

Hamdard Laboratories India Medicine ... vs Unani Drugs Manufacturers Association ... on 2 April, 2025

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment reserved on: 04 March 2025
Judgment pronounced on: 02 April 2025
+ FAO 328/2024 & CM APPL. 59993/2024
HAMDARD LABORATORIES INDIA
(MEDICINE DIVISION)Appellant
Through: Mr. Sanjeev Sindhwani, Sr.
Adv. with Ms. Shalini Kapoor,
Ms. Divyanshi Saxena & Mr.
Udit Bhatiani, Advs.
versus
UNANI DRUGS MANUFACTURER ASSOCIATION
(UDMA)Respondent
Through: Mr. N.K. Jha, Adv.
+ FAO 347/2024
HAMDARD LABORATORIES INDIA
(MEDICINE DIVISION)Appellant
Through: Mr. Sanjeev Sindhwani, Sr.
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versus
UNANI DRUGS MANUFACTURER ASSOCIATION
(UDMA)Respondent
Through: Mr. N.K. Jha, Adv.
CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
JUDGMENT

DHARMESH SHARMA, J.

1. This common judgment shall decide the two above-captioned First Appeals preferred under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, ['CPC'] by the appellant/plaintiff, assailing the common impugned order dated 29.08.2024 passed by the learned Additional District Judge, Shahdara District, Karkardooma Courts, Delhi ['trial Court'] in CS No. 449/2022 titled "Hamdard Laboratories India (Medicine Division) versus Unani Drugs Manufacturer Association (UDMA)", whereby the applications filed by the appellant/plaintiff under Order XXXIX Rule 1&2 of CPC and Order XXXIX Rule 2A of CPC respectively were dismissed by the learned trial Court.

FACTUAL MATRIX:

2. Briefly stated, the appellant herein has descended from HAMDARD Group established in the year 1906, and is using the trademark HAMDARD in relation to its wide range of products inter alia Unani and Ayurvedic medicines, under an exclusive license from its sister concern, Hamdard National Foundation, through a Deed of Agreement dated 11.08.1975.

3. It is a matter of record that various disputes arose among the successors of Hakeem Hafiz Abdul Majeed, the founder of the HAMDARD Group, which were amicably resolved upon the intervention of the Supreme Court, vide Family Settlement Deed dated 22.10.2019. By way of the said Family Settlement, the business of the HAMDARD Group was divided into two separate divisions i.e., the Food Division and the Medicine Division, and both divisions were barred from entering into each other's domain. The Medicine Division of the HAMDARD Group called "Hamdard Laboratories (Trust)" ['HAMDARD (Medicine Division)'] i.e., the appellant herein, was agreed to be headed and run by Mr. Abdul Majeed and Mr. Asad Mueed, Sons of Late Janab Abdul Mueed Sahib, whereas the Food Division of the HAMDARD Group called "Hamdard Foods India"

['HAMDARD (Food Division)'] was agreed to be headed and run by Mr. Hammad Ahmed with his sons Mr. Hamid Ahmed and Mr. Sajid Ahmed.

4. At this stage, it would be apposite to reproduce Clause (11) of the Family Settlement Deed which provides as under:

"Notwithstanding anything contained in this Settlement Deed, the HLT Group (Medicine Division) will not manufacture, market or trade in products falling in classes 29, 30, 32, 33, 34 of the Trade Marks Act, 1999 and the HFI Group (Food Division) will not manufacture, market or trade in products falling in classes 3, 5 and 10 of the Trade Marks Act, 1999, except to the extent mutually agreed by the Parties"

5. It is claimed that cause of action in favor of the appellant/plaintiff arose against the respondent/defendant i.e., UDMA, an organization of Unani Drugs Manufacturers formed only recently on 11.10.2017 under the Societies Registration Act, 1860, when the appellant found out that the respondent/defendant on its website "www.udmaindia.com", under the heading "ABOUT UDMA", is claiming that "...Currently, over 70 Unani manufacturers from across the length and breadth of our country are members of this esteemed body. The members comprise of more than 95% of the overall Unani industry India, both in terms of volume and value of business."

