



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.35091 OF 2025
IN
COMMERCIAL IP SUIT (L) No.27106 of 2025

Elder Neutraceuticals Private Limited ...Applicant/Defendant

IN THE MATTER BETWEEN ...Plaintiff

Elder Prroject Limited

V/s.

Elder Neutraceuticals Private Limited ...Defendant

WITH

INTERIM APPLICATION (L)NO.27598 OF 2025
IN
COMMERCIAL IP SUIT (L) No.27106 of 2025

Elder Prroject Limited ...Applicant/Defendant

IN THE MATTER BETWEEN ...Plaintiff

Elder Prroject Limited

V/s.

Elder Neutraceuticals Private Limited ...Defendant

Mr. Karl Tamboly with Mr. Bhupesh Dhumatkar, Mr. Rohit Pandey &
Mr. Bhavin Shah i/b Mr. Dinesh Dubey, for Plaintiff & for Applicant in
IAL/27598/2025

Mr. Hiren Kamod with Mr. Nihit Nagpal, Ms. Nisha Kaba, Mr. Abhijit
Singh, Mr. Anees Patel & Ms. Areen Shaikh, for Defendant & for
Applicant in IAL/35091/2025

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 18 FEBRUARY 2026.

PRONOUNCED ON: 09 March 2026.

JUDGMENT:

1) This is an action by the Plaintiff complaining of infringement and passing off in respect of its registered trademark  used by it for manufacture and sale of its pharmaceutical and medicinal products. It is Plaintiff's case that the Defendant's mark  is identical with and/or deceptively similar to the Plaintiff's mark and that the Defendant is using the impugned mark in respect of identical goods. In its Suit, Plaintiff filed application for temporary injunction. On 26 September 2025, the Plaintiff persuaded this Court to pass an *ex-parte* ad-interim injunction in its favour *inter alia* restraining the Defendant from using the mark  or any other deceptively similar mark containing the word ELDER. This Court also appointed Court Receiver for seizure of goods of the Defendant. Upon being served with *ex-parte* ad-interim injunction order, the Defendant has filed Interim Application (L) No.35091 of 2025 seeking vacation of the *ex-parte* ad-interim injunction order dated 26 September 2025 under Order 39 Rule 4 of the Code of the Civil Procedure, 1908 **(the Code)**. With the consent of parties, Defendant's application for vacation of ad-interim injunction and Plaintiff's application for temporary injunction are taken up for hearing together.

FACTS

2) Plaintiff's pleaded case in the Plaint is that it was originally incorporated under the Companies Act, 1956 in the name as 'Kenex Projects Limited' on 4 July 1985. The name of the Company was changed from 'Kenex Projects Limited' to 'Elder Projects Limited' on 16 September 1992. The registered office of the Company was also changed from Shillong to Mumbai. On 16 August 2022, Plaintiff has changed its name from 'Elder Projects Limited' to 'ELDER Prrojects Limited'. The Plaintiff is in the business of manufacturing, selling and trading of range of medicines, ointments, eye drops, etc. since 1992-93. Plaintiff claims use of the device mark  since 1992-93. According to the Plaintiff, the trademark has achieved significant goodwill and popularity with products sold in Class-5 specially medicines, ointments, eye drops, etc. Plaintiff claims to have coined the mark and has been using the same without any objections or interruptions. Plaintiff also claims itself to be a prior user of the mark.

3) The Plaintiff applied for registration of the mark  on 31 August 2018 in Class 5 of the Trade Marks Act, 1999 (**Trade Marks Act**). The Application was allowed on 12 June 2024 and thereafter Plaintiff's trade mark has been registered. Plaintiff also applied for registration of copyright  for the label and the registration certificate dated 5 February 2020 has been issued in its name.

4) Plaintiff claims that in May 2025, its distributors brought to its notice Defendant's products bearing the impugned mark. According to the Plaintiff, Defendant has made cosmetic changes to Plaintiff's trade mark and started using the mark . According to the Plaintiff, Defendant has replicated the word 'ELDER' in identical style and colour as used in Plaintiff's registered trademark with few cosmetic changes added to the infringing trademark. That the word 'ELDER' is written in identical manner as that of Plaintiff's registered trade mark, which is most prominent feature of the infringing mark. Plaintiff took search in the registry of Trade Marks and found that the Defendant has applied for registration of word mark **ELDER NEUTRACITICALS** on 28 March 2025, but has not applied for registration of the device mark . It is pleaded that the Defendant has claimed use of the alleged word mark since 19 January 2015, but the Plaintiff noticed products of the Defendant bearing the infringing mark in May-2025. Plaintiff claims to have come across numerous products marketed by the Defendant using infringing trademark.

5) The Plaintiff accordingly addressed Cease and Desist Notice dated 27 June 2025 to the Defendant, which replied to the same on 4 July 2025 denying the allegations. Since the Defendant failed to stop use of the infringing mark, the Plaintiff has filed the present Suit complaining infringement of its registered trademark and passing off. In its Suit, the Plaintiff has filed Interim Application (L) No.27598 of 2025 seeking temporary injunction *inter-alia* for restraining the Defendant from using the infringing mark. The Plaintiff also sought

appointment of Court Receiver for raiding the places and registered offices of the Defendants for seizure of the products of the Defendant.

6) Plaintiff moved Interim Application (L) No.27598 of 2025 and pressed for *ex-parte* ad-interim injunction against the Defendant. The Plaintiff impressed upon this Court that the purpose of granting ad-interim injunction would be defeated by delay in giving notice to the Defendant. On 26 September 2025, this Court passed *ex-parte* ad-interim injunction in favour of the Plaintiff in terms of prayer clauses (a) and (c) of the Interim Application. This Court also appointed Court Receiver empowering it to do the acts enumerated in the order. Upon being served with order of ad-interim injunction, the Defendant appeared in the Suit and has filed Interim Application (L) No.35091 of 2025 seeking vacation of the ad-interim injunction under Order 39 Rule 4 of the Code. The Plaintiff has filed affidavit-in-reply to that Application. The Defendant has filed affidavit-in-rejoinder. Since pleadings in the Interim Application (L) No.35091 of 2025 are complete the same is taken up for disposal. By administrative order of the Hon'ble Chief Justice, both Interim Application (Lodg.) No.35091 of 2025 and Interim Application (Lodg.) No.27598/2025 are assigned to this Court. With the consent of the learned counsel appearing for the parties, both the Applications are taken up for analogous hearing.

SUBMISSIONS

7) Mr. Kamod, the learned counsel appearing for the Defendant has canvassed elaborate submissions for vacation of *ex-parte*

ad-interim injunction. Additionally, he has also prayed for dismissal of the application for temporary injunction on the ground that the Plaintiff has failed to make out any case for grant of temporary injunction. He submits that the Plaintiff has suppressed material facts from this Court while applying for *ex-parte* ad-interim injunction. That the Plaintiff has not disclosed the fact that the Elder Pharmaceutical Ltd. (EPL), which was incorporated in the year 1983, is the first adopter, user and registered proprietor of word mark **ELDER**, and that EPL was using the mark in the stylised font since the year 1983. That late Mr. Jagdish Saxena, Managing Director of the EPL is father of Dr. Anuj Saxena (director of Plaintiff Company) and of Ms. Shalini Kumar (Director of the Defendant-Company). That the Plaintiff has suppressed the relationship between its Director and Director of the Defendant. That Ms. Shalini Kumar also functioned as Director (Sales and Marketing) of EPL and also happens to be a shareholder in Plaintiff's company.

8) Mr. Kamod further submits that the Plaintiff has grossly suppressed orders passed by the Delhi High Court in other proceedings. He takes me through the order passed by the Delhi High court in **Elder Projects Ltd. Versus. Elder Labs Limited & other**¹ in which statement of Mr. Anuj Saxena was recorded that he did not hold any position in EPL and that Elder Project Ltd. was doing mere job work for EPL and that it does not claim any right in the trademark 'ELDER' which is registered in the name of EPL. That Mr. Saxena deposed before the Delhi High Court that the form submitted with Trade Mark Registry for

¹ Order dated 11 February 2018 passed by Delhi High Court in CS(COMM) 59/2019

claiming right over mark 'ELDER' was filed under mistaken belief. That the Delhi High Court observed in the order that Plaintiff therein raised false claim and accordingly vacated the interim order passed in its favour. Mr. Kamod then takes me through the Order in **Elder Projects Ltd. and Another Versus. Elder Pharmacia LLP & Others**² in which the Delhi High Court held that the EPL has the exclusive right to use the trademark 'ELDER' and that Plaintiff No.1 and Defendant No.1 therein were both infringers and the case involved senior infringer suing the junior infringer. The Delhi High Court rejected the prayer for injunction relying on its judgment in **Capital Plastic Industries Versus. Kappv Plastic Industries**³. The Delhi High Court rejected the contention of shared reputation raised by the Plaintiff in respect of the EPL's trademark 'ELDER'. That contrary to the findings of the Delhi High Court, Plaintiff has falsely claimed independent reputation and goodwill for trademark 'ELDER' from 1992-93. Mr. Kamod then relies on order of Delhi High Court in **Antex Pharma Pvt. Ltd. & Another Versus. Elder Projects Ltd. & Another**⁴ in which the Plaintiff herein has been restrained from giving groundless threats of illegal proceedings against the Plaintiffs therein in relation to the trademark 'ELDER' and ELDERVIT. He has also relied upon order passed by the Delhi High Court in **Elder Orgichem Private Limited Versus. Elder Prrojects Limited**⁵ in which *ex-parte* order secured by Plaintiff by concealing vital facts is set aside by the Division Bench of Delhi High Court.

² Order dated 5 April 2019 passed by Delhi High Court in CS (Comm) No.1313 of 2018

³ 1998 (8) PTC 182 (Del)

⁴ Order dated 28 February 2024 passed by Delhi Hich Court in CS(COMM) 178/2024

⁵ 2024 SCCOnline Del 9173

9) Mr. Kamod then relies upon proceedings initiated by the Official Liquidator (OL) of EPL against the Plaintiff. He invites attention of the Court to notice issued by the OL on 21 February 2022 and reply thereof by the Plaintiff, in which the Plaintiff's director stated that he is nowhere concerned with trademarks of EPL and that the Plaintiff was merely a contract manufacturer of EPL from 1994 upto March-2016. That the Plaintiff confirmed that it did not apply for transfer of any products from the name of EPL in its name. He relies on report No.36 of 2022 filed by the OL in this Court and order passed by this Court on 3 July 2025 granting liberty to the OL to file OLR identifying the cost against whom suit for infringement is proposed to be filed. Mr. Kamod submits that the Plaintiff has concealed pendency of three separate rectification proceedings filed by Elder Remedies Ltd., Elder Laboratories Ltd. and Elder Drugs and Pharmaceutical Ltd. against its registered trademark. That Defendant has also filed rectification application against Plaintiff's trademark registration.

