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

COMMERCIAL IP SUIT NO. 111 OF 2013
WITH
NOTICE OF MOTION NO. 27 OF 2013
IN
COMMERCIAL IP SUIT NO. 111 OF 2013

Sun Pharmaceutical Industries Ltd. … Plaintiff
Versus
Satej M. Katekar, Proprietor of Absun Pharma … Defendant

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Mr. Hiren Kamod a/w Mr. Nishad Nadkarni, Mr. Aasif Navodia, Ms. Khushboo Jhunjhunwala, Ms. Jaanvi Chopra and Ms. Rakshita Singh i/by Khaitan and Co. for the Plaintiff/Applicant.
Mr. Rashmin Khandekar a/w Mr. Anand Mohan and Mr. Lalit Nair for Defendant.

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CORAM : MANISH PITALE, J.

RESERVED ON : 3rd FEBRUARY 2026
PRONOUNCED ON : 22nd APRIL 2026

JUDGMENT :

. The plaintiff-Sun Pharmaceutical Industries Ltd. has filed this suit, seeking a decree of permanent injunction to restrain the defendant from using the impugned trade mark/trade name 'ABSUN'/ 'ABSUN PHARMA' on the ground that it infringes upon the registered trade mark/house mark of the plaintiff 'SUN'/ 'SUN PHARMA'. The plaintiff has also sought a decree of permanent injunction restraining the defendant from using the impugned mark 'ABSUN'/ 'ABSUN PHARMA', so as to pass off its goods as those of the plaintiff. The plaintiff has further sought similar decree of

permanent injunction regarding infringement and passing off concerning the use of trade mark 'E-MIST' used by the defendant in the context of the registered trade mark 'EYEMIST'. The plaintiff has further claimed damages.

2. The controversy in the present suit is now limited to the marks 'SUN'/ 'SUN PHARMA' versus 'ABSUN'/ 'ABSUN PHARMA', for the reason that when Notice of Motion (Lodging) No.681 of 2013 was pressed on behalf of the plaintiff, a statement was made on behalf of the defendant that it had never used the trade mark 'E-MIST' and that it did not intend to do so until disposal of the suit. In view of the statement made on behalf of the defendant, on the said date, this Court further restrained the defendant from using the mark 'E-MIST' or any other deceptively similar mark until disposal of the suit. Even at the stage of final hearing, the said stand of the defendant was reiterated and therefore, the suit deserves to be decreed in terms of prayer clauses (d) and (e), pertaining to reliefs in the context of the registered trade mark of the plaintiff 'EYEMIST', particularly in view of the fact that the defendant gave up any contest with regard to the same. But, during the final hearing of the suit, the rival parties made submissions in the context of their respective stands pertaining to the said trade marks 'SUN'/ 'SUN PHARMA' and 'ABSUN'/ 'ABSUN PHARMA'.

3. The plaintiff is a company carrying on business of manufacture and sale of medicinal and pharmaceutical preparations. Its predecessor was a proprietary concern, which subsequently was converted into a partnership firm and eventually, registered as the

plaintiff company. Since the year 1978, the predecessor of the plaintiff and thereupon, the plaintiff openly, regularly and extensively used the trade mark 'SUN' and since 1993, it started using the trade mark 'SUN PHARMA' in respect of its medicinal and pharmaceutical preparations. These were used as house marks on labels, cartons and other packaging material, as also publicity and promotional material in connection with the medicinal and pharmaceutical preparations for the plaintiff.

4. The plaintiff has registration for its trade mark (device mark) 'SUN' since 4th August 1983 in class 5 for medicinal and pharmaceutical preparations with user claim since 1978. The plaintiff also has registration for the trade marks (word marks) 'SUN PHARMA' and 'SUNPHARMA' since 1st June 2007 and 28th June 2007 respectively, with user claim from 1993, again in the same class and for the same goods. The plaintiff also has registration for a number of trade marks that prefix or suffix 'SUN' in respect of its various medicinal and pharmaceutical preparations. These registrations date back to the year 1983 onwards. On the basis of such registration of trade marks, the plaintiff claims exclusive right to the same. It is emphatically claimed that such registered trade marks have been used openly and extensively by the plaintiff over the aforesaid long period of time.

5. The plaintiff further claims that it has garnered substantial goodwill in the context of the said trade marks 'SUN'/ 'SUN PHARMA' over long period of time and in support thereof, it has relied upon certificates issued by Chartered Accountants to show the

extent of revenue generated from medicinal and pharmaceutical products bearing the said trade marks. It is the case of the plaintiff that the sales revenue and the promotional expenses, also certified by Chartered Accountants, clearly demonstrate the extensive use of the said trade marks/house marks in respect of the medicinal and pharmaceutical preparations of the plaintiff.