6. The grievance of the appellant/plaintiff is that such statement displayed by the respondent/defendant is misleading to the general public and government authorities since the products originating from the HAMDARD (Medicine Division) i.e., the appellant/plaintiff, are also being counted by the respondent/defendant as their own, otherwise they would not have claimed such huge market presence on their website. It is stated that the appellant/plaintiff alone comprises more than 60% of the Unani medicine market and it is not a member of the respondent/defendant. Accordingly, it is claimed that since the appellant/plaintiff refused to become a member of the respondent/defendant organization, the statement made by the respondent/defendant on its website is defamatory in nature.

7. It is further claimed that the respondent/defendant claims membership with the family of Janab Hammad Ahmed, head of HAMDARD (Food Division), by showing various products that are manufactured and sold by HAMDARD (Food Division), for instance the ROOH AFZA, JAM-E-SHIRIN, HAMDARD HONEY, as "medicinal products" on the UDMA website, which is misleading to the public at large since the fact remains that the HAMDARD (Food Division) is bound by Family Settlement Deed dated 22.10.2019 which prohibits the HAMDARD (Food Division) from manufacturing Unani Drugs/Medicines. It is stated that now, very conspicuously, the respondent/defendant's website has been stopped or has not been renewed by the respondent/defendant, however, the products originating from HAMDARD (Food Division) are still being depicted as "medicinal products" on the website of Just Dial by the respondent/defendant.

8. It is further claimed that due to the misrepresentations of the respondent/defendant, the appellant/plaintiff was constrained to publish a Public Notice dated 10.10.2021 besides issuing an email to the Department of AYUSH attaching the said Notice, in various prominent newspapers, so as to inform the general public and trade at large about the true state of affairs. However, on the same day i.e., 10.10.2021, the respondent/defendant through its General Secretary Mr. Mohsin Dehlvi, addressed a letter to the Directorate of AYUSH, Government of Delhi, condemning the Public Notice issued by the appellant/plaintiff and represented themselves to have been duly authorized to use the House mark 'HAMDARD' by the HAMDARD (Food Division).

9. In the aforesaid backdrop, the appellant/plaintiff had come to file a suit for compensation bearing CS No. 449/2022 against the respondent/defendant for damaging the reputation of the appellant/plaintiff by wrong representation and misleading the Govt. Authorities besides misrepresentation before the general public at large.

10. It is pertinent to note that in the said suit proceedings, the appellant/plaintiff filed an application under Order XXXIX Rule 1&2 of the CPC for ad interim injunction, which was granted in favour of the appellant/plaintiff by the learned trial Court vide order dated 01.08.2022, thereby restraining the respondent/defendant from publishing HAMDARD (Food Division) products as Unani Medicinal Products.

11. It has been brought to the fore that in the course of operation of the aforesaid order dated 01.08.2022, the respondent/defendant celebrated the 5th UDMA Day at Jamia Milia Islamia, Okhla 110025 from 14.10.2022 to 16.10.2022, wherein it displayed HAMDARD (Food Division) products as "Unani Medicinal Products" in blatant violation of the order passed by the learned trial Court on 01.08.2022. Aggrieved thereof, the appellant/plaintiff filed an application under Order XXXIX Rule 2A of CPC before the learned trial Court against the respondent/defendant for wilful violation of the interim order dated 01.08.2022.

12. However, on 29.08.2024, the learned trial Court dismissed the application filed by the appellant/plaintiff under Order XXXIX Rule 1&2 of CPC against the respondent/defendant, as also the application filed under Order XXXIX Rule 2A of CPC, and the stay granted to the appellant/plaintiff stood vacated by the learned trial Court vide impugned order dated 29.08.2024. Aggrieved thereof, the appellant/plaintiff filed the present set of appeals. IMPUGNED ORDER