10) Mr. Kamod submits that suppression of vital information by the Plaintiff in the Plaint is a fit ground for vacating the *ex-parte* ad-interim injunction and for dismissal of application for temporary injunction. Relying on judgment of Full Bench of this Court in **Abdul Cadur Allibhoy Versus. Mahomedally Hyderally**⁶ he submits that the Plaintiff approaching the Court with equitable relief must come with clean hands. He also relies on judgment of the Apex Court in **Ramjas Foundation and another Versus. Union of India and others**⁷ in support of the contention that once the material facts are suppressed or not

⁶1901 BLR 220

⁷2010 14 SCC 38

properly brought forward, the Court should not decide on the merits and vacate the injunction at once. He relies on judgment of Division Bench of this Court in **Keval Ashokbhai Vasoya and another Versus. Saurabhakti Goods Pvt. Limited**⁸ wherein this Court has discussed general principles governing grant of *ex-parte* ad-interim injunctions and the duty cast upon the Plaintiff while applying for injunction without notice. He relies on judgment of this Court in **Laser Shaving India Pvt. Limited Versus. Rkrm International Products Private Limited and others**⁹ wherein the order of *ex-parte* ad-interim injunction is vacated by this Court on the short ground of the Plaintiff withholding the relevant material. He relies on judgment of the Supreme Court in **Bhaskar Laxman Jadhav and others. Versus. Karamveer Kakasaheb Wagh Education Society and others**¹⁰ in support of his contention that it is not for a litigant to decide what fact is material for adjudicating a case and that it is the obligation of the litigant to disclose all facts of a case and leave the decision making to the Court.

11) Mr. Kamod further submits that if Plaintiff is found to have secured order of *ex-parte* injunction by suppressing the facts, the whole suit can also be dismissed. In support he relies on judgments of this Court in **Shoban Salim Thakur Versus. Chaitanya Arora**¹¹ and **Nagina Ramsagar Choube and others Versus. Ajay Mohan and Others**¹² In support of his contention that Court can even dismiss main proceedings once it notices suppression of vital facts, he relies on judgment of the

⁸2022 SCC OnLine Bom 3335

⁹2024 SCC OnLine Bom 4079

¹⁰2013 11 SCC 531

¹¹Interim Application (L) No. 18278 of 2025, decided on 15 October 2025

¹²Interim Application No. 2143 of 2025 decided on 24 June 2025

Apex Court in **Prestige Lights Limited. Versus. State bank of India**¹³ wherein the Apex Court has upheld order of the High Court dismissing the Writ Petition after noticing that the material facts were suppressed. He submits that the same principle has been applied by this Court even in relation to Suits. Relying on judgment of this Court in **Minco India Private Limited Versus. Minco India Flow Elements Private Limited**¹⁴ he submits that this Court has refused to grant the temporary injunction after noticing that the Plaintiff had not approached the Court with clean hands.

12) Mr. Kamod further submits that after being caught with suppression of material fact, the Plaintiff has changed its stance and has now sought to sing an altogether different song than the one pleaded in the Plaint. That the Plaintiff has now canvassed before the Court that it is not claiming any rights in respect of the word mark ELDER and that it has sued the Defendant for infringement of device mark . That the holistic reading of the Plaint clearly reveals that Plaintiff is actually claiming rights even in respect of the work mark 'ELDER'. That Plaintiff is playing hide and seek with this Court. That there is no direct or indirect statement in the Plaint to the effect that Plaintiff is not claiming any rights in respect of the word mark ELDER. That Plaintiff is clearly claiming rights both in respect of its label  as well as the word 'ELDER'. That Plaintiff has also claimed reputation and goodwill in the trade name ELDER. That Plaintiff has clearly sought injunction against the Defendant in respect of the word

¹³2007 8 SCC 449

¹⁴Interim Application (L) No.12616 of 2024 decided on 6 January 2026

‘ELDER’ in combination with other words. That in the cease or desist notice also, Plaintiff has claimed right in respect of the trade name ‘ELDER’ and has called upon the Defendant to change its corporate name.

13) Mr. Kamod further submits that change in the stand is clearly afterthought and is aimed essentially at getting over the act of suppression in respect of the orders passed by the Delhi High Court. That even the changed stand is dishonest, and an attempt is made to mislead this Court. That it is not the pleaded case of the Plaintiff in the Plaint or even in the reply to this Application that Plaintiff was using two different marks namely ‘ELDER’ and the label  and that Plaintiff started using the label  only in the year 2018 after the order of liquidation against the EPL. That on the contrary, Plaintiff has claimed use of the devise mark  since the year 1992. That even in law, the argument is untenable as the promising feature of Plaintiff’s label  is the word ‘Elder’. Secondly, the phonetic reference to Plaintiff’s label  is by the word ‘Elder’ and nothing more. Thirdly the consumers would refer to the pharmaceutical products bearing Plaintiff’s label  as ‘Elder’. That the law does not recognize such artificial distinction. He would therefore submit that even the changed stand by the Plaintiff during the course of arguments cannot save it from the consequences of suppression.

14) Without prejudice to the plea for vacation of *ex-parte* ad-interim injunction on the ground of suppression, Mr. Kamod submits

that the Plaintiff has otherwise not made out any case for grant of temporary injunction. That Plaintiff himself is an infringer of EPL's trademark. That it has secured registration by grossly misrepresenting the Trademark Registry. That if Plaintiff was to disclose the relevant material before the Registrar, the registration would not have been granted in its favour. That in any case, the Court deciding entitlement to temporary injunction can go behind registration. He submits that Court can also go into the question of validation of registration while deciding application for temporary injunction. In support, he relies on judgment of this Court in **Lupin Limited Versus. Johnson and Johnson**¹⁵. He also relies on judgment of this Court in **Pidilite Industries Limited V/s. Poma Ex Products**¹⁶ in support of his contention that mere failure to oppose registration is not a ground for grant of temporary injunction in favour of the Plaintiff. He submits that the Plaintiff has described itself as a mere contract manufacturer of EPL under the trademark 'ELDER' and therefore cannot sue Defendant for infringement. In support, he relies on judgment of this Court in **IPCA Laboratories Limited Versus. Savita Pharmaceuticals Pvt. Limited**¹⁷. That Plaintiff's case of prior use is also false as Defendant has been using the impugned mark since 2015.

15) On above broad submissions, Mr. Kamod would pray for vacation of *ex-parte* injunction as well as for dismissal of application for temporary injunction.

¹⁵2014 SCC OnLine Bom 4596

¹⁶2017 SCC OnLine Bom 7237

¹⁷ 2002 SCC Online Bom 689

16) Mr. Tamboly the learned counsel appearing for Plaintiff submits that Plaintiff is a registered owner of the trademark, which is infringed by the Defendant. Plaintiff is also an admitted prior user of the mark. That Plaintiff has obtained registration of device mark  with three leaves with the word 'ELDER' written in a distinguishable stylised font in blue colour as it is evident in the registration certificate. That Defendant has not obtained any registration for the mark displayed on its products. That the use claimed of the mark ELDER by Defendant is since 19 January 2015 as opposed to Plaintiff's use of the mark since 1992-93. That Defendant has used the word in identical stylized font with blue colour in their logo displayed on their products. That Plaintiff has common law right to seek injunction against the Defendant based on prior use. He relies on judgment of Delhi High Court in **Anjani Kumar Goneka and another Versus. Goenka Institute of Education and Research**¹⁸

17) Mr. Tamboly further submits that the test lies in copying of essential features of trademark or trade dress and even if there are slight differences in parts of the mark, infringement is established, if the parts are put together in a way that the whole mark is not made dissimilar. In support, he relies upon judgment of this Court in **Marico Limited Versus. Zee Hygiene Products Pvt. Ltd. and others**¹⁹. He also relies on judgment of the Apex Court in **Pernod Richard India Private Limited and another Versus. Karanveer Singh Chhabra**²⁰ laying down

¹⁸ ILR 2009 III DELHI 758

¹⁹ 2025 SCC Online Bom 2541

²⁰ 2025 SCC Online SC 1701

the principles for consideration while granting injunction in case of infringement action. That since Plaintiff is a registered user of the device mark and the logo and since Defendant has knowingly adopted a deceptively similar mark, Defendant has rightly been restrained from using the mark.

18) Mr. Tamboly further submits that Plaintiff has no objection to the Defendant using the word mark 'ELDER' so long as the same is not styled in the same font and colour as that of Plaintiff's registered mark. That there is no suppression of any material fact. That the present suit is for infringement of Plaintiff's registered mark , whereas in ***Elder Projects Ltd. Versus Elder Labs Ltd.*** (supra) and ***Elder Projects Ltd. Versus. Elder Pharmacia LLP and ors.*** (supra), the suits involved different mark 'ELDER', which was registered in the name of EPL. That facts of CS Comm. Suit No. 1313/2018 are disclosed in paragraph 23 of the Complaint wherein it has been specifically made clear that the mark in the said suit was not registered mark mentioned in the present suit. That therefore the four orders of Delhi High Court relied upon by the Defendant have absolutely no bearing on the issues involved in the present suit. He relies on judgment of this Court in ***International Association of Lions Club Versus. Association of Lions India and others***²¹ in support of his contention that to arrive at a case of suppression of facts which disentitles a party to any relief, facts suppressed must be material to the outcome of dispute. That since the marks involved in suits before the Delhi High Court are entirely different than the mark involved in the present suit, it cannot be

²¹ 2008 SCC Online Bom 1720

contended that Plaintiff has suppressed any material fact. He also relies on judgment of the Apex Court in **Government of NCT of Delhi and Another Versus. BSK Realtors LLP and Another**²²

19) Mr. Tamboly would further submit that the allegation of suppression of relationship between the directors of Plaintiff and Defendants is misplaced as the suit does not involve family dispute, but a dispute between two incorporated companies having separate and distinct entities involved. That the mark 'ELDER' was not registered in the name of Mr. Jagdish Saxena but the same was registered in the name of EPL. That therefore the mark is not the personal property of Mr. Jagdish Saxena, which could be claimed by his legal heirs. He relies on affidavit-in-reply filed by Ms. Shalini Kumar in Company Petition No. 488 of 2015 wherein she denied occupation of position as Director of EPL.

20) Mr. Tamboly further submits that the registration of Plaintiff's mark has been secured after following the procedure laid down as per law. That the application has undergone scrutiny by the Examiner of Trade Marks, publication, opposition by third parties, hearings granted to them etc. That Defendant never objected to Plaintiffs application and filed rectification application only after Plaintiff got its mark registered and after filing of the present suit. That the OL has also not objected /opposed Plaintiff's usage of the registered mark. That no order has been passed in OLR No. 36/2022 against the Plaintiff. That Plaintiff's undertaking not to claim any rights in the marks registered in the name of EPL is irrelevant for decision of the

²²(2024) 7 SCC 370

present suit, which involves an altogether different device mark registered in the name of the Plaintiff. That in **Lupin Limited** (supra) this Court has held that Court can question validity of registration only if the same is fraudulent or shocks conscience of the Court. He relies on judgment of the this Court in **Eurobond Industries Private Ltd. Versus Euro Panel Products Pvt. Ltd.**²³ in which it has been held that heavy burden lies on the Defendant to rebut the strong presumption that a registered mark creates in favour of the Plaintiff. That Plaintiff has not obtained the registration by fraud.

21) On above broad submissions, Mr. Tamboly would pray for dismissal of Defendant's Interim Application for vacation of ad-interim injunction and for making Plaintiff's application for temporary injunction absolute.