6. It is the case of the plaintiff that some time in the third week of December 2012, it came across medicinal and pharmaceutical preparations of the defendant bearing the house marks 'ABSUN' and 'ABSUN PHARMA'. As the plaintiff realized that the impugned house mark/trade name of the defendant was infringing upon the registered trade marks of the plaintiff and that the defendant was attempting to pass off its medicinal and pharmaceutical preparations as those of the plaintiff, on 28th December 2012, the plaintiff issued a cease and desist notice to the defendant. On 5th January 2013, the defendant sent a reply to the same and claimed that it was using the words ABSUN PHARMA as its brand name and trading style. It was claimed that the name ABSUN PHARMA was not deceptively similar to the registered trade marks of the plaintiff and thereupon, the defendant refused to comply with the demand made by the plaintiff in its cease and desist notice.

7. It is in this backdrop that the plaintiff filed the present suit for seeking the aforementioned reliefs. The defendant filed its written statement denying the claims of the plaintiff and submitted that the trade mark/house mark 'ABSUN'/ 'ABSUN PHARMA' was adopted and coined from the alphabets 'AB' from the name of the son of the

proprietor of the defendant i.e. Abheejit and the alphabets 'SUN' from the name of his wife i.e. 'Sunita'. It was further claimed that the said trade mark/house mark 'ABSUN'/ 'ABSUN PHARMA' did not infringe upon the registered trade marks of the plaintiff i.e. 'SUN'/ 'SUN PHARMA'. It was submitted that there was no question of dishonest adoption of the trade mark/house mark of the defendant.

8. Apart from this, it was submitted that the word 'SUN' pertains to the heavenly body, which gives energy and therefore, as per Section 9 of the Trade Marks Act, 1999, it could not have been registered and it cannot be the exclusive intellectual property of any person or party. It was further stated that all the medicinal and pharmaceutical preparations of the defendant were exported to African countries and not a single such preparation was sold in India, thereby claiming that the defendant could not be accused of passing off its products as those of the plaintiff. On the basis of such pleadings in the written statement, the defendant resisted the reliefs claimed by the plaintiff.

9. In the light of the rival pleadings, by order dated 1st July 2019, the following issues were framed:-

> (1) Whether defendant has infringed plaintiffs registered house mark SUN/SUN PHARMA bearing registration nos.408870, 1573582 and 1564369, all in class 05 by the use of the trade mark ABSUN/ABSUN PHARMA in respect of medicinal and pharmaceutical preparations?
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> (2) Whether defendant is passing off its medicinal and pharmaceutical preparations and/or its business of

manufacturing and/or selling and/or exporting and/or marketing of medicinal and pharmaceutical preparations as and for plaintiff's medicinal and pharmaceutical preparations and/or plaintiff's business of manufacturing and/or selling and/or exporting and/or marketing of medicinal and pharmaceutical preparations by the use of the impugned trading name and mark ABSUN/ ABSUN PHARMA?

(3) Whether defendant has infringed plaintiff's registered trade mark "EYEMIST" bearing registration no.1248761 in class 05 by the use of the trade mark "E-MIST" in respect of medicinal and pharmaceutical preparations?

(4) Whether defendant is passing off its medicinal and pharmaceutical preparations and/or its business of manufacturing and/or selling and/or exporting and/or marketing of medicinal and pharmaceutical preparations as and for plaintiff's medicinal and pharmaceutical preparations and/or plaintiff's business of manufacturing and/or selling and/or exporting and/or marketing of medicinal and pharmaceutical preparations by the use of the impugned trade mark "E-MIST"?

(5) Whether defendant proves that plaintiff's said trade mark "SUN" is common to the trade?

(6) Whether defendant proves that plaintiff has acquiesced in the use of the impugned trading name/mark ABSUN/ABSUN PHARMA by defendant?

(7) What decree? What order?

10. In the light of the specific stand taken on behalf of the defendant as recorded hereinabove, with no contest being raised on behalf of the defendant in respect of its trade mark 'E-MIST', issue Nos.3 and 4 deserve to be decided in favour of the plaintiff and a decree in that context deserves to be granted. The real dispute between the parties pertains to issue Nos.1, 2, 5 and 6. It is in the context of the said issues that the learned counsel for the rival parties have made their submissions.