13. While dismissing the application under Order XXXIX Rule 1&2 of CPC filed by the appellant/plaintiff, the learned trial Court vide impugned order dated 29.08.2024 inter alia observed that since no complaint had been filed on behalf of the HAMDARD (Food Division) against the respondent/defendant nor the present suit had been filed on behalf of the HAMDARD (Food Division), the appellant/plaintiff i.e., the HAMDARD (Medicine Division) has no locus standi to seek any relief so as to restrain the respondent/defendant from publishing HAMDARD (Food Division) products as "Unani Medicinal Products"

as no cause of action seems to have arisen in favor of the appellant/plaintiff in that regard. Furthermore, in view of the admitted position that the HAMDARD (Food Division) can use the word 'HAMDARD' and that the appellant/plaintiff had not filed any document to show that it is having more than 60% market presence in Unani Medicinal Products as alleged in its application, the learned trial Court reached at the conclusion that the appellant/plaintiff has failed to show any cause against the respondent/defendant so as to restrain the respondent/defendant from using the word 'HAMDARD' with respect to HAMDARD (Food Division) Products as Unani Medicinal Products, or for recalling the letter dated 10.10.2021 addressed to Directorate of AYUSH by the respondent/defendant in that regard. Accordingly, the learned trial Court dismissed the application under Order XXXIX Rule 1& 2 CPC filed on behalf of the appellant/plaintiff for not being maintainable in the eyes of law.

14. Secondly, the learned trial Court dismissed the application under Order XXXIX Rule 2A of CPC filed by the appellant/plaintiff on the ground that pursuant to order dated 01.08.2022, though the appellant/plaintiff filed an affidavit in compliance of Order XXXIX Rule 3 of CPC on 15.09.2022, the respondent/defendant remained unserved and entered appearance for the first time only on 28.10.2022 immediately after which the respondent/defendant filed an application under Order XXXIX Rule 4 of CPC. It was further recorded that it was only vide order dated 25.02.2023 that the defendant was served with the amended plaint which does not imply service under Order XXXIX Rule 3 of CPC. Accordingly, on the basis of the aforesaid submissions on behalf of the respondent/defendant, the learned trial Court held that it cannot be said that the respondent/defendant has "wilfully" violated the interim order dated 01.08.2022, thereby dismissing the application under Order XXXIX Rule 2A of CPC filed on behalf of the appellant/plaintiff.

LEGAL SUBMISSIONS ADVANCED BY THE LEARNED COUNSELS FOR THE PARTIES:

15. Drawing the attention of this Court to the photographs placed on record from the 5th UDMA Day celebrations organized by the respondent/defendant at Jamia Milia Islamia, Okhla, wherein the HAMDARD (Food Division) products were being displayed as Unani Medicinal Products by the respondent/defendant, learned senior counsel for the appellant/plaintiff urged that the learned trial Court erred in assuming that the only person aggrieved by the actions of the respondent/defendant is the HAMDARD (Food Division) and not the appellant herein, since it failed to appreciate that the HAMDARD (Food) Division) is actually a beneficiary of the act

complained of, besides the fact that vide the Family Settlement Deed, the HAMDARD (Food Division) has no right over the use of the mark HAMDARD for Unani/medicine products, therefore there is no question of the HAMDARD (Food Division) filing complaint proceedings against the respondent/defendant for the same. Further, it was urged that the learned trial Court failed to appreciate that the right of HAMDARD (Food Division) in the mark 'HAMDARD' is of no consequence and that the respondent/defendant is an association of Unani Drugs and Medicines which cannot employ the said mark under the guise of Food Products.

16. Lastly, it was contended that the impugned order is unsustainable in law since the learned trial Court has not alluded to the three cardinal principles of (1) existence of a prima facie case, (2) balance of convenience, and (3) irreparable loss and injury, while deciding the interim injunction application. Accordingly, it was submitted that the learned trial Court has erred inasmuch as it has failed to examine the case of the appellant/plaintiff in light of the 'triple test' doctrine and has dismissed the application of the appellant/plaintiff merely on the reasoning that the same is "not maintainable".

17. As regards the dismissal of the application under Order XXXIX Rule 2A of CPC filed on behalf of the appellant/plaintiff, it was contended that the learned trial Court has erroneously held that the respondent/defendant was not aware of the order dated 01.08.2022 during celebration of the 5th UDMA Day from 14th to 16th October 2022.

