

Advertisement or the defendant's Print Advertisement or any part thereof or any other advertisement of a similar nature in any language or in any manner disparaging the goodwill and reputation of the plaintiff's product 'Nihar Natural Shanti Badam Amla Hair Oil' and the registered Nihar trade marks.

2. On the other hand, I.A. No. 11057/2022 has been filed by the defendant seeking vacation of the *ad-interim* order of injunction granted in favour of the plaintiff vide order dated 13.07.2022.

3. At the outset, it is important to note that the operation of the *ad interim* order dated 13.07.2022 was suspended vide order dated 19.07.2022. The plaintiff has thereafter filed I.A. No. 12154/2022 praying that strict action be taken against the defendant for making a false statement and for the revival of the *ad interim* injunction on the impugned Print Advertisement granted on 13.07.2022.

4. As the three applications raise similar issues, they are being addendum and disposed of by this common order.

5. The impugned WhatsApp Advertisement is reproduced herein below:

दोपेका पादुकोण Dabur Amla Hair Oil
“MEGA FRONT PAGE PRINT AD”
कल आ रहा है (12 July 2022)
दैनिक भास्कर में
PRINT AD की कॉपी हर दूकान में दिखाए और
ज्यादा बेचे Dabur Amla Hair Oil
पर शेयर करे
अब निहार शांति आंवला से जंग जीतेगे हम

defendant alone and the statement made before this Court on 19.07.2022 was incorrect. The plaintiff prayed for the restoration of the ad *interim* injunction on the impugned Print Advertisement.

IV. SUBMISSIONS ON BEHALF OF THE LEARNED SENIOR COUNSEL FOR THE PLAINTIFF

21. The learned senior counsel for the plaintiff submits that the impugned advertisements are disparaging towards the product of the plaintiff due to the following factors:

a) The Print Advertisement shows a bottle similar to that of the plaintiff's product "Nihar Naturals Shanti Badam Amla Hair Oil" with a big cross in a stark red colour upon it, thereby asking the consumers to reject the plaintiff's product. Further, the WhatsApp message which was in circulation on 11 July, 2022 depicted a boxing glove knocking down the plaintiff's bottle with a caption "***Ab Nihar Shanti amla se jung jeetenge hum***", and urged the shopkeepers to circulate the same by stating "***WhatsApp par share kare***" which shows that the intention of the advertiser was to target the plaintiff and its product.

b) The Print Advertisement begins by alarming and threatening the consumers with statement "***Yaad rakhna, sasta amla, baalo ko mehnga pade ga***", implying that any affordable Amla Hair Oil in comparison to the defendant's product will cause serious harm and damage to the consumers. He submits that this is a direct reference to the plaintiff's product as the plaintiff has

plaintiff should be considered on merits. He submits that even public interest would demand that the application of the plaintiff is considered on merit rather than being dismissed only on account of a *bona fide* mistake.

V. SUBMISSIONS ON BEHALF OF THE LEARNED SENIOR COUNSEL FOR THE DEFENDANT

30. The learned senior counsel for the defendant, on the other hand, submits that the plaint suffers from grave misstatements and concealments in relation to the proceedings before the High Court of Bombay and before the ASCI. He submits that this itself is a sufficient ground to reject the prayer for *interim* relief filed by the plaintiff. In support of his submission, the learned senior counsel for the defendant has placed reliance on the following judgements:

- i. ***M/s Seemax Construction (P) Ltd v. State Bank of India and another***, 1991 SCC OnLine Del 668;
- ii. ***K. Jayaram & Ors v. Bangalore Development Authority & Ors***, 2021 SCC OnLine SC 1194;
- iii. ***Reckitt Benckiser (India) Ltd. v. Naga Ltd and Ors.***, 2003 (68) DRJ 441;
- iv. ***Charanjit Thukral and Anr v. Deepak Thukral and Anr***, 2010 SCC OnLine Del 2517
- v. ***Warner Bros. Entertainment Inc. & Anr v. Harinder Kohli & Ors***, ILR (2009) I Delhi 722;
- vi. ***Yashoda (Alias Sodhan) v. Sukhwinder Singh and Ors***, 2022 SCC OnLine SC 1208.