11. Mr. Hiren Kamod, learned counsel appearing for the plaintiff, relied upon the aforementioned registrations of the device mark  and the word marks 'SUNPHARMA' and 'SUN PHARMA' and he made the following submissions :

(a) He submitted that since there was no dispute about the registration of the said trade marks, as per Section 28 of the Trade Marks Act, the plaintiff had the exclusive right to use the said trade marks and upon infringement of the said registered trade marks, as per Section 29 of the Trade Marks Act, the plaintiff was entitled to institute an action like the present suit, to protect its proprietary rights.

(b) It was submitted that the impugned marks of the defendant ABSUN/ABSUN PHARMA are visually, structurally and phonetically similar to the registered trade marks of the plaintiff SUN/SUN PHARMA. It was submitted that by merely prefixing the alphabets 'AB' to the registered trade mark of the

plaintiff, the defendant was not entitled to claim that the similarity or deceptive similarity had been eliminated. It was emphasized that the rival marks in such cases are required to be compared as a whole, with attention being given to the common features rather than the differences, further emphasizing that trivial and non-distinctive differences would not sufficiently distinguish the impugned marks.

(c) It was further submitted that since the products of the plaintiff and defendant concern medicinal and pharmaceutical preparations, a stricter approach is required to be adopted while applying the test to consider the possibility of confusion and the test obviously is keeping in mind an ordinary person of average intelligence and imperfect recollection. It was submitted that the minute difference of only the alphabets 'AB' being prefixed to the registered trade marks of the plaintiff would certainly create confusion as otherwise the impugned trade marks/house marks of the defendant are visually, phonetically and structurally very close and deceptively similar to the registered trade marks of the plaintiff. In this regard, reliance was placed on judgments of this Court in the cases of *Indchemie Health Specialities Pvt. Ltd. vs. Naxpar Labs Pvt. Ltd. & Anr.*, 2001 SCC OnLine Bom 868 and *Aglowmed Limited vs. Aglow Pharmaceuticals Private Limited,* 2019 SCC OnLine Bom 1425.

(d) It was submitted that the defendant's claim that it had honestly and bonafide adopted its marks/trade name ABSUN/ABSUN

PHARMA, could be of no consequence as it could not be a defence in an action for infringement and/or passing off. It was submitted that honest adoption is wholly irrelevant as a defence in such cases. In this context, reliance was placed on the judgments of this Court in the cases of *Cadila Pharmaceuticals Limited vs. Sami Khatib of Mumbai,* **2011 SCC OnLine Bom 484**, *Charak Pharma Pvt. Ltd. vs. Glenmark Pharmaceuticals Ltd.,* ***2014 SCC OnLine Bom 98*** and *Aglowmed Limited vs. Aglow Pharmaceuticals Private Limited* **(supra)**.

(e) It was emphasized that the defendant was duty bound to have first examined the register of trade marks to see if any marks similar to its proposed mark were found in the register. By inviting attention of this Court to the responses given by the sole witness for the defendant to question Nos.8 and 9 in cross-examination, it was submitted that the defendant had conceded that no such enquiry was made in the register. In this context, reliance was placed on judgment of this Court in the case of *Bal Pharma Ltd. vs. Centaur Laboratories Pvt. Ltd.,* **2001 SCC OnLine Bom 1176**. It was submitted that the defendant could not escape liability by claiming that its marks ABSUN/ABSUN PHARMA were only being used as house marks and trade names. It was emphasized that under the Trade Marks Act, there is no such distinction made between a trade mark and house mark and a mark is recognized as a trade mark the moment it is capable of distinguishing the goods of one person from those of the others. It was also

submitted that the defendant cannot claim immunity on the ground that both the rival marks are essentially trade marks/house marks and not product brands. In this regard, the learned counsel for the plaintiff invited attention of this Court to responses given by the sole witness of the defendant to question Nos.16 and 25 in cross-examination, wherein the witness conceded that ABSUN PHARMA written in a particular manner was indeed a logo and that the defendant was claiming monopoly over the name/mark ABSUN PHARMA. In this regard, reliance was also placed on judgment of this Court in the case of *Hem Corporation Pvt. Ltd. & Ors. vs. ITC Limited,* **2012 SCC OnLine Bom 551**.