It was urged that the respondent/defendant, at the relevant point in time, had knowledge of the operation of the interim order since the counsel for the respondent/defendant had filed an inspection application and carried out an inspection dated 22.09.2022 of the judicial file upon authorisation from the General Secretary of the respondent/defendant Mr. Mohsin Dehlvi. Furthermore, it was pointed out that the application under Order XXXIX Rule 4 of CPC was signed and attested on behalf of the respondent/defendant on 22.10.2022 as is evident from the date of notarisation of the affidavit filed alongwith. Accordingly, it was urged that the learned trial Court failed to appreciate that the respondent/defendant was duly served on 19.09.2022 as is evident from the tracking reports placed on record by the appellant/plaintiff. It was further urged that the learned trial Court has confused the service of the amended plaint with the knowledge of the interim order dated 01.08.2022. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in Samee Khan v. Bindu Khan¹ and Lavanya C v. Vittal Gurudas Pai².

18. Per contra, learned counsel for the respondent/defendant urged that the respondent/defendant is not a signatory to the family settlement deed dated 22.10.2019 entered into between the Medicine Group and 1 (1998) 7 SCC 59 2 2025 SCC OnLine SC 499 the Food Group as well as their allied institutions. It was further contended that in view of an arbitration clause, the learned trial Court does not have the jurisdiction to entertain, try and decide any disputes in respect of violation of terms of the Family Settlement Deed dated 22.10.2019, nor does it have the jurisdiction to entertain any case of infringement of the trademark 'HAMDARD' since the said dispute falls under sub clause

(xvii) of Section 2(1)(c) of the Commercial Courts Act, 2015 which is exclusively triable by the Commercial Court. It was further contended that since the appellant/plaintiff has no right, title or interest in respect of HAMDARD (Food Division), the learned trial Court has rightly held that no cause of action has arisen in favour of the appellant/plaintiff as claimed in the suit against the respondent/defendant. As regards the dismissal of the application under Order XXXIX Rule 2A of CPC, it was urged that the decision of the learned trial Court requires no interference since it is apparent on the face of the record that the appellant/plaintiff failed to comply with the mandatory provisions of Order XXXIX Rule 3 CPC due to which the ex parte interim order dated 01.08.2022 and 13.09.2022 stand liable to be vacated for having no value in the eyes of law.

19. In rebuttal, it was submitted on behalf of the appellant/plaintiff that the cause of action being alleged is essentially the misuse of the appellant/plaintiff's name by the respondent/defendant and not any violation of the Family Settlement Deed by the respondent/defendant. It was reiterated that the appellant/plaintiff has referred to the Family Settlement Deed in the suit proceedings only to show its own right and exclusivity over the manufacturing and trade of Hamdard medicines, and not for asserting any right over the respondent/defendant based on the said Deed. Furthermore, it was urged that the present dispute does not fall under the category of a "commercial dispute" inter alia for the reason that there is no contract existing between the appellant/plaintiff and respondent/defendant nor is the plaint predicated upon any commercial transaction between the parties, besides the fact that the respondent/defendant is not even a commercial body, rather it is a registered Society engaged in research, development and promotion of Unani drugs. In conjunction, it was contended that the present matter does not involve any dispute pertaining to the intellectual property rights of the appellant/plaintiff either, for the reason that there is neither a rival mark nor any warring trading bodies, and it is not even the case of the appellant/plaintiff that the respondent/defendant is claiming any right over the mark 'HAMDARD' or proposing to use the said mark as its own. In view thereof, it was contended that the present dispute between the parties is well within the jurisdiction of the learned trial Court to hear and decide.

ANALYSIS & DECISION:

20. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties. I have also perused the appeal paperbook besides the Trial Court Record, as also the relevant case law placed on the record.

21. Before proceeding to decide the fate of the present appeals, it would be apposite to reproduce the impugned order dated 29.08.2024 which has been passed by the learned trial Court, that goes as under:

"Replication filed on behalf of the plaintiff on 28.08.2024. Copy supplied.