REASONS AND ANALYSIS

22) Plaintiff has sued the Defendant alleging infringement of its registered trademark  and for passing off. Plaintiff's claim is thus based on registration granted in its favour by the Trade Mark Registrar vide certificate dated 12 June 2024 in respect of the mark . The registration is in respect of pharmaceutical products, veterinary and sanitary preparations, diabetic substances, etc. Plaintiff also claims prior use of the mark since 1992-93. Plaintiff has complained in the suit that in May 2025, it noticed Defendant's

²³ 2018 SCC Online Bom 6123

pharmaceutical products using the mark  and has accordingly filed the present Suit. Plaintiff moved this Court on 26 September 2025 without notice to Defendant and persuaded this Court to pass ad-interim injunction in its favour in terms of prayer clauses (a) and (c) of the IA, which read thus

a) Pending the hearing and final disposal of the Suit, the Defendant by its servants, agents and distributors or representatives and the like be restrained by an order of injunction from using the marks/labels  and/or any other mark or the impugned mark being  or any other deceptively similar mark containing the impugned words ELDER written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered  so as to infringe the Applicants said registered trademark in relation to any of its goods.

(c) Pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint a Court Receiver and/ or a court commissioner and direct the officers to raid the places and registered offices, godowns of Defendant and also the retailers and distributors of the Defendants and cease the accounts books, registers, computer, voucher books, invoices, laptops, computer floppies, hard disks, pen drives and accounts stored in the computer, laptops and products which bear the marks/labels  or  and/or any other mark or the combination of impugned marks/labels mark or any other deceptively similar label containing the impugned marks written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered  trademarks and also the books of accounts, computer software used for maintaining records and accounts online.;

23) While granting *ex-parte* ad-interim injunction, this Court granted liberty to the Defendant to apply for variation, modification or recall of the order by giving prior notice to the advocate for the Plaintiff. The Defendant has accordingly filed Interim Application (L.)

No. 35091/2025 seeking vacation of *ex-parte* injunction granted vide order dated 26 September 2025.

VACATION OF AD-INTERIM INJUNCTION DUE TO SUPPRESSION

24) Defendant has claimed gross suppression of facts by the Plaintiff while seeking *ex-parte* ad-interim injunction and has accordingly sought vacation thereof under Order 39 Rule 4 read with Section 151 of the Code.

25) Order 39 Rules 1 and 2 of the Code empowers the Court to grant temporary injunction during pendency of suit. Ordinarily under Order 39 Rule 3 of the Code, the Court needs to direct issuance of notice to the opposite party before granting injunction. The only exception recognized under Rule 3 is where it appears to the Court that the object of granting injunction would be defeated by the delay. Under Proviso to Rule 3, while granting injunction without issuing notice to the opposite party, the Court needs to record reasons as to why it appears to it that the object of granting injunction would be defeated by delay.

26) Under the first Proviso to Rule 4 of Order 39, if a party has unknowingly made a false or misleading statement in relation to a material particular and the injunction is granted without notice to the opposite party, the Court can vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary to do so in the interest of justice. However, for invoking the first Proviso for vacation of *exparte* injunction, the false or misleading statement must be in

relation to a 'material particular' which would affect the mind of the court while considering grant of injunction.

27) In the present case, Defendant has accused Plaintiff of suppression in respect of four aspects viz. (i) suppression of registration and use of the trademark 'ELDER' by EPL, (ii) relationship between the directors of the Plaintiff and Defendants and their past positions in EPL, (iii) suppression of orders passed by the Delhi High Court against the Plaintiff in respect of 'ELDER' mark and (iv) suppression of proceedings initiated by the OL of EPL against the Plaintiff. I proceed to examine allegation of suppression raised by the Defendant in respect of each of the four aspects and its effect on Plaintiff's entitlement for temporary injunction.

28) To examine the allegation of suppression raised by the Defendant, it would be necessary to consider the case pleaded by the Plaintiff in the Plaint. Plaintiff has raised following averments in the Plaint in support of its claim to  mark:

6. **The Plaintiff has been using the device mark  since 1992-1993** (Hereinafter referred to as "registered trademark"). The mark is distinct from the other marks bearing the word ELDER. There are 3 leaves like structure in grey colour and besides the leave the word ELDER is written in stylised font and in Blue colour (cyan: 100 and Magenta: 89). **The registered trade mark was being exclusively used by the Plaintiff alone since 1992-1993 and continues to be used till date.** Hereto annexed and marked as Exhibit -"D" are copies of some of the stationary used by the Plaintiff bearing the said trademark since 1992-1993 till date.

7. The Plaintiff has been in the business of manufacturing, selling and trading of range of medicines, ointments, eye drops and other medicines etc. since 1992-1993. **The Plaintiff has extensively and exclusively been using the said trademark for over three (3)**

decades now. The said trademark has achieved significant goodwill and popularity in the eyes of the customers and persons dealing with products sold in Class 5 specially medicines, ointments, eye drops etc.

8. The Plaintiff has been regularly conducting business since 1992-93 till date. The Plaintiff has huge turnover and business due to the popularity enjoyed due to high quality products and standards maintained by the Plaintiff with respect to its products. The Plaintiff has also widely publicised the mark in various advertisement's and print media. **The Plaintiff has coined the mark and have been using the mark without any objections or interruptions. The Plaintiff is the prior user of the registered trademark in its entirety.**

9. From 1992-93 till 2018 the Plaintiff did not think it necessary to register the said registered trademark as the business was operating smoothly without any obstructions. In 2018, the Plaintiff thought that with changing times, the company needed to protect its trademark as there were many infringers using the mark Elder. Therefore, the Plaintiff applied for the registration of the device mark  in the trademark registry. The Plaintiff applied for the registration of the said trademark on 31st August, 2018 in Class 5 of the Trademarks Act bearing Application No. 3931941. Hereto annexed and marked as Exhibit "E" is a copy of the Application No. 3931941 dated 31 August, 2018.

10. The Plaintiff also has a Copyright NOC Label bearing registration No. 2153/2020-CO/A, with  on the left top corner of the label with 2 arches ("Label"). The same is as under



applied under the Copyright Act, for registration of its packaging design bearing the ELDER, was also allowed by the Copyright Registry and therefore, the Plaintiff is also registered owner of the packaging design bearing the trademark under diary registration No. 2153 / 2020 CO/A, TMR- CC No. 97155 under the Copyright Act, 1957 as well. The registration certificate was issued on 05/02/2020. Hereto annexed and marked as Exhibit - "F" is the copy of Certificate issued by copyright registry in favour of the Plaintiff.

11. The trademark application bearing No. 3931941 was allowed and notified in Trademark Journal No. 2162 on 12th June, 2024 and thereafter it was registered with the Trademark registry bearing Certificate No. 3603833. Hereto annexed and marked as the Exhibit "G" is a copy of the trademark registration certificate.

(emphasis and underlining added)

29) Thus, Plaintiff has approached this Court with a plain case that it has coined the mark  and that it has been using the same since 1992-93. Plaintiff has averred that the mark  has been exclusively used by it for over three decades. It is pleaded that though the use is since 1992-93, Plaintiff felt the need to register the same in the year 2018 and accordingly it applied for registration and secured the same on 12 June 2024. Plaintiff has thus approached the Court by representing that it is the originator of the  mark, which it has been using exclusively since 1992 for manufacture and sale of pharmaceutical and medicinal products.

SUPPRESSION ABOUT EPL'S REGISTRATION AND USE OF MARK 'ELDER'

30) In its application for vacation of ad-interim injunction, the Defendant has brought on record the fact that a company named Elder Pharmaceuticals Ltd. (EPL) was incorporated in the year 1983 and that it is the first adopter, user and registered owner of the trademark 'ELDER' bearing Registration No.2195882 in a Class-5. Defendant has produced copy of registration certificate of 'ELDER' mark in favour of EPL issued by the Trade Mark Registry. Defendant has also brought on record use of the word mark 'ELDER' in a stylized font  by producing on record few documents relating to the years 1988, 1996, 2010 and 2014. However, Plaintiff has completely suppressed the above position of registration and use of 'ELDER' mark by EPL since 1983 and has on the contrary pleaded in paragraph 8 of the Plaint that 'the

Plaintiff has coined the mark'. The use of the mark is pleaded by the Plaintiff since the year 1992-93.

31) Plaintiff has thus suppressed the material fact that EPL is the originator of the registered mark 'ELDER'. It is not Plaintiff's pleaded case that though EPL has registration in respect of the mark 'ELDER', Plaintiff adopted stylized version of the mark which is different and distinct from EPL's mark. There is no pleading to the effect that pharmaceutical and medicinal products were being simultaneously manufactured and sold by EPL under 'ELDER' mark and by Petitioner under  mark. On the contrary it has come on record that Plaintiff was a mere contract manufacturer of medicines for EPL till 2016 and which aspect is being discussed in greater details in latter part of the judgment. Plaintiff has thus completely suppressed the factum of EPL's use and ownership in respect of registered mark 'ELDER'.

SUPPRESSION ABOUT RELATIONSHIP BETWEEN DIRECTORS AND THEIR ASSOCIATION WITH EPL

32) Defendant has also brought on record the fact that the director of Plaintiff Mr. Anuj Jagdish Saxena, who has verified the plaint and affirmed the affidavit in support of the application for temporary injunction, is the real brother of the director of the Defendant Ms. Shalini Kumar. It is also brought on record that Late Mr. Jagdish Saxena was the erstwhile Managing Director of EPL and was the father of the siblings. Defendant has also brought on record that Ms. Shalini Kumar functioned as Director (Sales and Marketing) in the EPL. Letter of her

appointment as Director in EPL issued on 1 October 1996 and her discontinuation from EPL vide letter dated 2 December 2014 is also brought on record. Few documents relating to remuneration earned by Ms. Shalini Kumar from EPL are also produced on record by the Defendant. It has also come on record through proceedings before the Delhi High Court that Plaintiff-Company used to do mere job work for EPL and used to manufacture medicines for them. Additionally, Defendant has brought on record application dated 27 June 2018 submitted by the director of the Plaintiff, Mr. Anuj Jagdish Saxena to the Trademarks Registry for change in the name of Registration Certificate of the mark '**ELDER**' from EPL to Mr. Anuj Jagdish Saxena. Plaintiff's director thus made an attempt to seek transfer of ownership in '**ELDER**' mark by using his capacity as son of Mr. Jagdish Saxena.

33) Plaintiff has however suppressed that the director of the Defendant is the sister of director of Plaintiff, her association with EPL and Plaintiff's own connection as mere medicine manufacturer for EPL. Plaintiff has also not disclosed the attempt made by its director to seek transfer of ownership in '**ELDER**' mark from EPL to himself.

34) In my view, suppression of the first two factors of EPL's ownership and use of '**ELDER**' mark since 1983 and the past association of directors of Plaintiff and Defendant, as well as their *inter-se* relationship was clearly material for the purpose of deciding Plaintiff's entitlement to temporary injunction. The facts relating to the above two aspects were material and ought to have been disclosed by the Plaintiff in the Complaint or in Application for temporary injunction.

Plaintiff however choose to suppress the same and came with a plain story as if he is the originator of the trademark in question and that a unconnected entity (Defendant) was selling products by infringing its mark. The suppression was aimed at preventing this Court from knowing the position that the two siblings have adopted different versions of the mark owned by their father's company.