by stating that each advertisement has to be considered on its own merit. While there is no dispute on this proposition of law, the fact remains that the complaint of the plaintiff in the suit before the High Court of Bombay was almost similar if not identical to the present suit. It was, therefore, incumbent on the plaintiff to have fully and truthfully disclosed the orders of the High Court of Bombay. In fact, the plaintiff itself disclosed the High Court of Bombay proceedings by prefacing it as under:

“50. That the Defendant has time and again published disparaging advertisement against the Plaintiff’s Product by making false and baseless statements. The history of the proceedings before different high courts between the parties, which deals with issue of disparagement for the identical products are provided as under:”

48. A reading of the above would show that when it suited the plaintiff, the plaintiff wanted to take advantage of the proceedings before the High Court of Bombay. It is only when its folly was caught and highlighted by the learned senior counsel for the defendant, that the plaintiff is now seeking refuge of the principle of law that each advertisement must be considered on its own merit and by contending that the proceedings before the High Court of Bombay would not have any relevance to the present suit. The plaintiff cannot approbate and reprobate and resile out of its own stand taken in the present proceedings.

(b) ASCI Action

49. There have been multiple actions taken by the plaintiff before the ASCI. On being questioned regarding the concealment and misrepresentation of such proceedings, the plaintiff sought to explain the same away by way of a note, which for convenience is reproduced hereinbelow:

S.No.	Details of the Document	Allegation of the Defendant	Response of the Plaintiff
<i>I.</i>	<p>ASCI Complaint No.1801 FTCC. 15</p> <p>Ad-29 December 2017-1099-1101, Vol VI, Plaintiff Documents dated 25.07.2022</p> <p>Complaint-2 January 2018- 1102-1107, Vol VI Plaintiff Documents dated 25.07.2022</p>	<p>These proceedings before ASCI were suppressed.</p>	<p>In these proceedings, the claim of 'Asli Amla Dabur Amla' was found to be misleading. (Para 32 of IRP Order -1129, Vol VI Plaintiff Documents dated 25.07.2022)</p> <p>Therefore, there was no reason for the Plaintiff to suppress the proceedings. The failure of the plaintiff to rely on the said favourable proceedings in the plaint, if anything highlights the haste with which the suit was prepared.</p>
	<p>FTCP-10 January 2018-1110-1111, Vol VI, Plaintiff Documents dated 25.07.2022</p> <p>IRP -5 April 2018-1112-11129, Vol VI Plaintiff Documents dated 25.07.2022/179, Vol I, Plaintiff Documents dated 12.07.2022</p>	<p>ASCI held that the claim of '2X strength' by the Defendant was substantiated based on technical reports. (Para 30, IRP Order 1112@1128, Vol VI Plaintiff Documents dated 25.07.2022)</p>	<p>The Defendant has not disclosed to the court that the composition of Dabur Amla hair oil which supported the claim of 2X strength in that ad is no longer marketed or sold by the Defendant. (Old Composition-IRP Order at pg. 1122, Vol VI Plaintiff Documents dated 25.07.2022 and current compositions at Para 101, Pg 54, Written Statement)</p>

			<p>Hence, the test reports before ASCI and the ASCI finding in this regard is not material to the Defendant's in the market today.</p> <p>For the products in the market today, the Defendant has not been able to show any technical report to support the claim of 2X strength.</p>
		<p>ASCI held sasta amla is not disparaging. (Para 29, IRP Order at pg 1128, Vol VI Plaintiff Documents dated 25.07.2022)</p>	<p>The impugned advertisement before ASCI contained the following statement:</p> <p>"Saste tel ke behkawe mein na aayein, chuniye ussee jo de quality ka vada, na ki use jisme ho tel zyada"</p> <p>The aforesaid statement was found to be a factual statement as the Defendant had established that its product provided better tensile strength based on higher content of vegetable oil in the Defendant's product. Hence, this was found to be not disparaging. (para 30, IRP Order at pg. 1128, Vol VI Plaintiff Documents dated 25.07.2022)</p> <p>Further, ASCI also finds that the use of the word Sasta is not disparaging because other Amla hair oils use more quality of mineral oil as compared to vegetable oil which costs double the price of mineral oil and hence other parties</p>