An application was also earlier filed on behalf of plaintiff u/s 151 CPC for seeking directions to supply legible copies alongwith the WS, without mentioning the details of the documents stated to be illegible. However, since the replication has already been filed by the plaintiff, the instant application has become infructuous. The same

is accordingly disposed of.

Arguments heard on the application u/s 151 CPC earlier filed on behalf of defendant for seeking of modification of order dated 17.02.2024.

Perusal of order dated 17.02.2024 shows that it is inadvertently mentioned that 'Ld. Counsel for the Defendant undertakes to supply the deficient and its legible copy within one week from today, whereas it should have been Ld. Counsel for the Plaintiff.

Today, Ld. Counsel for defendant submits that he has already received the legible copies pursuant to the order dated 17.02.2024.

In view of the same, application U/S 151 CPC filed on behalf of defendant is hereby disposed of as allowed.

Application under Order 39 Rille 1&2 CPC :-

Arguments also heard on the application under Order 39 Rule 1 & 2 CPC filed by plaintiff from both the sides.

In the application, the plaintiff is seeking an order restraining the defendant from publishing Hamdard Food Delivery Products as Unani Medicinal Products; for re-calling the letter dated 10.10.2021 issued to Department of AYUSH by the defendant, and for restraining the defendant from claiming market presence of 90% in Unani Medicinal Products as the plaintiff alone has market presence of more than 60%.

Ld. Counsel for the Plaintiff fairly concedes that it is mentioned in para-12 of the plaint that pursuant to a Family Settlement Deed, the business of the Hamdard Group was divided between Hamdard Food Division and Hamdard Medicine Division.

Ld. Counsel for the Plaintiff further admits that the plaintiff is representing the Hamdard Medicine Division and not the Hamdard Food Division.

Admittedly, no complaint has been filed on behalf of Hamdard Food Division against the defendant nor the present suit has been filed on behalf of Hamdard Food Division.

Hence, plaintiff herein cannot seek any relief restraining the defendants from publishing Hamdard Food Division products as Unani Medicinal Products, as no cause of action arise in favour of the plaintiff in this regard.

Perusal of the letter dated 10.10.2021 shows that the defendant has written to the Director/Department of AYUSH, GNCT Delhi that Hamdard Laboratories India - Food Division is legally authorized to use Hamdard and has also given the defendant/UDMA consent to use the

name of Hamdard on the website and other platforms of UDMA and that the Hamdard Food Division headed by Sh. Hamid Ahmed is the President of the defendant society i.e. UDMA.

It is contended on behalf of the plaintiff that defendant has not filed on record any such letter issued by Sh. Hamid Ahmed authorizing UDMA to use Hamdard Logo on their Unani Products and that Hamdard National Foundation, which owns the Hamdard Logo has not assigned right to use Hamdard Logo in favour of the defendant.

Ld. Counsel for the plaintiff however, clarified that Hamdard Food Division can use the word 'Hamdard'.

Further, the plaintiff has sought the prayer for restraining the defendant from claiming its market presence of 90% in Unani Medicinal Products on the ground that it is the plaintiff which alone has market presence of more than 60%.

On court query, Ld. Counsel for the Plaintiff fairly concedes that plaintiff has not filed any document to show that plaintiff is having any such market presence in Unani Medicinal Products of more than 60%, as alleged in the instant application.

In view of the above, the plaintiff has failed to show any cause against the defendant so as to restrain the defendant from using the word 'Hamdard' w.r.t. Hamdard Food Delivery Products as Unani Medicinal Products, or for recalling the letter dated 10.10.2021 in this regard.

Accordingly, the application under Order 39 Rule 1 & 2 CPC filed on behalf of plaintiff is dismissed, being not maintainable.

For the reasons stated above, the application under Order 39 Rule 4 CPC filed on behalf of the defendant is also disposed of as having become infructuous.

Application under Order 39 Rule 2A CPC :-

Arguments also heard on application under Order 39 Rule 2A CPC filed on behalf of plaintiff from both the sides.

By way of the said application, the plaintiff has alleged that pursuant to the interim order dated 01.08.2022, the defendant continued to publish Hamdard Food Division products as Unani Medicinal Products and the same was displayed physically from 14.10.2022-16.10.2022, as the defendant celebrated 5th UDMA Day at lamia Milia Islamia, Okhla, Delhi.

