.

Delay, Laches and Acquiescence

44. In this context, it is apposite to recall the judgment of the Hon'ble Supreme Court in *Midas Hygiene Industries (P) Ltd. And Anr. v. Sudhir Bhatia And Ors.*²⁸, where it was held that where the adoption of a mark is *prima facie* dishonest, the defence of delay cannot by itself operate to defeat a claim for injunction. The Court emphasised that in matters of trademark or copyright infringement, injunctive relief ordinarily follows, and mere lapse of time in approaching the Court



does not disentitle the plaintiff when the circumstances indicate that the defendant's adoption of the impugned mark was tainted by bad faith. Further in the judgment of Hon'ble Supreme Court in *M/s Power Control Appliances (supra)*, it was affirmed that where the defendant disputes the plaintiff's title or raises defences such as delay, acquiescence or concurrent rights, the Court must consider the balance of inconvenience and the justice of the case while deciding whether to grant or withhold an injunction.

45. In the present facts, the defendants' plea of delay, laches, or acquiescence cannot be accepted. The record shows that the defendants applied for the registration of the device mark "**DINDAYAL AYURVED BHAWAN**" on 20.01.2015, to which the plaintiff sent two notices dated 11.08.2015 and 04.12.2015 to the Trade Marks Registry and informed that the said trademark was already registered in the name of plaintiff for the same class i.e. Class 5. Subsequently, the plaintiff filed its notice of opposition dated 17.11.2017 when the said mark was published by Trademarks Registry. The plaintiff also sent legal notice dated 05.10.2019 when they first came across the products of the defendants which means plaintiffs are litigating against the defendants from day one. Therefore, it cannot be held to be a perceived acquiescence on the part of the plaintiff. It is relevant, in this context, to refer to the judgment of this Bench speaking through one of us (C. Hari Shankar, J) in *Bodhisattva Charitable Trust & Ors. v. Mayo Foundation for Medical Education and Research*²⁹, wherein it was observed that the plea of acquiescence is belied once the proprietor has



2025:DHC:11707-DB



issued a cease-and-desist notice, as any continued use of the mark thereafter is at the infringer's own peril and does not give rise to any equity in its favour.

46. Further, the intervening period of non-action till 2021 is sufficiently explained, in our view, due to the COVID-19 pandemic and, subsequently, by the plaintiff's assertion that it had not encountered the defendants' products earlier which is a plausible explanation given that the defendants' business operates from Sirsa, Haryana, whereas the plaintiff carries on business from Gwalior, Madhya Pradesh. It is reasonable that the plaintiff would not have come across the defendants' goods until complaints from its stockists were received in 2021. Upon gaining knowledge of the defendants' continued use of the impugned marks, the plaintiff instituted the suit for permanent injunction in 2021, which appears *prima-facie* to be plausible and believable. In this backdrop, the material demonstrates that the plaintiff has acted with vigilance at every stage upon becoming aware of the defendants' activities, and no inference of acquiescence can be drawn in absence of any unexplained delay.

47. Even otherwise, the balance of convenience is clearly in favour of the plaintiff. The plaintiff has been in commerce at least since 1997, whereas the defendants are comparatively recent entrants, with their earliest invoice dating to 2020. At this stage, the plaintiff has also demonstrated *prima facie* goodwill and reputation through substantial turnover figures and celebrity endorsements for promotion. The defendants, by contrast, have placed no material on record to suggest



any comparable market presence or goodwill. In these circumstances, the plaintiff is far more likely to suffer irreparable harm, if the injunction is withheld.

ERROR IN IMPUGNED ORDER REASONING

48. Apparently, the learned District Judge also relied on the fact that the defendants had obtained a search certificate, a copyright NOC, and label approval for the mark “**Dindayal Ayurved Bhawan**” to vacate the ad-interim injunction. In our view, the learned District Judge reasoning is legally untenable. In order for any person to obtain copyright registration of an artistic work that is used, or capable of being used, on goods or packaging, an NOC is mandatorily required under the proviso to Section 45(1) of the Copyright Act, 1957³⁰. We are in agreement with the view taken by the learned Single Bench of this Court in *Mohd. Ershad (Ek Agencies) v. Registrar of Copyrights*³¹, wherein it was clarified that NOC from the Trade Marks Registry under the proviso to Section 45(1) of the Copyright Act is mandated to ensure that copyright registration of an artistic work when used or capable of being used on goods or packaging does not conflict with trademarks already recorded on the Register. In our view, it acts as a pre-requisite clearance certificate for copyright registration of packaging/ label art, not as conferring any special or proprietary right (and certainly not as transplantation of trademark rights). The presence or absence of an NOC has no bearing

³⁰ “Copyright Act” hereinafter

³¹ 2022 SCC OnLine Del 2815.



on the adjudication of trademark infringement or passing off, which must be decided with reference to deceptive similarity and likelihood of confusion in the marketplace. Therefore, it is clear that copyright registration, search certificates, or label approvals cannot be treated as determinative of trademark rights or as evidence negating a *prima facie* case of infringement or passing off.

CONCLUSION

49. For all the reasons discussed above, this Court is satisfied that the plaintiff has established a *prima facie* case of infringement as well as passing off; that the balance of convenience lies decisively in its favour; and that refusal of interim relief would result in irreparable injury to the plaintiff's goodwill and trade reputation. Therefore, the findings of the learned District Judge, being contrary to settled principles of trademark law and having proceeded on legally untenable considerations, cannot be sustained.

50. Accordingly, the impugned order dated 18.09.2023 is set aside.

51. The defendants and all other persons acting for and on their behalf are hereby restrained, until the final disposal of the suit, from

using the “DINDAYAL”, “”, “DINDAYAL AYURVED

 BHAWAN” or “” or any identical or deceptively similar mark to the plaintiff's trademarks containing the mark “DINDAYAL”,



2025:DHC:11707-DB



or any other formative variant thereof, in relation to Class 5 goods.

52. Any observations made herein are only for the purposes of adjudication of the present application and would have no bearing on the final outcome of the suit.

53. The appeal stands allowed in the above terms. No order as to costs.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

DECEMBER 22, 2025/pa/gunn/rjd