(f) The learned counsel for the plaintiff relied upon Section 29(5) of the Trade Marks Act, which stipulates that when a registered trade mark is used as trade name or part of trade name by the rival parties concerning its business, dealing in goods or services in respect of which the trade mark is registered, it amounts to infringement. It was submitted that the contention of the defendant that the plaintiff does not have registration for the word SUN *per se* and that the registration is only for device mark  , is fallacious for the reason that the most prominent feature of the device mark  is the word SUN and in any case, the plaintiff has registration for its trade marks SUNPHARMA and SUN PHARMA. In this regard, reliance was placed on the judgment

of this Court in the case of *Pizza Hut International LLC & Ors. vs. Pizza Hut India Pvt. Ltd.,* 2002 SCC OnLine Bom 688. It was submitted that the aforesaid contention pertaining to Section 29(5) of the Trade Marks Act, is in addition to the stated case of the plaintiff that in the facts and circumstances of the present case, the defendant had clearly infringed upon the registered trade marks of the plaintiff under Section 29(1) and (2) of the Trade Marks Act. In addition, it was submitted that Section 29(6) and (7) of the Trade Marks Act are also attracted, in the facts and circumstances of the present case, for the reason that the defendant was affixing its trade name/house mark ABSUN/ABSUN PHARMA on its goods and packaging, as also exporting goods under the said marks and using them on its business papers and advertising material.

(g) On the stand taken by the defendant that it cannot be held liable for infringement, as it exports all its goods to countries in Africa with not a single product is sold in India, the learned counsel for the plaintiff submitted that Section 56 of the Trade Marks Act, clearly demonstrates that use of a trade mark on goods exported outside India, in relation to goods traded in India, shall be deemed to constitute use of the trade mark in India. In this regard, reliance was placed on judgment of this Court in the case of *Cadila Pharmaceuticals Limited vs. Sami Khatib of Mumbai* (supra).

(h) On the defendant's claim that the mark SUN was common to trade in respect of medicinal and pharmaceutical preparations

fall under class 5, it was submitted that the burden was clearly on the defendant to prove the said claim. It was submitted that in order to prove such a claim, the defendant was required to lead positive evidence to show that such a mark was being extensively used by other parties and in that context, data pertaining to such use was required to be produced, including the revenue earned by such parties while using the mark, alleged to be common to trade. It was submitted that mere reference to the trade marks register would not suffice and if there was indeed any public search report, the same ought to have been placed on record, during the course of evidence. In the absence of any such steps being taken by the defendant, it was submitted that the said claim of the mark SUN being common to trade was clearly not proved by the defendant. In that regard also reliance was placed on the judgment of this Court in the case of *Cadila Pharmaceuticals Limited vs. Sami Khatib of Mumbai* (**supra**).

(i) In respect of the contention of the defendant that the plaintiff had acquiesced to the use of the impugned trade mark/ house mark ABSUN/ABSUN PHARMA, it was submitted that in respect of such claim also the defendant was unable to place any material on record. Acquiescence required a positive act knowingly done by the plaintiff to allow the defendant to continue to use the impugned trade mark/house mark. In this regard, there was no evidence brought on record by the defendant. As a matter of fact, responses given by the defendant to specific question put during cross-examination,

show that the witness of the defendant did not even know the meaning of the term acquiescence. On this basis, it was submitted that the aforesaid issue clearly deserved to be decided in favour of the plaintiff.

(j) The learned counsel for the plaintiff submitted that in the present case, the plaintiff was able to prove the three ingredients of passing off i.e. goodwill, misrepresentation and resultant damages. It was submitted that the plaintiff placed on record sufficient oral and documentary evidence to show as the manner in which the trade mark SUN/SUN PHARMA was continuously used since 1978 by the plaintiff on the packaging of its goods, the cartons in which the medicinal and pharmaceutical preparations were being transported, articles in newspapers, orders passed by the Registrar of Companies and other such material. It was further submitted that certificates of Chartered Accounts, certifying the annual sale and promotional expenses were also placed on record to demonstrate the goodwill earned by the plaintiff in the context of the said registered trade marks/house marks. The lone witness of the plaintiff had entered the witness box and also deposed about the manner in which the contents of the certificates issued by the Chartered Accountants were based on data provided by the plaintiff. It was submitted that the defendant was not justified in claiming that the certificates of the Chartered Accountants could not be relied upon as the author of such statements was not examined as witnesses. It was submitted that since the defendant had not denied the

claims of the plaintiff based on such certificates of Chartered Accountants, there was no occasion for the plaintiff to have examined the author of such certificates.

(k) Much emphasis was placed on the fact that the present suit is a commercial suit and as per the provisions of the Civil Procedure Code, 1908 (CPC) applicable to the proceedings before the Commercial Courts, the procedure for admission and denial of documents is also different from ordinary suits. Under Order VIII Rules 3 and 5 of the CPC as applicable to Commercial Courts, the defendant was specifically required to deny the contents of the documents. In the present case, despite the notice to admit documents issued under Order XII Rule 3 of the CPC to the defendants, there was no response and as a matter of fact, all the documents were admitted. In such a situation, at the time of the final hearing, the defendant cannot be permitted to claim that the certificates issued by the Chartered Accounts cannot be relied upon by the plaintiff. Thus, the aforementioned documentary and oral evidence, as regards goodwill of the plaintiff in the context of its trade marks SUN/SUN PHARMA cannot be disputed.