Ld. Counsel for the Defendant submits that the defendant has not committed any violation of interim order passed by Ld. Predecessor Court. It is further submitted that vide order dated 01.08.2022, the plaintiff was to make compliance as per Order 39 Rule 3 CPC within 02 days, whereas admittedly, the plaintiff filed the affidavit of

compliance of 04.08.2022.

Vide order dated 13.09.2022 passed by Ld. Predecessor Court, the plaintiff sought extension for complying the provisions of Order 39 Rule 3 CPC.

Perusal of record shows that plaintiff has filed affidavit in compliance of Order 39 Rule 3 CPC on 15.09.2022. However, as per the report dated 27.10.2022, the defendant remained unserved and the defendant entered appearance on 28.10.2022.

It is submitted by Ld. Counsel for the Plaintiff that defendant was served on 19.09.2022 and has also filed tracking reports in this regard. However, the defendant denies to have received any such notice and further submits that admittedly vide order dated 25.02.2023, the defendant was served with the amended plaint which was never on record, and therefore, the same does not imply any service under Order 39 Rule 3 CPC.

In Para no.3 of the instant application filed by the plaintiff U/o 39 Rule 2A CPC, the plaintiff has mentioned that there was a typographical error in the address of the defendant no. 1 and has sought amendment in the plaint in this regard which was allowed by Ld. Predecessor Court vide order dated 13.09.2022 and plaintiff was given extension of time for complying the provisions of order 39 Rule 3 CPC pursuant to the interim order dated 01.08.2022.

It is trite law that as per order 39 Rule 2A CPC, the 'Disobedience' of any injunction order has to be 'Willful'. It is the case of the defendant that the plaintiff was never entitled to any injunction order against the defendant as the plaintiff has no cause of action to file the present suit against the defendant.

This Court has already dismissed the application of the plaintiff U/o 39 Rule 1 and 2 CPC for the reasons stated hereinabove. However, without prejudice to the same and in view of the fact that the interim order dated 01.08.2022 passed by Ld. Predecessor Court was continuing even on 14.10.2022- 16.10.2022 i.e. on the day when the defendant had physically displayed Hamdard Food Division products as Unani Medicinal Products, as the defendant celebrated 5th UDMA Day at Jamia Milia Islamia, Okhla, Delhi, it cannot be said that the defendant has willfully violated any interim order dated 01.08.2022 passed by Ld. Predecessor Court, as even otherwise, it has been submitted on behalf of defendant that defendant was never served the original plaint of the present suit nor communicated about the operation of ex-parte order dated 01.08.2022 as the defendant has entered his appearance for the first time in the present proceedings on 28.10.2022 and immediately thereafter has filed an application U/o 39 Rule 4 CPC on NDOH i.e. 25.02.2023.

In view of the above, the application U/o 39 Rule 2A CPC filed on behalf of plaintiff is also dismissed, being not maintainable.

Now to come up for reply and arguments on the pending applications U/o 1 Rule 10 CPC r/w Order 6 Rule 17 CPC filed on behalf of plaintiff on 19.12.2024."

CHALLENGE TO ORDER PASSED WITH RESPECT TO ORDER XXXIX RULE I & 2

22. It would be relevant to re-produce the reliefs which are claimed in the application under Order 39 Rule 1 and 2 of the CPC which came to be dismissed by the learned Trial Court: -

"i. An order of ad interim injunction in favour of the Applicants/Plaintiffs and against the Respondents/Defendants restraining the Respondents/Defendants from publishing HAMDARD FOOD Division products as Unani medicinal Products.

ii. Recall the letter 10th October, 2021 issued to the Department of Ayush by Respondent/Defendant stating that the Publish Notice issued on dated 10th October, 2021 by the Applicant/Plaintiff was malafide.

iii. Refrain Respondent/Defendant from claiming of having market presence of 90% in Unani Medicinal products, which is not possible as Applicant/Respondent alone has market presence of more than 60%."

