

Elder Projects Ltd vs Elder Labs Limited & Ors on 11 February, 2019

Author: J.R. Midha

Bench: J.R. Midha

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 59/2019 & I.A. 1683/2019

ELDER PROJECTS LTD.

Through:

..... Plaintiff
Mr.Hemant Singh, Mr.Sumit Rajput,
Mr.Vipul Tiwari and Ms.Shipra
Philip, Advocates

versus

ELDER LABS LIMITED & ORS.

..... Defendants
Through: Mr.Amit Sibal, Senior Advocate with
Mr.Anil Dutt, Mr.Saksham Garg and
Mr.Aishvary Vikram, Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% 11.02.2019

1. Further arguments heard.

2. During the course of hearing, this Court recorded the statement of Mr.Anuj Saxena, Managing Director of plaintiff and Ms. Rubi Mukopadhyay, Director and Mr. Aditya Balasaria, CEO of defendant on oath in exercise of power under Section 165 of the Indian Evidence Act.

3. This Court is of the prima facie view that the plaintiff has raised false claims before this Court. The consequences of raising the false claim shall be considered on the next date of hearing.

4. Mr.Amit Sibal, learned senior counsel for defendant has handed over two compilations of documents which are taken on record.

5. List for continuation of the arguments on 14th February, 2019 at 02:30 PM.

6. Interim order not to continue.

7. Copy of this order as well as statements be given dasti to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

FEBRUARY 11, 2019 ds CS(COMM) 59/2019 Statement of Ms. Rubi Mukopadhyay W/o Sumit Mukopadhyay aged about 41 years R/o D/38, Aurobindo Park Kolkata-700070 On S.A. I am a B.A. (Pass). There are two other Directors of Elder Labs Ltd., namely Ramdev Ram and the other name I cannot remember at the moment. I did my graduation in the year 1991. I joined as a Sales Executive in a travel agent company after graduation in 1996 and I did the job for four years. I left the job in 2000. From 2000 to 2006 I was a house wife. In 2006 I joined a Ferro Alloys Company as a sales and marketing executive and worked there till 2013. In 2013, I resigned from that job and joined this company.

I was aware of Elder Pharmaceuticals Ltd. but I was not aware of the Elder Projects Ltd. till I received notice of this Court.

There are 3-4 share holders of Elder Labs Ltd. Balasaria Group is the major share holder which I would like to recheck. I have no expertise in pharmaceuticals. Defendant No.1 company is only providing technical assistance to the manufacturers.

The decision on the name of the medicines is taken by our CEO. CEO Mr. Aditya Balasaria took the decision to use Elder TM on the medicine boxes in question. I was aware and approved the decision of the CEO. I was aware that Elder Pharmaceuticals Ltd. were using Elder as a mark on their medicines when I incorporated my company.

The CEO of my company is M.Com from London University. My CEO has technical qualifications of pharmaceuticals. He was the CEO of another company for 10-12 years.

R.O. & A.C.

J.R. MIDHA, J.
11.02.2019

CS(COMM) 59/2019

Statement of Mr. Aditya Balasaria S/o Shri M.S. Balasaria aged about 42 years R/o 35/1, D.H. Road, #105, Kolkata-700027 On S.A. I did my graduation in B.Com in the year 1995 and thereafter, I did my MBA from Cardiff University in Accounts and Finance in the year 2000. My father was having a pharmaceuticals company and I was assisting him even during graduation. I started a company with the name of Venus Bio Sciences Private Limited in the year 2002 in which I was one of the Director. I am still running the said company as a Director.

I am one of the share holder/promoter of defendant No.1 Company which was incorporated in the year 2016. Ruby Mukopadhyay is the Managing Director of the plaintiff company and I took the decision to keep the name of defendant No.1 as Elder Labs Ltd. We did our enquiry through Company Secretary and the Company Secretary told us that there was a company named as Elder Pharmaceuticals Ltd. Company Secretary also told us that there are fifty companies with the name

of Elder. I was aware of Elder Pharmaceuticals Ltd. but I was not aware of Elder projects Ltd. I took the decision of printing word Elder with word TM on the medicine box. According to me, the word TM can be legally put on the medicine box and there is nothing wrong in it.

There are no pharmaceuticals experts in our company. In fact, we do not need any technical expert on medicines since we are basically a marketing company and we do market survey and then advise the manufacturers with respect to the name of the medicine, the composition and packaging.

R.O. & A.C.

J.R. MIDHA, J.
11.02.2019

CS (COMM) 59/2019

Statement of Anuj saxena, S/o late Sh. Jagdish Saxena, aged 52 years, R/o 271, Kalpataru Pinnacle, Goregaon-West, Mumbai on S.A.:

I am a medical doctor having passed MBBS in the year 1991. I am the Managing Director of Elder Projects Limited. This company was incorporated in the year 1992. It is a public limited company which is not listed now. I have not held any position in Elder Pharmaceuticals Ltd. My father Mr. Jagdish Saxena was the Managing Director of Elder Pharmaceuticals Ltd. and after his death in 2013, my brother Alok Saxena became the Managing Director of that company. Elder Pharmaceuticals Ltd. was wound up by the order of Bombay High Court dated 04th December, 2017. As per the report of the auditors, it was alleged that Rs.1,300 crores was siphoned out of the Elder Pharmaceuticals Ltd. Elder Projects Ltd. were doing job work for Elder Pharmaceuticals Ltd. and were manufacturing the medicines for them. After the liquidation of Elder Pharmaceuticals Ltd., the plaintiff company commenced the production of the medicines in their own name in December, 2017 to January, 2018. The turnover of the plaintiff company in which the mark 'Elder' has been used, is approx. Rs.200 crores for this financial year. The plaintiff company does not claim any right of the trademark Elder which is registered in the name of 'Elder' Pharmaceuticals Ltd. The Form TM-P submitted to the trademark registry claiming right over the trademark 'Elder' was filed under a mistaken advice.

In paras 3 and 8 of the judgment dated 04th December, 2017 of Bombay High Court in company petition for liquidation, I have been mentioned as CEO of the Elder Pharmaceuticals Ltd. but I deny holding that charge. In the Form TM-P dated 27th June, 2018, I have mentioned being the owner and director of Elder Pharmaceuticals Ltd. but I deny the statement recorded therein.

RO&AC J.R. MIDHA, J./11.02.2019