(l) On the basis of the contentions raised hereinabove, the learned counsel for the plaintiff submitted that this was a clear case of misrepresentation by the defendant, by simply prefixing alphabets AB to the trade mark SUN/SUN PHARMA of the plaintiff, thereby riding upon the goodwill of the plaintiff. It was emphasized that since the goods of the defendant

pertained to the same field of medicinal and pharmaceutical products, this was obviously a case of misrepresentation on the part of the defendant. In this context, attention of this Court was invited to the prayer for damages of Rs.10 lakhs made on behalf of the plaintiff and it was submitted that accordingly, the plaintiff had made out a case of passing off against the defendant.

(m) It was further submitted that even if it was to be assumed that the plaintiff had fallen short of placing necessary material to demonstrate the exact amount of damages, it would still be entitled towards compensatory and punitive damages in the light of the conduct of the defendant in blatantly seeking to pass off its goods as those of the plaintiff. In this regard, reliance was placed on judgment of this Court in the case of *Sanjay Soya Private Limited vs. Narayani Trading Company,* 2021 SCC OnLine Bom 407. If nothing else, it was submitted that the plaintiff is entitled to a decree for rendition of accounts and compensatory damages, for which purpose reliance was placed on judgment of Madras High Court in the case of *Dart Industries Inc & Ors. vs. Techno Plastic Industries* ***(judgment and order dated 23rd November 2022 passed in Civil Suit No.828 of 2015).***

(n) It was further submitted that the plaintiff is also entitled to costs under Section 35 of the CPC as applicable to Commercial Suits under the Commercial Courts Act, 2015. Apart from placing reliance on the said provision of law, the

learned counsel placed reliance on judgment and order dated 8th December 2025 passed by this Court in Commercial Suit No. 110 of 2012 ***(Anheuser Busch Inbev India Ltd. vs. Jagpin Brewerise Limited)***.

(o) The learned counsel for the plaintiff further raised strong objection to the attempt on the part of the defendant to claim before this Court at the stage of final hearing by seeking to tender an affidavit dated 13th November 2025 to claim that the defendant had now changed its trading name from ABSUN PHARMA to ABSUN REMEDIES. It was submitted that this Court had refused to take the said affidavit on record and therefore, the defendant ought not to be permitted to take recourse to such a submission. It was submitted that if such tactics are permitted, then parties like the defendant herein would evade injunction orders, by simply changing their trading marks/house marks/trading names at the stage of final hearing for the purpose of defeating the trial. Thereafter, the learned counsel for the plaintiff made submissions on the alleged dishonest and malafide conduct of the defendant. The learned counsel for the plaintiff further sought to distinguish the judgments upon which the defendant placed reliance.

(p) On the basis of the aforesaid submissions, it was asserted that the instant suit deserved to be decreed.

12. In response, Mr. Khandekar, the learned counsel appearing on behalf of the defendant, made the following submissions :

(a) It was submitted that the plaintiff has not been able to make

out its case of infringement against the defendant at all. It was asserted that since the defendant was not using its mark ABSUN/ABSUN PHARMA as a trade mark and it was being used only as a trading name/business style, Section 29(1), (2) and (4) of the Trade Marks Act are wholly inapplicable, for the reason that the said provisions would apply only in a case of trade mark versus mark situation and not the situation that arises in the present case. At the most, the only provision that the plaintiff could take recourse to is Section 29(5) of the Trade Marks Act. In this context, reliance was placed on judgments of this Court in the case of *Raymond Ltd. vs. Raymond Pharma Ltd.,* **2020 (7) Mh.L.J. 646** and *CIPLA Ltd. vs. CIPLA Industries Pvt. Ltd.,* **2017 (2) Mh.L.J. 877** (full Bench).

(b) It was emphasized that sub-section (5) of Section 29 of the Trade Marks Act does not use the words 'deceptively similar' although such words are found in the other sub-sections. On this basis, much emphasis was placed on the words 'such registered trade mark' used in Section 29(5) of the Trade Marks Act, to claim that the defendant would have infringed on the registered trade mark of the plaintiff only if the said registered trade mark had been used as the trading name or business style of the defendant.