FAO 328/2024 & CM APPL. 59993/2024

23. A careful perusal of the reasoning accorded by the learned trial Court in dismissing the application under Order XXXIX Rule 1&2 of CPC seems to be that in terms of the Family Settlement, it was the prerogative of the HAMDARD (Food Division) ['HFI'] alone to enforce their legal rights arising out of the Family Settlement Deed dated 22.10.2019 and seek remedy against the respondent/defendant on the ground that their food products are being passed off as Unani Medicinal Products. Unhesitatingly, the aforesaid reason is flawed since if the case of the appellant/plaintiff is believed, HFI would rather be a direct or indirect beneficiary of the impugned proclamations by the respondent/defendant.

24. However, that is not the end of the matter. On a careful perusal of the averments in the plaint filed by the appellant/plaintiff, the core issue raised by them is with regard to the use of the trade name 'HAMDARD' by the respondent/defendant with respect to the Hamdard (Food Division) Products claiming them to be Unani Medicinal Products. Although the suit is couched by the appellant/plaintiff as a suit for compensation/damages against the defamation of the appellant/plaintiff under Order VII Rule 1 of the CPC, as rightly pointed out by the learned counsel for the respondent/defendant, the cause of action essentially emanates from the Family Settlement arrived at between the parties dated 22.10.2019, whereby the appellant/plaintiff has been accorded an exclusive right to deal in Medicines, Pharmaceuticals, Drugs & Cosmetics, besides prohibiting HFI from dealing with any business falling under Classes 3, 5 and 10 of the Trade Marks Act, 1999.

25. In order to appreciate the real controversy, it would be apposite to re-produce the averments with regard to the cause of action in the plaint, which go as under:-

"29. Cause of Action first arose, when after Family Settlement executed, and Mr. Hamid Ahmed and his Group (Hamdard Food Division) was not entitled to use the

mark/name HAMDARD in relation to medicinal/unani products, then remaining him to be part of Defendant even as Food Division is wrong as the Defendant is an organization claiming it to be an organization of Unani Drugs Manufacturers, which Hamdard Food Division is not. And since the Plaintiff is not a member of the Defendant, the use of name/mark HAMDARD for medicines in any manner is malafide on the part of the Defendant that too despite being known of the actual facts, which was brought into the notice of the Defendant, vide a letter dated 5th February, 2021, as also the public notice dated 10th October, 2021. The act of the Defendant in enclosing the website of unani sellers appears to be temporary one and in a very clandestine manner shifting the marketing/publicity to website of JUST DIAL is a reflection of culpability of Defendant.

30. Cause of Action has been continuous one and lastly arose when a letter was addressed to the Director, Directorate of AYUSH, Govt. of NCT Delhi on dated 10th of October, 2021, stating that the Public Notice dated 10th October, 2021 in various News Paper is wrong and with malafide intention by the Plaintiff and on dated 22.07.2022, when the plaintiff found the defendant after closing the website www.unanisellers.com has shifted to JUST DIAL, website, wherein the earlier website of www. Unani sellers are still being mentioned."

26. Further, it would be relevant to reproduce the reliefs which are claimed by the appellant/plaintiff in the main suit: -

- "i. That the Defendant may be directed to not to use the name/housemark HAMDARD in any manner, whoseever being Unani Drugs manufacturers Association.
- ii. That the Defendant may be directed to put clear and unambiguous manner a declaration that plaintiffs are not at all the member of the defendant organization.
- iii. That the Defendant may be directed to pay a Sum of Rs. 5,00,000/- as Damages as mentioned in the Plaint to the Plaintiff."

27. A bare perusal of such prayers would show that firstly, what is sought in the application seeking interim relief goes beyond what is claimed in the main suit. Anyhow, at the cost of repetition, the core issue is that the Hamdard Food Division directly or indirectly by engaging with the respondent/defendant is allegedly usurping on the domain of the appellant/plaintiff so as to deal in Medicines, Pharmaceuticals, Drugs & Cosmetics business. I am afraid if that is the case, not only the present suit is bad for non-joinder of the Hamdard Food Division (HFI) as a necessary party but is also hit by Sections 2(1)(c)(ix) 3 and (xvii)4 of the Commercial Courts Act, 2015.