SUPPRESSION OF ORDERS OF DELHI HIGH COURT

35) The third aspect of suppression is more disturbing. This relates to non-disclosure of four orders passed by the Delhi High Court against the Plaintiff. The details of the said four orders are as under:

35.1) Plaintiff filed C.S. (Comm) No. 59 of 2019 against an entity named ***Elder Labs Limited*** before Delhi High Court complaining of infringement of 'ELDER' mark. While considering its application for temporary injunction, the Delhi High Court recorded deposition of Dr. Anuj Saxena on 11 February 2019 wherein he stated as under :

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.

(emphasis added)

Thus, Dr. Anuj Saxena (director of Plaintiff) admitted that Plaintiff was doing mere job work for EPL and was manufacturing medicines for them. He admitted that only after liquidation of EPL, Plaintiff 'commenced' the production of the medicine 'in their own name' in December 2017 to January 2018. He specifically stated that Plaintiff did not claim any right in the trademark 'ELDER' which is registered in the name of EPL. He further deposed that Form TM-P filed for transfer of registration of 'ELDER' in his name was filed under mistaken advise. The Delhi High Court took strong note of the conduct of the Plaintiff and passed following order on 11 February 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 5.02:30 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.

Thus, *prima-facie* finding of raising false claims is recorded against the Plaintiff. Plaintiff however chose to suppress the proceedings and order passed by the Delhi High Court. Suppression of proceedings of this suit assumes significance also because it falsifies claim of Plaintiff that it has been exclusively manufacturing and selling the products under  mark since 1992-93 as Plaintiff has sued for 'ELDER' mark in 2019.

35.2) Plaintiff sued *Elder Pharmacia LLP and ors.* in C.S. (Comm.)1313 of 2018 again in respect of 'ELDER' mark. The Delhi High Court took note of deposition of Dr. Anuj Saxena as well as the order passed in Suit against *Elder Labs Limited* and proceeded to consider the issue as to who is the owner of the Trademark 'ELDER' and/or 'ELDER' logo. The Delhi High Court held in paras-19 to 20 as under:

19. The trademarks 'ELDER' or 'ELDER' logo that are subject matter of the present suit are registered trademarks. The Plaintiffs concede that the proprietor of the said registered trademark is the Company in liquidation-EPL. The said registrations in favour of EPL are presently valid, renewed and in force. Thus, there cannot be any gainsay that it

is EPL who is the registered Proprietor of the trademark 'ELDER' and 'ELDER' logo in India and has the exclusive right to use the said trademark.

20. We are now poised with the question concerning the right of the Plaintiffs to use the said trademark. The answer to this question would also resolve and expound the right of the Plaintiffs to maintain the action of passing off in respect of the said trademark. Plaintiff No. 1 started using the mark 'ELDER' and 'ELDER' logo for manufacturing the medicines for the registered proprietor- EPL since 1992. In this arrangement, ELDER was also used as a part of the corporate name of the Plaintiff No. 1. Although no written agreement is shown to the court, but since this use was not objected to by EPL and was within its knowledge, it could at the highest be considered as a "permitted permitted use" use under Section 2(r)(ii)(c) of the Trade Marks Act, 1999 (herein after referred to as the 'Act'). Post liquidation proceedings, Plaintiffs have embarked upon using the trademarks in relation to the goods manufactured sold under their own name. This is without permission or consent of EPL and thus such use of the 'ELDER' mark in relation to the goods and as part of the corporate name of Plaintiff No.1 can't be characterized as "permitted use" and it would amount to infringement as provided in Section 29 sub clause (1),(3) and (5) of the Act.

The Delhi High Court thereafter considered the plea raised on behalf of the Plaintiff that it shared reputation and goodwill in '**ELDER**' mark with EPL and negated the same by holding in para-23 as under:-

23. In the present case, the first constituent of passing off action-acquisition of reputation or valuable goodwill, requires a deeper probe. EPL started manufacturing and trading of medicines, under the trademark 'ELDER' and 'ELDER' logo from the year 1983. This resulted in establishing goodwill and reputation in the said brand name. Plaintiffs are staking claim on the said reputation. There is no doubt in the mind of the Court that if the trademark 'ELDER' and 'ELDER' logo were perceived as household names, the reputation and goodwill attached to the said trademarks belongs to EPL. The products under the trade name 'ELDER' and 'ELDER' logo created a nexus or an association or a trade connection amongst the members of the public with EPL alone. Plaintiff No. 1 has attempted to stake claim on this reputation and goodwill by raising the plea of 'shared reputation' in respect of the said marks from the year 1992 till December 2017. The Court is however not convinced with the stand taken by Plaintiff No. 1. The Managing Director of the Plaintiff No.1 in his statement dated

11th February 2019 confirms that Plaintiff No.1 was merely doing a job work for EPL. He has categorically stated that the Plaintiff's Company does not claim any right in the trade mark ELDER which is registered in the name of EPL. In light of the said statement made on oath, Plaintiffs cannot claim to have earned shared reputation in the trademarks. Curiously, in the suit, goodwill is claimed in conjunction and jointly with EPL as it's sister concern and there is no pleading or assertion of "shared reputation" as was urged at the time of the arguments. **Therefore, use of the trademark 'ELDER' and 'ELDER' logo by Plaintiff No. 1 from the year 1992 till 2017 can only be considered as a permitted use and nothing beyond. Plaintiff No.1 cannot stake claim in the reputation associated in respect of the 'ELDER' mark.** It would only be the official liquidator attached to Bombay High Court, the custodian of the assets of EPL who can rightfully claim benefit of the reputation and the good will associated with the said marks. **Plaintiff No. 1 cannot assert goodwill and reputation in the said marks and file a suit for passing off.**

(emphasis and underlining added)

Even the plea of independent reputation was rejected by the Delhi High Court by holding in para 25 as under:

25. The next question that arises for consideration is - whether the Plaintiffs can claim **independent reputation** in the marks from December 2017? To find the answer to this question, one would have to first ascertain whether Plaintiffs can use the mark in the first place. Plaintiffs first attempted to claim rights over the registered trademark 'ELDER' by filing an application (TM-P) to the Trademark Registry, seeking transfer of the said mark in favour of (Plaintiff No. 2). Mr. Anuj Saxena, (Plaintiff No. 2), admits the filing of the said application, but pleads that the said action was initiated under a mistaken advice. After being unsuccessful in this attempt, Plaintiffs started using the trademarks and now asserts to have built up goodwill on the basis of the sales figures. **This reputation is on account of infringing activities and therefore, to my mind, the same cannot satisfy the first element of the classic trinity of passing off as noted above.**

(emphasis added)

In paragraphs 27 and 29 of the judgment, the Delhi High Court held that both Plaintiff as well as Defendant No.1 therein were infringers and that the case involved senior infringer suing the junior infringer. The Delhi High Court held thus:

27. The argument of prior use is unsustainable in the facts of the present case. The case of Century Trader (supra) relied upon by Plaintiff No.1 lays down a well settled proposition in law. The Supreme Court in S. Syed Mohideen (supra) has held that the rights conferred by registration are subject to the rights of the prior user of the trade mark. The aforesaid judgements, discuss and confirm the proposition that has been settled in N.R. Dongre v. Whirlpool Corpn reported in (1996) 5 SCC 714. However, these judgments have no application to the facts of the case. It is also apposite to note that there is also a categorical contradiction in the stand taken by the Plaintiffs on this issue. **On one hand Plaintiff No.1 claims to have continuously and extensively used the said trade mark since 1992 as a manufacturer and on the other hand Plaintiffs claims that upon liquidation of EPL, it has been independently manufacturing the medicines with the 'ELDER' mark. The independent use by the Plaintiff No.1 since December 2017 is admittedly with full knowledge of registration of EPL in respect of the trade marks in question. Such use constitutes infringement of the registered trade mark of EPL under Section 29 (1) read with Section 29 (3) of the Act.** If the acts of the Plaintiff No. 1 are infringing, it is not that Defendant No. 1 is any better. The activities of Defendant No. 1 also appear to be in contravention of Section 29 of the Act. **Thus, before the Court, both the Plaintiff No.1 and the Defendant No. 1 are infringers. Therefore it is a case of a senior infringer suing a junior infringer.** Mr. Lall admitted this position, but argued that the infringing activities of the Defendant No. 1 cannot be enjoined in an action of passing off brought by the another infringer. The judgment of *Capital Plastic Industries* (supra), relied upon by the Defendant No.1 becomes relevant on this proposition. This Court in a suit for injunction, held that one pirator cannot sue another one. The relevant portion reads as under:-

"9.....Even otherwise in my opinion the plaintiff is not entitled to any relief on the basis of this mark. Both the plaintiff as well as the defendant are pirators. They have copied and adopted this mark which already stands registered in the name of Plasticrafters Limited, Premier Insurance Building, Wallace Road, Karachi. None of them is entitled to claim any relief on the basis of this mark. Even otherwise the plaintiff has not been able to establish that he has acquired a valuable goodwill or reputation in respect of the mark RAHBER. The plaintiff has not been able to prima facie establish and fulfill the requirements of a passing off action. The result is that the plaintiff is not entitled to the interim relief at this stage."

29. In this case as well, Plaintiffs are infringing a registered trademark. Thus they cannot claim rights in the said mark for bringing an action

of passing off against another infringer. Hence the plea of seniority in the present case is immaterial and the Court would refrain from injuncting the Defendants on the basis of the prior user of the mark by the Plaintiff No. 1.

(emphasis added)

The Delhi High Court negated the case of the Plaintiff by observing in paragraph 30 as under:

30. As noted above, the plaint gives an impression that the Plaintiffs are the successors of the trademarks 'ELDER' and 'ELDER' logo which is factually false and untrue.

35.3) *Antex Pharma Pvt. Ltd. & Another* sued the Plaintiff for issuing groundless threats by filing CS (COMM) Suit NO. 178 of 2024. The Delhi High Court took note of the order passed in the case of *Elder Pharmacia LLP and ors.* and held in paragraphs 9.5 and 11 of the order dated 28 February 2024 as under:

9.5 The Defendants do not possess any right over the trademark 'ELDER', which is in fact registered in the name of another company- Elder Pharmaceuticals Ltd. By way of judgment dated 5th April, 2019, this Court has declared that the trademark 'ELDER' belongs only to Elder Pharmaceuticals Ltd., which company is presently in liquidation. The said judgment has not been assailed and thus has attained finality. In light of this judgment, the Defendants certainly cannot assert any proprietary claim over, the trademark 'ELDER'. Rather, only Elder Pharmaceuticals Ltd., through the Official Liquidator who is in custody of said company's assets, would be permitted to raise any grievance regarding the Plaintiffs use of the trademark 'ELDER'.

11. This finding unequivocally establishes that the ownership and exclusive right to use the 'ELDER' trademark and logos rest with Elder Pharmaceuticals Limited (referred to as 'EPL' in the above extract), which contradicts the Defendants' claims in the disputed article. Therefore, Defendant No. 1 cannot assert rights over the trademark 'ELDER' and seek to restrain other entities from using the said trademark. The news article placed on record suggests that Defendant No. 1, through their Managing Director (Defendant No. 2), are acting

in a manner which is contrary to the findings rendered by this Court in the aforementioned judgment.