(c) In this context, it was submitted that since the plaintiff itself is relying on registration of only word marks SUN PHARMA/ SUNPHARMA and device mark with a stylized writing of the

word SUN, there was no question of any infringement on the part of the defendant, even if Section 29(5) of the Trade Marks Act was taken into consideration. It was submitted that if the scrutiny of deceptive similarity was artificially added in Section 29(5) of the Trade Marks Act, it would lead to absurd results and in that context, certain illustrations were relied upon. In this context, reliance was placed on the judgment of the Supreme Court in the case of *H.S. Vankani & Ors. vs. State of Gujarat & Ors.,* **2010 4 SCC 301**. It was further submitted that the ingredients of passing off were not at all satisfied by the plaintiff in the present case. Mere reference to use of the plaintiff's trade mark on certain packaging and cartons could not be of any use and it was emphasized that the Chartered Accountant certificates regarding sales and expenditure were not proved in accordance with law. The plaintiff failed to examine the authors of the said certificates and the sole witness of the plaintiff could not have proved the said documents, only on the basis that he knew the concerned Chartered Accountants. Reliance was placed on judgments of this Court in the cases of *Om Prakash Berlia & Anr. vs. Unit Trust of India & Ors.,* **1982 SCC OnLine Bom 148**, *Pukh Raj Bumb vs. Jagannath Atchut Naik & Ors.,* **(2014) 4 Mh.L.J. 447** and *CFMA Asset Reconstruction Pvt. Ltd. vs. M/s. SAR Parivahan Pvt. Ltd. & Ors.* **(judgment and order dated 13th June 2024 passed in IA (L) No.6246 of 2024 in CARBP (L) No. 5565 of 2024**. On this basis, it was submitted that goodwill was not proved.

(d) On the aspect of alleged misrepresentation by the defendant, much emphasis was again placed on the fact that the defendant was using its marks ABSUN/ABSUN PHARMA as trade names and house marks and not product marks. It was submitted that the medicinal products of the defendant bear different product names and the house mark ABSUN is printed on the reverse with the words 'manufactured by' on the packaging. It was submitted that judicial notice was taken of the position that medicinal and pharmaceutical products are ordered and identified only by product marks and brand names and not house marks. In this regard, reliance was placed on the judgments of the Supreme Court in the cases of *Astra Pharmaceuticals (P) Ltd. vs. Collector of Central Excise, Chandigarh,* **(1995) 2 SCC 84** and *Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Ltd. & Ors.,* **2011 12 SCC 243**, as also judgment of this Court in the case of *Meher Distilleries Pvt. Ltd. vs. SGS Worldwide Inc & Anr.,* **2021 1 HCC (Bom) 646**.

(e) The learned counsel for the defendant compared the registered trade mark of the plaintiff with the house mark of the defendant and submitted that the word ABSUN was written in a stylized manner, with the word having no dictionary meaning and a side by side comparison with the plaintiff's trade mark SUNPHARMA/SUN PHARMA and the device mark  show absolutely no similarity at all. On this basis, it was submitted that there was no question of

misrepresentation on the part of the defendant. It was further emphasized that the plaintiff miserably failed to place on record any material to support the claim of damages, thereby showing that the plaintiff had failed to prove even a single aspect of the tort of passing off. On this basis, it was submitted that the issues pertaining to infringement as well as passing off in the context of the aforesaid registered trade marks of the plaintiff, need to be answered against the plaintiff and in favour of the defendant.

(f) It was submitted that the documents filed on behalf of the plaintiff in its compilation were of no consequence because the orders of various Courts, as also the newspaper articles, all pertained to the period after filing of the suit. As a matter of fact, the plaintiff was required to place on record relevant and cogent material to put-forth its case of goodwill by placing on record documents prior to the year 2007, as the defendant had adopted its house mark ABSUN/ABSUN PHARMA in the year 2007. It was emphasized that the relevant date in the facts and circumstances of the present case was of the year 2007.

(g) It was submitted that the defendant had placed on record sufficient material to show honest and bonafide adoption of its house marks ABSUN/ABSUN PHARMA. The word ABSUN was derived from the alphabets from the names of wife and son of the proprietor of the defendant and hence, there was no question of any malafide on the part of the defendant. It was submitted in any case, the products of the defendant were all

exported to countries in Africa and the products were not sold in the domestic market.

