

Dr Reddy S Laboratories Limited vs Neutec Healthcare Pvt. Ltd on 24 April, 2023

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 223/2023, I.A. 7164/2023, I.A. 7165/2023, I.A.
7166/2023 & I.A. 7167/2023

DR REDDY S LABORATORIES LIMITED Plaintiff
Through: Mr. Ranjan Narula and Mr.
Shashi P. Ojha, Advs.

versus

NEUTEC HEALTHCARE PVT. LTD Defend
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
ORDER

% 24.04.2023 I.A. 7165/2023 (Exemption)

1. Subject to the plaintiff's filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

2. The application is disposed of.

I.A. 7166/2023 (under Order XI Rule 1(4) of CPC)

3. This application seeks permission to file additional documents.

4. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.

5. The application stands disposed of accordingly.

I.A. 7167/2023 (under Section 12A of the Commercial Courts Act, 2015)

6. In view of the judgment of the Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd 1, exemption is granted from the requirement of pre-institution mediation

under Section 12A of the Commercial Courts Act, 2015.

7. The application stands allowed accordingly.

CS(COMM) 223/2023

8. The plaintiff is the proprietor of the following registrations, in respect of the cyproheptadine hydrochloride pharmaceutical formulation:

Trade mark Registration Filing Date Status/ Validity PRACTIN 457754 30/07/1986 Registered, valid until July 30,2027 1053804 22/10/2001 Registered, valid until October 22, 1053805 22/10/2001 Registered, valid until October 22, 1053809 22/10/2001 Registered, valid until October 22, 2022 SCC OnLine Del 3529 Digitally Signed By:KAMLA RAWAT Signing Date:25.04.2023 13:01:04 1053810 22/10/2001 Registered, valid until October 22, 1053834 22/10/2001 Registered, valid until October 22, VITAPRACTIN 3571246 15/06/2017 Registered Valid until June 15th,

9. The defendant's product is sold in strip of a distinctive colour, with a statutory warning printed in black on a pink/red strip. The strip looks like this:

10. The plaintiff is aggrieved by the fact that the defendant is manufacturing and selling cyproheptadine hydrochloride tablets, i.e., the same product as is being sold by the plaintiff as PRACTIN, using the deceptively similar name PACTRIN, in a strip which also adopts a trade dress deceptively similar to that of the plaintiff. For ease of reference, tabular comparison of the strips of the plaintiff and defendant has thus been provided in para 17 of the plaint:

Plaintiff's packaging Defendant's packaging

11. The plaintiff, in these circumstances, alleges infringement and passing off, by the defendant, of its product as that of the plaintiff.

12. The plaintiff or its predecessor-in-interest has been using the asserted marks since 1986.

13. To a query from the Court, Mr. Narula, learned Counsel for the plaintiff submits, on instructions, that the plaintiff enjoys priority of user of the asserted mark vis-à-vis the defendant. He is directed to incorporate the said averment either by making necessary amendment in the plaint or by filing an additional affidavit to that effect within one week from today.

14. A Prima facie case of infringement is made out as (i) the plaintiff holds a word mark registration for the mark PRACTIN, (ii) the products of the plaintiff and defendant are identical i.e. cyproheptadine hydrochloride, (iii) customer base of the products is, therefore, the same and the products are available at the same outlets,

(iv) the defendant adopts a trade dress which is nearly identical to that of the plaintiff and (v) the names PRACTIN and PACTRIN are almost indistinguishable phonetically, the only difference being that the 'R' has been shifted from the second to the fifth place in the word.

15. Prima facie, the Court also finds the case to be one of a dishonest attempt at deceiving customers into purchasing defendant's product believing it that of the plaintiff. The case being one of pharmaceutical preparations, the Court is required to adopt a more stringent stand, as per the law laid down by the Supreme Court in Cadila Healthcare Ltd. v. Cadila Pharmaceuticals 2 as the dispensation of a drug other than the one which has been prescribed or by another manufacturer can have severely deleterious effects on the community.

16. In the circumstances, let the plaint be registered as a suit.

17. Issue summons in the suit.

18. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendant within 30 days thereof.

19. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission/denial of the documents and marking of (2001)5 SCC 73 Digitally Signed By:KAMLA RAWAT Signing Date:25.04.2023 13:01:04 exhibits on 7th July 2023.

I.A. 7164/2023 (under Order XXXIX Rules 1 and 2 of CPC)

20. This is an application by the plaintiff seeking interlocutory injunctive reliefs.

21. A prima facie case of infringement and passing off is made out. Additionally, as already noted, as the case relates to pharmaceutical products, the Court has to ensure that there is immediate discontinuance of further dissemination of the allegedly infringing product.

22. As such, issue notice, returnable on 27th July 2023.

23. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks thereof.

24. Till the next date of hearing, the defendants as well as all other acting on its behalf shall stand restrained from using the impugned mark PACTRIN or the trade dress of the defendant which is deceptively similar to that of the plaintiff for manufacturing or selling cyproheptadine hydrochloride or any other pharmaceutical product or allied goods.

25. The defendant is also directed to forthwith remove, from all physical as well as virtual sites, reference to the impugned mark PACTRIN or the product which is presently being sold under the

said mark.

26. Let the plaintiff comply with the provisions of Order XXXIX Rule 3 of the CPC within one week from today.

C. HARI SHANKAR, J.

APRIL 24, 2023 dsn