35.4) Plaintiff filed suit against *Elder Orgichem Pvt. Ltd* and secured *ex-parte* injunction from Single Judge of Delhi High Court. The Division Bench in *Elder Orgichem Pvt. Ltd* noted the submission that injunction order was obtained by concealing important and vital facts from the learned Single Judge. After being accused of suppression, the Plaintiff agreed for setting aside the order passed by the learned Single Judge and for fresh decision of application for temporary injunction. The Delhi High Court specifically granted liberty to the Defendant therein to raise the issue of suppression while opposing discretionary relief of injunction.

36) All the four orders referred to above are suppressed by the Plaintiff wherein it is repeatedly denied the relief in respect of ‘**ELDER**’ mark by the Delhi High Court. By suppressing repeated denial of injunctive relief in respect of ‘**ELDER**’ mark, Plaintiff pressed application for ad-interim injunction without notice to the Defendant and persuaded this Court to pass order dated 26 September 2025. In my view, the four orders passed by the Delhi High Court have material bearing on the issue involved in the present case and disclosure thereof would have most certainly cautioned this Court while considering the issue of grant of injunction without issuing notice to the Defendant. More importantly, filing of four proceedings before Delhi High Court in respect of ‘**ELDER**’ mark belies the story of Plaintiff that it has been manufacturing and selling products by using  mark since 1992-

93. The orders show that as late as in December 2024, Plaintiff was suing, threatening parties in respect of 'ELDER' mark and not  mark.

37) The allegation of suppression in respect of orders passed by the Delhi High Court is sought to be salvaged by Mr. Tamboly by relying on averments in paragraph 23 of the Plaint. Plaintiff had issued cease and desist notice to the Defendant on 27 June 2025. In its reply dated 4 July 2025, Defendant relied upon order dated 5 April 2019 passed by the Delhi High Court in the case of **Elder Pharmacia LLP and ors.** While disclosing receipt of response from the Defendant and while dealing with the contents of the response, the Plaintiff has averred in paragraph 23 of the Plaint as under:

23. The Defendant replied to the cease-and-desist notice on 4th July, 2025 and denied all the allegations. The Defendant relied upon an order dated 5th April, 2019 passed in CS Comm No. 1313 of 2018 passed by the Hon'ble High Court of Delhi to deny the rights of the Plaintiff in its registered trademark. The order does not adjudicate any issues raised in the cease-and-desist notice addressed by the Plaintiff herein. The Defendant's reliance on the said order to deny the Plaintiff its rights in its registered trademark is totally misconceived and wrong interpretation of the said order. The Hon'ble High Court, Delhi passed the order in light of the pleadings and facts of that suit. The infringement action in that suit was based on the mark owned by Elder Pharmaceutical Ltd which has now lapsed and was not renewed thereafter. The infringement action in CS Comm No. 1313 of 2018 was not the registered trademark mentioned herein. The facts and circumstances have since the passing of the order, changed and therefore, the Defendant's reliance on the orders passed in the proceedings have no relevance as of date. The Defendant's claim that the Defendant being a daughter of late Mr. Jagdish Saxena has a right over the trademark Elder is also incorrect. There is no trademark which was registered in the name of Mr. Jagdish Saxena till date. As mentioned in Defendant's own reply the Elder was once upon a time registered in the name of Elder Pharmaceuticals Ltd which does not exist anymore. The Plaintiff craves leave to refer and rely upon the

entire record and proceedings of CS Comm No. 1313 of 2018 and all the other proceedings previously filed by the Plaintiff and shall produce it as and when called for by this Hon'ble Court. The Defendant has admitted the registration of the mark in favour of the Plaintiff. Hereto annexed and marked as Exhibit -"L" is a copy of the reply of the Defendant dated 4th July, 2025.

38) Thus, the Plaintiff did not, on its own, disclose any of the four orders passed by the Delhi High Court and upon Defendant relying on order passed in *Elder Pharmacia LLP*, Plaintiff has pleaded in paragraph 23 of the Plaint that the said order does not adjudicate any issues raised in the cease-and-desist notice addressed by the Plaintiff and that the order was passed by the Delhi High Court in the light of pleadings and facts of that case and that infringement action therein was based on mark owned by EPL, which has now lapsed. It is further pleaded that the infringement action in that suit was not for registered trademark mentioned in the present suit. It is further pleaded that facts of the case have since changed and therefore the order passed by the Delhi High Court has no relevance. In my view, the averments in paragraph 23 of the Plaint cannot be termed as honest disclosure in respect of EPL's ownership and use of the registered mark, claims raised by the Plaintiff in respect of 'EDLER' mark and repeated denial of relief in relation to said mark by the Delhi High Court. I am therefore fully convinced that the Plaintiff has deliberately suppressed passing of orders in four proceedings by Delhi High Court against it. The suppression is of material particulars and the same is aimed at misleading this Court in passing injunction order without notice to Defendant.

SUPPRESSION OF OL PROCEEDINGS

39) The fourth category of suppression is with regard to the proceedings initiated by OL of EPL. EPL went into liquidation on 19 September 2016. The OL of EPL had addressed letter to the Plaintiff and after receipt of its response, Plaintiff was called for a meeting on 22 February 2022 and was directed to clarify six enumerated queries in the letter dated 21 February 2022. Plaintiff submitted written response on 28 February 2022 to the OL. The response given by the Plaintiff in respect of query no.1, 3, 5 and 6 is relevant, which reads thus :-

Dear Sir,

I, Dr. Anuj J. Saxena, being Director of the Elder Projects Ltd., under receipt of your Notice dated 21/02/2022 bearing No. OL/ Liquidation Section-VI/6565, having office address at, 301-302, Kunthu Commerce Centre, 3rd Floor, Plot No.174, Near Ayyappa Temple, Bangur Nagar, Goregaon (West), Mumbai 400104, in response to your letter dated 21/02/2022 for providing of relevant documents under Notice, I am maling my submission as under:

1. The details (lists) of the trademark, which Elder Pharmaceuticals Limited (in liquidation) was using and known to you. The role of Elder Projects Limited associated with such products up to the liquidation period.)

With respect to Sr. No. 1, of receipt Notice, I say that Elder Projects Limited was, and till date, is nowhere concerned with Trademarks of the Elder Pharmaceuticals Limited (in liquidation) under name of Elder Projects Limited.

However, we are providing some details of the products of Elder Pharmaceuticals Limited (in liquidation) which is known to Elder Projects Limited with their trademark registry status; hereby relying as Annexure-1.

3. Whether Elder Projects Limited was using /involved /associated/manufacturing/ marketing any of the product which was licensed in favour of Elder Pharmaceuticals Limited (in

liquidation) has a trademark in its favour? If yes, the details thereof)

With respect to Sr. No.3, I say that Elder Projects Limited was a contract manufacturer for Elder Pharmaceuticals Limited (in liquidation) for the Brand name "Eldervit-12 injection". The above said arrangement between both the Companies was started somewhere around 1994 upto the period March 2016.

Other than this Elder Projects Ltd was not associated in. marketing/manufacturing any other brands of Rider Pharmaceuticals (In liquidation).

5. In the case, such that Elder Projects Limited is using or has been using the trademark issued in favour of Elder Pharmaceuticals Limited (in liquidation) then details of revenue so generated may be produced.

6. Whether Elder Projects Limited has applied /made an application for trademark for a product which was licensed to Elder Pharmaceuticals Limited (in liquidation), if yes, the dates of such applications and status thereof

With respect to Sr. No. 5 & 6, Elder Projects Limited had applied for three (3) brands i.e. ELDER FLUMOL, AMPM PLUS and AMPM SPECIAL, where Trade Mark registry has advertised the same in Trade Mark Journal also. At current scenario all the 3 brands which Elder Projects Limited had applied are opposed by other companies.

(emphasis added)

40) Thus, in its response to the OL, Plaintiff specifically stated that it was nowhere concerned with the trademarks of EPL till 28 February 2022. It further stated that Plaintiff was a mere contract manufacturer for EPL and that such arrangement started in 1994 and continued upto March 2016. It stated that the Plaintiff was not associated with marketing/manufacture of any other brands of EPL. Plaintiff further stated that it had applied for only 3 brands of ELDER, FLUMOL, AMPM PLUS AND AMPM SPECIAL. Thus, the stand taken by the Plaintiff in its reply to the OL on 28 February 2022 is diametrically

opposite to its claim in the present suit. The said response is however conveniently suppressed by the Plaintiff in the present suit.

41) It appears that the OLR-36 of 2022 is filed by the OL before this Court seeking directions against the Plaintiff regarding unauthorized use of mark 'ELDER' registered in the name of EPL and by order dated 3 July 2025, this Court has granted liberty to OL to file OLR identifying the Companies against whom the suit for infringement is proposed to be filed. It appears that the Plaintiff has been duly represented in those proceedings before this Court which is clear from order dated 3 July 2025. However, all the proceedings relating to the OL of ELP are conveniently suppressed by the Plaintiff in the present suit.

EFFECT OF SUPPRESSION

42) It is well settled position that injunction is an equitable relief and a party seeking the same must approach the Court with clean hands. The relief of temporary injunction can be denied to a party only on the ground of he not approaching the Court with clean hands. An instructive judgment on the issue is ***Abdul Cadur Allibhoy*** (supra) in which the Full Bench of this Court has emphasized the requirement of Plaintiff approaching the Court with clean hands. In relation to use of trademark, the Court observed that if the Plaintiff himself is found selling goods of another or if his trademark gives a false description of the article, he violates the rule on which he seeks relief against the Defendant.

43) In ***Ramjas Foundation*** (supra), the Apex Court has held that it is the duty of the plaintiff to state the whole case fully and fairly before the Court. It has held that when Defendant applies for vacation of injunction on the ground that material fact has been suppressed or has not been properly brought forward, the Plaintiff must be told that the Court would not decide as the faith of the Court is broken and the injunction must be vacated. It is held in paras-21, 22, 23 and 24 as under:

21. **The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums.** The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

22. In ***Dalglish v. Jarvie*** [(1850) 2 Mac & G 231 : 42 ER 89], Mac & G at p. 238, Lord Langdale and Rolfe, B. observed: (ER p. 89)

“It is the duty of a party asking for an injunction to bring under the notice of the court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.”

23. In ***Castelli v. Cook*** [(1849) 7 Hare 89: 68 ER 36], Hare at p. 94, Wigram, V.C. stated the rule in the following words: (ER p. 38)

“... a plaintiff applying ex parte comes ... under a contract with the court that he will state the whole case fully and fairly to the court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the court will not decide on the merits, and that, as he has broken faith with the court, the injunction must go.”

24. In *Republic of Peru v. Dreyfus Bros. & Co.* [55 LT 802] , LT at p. 803, Kay, J. held as under:

“I have always maintained, and I think it most important to maintain most strictly, the rule that, **in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once**, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith in the Court when ex parte applications are made.”

(*emphasis added*)

44) In *Prestige Lights Limited* (supra), while dealing with the issue of suppression in a petition filed before the High Court under Article 226 of the Constitution of India, the Apex Court has held in paras-33 and 34 as under:

33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. **If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.**

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] , in the following words:

“it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.”

(*emphasis supplied*)

45) Though the above observations are made in the context of a Writ Petition filed under Article 26 of Constitution Of India, the same has been repeatedly followed by this Court while dealing with the issue of vacation of *ex-parte* injunction based on suppression in suits as well.