(h) On the aspect of monetary reliefs and rendition of accounts, it was submitted that the plaintiff had miserably failed to place on record any material to justify such a direction against the defendant. It was further submitted that in the worst case scenario, if this Court were to find that the defendant had infringed upon the registered trade marks of the plaintiff, only an order of injunction could be passed and there was no question of any monetary reliefs. In this regard, reliance was placed on judgment of Delhi High Court in the case of *Koninlijke Philips N. V. & Anr. vs. Amazestore & Ors.,* **2019 SCC OnLine Del 8198**. It was also submitted that even if in the worst case scenario, Section 29(5) of the Trade Marks Act was to be held against the defendant, the same was in the nature of no fault liability and there was no question of any monetary relief to the plaintiff.

(i) It was further submitted that in terms of an affidavit dated 2nd January 2026 tendered in the Court, the defendant had now changed its trading name from ABSUN PHARMA to ABSUN REMEDIES. This change was incorporated some time in October 2025 and that such changed trade name was being used on the packaging of the products of the defendant as well as its letterheads and business papers, etc. On this basis, it was submitted that the plaintiff can no longer have any grievance against the defendant.

(j) It was also emphasized that during the pendency of the suit for 12 years, the petitioner never even applied for temporary injunction and this aspect also needs to be taken into consideration, while deciding the aspect of monetary reliefs claimed by the plaintiff. It was submitted that in the facts and circumstances of the present case, there was no question of any costs being saddled upon the defendant. There was no question of defences adopted by the defendant being false and vexatious and hence, no case for cost was made out. The learned counsel for the defendant proceeded to make an attempt to distinguish the judgments relied upon by the learned counsel appearing for the plaintiff. On the basis of such submissions, it was prayed that the suit may be dismissed.

13. The issues framed in this suit, referred to hereinabove, are to be decided in the light of the oral and documentary evidence on record and also in the light of the aforementioned contentions raised on behalf of the rival parties. The record shows that the plaintiff has placed a number of documents on record, including certificates of registration of device mark dating back to 4th August 1983; word mark 'SUN PHARMA' dating back to 1st June 2007 and word mark 'SUNPHARMA' dating back to 28th June 2007. The defendant has not disputed the fact that the plaintiff has registration for the said trade marks. As regards the other documents, this Court will refer to them while discussing and rendering findings on the aforementioned issues.

14. <u>As to Issue No.1</u> : This issue pertains to the question as to

whether the defendant has infringed upon the aforementioned house marks 'SUN'/'SUN PHARMA' by using the impugned marks 'ABSUN' / 'ABSUN PHARMA'. The plaintiff has registration of the aforementioned marks in class 5 for medicinal and pharmaceutical preparations. It is not disputed that the defendant is also in the business of manufacturing and selling medical and pharmaceutical preparations.

15. Since the registration of the trade marks/house marks of the plaintiff is not disputed, the plaintiff is entitled to assert its rights conferred by such registration under Section 28 of the Trade Marks Act. This necessarily includes the right of the plaintiff, as proprietor of the said trade marks/house marks, to exclusively use the same in relation to the goods in respect of which such trade marks/house marks are registered. If the plaintiff is able to demonstrate that the defendant has infringed upon its registered trade marks/house marks under Section 29 of the Trade Marks Act, the aforesaid issue No.1 will have to be decided in favour of the plaintiff. It is evident that the burden is upon the plaintiff to prove that such an infringement has indeed taken place.

16. The defendant has taken a specific stand that since its marks 'ABSUN' / 'ABSUN PHARMA' are house marks, they ought not to be treated as trade marks and therefore, Sections 29(1), (2), (3) and (4) of the Trade Marks Act do not apply in the present case. In order to test the said contention, a reference will have to be made to the definitions of 'mark' under Section 2(m) and 'trade mark' under Section 2(zb) of the Trade Marks Act. The aforesaid provisions read

as follows:

> *"2. Definitions and interpretation.— (1) In this Act, unless the context otherwise requires, -*
>
> *(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;*
>
> *(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—*
>
> *(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and*
>
> *(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;"*

17. A perusal of the above-quoted definitions of 'mark' and 'trade mark' show that the moment a mark is capable of distinguishing the goods or services of one person from the other, it qualifies as a trade mark. It is crucial to note that the Trade Marks Act does not specifically define house mark and it makes no distinction between a trade mark and a house mark. The fact that the defendant is using its marks 'ABSUN' / 'ABSUN PHARMA' for distinguishing its goods, is evident from the manner in which the marks have been used and the

vehemence with which the stand taken by the plaintiff has been opposed on behalf of the defendant. As a matter of fact, the defendant itself has heavily relied upon the peculiar manner in which the word ABSUN is used and printed on the packaging of its medicinal products. It is claimed that the word ABSUN is written in a stylized manner. In response to question No.16 put to the sole witness of the defendant in cross-examination, it was asserted that the words ABSUN PHARMA, with the word ABSUN being written in stylized manner, constituted a logo. In response to question No.25, the aforesaid witness in cross-examination, specifically stated that the defendant was indeed claiming monopoly over the name/mark 'ABSUN PHARMA'. In the face of such material, the defendant cannot claim that its marks do not qualify to be trade marks and that Sections 29(1), (2), (3) and (4) of the Trade Marks Act would not be applicable.