28. The plea advanced by the learned senior counsel for the appellant/plaintiff that the suit is not predicated on any cause of action against the other family branch i.e., Hamdard Food Division (HFI), cannot be sustained for the simple reason that the suit is essentially for the use of the trade name 'HAMDARD' by the respondent/defendant passing off food products as Unani medicine being

manufactured by the other family branch i.e. HFI, and thereby claiming to the general public that such food items have medicinal values.

3 (ix) distribution and licensing agreements 4 (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

29. In fact, another aspect which is espoused on behalf of the appellant/plaintiff is that the food division should not have no concern with the body which is meant for Unani drugs. In this regard, attention of the Court was invited to the aims and objects of the respondent/defendant, as contained in the Memorandum of Association of the respondent/defendant, which was founded in 2017, vide Clause (1) which states as follows: "to establish and manage organizations/ institution/ Research center for development of Unani and Other allied herbal drugs covered by AYUSH". It was urged that if the objective of the respondent/defendant is to promote Unani medicine, it is beyond the scope of its Memorandum to promote food products portraying them as Unani Medicinal Products. The issue as to whether the foods products may or may not possess medicinal qualities is something which should essentially be addressed by an appropriate forum.

30. The plea raised by the learned counsel for the appellant/plaintiff that the dispute is not of commercial nature since there is no contract between the appellant/plaintiff and the respondent/defendant, is again flawed since what is, in essence, claimed is the use of the trade name 'HAMDARD' in relation to Unani Medicinal Products which the respondent/defendant seeks to promote.

31. The bottom line is that although the learned trial Court has not discussed the 'trinity test' while deciding the application under Order XXXIX Rule 1 & 2 CPC but at the same time, while considering the whole conspectus of the matter, this Court has no hesitation in finding that the appellant/plaintiff cannot invoke the jurisdiction of the learned trial Court seeking the reliefs which are claimed, since the present matter clearly falls in the domain of the Commercial Court. There is no gainsaying that the underlying object of setting up of Commercial Courts is to ensure that all cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. The Commercial Courts Act, 2015, provides for a fast-track procedure which must be adverted to when the parties are engaged in trade and commerce as in the present case.

32. It is only when the appellant/plaintiff is able to establish a clear legal right to the use of the word 'HAMDARD' for Medicinal Products in terms of the Family Settlement, which has not been fully implemented and in the background, the parties are already in arbitration, that the question of reputational damage to the appellant/plaintiff, in light of the respondent/defendant's alleged tall claims regarding the market share of its Medicinal Products by its registered members, would arise. This aspect shall then be required to be considered by the Commercial Court in accordance with the law. The suit, in essence, pertains to the protection of not only the use of trade name but also the intellectual property rights of the appellant/plaintiff with regard to the medicinal, pharmaceutical and drugs.

33. Resultantly, the present appeal is dismissed. The pending applications also stand disposed of accordingly.

34. Lastly, in view of the decision by this Court in the case of Namita Gupta v. Suraj Holdings Limited⁵, the learned trial Court shall return the plaint under Order VII Rule 10 of the CPC with liberty to the appellant/plaintiff to present the plaint for redressal of its grievances before the competent Commercial Court.

35. In light of the reasons that have prevailed in the mind of this Court in dismissing FAO 328/2024, at the outset, this Court finds that the instant appeal is also bereft of any merits. The learned trial Court has accorded sound reasons for dismissing the application under Order XXXIX Rule 2A of CPC.

36. The fact of the matter is that it is difficult to discern that the respondent/defendant has committed any willful or deliberate disobedience of the directions of the learned trial Court. Furthermore, where the Court lacks subject matter jurisdiction for the matter being a commercial dispute, it would not be conducive to take any action for the alleged contempt or disobedience of the directions of that Court.

37. Hence, the present appeal also stands dismissed. All pending applications are also disposed of.

DHARMESH SHARMA, J.

APRIL 02, 2025 Sadiq/Ch 5 2024 SCC OnLine Del 143