46) In ***Bhaskar Laxman Jadhav*** (supra), the Apex Court has held that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of the case and leave the decision making to the Court. It is held that it is a duty of the litigant to come upfront and clean with all material facts and then leave it to the Court to determine whether or not a particular fact is relevant for arriving at the decision. It has held in paras-44 and 47 of the judgment as under :-

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. **It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision.** Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

(emphasis added)

47) The Division Bench of this Court in *Keval Ashokbhai Vasoya* (supra) has summarized the principles relating to the duties that fall on the applicant who applies for injunction without notice. The duties and their underlying principles have been discussed by this Court in Single Bench judgment in *Sun Pharmaceutical Industries Ltd Versus. Emil Pharmaceutical Industries Pvt. Ltd.*²⁴, which are reiterated by the Division Bench in *Keval Ashokbhai Vasoya*. The Division Bench has also noted the summation of principles in English judgment in *Alexendar Tugushev v. Vitaly Orlo*²⁵. It would be apposite to extract only the relevant portions of the judgment of Division Bench in paragraphs-16, 17 and 18 for facility of reference:

16. While we take these principles as settled, they appear to us to indicate that in applying for an injunction without notice, there is a duty that falls on the applicant. These duties and their underlying principles were culled out in paragraph 5 of *Sun Pharmaceuticals*:

5. To avoid ambiguity, I take the liberty of briefly summarizing the key principles I believe apply to every ex parte application. I do so because I believe an application for leave to move ex parte can never be granted for the asking or automatically.

(a) The general principle is that the Court will hear both sides before rendering a decision. This is the essence of any adversarial justice-delivery process and based on the fundamental rule of natural justice and fairness, audi alteram partem. **An ex parte application, without notice to or hearing, the other side is, therefore, the exception, a derogation from this general principle.**

(b) It is every advocate's and every court's paramount duty, of the very first importance, to ensure the integrity of the judicial process. When, therefore, a court is asked to depart from the general and general rule, it must be able to rely on the applicant (who or which is appearing without an opponent on notice) to present its case fairly and evenly. This means that the applicant's case must contain a disclosure or statement of an anticipated defence or arguments likely in opposition. **In turn, this means that an applicant seeking an ad-interim relief without notice must make a full and reasonably accurate**

²⁴ IAL-10937 of 2021 in Comm. IP Suit NO.10928 Of 2021

²⁵ (2019) EWHC 2031

disclosure of material facts and must invite the court's attention to factual, legal and procedural issues. On the factual issues to be disclosed, the applicant need only disclose as much — but every bit as much — as is within his knowledge, or that which, with reasonable efforts, he could discover. Material in the public domain, including in open registries, falls within this class of factual material.

(c) The disclosure and statement in the application or plaint must be neutrally and objectively presented so that the court has confidence in the case brought. Merely annexing a slew of documents does not, of itself, serve this purpose.

xxx

(e) Ex parte applications are, by definition, moved in urgency. This must be demonstrated too. The compilation of relevant material may be less than optimally organized in view of the urgency, but the urgency does not excuse the need for a sufficient disclosure. The requirement is not of the fullest and most complete disclosure but enough to make the court cognisant of the likely issues and possible defences. A detailed analysis of every single possible point is not required. Undoubtedly, the requirement of disclosure relates to relevant material, and kept within sensible limits. The disclosure must be proportionate, and the task is not the pursuit of perfection (for it will always be argued that the disclosure might have been bettered). **The disclosure requirement is, above all, a safeguard to ensure that the court is not misled on a material and relevant aspect.**

17. We believe this to be only a summation of long-settled law. It has been the law in this country and in England, where orders without notice are common. These include freezing orders in Mareva injunctions, frequently granted without notice on affidavit material alone, and Anton Piller search-and-seizure orders, typically without notice. The underlying principles were succinctly set out in a decision of 26th July 2019 by the Hon'ble Mrs. Justice Carr, sitting in the Commercial Court of England and Wales, a Division of High Court in *Alexendar Tugushev v. Vitaly Orlov* She had before her a non-disclosure application, i.e., an application saying that the plaintiff had failed to make the required disclosures. Saying the law was not contentious, Carr J set out the general principles in this way:

7. The law is non-contentious. The following general principles can be distilled from the relevant authorities by way of summary as follows:

i) **The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;**

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation

from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. **Thus, for example, it is not sufficient merely to exhibit numerous documents;**

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) **Material facts are those which it is material for the judge to know in dealing with the application as made.** The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;

XXX

ix) **If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;**

XXX

xi) **The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;**

XXX

18. We take this branch of the law as now firmly settled.

(emphasis added)

48) Thus, as held by the Division Bench in ***Keval Ashokbhai Vasoya***, injunction without notice to the other side is an exception and a derogation from the general principles of hearing both the sides before rendering decision on injunction. It is the duty of the applicant applying for injunction without notice to make full and accurate disclosure of all material facts and full disclosure must be linked with fair presentation. Material facts are those which are material for the Judge to know while dealing with an application so made. The duty requires applicant to make the Court aware of the issues likely to arise and the possible difficulties in the claim though it need not extend to a detailed analysis of every possible point which may arise. If material non-disclosure is established, the Court has to ensure that the applicant who obtains injunctive relief without full disclosure is deprived of any advantage, he may have arrived.

49) In ***Laser Shaving India Pvt. Limited*** a Single Judge of this Court has vacated the *ex-parte* ad-interim injunction after noticing that the Plaintiff therein had suppressed the documents filed by it before Trademarks Registry and reply given to cease and desist notice issued by another entity containing contradictory stand. Reference in this regard can also be made to the judgment of this Court in ***Shantapa alias Shantesh Kalasgond Versus M/s. Anna***²⁶ which is relied in ***Laser Shaving India Pvt. Limited***.

50) In ***Nagina Ramsagar Choube*** (supra) and ***Shoban Salim Thakur*** (supra) this Court has gone to the extent of dismissing the Suit

²⁶ AO No. 915 OF 2023 decided on 30 November 2023

when it found that *ex-parte* ad-interim injunction was secured by suppression of material facts. The Court also directed payment of exemplary costs in both the decisions against the Plaintiffs, who had indulged in suppression of facts.

51) The law thus is fairly well settled that Plaintiff has a duty to make full disclosure of all material facts and it is not for the Plaintiff to decide which fact is material and which is not. Plaintiff cannot first indulge in suppression of facts and upon being caught, raise a defense that what is suppressed is not material. Mr. Tamboly has relied upon judgment of this Court in ***International Association of Lions Club*** (supra) in support of his contention that to arrive at a case of suppression of facts which disentitles party to any relief, the facts suppressed must be material to the outcome of the dispute. In case before this Court, the Defendants therein had accused Plaintiff of non-disclosure of facts of institution of civil suit before the District Court of Jabalpur and it was contended that Plaintiff was not entitled to discretionary relief of injunction on account of suppression. This Court considered whether Plaintiffs were obliged to disclose the fact of institution of the said suit filed in representative capacity by another person under Section 120 of the Trade and Merchandise Marks Act, 1950, which provision envisaged for a direction against a person who threatens an action or proceeding for infringement of trademark. This Court referred to various judgments and held that the scope of such suit was very limited where only justifiability of threats given by the Defendant could be adjudicated therein. This Court further held that any other finding recorded in such a Suit becomes irrelevant in the

context of limited scope of enquiry. It is in the light of these peculiar facts that this Court held that it was not necessary for the Plaintiff therein to disclose filing of the suit before Jabalpur Court. Therefore, the judgment in *International Association of Lions Club* is clearly distinguishable and would have no application to the facts of the present case, where there is suppression of material necessary for deciding Plaintiff's entitlement to temporary injunction.

52) Mr. Tamboly has also relied on judgment of the Apex Court in *Government of NCT of Delhi* (supra) in support of the contention that the suppression must be of facts material to the dispute. Referring to its judgments in *S.J.S. Business Enterprises (P) Limited Versus. State of Bihar and others*²⁷ and *Arunima Baruah Versus. Union of India and others*²⁸ the Apex Court has held in para 33 to 37 as under:

F.2. Suppression of material facts by appellants

33. The counsel on behalf of the landowners have contended that the conduct of the appellants disqualifies them from seeking any relief. They assert that the appellants filed the present appeals, specifically under Group B-1, without disclosing that civil appeals filed by another appellant/authority against the same impugned order has already been dismissed. Furthermore, this action is deemed as providing an inaccurate declaration under Order XXI Rule 3(2) of the Supreme Court Rules, 2013.

34. Before addressing the aforesaid contention, we may refer to the law laid down in this regard.

35. A Bench of two Hon'ble Judges of this Court in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* held that **a fact suppressed must be material; that is, if it had not been suppressed, it would have influenced the merits of the case.** It was held thus

²⁷(2004) 7 SCC 166

²⁸(2007) 6 SCC 120

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. **But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken** [*R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] ...

xxx

36. Further, a Bench of two Hon'ble Judges of this Court in *Arunima Baruah v. Union of India* following the aforesaid dictum, held thus :

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. **Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction.** It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

37. **Law is well settled that the fact suppressed must be material in the sense that it would have an effect on the merits of the case.** The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust. **Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process.**

(emphasis added)

53) Thus, as held in ***Government of NCT of Delhi***, material facts refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. In the present case, I am fully convinced the material relating to (i) ownership and use of 'ELDER' mark by EPL, (ii) four adverse orders passed by Delhi High Court, (iii) relationship of directors of Plaintiff and Defendant with each other and with EPL and (iv) proceedings before Official Liquidator possess the potential to significantly influence the decision-making process. If the above material was disclosed, this Court would not have granted *ex-parte* ad-interim injunction in favour of the Plaintiff and would have issued notice to Defendant. In my view therefore, the ad-interim injunction granted in favour of the Plaintiff deserves to be vacated under Order 39 Rule 4 of the Code.

NEW TWIST ADDED IN ORAL SUBMISSIONS TO GET OVER SUPPRESSION

54) To get over the allegation of suppression, the Plaintiff seems to have grown wiser and during the course of arguments, an altogether new twisted case is sought to be presented before the Court. It is argued on behalf of the Plaintiff that the past litigations before Delhi High Court and orders passed therein are of no relevance to the present suit since Plaintiff had attempted to seek enforcement of the mark 'ELDER' owned and used by EPL, whereas the present suit is filed for the purpose of enforcement of stylised mark/label  which has the unique feature of a particular font in blue colour with three leaves. It is sought to be clarified that the Suit is not for enforcement of any rights in the word 'ELDER' *per se*. It is further clarified that Plaintiff

has no objection to the Defendant using the word mark 'ELDER' as long as the same is not styled in the same font or colour as that of Plaintiffs registered mark.

55) This twisted case sought to be presented on behalf of the Plaintiff during the course of oral submissions is totally contrary to the pleadings. Holistic reading of the Complaint would leave no manner of doubt that Plaintiff has claimed rights even in the word mark. The Complaint is replete with phrases such as, 'trade name', 'word', 'in combination with other words', etc. Some of the averments in the Complaint are already reproduced above. In paragraph 25 of the Complaint Plaintiff has pleaded that '*... Plaintiff has generated substantial reputation and goodwill in the registered trade mark  and **trade name** Thus, any product sold in a similar trade mark, **trade name** or style by any third party for pharmaceutical goods is a direct violation of Plaintiff's Intellectual Property Rights*'. In paragraph 28 it is pleaded that, '*the Defendant has no right, license or authority to use the impugned mark . The **word** and logo of Defendant  is identical which and/or is deceptively similar to Plaintiffs  trademark*'. In paragraph 30 it is pleaded that '*.. and restrain the defendant from using in any manner in relation to any of its goods and more particularly the marks/labels  or **word 'ELDER'** in combination with **any other words** or combination or modified version of the **word** 'ELDER' as depicted/displayed in the registered trademark.....*' Again, in paragraph 31, pleadings are raised even in relation to the word 'Elder'.

56) The prayers sought in the Complaint are as under :-

a) this Hon'ble Court be pleased to pass Judgment and Decree or order and restrain the Defendant itself, its servants, agents, representatives the like an order of perpetual injunction and restrain them from using in any manner in relation to any of its goods and more particularly the marks/labels"  **or word "ELDER"** in combination with other **words** or combination or modified version of the word "ELDER" as depicted/displayed in the said registered trademark and/or any other marks or any other deceptively similar label containing the impugned marks written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered and well known  trademark.

b) This Hon'ble Court be pleased pass an Order, Judgments or Decree against the Defendants and their servants, agents and distributors and / or representatives and the like an order of perpetual injunction and restrain them from using in any manner and in relation any of the goods bearing the marks/labels  Or in combination with other **words** or combination of modified version of the **word**  and/or any other marks or the impugned label or any other deceptively similar label containing the impugned marks written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the registered and well known  trademarks and/or other deceptively similar label containing the **impugned words** written in a stylized manner or in any manner and/or any other deceptively similar mark so as to pass off and/or enable others to pass off the Defendant's goods as and for the goods of the Plaintiff or in some way connected with the Plaintiff;
(emphasis and underlying added)

57) Thus, there can be no doubt to the position that the Suit is filed to restrain Defendant even from using the word 'ELDER'. The contention that prayer clause (a) in the Complaint is sought to restrain the Defendant from only using the word 'ELDER' as depicted/displayed in the said registered trademark is factually incorrect. The phrase used in the prayers "word 'ELDER' in combination with other words" is

disjunctive from the phrase “*combination or modified version of the word ‘ELDER’*” Thus, a specific prayers are sought in the Plaint to restrain Defendant from even using the word ‘ELDER’.

58) Plaintiff therefore cannot seek to escape from consequences of suppression by contending that it was enforcing the mark ‘ELDER’ of EPL in four proceeding before Delhi High Court as against enforcement sought for the stylized label  in the present suit.

59) Also of relevance is the fact that Plaintiff has not specifically pleaded anywhere in the Plaint that it has used the trademark ‘ELDER’ as well as  simultaneously. It is not the pleaded case of the Plaintiff that it was selling the products under the mark ‘ELDER’ till liquidation of EPL and that thereafter, it has coined the mark . On the contrary, the pleaded case in the Plaint is that it has been using mark  since 1992-1993 for selling its pharmaceutical products under that mark. Thus, the whole story of Plaintiff seeking to enforce rights in respect of the mark ‘ELDER’ before Delhi High Court as contradistict from current claim for the mark  is afterthought, dishonest and belied by the pleadings.

60) Plaintiff’s clarification in the course of oral submissions (*and reiterated in written note of arguments*), that ‘*Plaintiff has no objection to the Defendant using the word mark ‘ELDER’ as long as the same is not styled in the same font or colour as that of the Plaintiffs*

registered mark’ cannot save the Plaintiff from the consequences of securing *ex-parte* ad-interim injunction by suppression of material facts. It is not Plaintiff’s pleaded case that the Defendant can use the word mark ‘ELDER’. On the other hand, Plaintiff has sought to restrain Defendant from using even the word ‘ELDER’.

61) I am therefore convinced that there is gross suppression of material facts by the Plaintiffs warranting vacation of ad-interim injunction order granted vide order dated 26 September 2025.

CONTRADICTORY STANDS TAKEN BY PLAINTIFF IN DIFFERENT PROCEEDINGS TO SUIT ITS CONVENIENCE

62) While Plaintiff’s claim of having developed reputation in respect of the mark in the market appears to be questionable, it has most certainly developed a reputation of taking contradictory stands in different proceedings to suit its convenience.

63) Before discussing frequent shifts in the stands adopted by Plaintiff to suit its convenience, it would be necessary to deal with the plea raised during the course of oral submissions based on provisions of Section 33 of the Trade Marks Act, which has also turned out to be self-contradictory. Mr. Tamboly has contended that one of the reasons why the Delhi High Court refused relief in favour of the Plaintiff in Suit filed against ***Elder Pharmacia LLP*** was because the Plaintiff had relied on the provisions of Section 33 of the Trade Marks Act and period of 5 years was yet to expire by the time the order was passed by the Delhi

High Court on 5 April 2019. He particularly relies on observations in para-22 of the order which reads thus:

22. The Pleadings are factually incorrect and false and particularly when the use of mark is with knowledge of EPL's registration, it cannot be termed as honest or bona fide use. **On this issue, Plaintiffs have also relied upon the Section 33 of the Act which provides that if the proprietor of the registered trademark owner has not opposed the use of the mark by Plaintiff No.1, it should be considered that the proprietor has acquiesced the use of the mark.** This plea is erroneous. The aforesaid provision would be attracted where the acquiescence is for a continuous period of five years in the use of a registered trademark. **Concededly, the use of the trademark by Plaintiff No. 1 has been only from the year December 2017 and five years have not lapsed and therefore Plaintiff No. 1 cannot claim acquiescence.**

(emphasis added)

64) Relying on the above quoted observations of the Delhi High Court, Mr. Tamboly has contended that now period of 5 years has passed since use of the trade mark by the Plaintiff from the year 2017 and that therefore Plaintiff is entitled to exercise rights in respect of the mark on account of provisions of Section 33 of the Trade Marks Act. However, this position taken by the Plaintiff is contrary to the one which is sought to be orally argued before me that the Delhi High Court Suits were for enforcement of mark 'ELDER' whereas the present suit is for enforcement of the registered mark . Going by the Plaintiff's own orally argued case, it was seeking to enforce the mark 'ELDER' before the Delhi High Court upto 19 December 2024 when the order in *Elder Orgichem Private Limited* was passed. This would mean that Plaintiff was not claiming any right in respect of the registered mark  before the Delhi High Court till 19 December 2024. Thus, reliance on the provisions of Section 33 of the Trade Marks Act is

contrary to Plaintiff's own argued case. In fact, this is yet another inconsistent stand taken by the Plaintiff.

65) Plaintiff is blowing hot and cold and is frequently changing its colours to suit its convenience. This is clear from the following conflicting stands taken by Plaintiff:

(i) **Pleaded case of use of mark since 1992**

Plaintiff's pleaded case in the Plaint is that it has been using the mark  since 1992-93 but felt the need to register the same on 31 August 2018 when it filed application for registration of the mark.

(ii) **Argued case of use of EPL's mark 'ELDER' till December 2024**

After Defendant brought on record the adverse orders passed by the Delhi High Court, Plaintiff attempts to wriggle out of consequences of suppression by taking a stand during the course of oral arguments (*contrary to pleadings*) that what it pursued before Delhi High Court were rights in respect of mark 'ELDER' (of EPL), whereas the present suit is for enforcement of rights in respect of Plaintiff's own mark .

(iii) **Argued case of acquiescence by claiming use of mark**

But while attempting to wriggle out of consequences of suppression of Order passed by Delhi High Court in ***Elder Pharmacia LLP*** by contending that the order is passed in

respect of **ELDER** mark and not  mark, Plaintiff chances upon an opportunity to claim right of acquiescence under Section 33 of the Trade Marks Act by picking up a stray observation in the Order and again goes back to its original pleaded case of use of the mark  for a period in excess of 5 years without objection.

(iv) Stand before the OL

Before the OL, Plaintiff has taken a stand on 28 February 2022 that it was merely a contract manufacturer of medicines for EPL and that it never claimed any rights even in respect of **ELDER** mark of EPL, which stand is contrary to the argued case that Plaintiff was enforcing rights in respect of **ELDER** mark of EPL before Delhi High Court till December 2024.

Plaintiffs has then shifted its stands to suit its convenience in different proceedings. This Court strongly deprecates Plaintiff's conduct of approbation and reprobation to suit its convenience.

66) In **Bhagwat Sharan Versus. Purushottam and others**²⁹ the Apex Court has held that a party cannot be permitted to approbate and reprobate at the same time, which principle is based on doctrine of election. It has held that the party cannot blow hot and cold at the same time and once a party elects to take a stand, it cannot turn around and take a opposite stand. In the present case, the Plaintiff is clearly

²⁹ 2020 6 SCC 387

attempting to blow hot and cold at the same time. It is repeatedly changing its stand as per its convenience which conduct is clearly fatal to retain the *ad interim* injunction secured by Plaintiff behind the back of Defendants by suppressing the material facts.

67) In my view therefore the ad interim injunction order passed in favour of Plaintiff on 26 September 2025 deserves to be forthwith vacated on account of gross suppression of material facts by the Plaintiff.

FALSE URGENCY SHOWN FOR EX-PARTE INJUNCTION

68) Plaintiff applied for ex-parte ad-interim injunction claiming that in May 2025, its distributors noticed Defendant's products bearing the impugned mark. With this urgency, the suit and application for temporary injunction were moved ex-parte. However there is ample material on record to indicate that Defendant has been selling its products with the impugned mark since 2015. At Exhibit-H to the rejoinder, Defendant has produced order dated 15 December 2015, which bears the impugned mark. It has produced purchase order 16 January 2016 which also bears impugned mark. There are several such documents. Defendant's director is not a stranger to Plaintiff's director, they are siblings. Defendant's director held various posts in EPL. It is therefore impossible to believe that Plaintiff did not notice Defendant's use of the impugned mark since 2015. Thus it is established that the urgency pleaded by the Plaintiff's is blatantly false, which is yet another reason why the ad-interim injunction deserves to be vacated.

PLAINTIFF'S ENTITLEMENT TO TEMPORARY INJUNCTION

69) Independent of the factor of suppression of material facts, Plaintiff otherwise does not have any case for grant of temporary injunction. Plaintiff himself does not have any right in respect of the word mark 'ELDER'. Having acted as a mere contract manufacturer of medicines for EPL under the trade name 'ELDER' for several years, Plaintiff appears to have taken disadvantage of EPL's liquidation and has secured registration of the mark  allegedly by suppressing the facts. The statement of Plaintiff's director recorded by the Delhi High Court and its response to the OL on 28 February 2022 leaves no manner of doubt that Plaintiff cannot *prima facie* maintain action for infringement and/or passing off against the Defendant. Its conduct, as discussed above is such that this Court would otherwise be loathe in granting any equitable relief in its favor.

70) Plaintiff's case is mainly premised on registration of mark granted in its favour. However mere grant of registration in favour of Plaintiff in respect of the mark  would make no difference and such registration would not infuse fresh life into Plaintiff's already rejected claims by the Delhi High Court. This is particularly because Plaintiff kept on claiming use of **ELDER** mark for manufacture and sale of products until December 2024 before the Delhi High Court. The registration application for the mark  was made by it in 2018. Therefore if the mark  was published in 2018, why Plaintiff claimed use of the mark 'ELDER' till December 2024 before the Delhi

High Court is incomprehensible. It actually creates strong doubts about the validity of registration.

71) It is also well settled position that the Court considering temporary injunction need not always be swayed by mere registration of the mark. In **Lupin Limited** (supra) the Apex Court has held that Court can very well go behind Plaintiff's registration even at the interim stage so as to arrive at a *prima facie* finding of invalidation of Plaintiffs registration. There appears to be substantial material available on record creating doubts about Plaintiffs entitlement to registration. Whether Plaintiff had disclosed all the material discussed by this Court while seeking registration is something which needs to be examined while deciding Rectification Applications. As of now, it is too dangerous to blindly accept Plaintiff's registration of the trademark for grant of temporary injunction against the Defendant. Though heavy burden lies on the Defendant to rebut strong presumption in respect of a registered trademark as held by this Court in **Eurobond Industries Private Ltd.** (supra), in my view Defendants have *prima facie* discharged the said burden. Plaintiff has played hide and seek before different Courts and authorities and has changed its stand on multiple occasions as discussed above. The whole case of the Plaintiff is riddled with inconsistencies, and it is too dangerous to rely upon Plaintiff's registration in respect of the mark .

72) EPL is the first adopter, user and registered proprietor of trademark 'ELDER'. *Prima facie* Plaintiff can take no advantage of different style in respect of its label since it is established that even EPL

has used the stylised font  since 1 January 1988. Mere addition of colour to that stylised font would not make Plaintiff the first adopter even in respect of the label . Plaintiff has sought to contend that use of the trade name by other parties/persons would not provide a justification to the Defendant for using the said name if the Plaintiff has been using the said name much prior to its adoption by the Defendant. Plaintiff has relied upon judgments of Delhi High court in **Essel Packaging Limited. V/s Sridhar anil and Another**³⁰ and **Anjani Kumar Goenka** (supra). However, in the present case, the very claim of the Plaintiff of having adopted and used the mark  since 1992-93 is found to be *prima facie* fallacious in the light of repeated admissions given by it before Delhi High Court and before OL that it was merely a contract manufacturer of EPL upto March 2016. Its claim of shared reputation with EPL is already rejected by the Delhi High Court. On the other hand, Defendant's use of the mark  is *prima facie* established since 2015 as the Defendant has produced copies of orders, purchase orders, letter of acceptance etc. indicating the use of mark .

73) Plaintiff's reliance on judgment of this Court in **Marico Limited** also does not cut any ice. The judgment is relied upon in support of the proposition that the test of infringement lies in copying of essential features of a trademark and that even if there are slight differences in parts of the mark, infringement is established if the parts are put together in a way that the whole mark is not made dissimilar.

³⁰ 2002 SCC online Del 631

While the proposition sought to be canvassed by the Plaintiff by relying on judgment in **Marico Limited** is well settled, the same has little application to the facts and circumstances of the present case. Here, the Defendant is not claiming any dissimilarity in the marks. The Defendant's claim is that Plaintiff itself is an infringer since it is unauthorizedly using the trademark of EPL. The Defendant's case is also of prior use than Plaintiff registered mark . The case therefore does not involve comparison of any parts or features of the marks or logo. Reliance on judgment in **Marico Limited** is thus inapposite.

CLAIM OF PRIOR USE

74) Plaintiff has sought action against the Defendant for passing off based on its claim of prior use. However, even the common law relief of passing off cannot be *prima facie* granted in Plaintiff's favour. As observed above, Plaintiff has contradicted itself even in relation to its claim for prior use. It has pleaded in the Plaint that it has been using the mark  since 1992-93. However, this claim is contrary to the statement recorded before the Delhi High Court and in its reply to the OL dated 28 February 2022 in which the Plaintiff has admitted that he was merely a contract manufacturer for EPL during 1994 till March 2016. These admissions depict that Plaintiff did not manufacture or sale any pharmaceutical or medicinal products even by using 'ELDER' mark till March 2016. Apart from the fact that these admissions establish falsity in the pleaded case of use of the mark



for manufacture and sale of pharmaceutical and medicinal products since 1992-93, the same also kills the case of prior use and passing off. Secondly, while raising a contradictory claim during the course of oral arguments that Petitioner was enforcing rights in respect of 'ELDER' mark of EPL in the four suits before Delhi High Court, Plaintiff once again scores a self-goal by defeating the claim of prior use. Two of the orders are passed by the Delhi High Court on 28 February 2024 and 19 December 2024 and if the orally argued case of the Plaintiff is to be believed, it was not claiming any rights *qua* the mark  till December 2024. As observed above, the Defendant has produced ample documents on record to prove use of the mark  since the year 2015. Therefore, even the plea of prior use sought to be raised by the Plaintiff in support of its claim for passing off is defeated by contradictions created by the Plaintiff itself.

PLAINTIFF ITSELF IS AN INFRINGER

75) It is well settled principle that the Plaintiff, who itself is a pirator, cannot be permitted to sue the Defendant for use of the mark which is infringed by the Plaintiff. In the present case, as discussed above Plaintiff clearly claims rights even in respect of word 'ELDER'. There is no dispute to the position that 'ELDER' is registered trade mark of EPL. Plaintiff has admitted during the course of arguments that it was seeking to enforce EPL's mark 'ELDER' before Delhi High Court by producing copies of complaints filed in those suits. So far as word 'ELDER', is concerned, Plaintiff is an admitted infringer. After having made unsuccessful attempts to enforce its claims in respect of 'ELDER'

mark before Delhi High Court, Plaintiff now claims rights in respect of stylized version of the mark by changing colour and adding a three-leaf logo to the mark, but by copying same font as used by EPL. It is *prima facie* established that even the stylized font mark *Elder* was being used by EPL, which Plaintiff has copied in its device mark by adding colour to the same. Thus, *prima facie* Plaintiff itself is an infringer of EPL's mark and cannot be permitted to sue the Defendant complaining of infringement.

76) In *IPCA Laboratories Limited* (supra) the Plaintiff therein was found to be the infringer of the mark. This Court referred to the Full Bench decision in *Abdul Cadur Allibhoy* and held in para-45 and 51 as under:

45. The judgments do support the abstract proposition that a plaintiff cannot be denied relief on the ground that the **plaintiff is himself using and infringing a third parties registered trade mark**. However, the same are contrary to the judgment of the Full Bench of this Court in **3 Bom. L.R. 220**.

51. I may however mention that subsequently in *Baldev Singh v. Godran Rubber Plastic Industries*, (1999) 79 Delhi Law Times 517, a Learned Single Judge of the Delhi High Court held that **a pirator is not entitled to protection of a trade mark or design**.
(emphasis added)

77) By order dated 3 July 2025 passed in OLR 36 of 2022, this Court has granted liberty to the OL to file OLR against the persons against whom suits for infringement are proposed to be filed. Plaintiff has attempted to dissociate itself from 'ELDER' mark in response dated 28 February 2022 to the OL. However, it is not only orally argued before me but from perusal of Complaints filed in the three suits of *Elder Pharmacia*, *Elder Labs* and *Antex Pharma*, it *prima-facie* appears that

Plaintiff has pursued rights in respect of the mark 'ELDER' before the Delhi High Court. Thus, the action of the Plaintiff in pursuing actions before the Delhi High Court in respect of mark 'ELDER' appears to be contrary to the position taken by it before the OL in reply dated 28 February 2022. This conduct creates *prima-facie* impression of Plaintiff itself being an infringer and this is yet another ground why I am not inclined to grant equitable relief of temporary injunction in favour of the Plaintiff.

78) Plaintiff has thus failed to make out any *prima facie* case for grant of any temporary injunction in its favour. The Plaintiff would not suffer any irreparable loss since Defendants use of the mark  is *prima facie* established since 2015-16. The balance of convenience is also heavily tilted against the Plaintiff and in favour of the Defendant as Defendant's product are available in the market since 2015 and both Plaintiff and Defendant are apparently selling products under their respective marks for quite some time.

CONCLUSION

79) Considering the overall conspectus of the case I am of the view that Plaintiff has moved this Court for injunction without notice to the Defendant by grossly suppressing material facts. It has failed to disclose all true and material facts and has accordingly disentitled itself from securing equitable relief of injunction from this Court. Suppression of material facts has a clear bearing on Plaintiff's entitlement to temporary injunction. Suppression of facts by the

Plaintiff has resulted in a situation where this Court is misled in believing that object of injunction would be defeated by delay in service of notice on Defendant. In my view therefore, perfect case is made out for vacation of ad-interim injunction order dated 26 September 2025.

80) Independent of factor of suppression, Plaintiff otherwise has failed to make out any *prima facie* case for grant of temporary injunction. It has raised inconsistent pleas before various fora. It was merely a contract manufacturer for EPL and appears to be an infringer of EPL's trademark after its liquidation. It is seen that Plaintiff has dissociated itself from EPL's trademark '**ELDER**' on multiple occasions and particularly before the OL. However, when it comes to third parties, it has claimed rights in respect of EPL's mark '**ELDER**'. In the present case, Plaintiff's is once again seeking to enforce EPL's mark by adding different colour to the same stylized mark  and by adding three leaves to the logo. However, even the font used by the Plaintiff in the mark  is found to be similar to the one used by EPL. Plaintiff has adopted the false plea of selling medicinal and pharmaceutical products under the trademark  since 1992-93. It has failed to satisfy the classic trinity test of reputation/goodwill, misrepresentation and damage. The conduct of the Plaintiff is otherwise such that it is not entitled to claim any equitable relief from this Court. Plaintiff has thus failed to make out any case for grant of temporary injunction.

81) Plaintiff's act of applying for and securing *ex-parte* ad-interim injunction by deliberately withholding the relevant material from Court has undoubtedly led to immense inconvenience and losses

for the Defendant. Apart from cause of inconvenience and loss to Defendant due to acts of Plaintiff, this Court cannot remain a mute spectator to Plaintiff's acts of suppression and misrepresentation. Therefore this Court would have been justified in imposing exemplary costs on the Plaintiff. However as of now, it is not known as to whether Defendant's use of the mark is also valid or not. Afterall 'ELDER' is the proprietary mark of EPL and the siblings have adopted different versions thereof. Therefore, I propose to award a moderate amount of Rs. 1,00,000/- to the Defendant, more towards token costs, for Plaintiff's misuse of Court's exceptional power of grant of *ex parte* injunction by indulging in acts of deliberate nondisclosure.

ORDER

82) I accordingly proceed to pass following order.

- i) Interim Application (L) No. 35091 of 2025 filed by the Defendant is allowed.
- ii) Order of ad-interim injunction passed on 26 September 2025, and as continued from time to time, is vacated forthwith.
- iii) Interim Application (L) No. 27598 of 2025 filed by the Plaintiff is dismissed.
- iv) The Court Receiver is discharged without passing of accounts, subject to payment of all costs, charges and expenses by Plaintiff.

- v) The goods seized by the Court Receiver pursuant to order dated 26 September 2025 shall be returned to Defendant forthwith.
- vi) Plaintiff shall pay to the Defendant costs of Rs. 1,00,000/- within 4 weeks.

83) With above directions both the Interim Applications are disposed of.

[SANDEEP V. MARNE, J.]