18. Apart from this, while testing the claim of infringement made on behalf of the plaintiff, Section 29(5) of the Trade Marks Act also assumes significance. It provides that the registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name of his business concern dealing in goods or services in which the trade mark is registered. This Court finds that the said provision directly applies to the factual position arising in the present case. As a matter of fact, in order to appreciate the rival submissions, it would be appropriate to refer to Section 29 of the Trade Marks Act, which reads as follows:

"29. Infringement of registered trademarks.—

(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade markis registered and in such manner as to render the use of the mark likely to be takenas being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name,of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly."

19. Much emphasis was placed on behalf of the defendant on the words 'uses such registered trade mark', to claim that the defendant was not using the registered trade marks 'SUN'/ 'SUN PHARMA' in

its house marks and that the requirement of Section 29(5) of the Trade Marks Act is that the very registered trade mark should be used by a person to constitute infringement. The said contention deserves to be rejected, for the reason that Section 29(5) of the Trade Marks Act has to be read as a whole and it uses the words 'A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name'.

20. In the present case, in the house marks of the defendant 'ABSUN' / 'ABSUN PHARMA', the words SUN/SUN PHARMA are subsumed and only the alphabets 'AB' are prefixed to the same. In other words, the defendant is indeed using the registered trade marks of the plaintiff 'SUN'/ 'SUN PHARMA', as part of its trade name and hence, the defendant cannot escape liability, in the event it is established that a case of 'infringement' is made out by the plaintiff. In this context, it becomes clear that the defendant is also not justified in contending that 'deceptively similar' is foreign to Section 29(5) of the Trade Marks Act. The moment a registered trade mark is used as part of trade name, the aspect of deceptive similarity obviously comes to the fore.

21. This Court also finds that Sections 29(6) and (7) of the Trade Marks Act would apply in the present case, as the plaintiff has specifically asserted that the defendant is affixing the impugned marks on the goods and packaging and also exporting goods under the said marks, further using the same on business papers, advertising, etc. This is not denied on behalf of the defendant.

22. In the case of *Pizza Hut International LLC & others vs. Pizza*

Hut India Pvt. Ltd. (supra), this Court finds that the essential features of the corporate name of the plaintiffs therein were 'Pizza Hut' and if the defendant mentioned the aforesaid name on its premises or on containers of its products, even if it sold its products under different names in its restaurant or establishment, there was likelihood of deception and confusion. The defendant is not justified in contending that the said findings or observations of this Court would not be relevant because the aforementioned case was decided under the Trade and Merchandise Marks Act, 1958, for the reason that the said observations bring out the principle to be applied in such cases, where the allegation of infringement is made, in the context of house marks/corporate names/trade names.

23. In the case of *Hem Corporation Pvt. Ltd. and others vs. ITC Limited* (supra), this Court found that use of a registered trade mark would constitute infringement, if it indicates a connection in the course of trade between the person and goods and services, irrespective of the intention. The defendant is not justified in contending that since such an observation was made while deciding an application for temporary injunction, the same cannot be taken into consideration, for the simple reason that the said observation was made in the context of relevant provisions of the Trade Marks Act, including Section 2(zb), defining trade mark and Section 29(1) concerning infringement of a registered trade mark.

24. In the case of *Aglowmed Limited vs. Aglow Pharmaceuticals Private Limited* (supra), this Court found that the adoption of the word 'Aglow' in its corporate name by the defendant amounted to

infringement, as it was sufficiently close to the plaintiff's corporate name 'Aglowmed', which was likely to mislead the consumers of such pharmaceutical products into believing that the business of the defendant was that of the plaintiff. It is significant to note that in the aforesaid case also, the defendant had simply deleted the alphabets 'med' from the plaintiff's corporate name 'Aglowmed', thereby indicating that even if such change is made, the defendant could not escape the liability of having infringed upon the registered trade mark/house mark of the plaintiff.

25. Similarly, in the case of *Indchemie Health Specialities Pvt. Ltd., Mumbai vs. Naxpar Labs Pvt. Ltd. and another* (supra), this Court found that the mark 'Cherish' used by the defendants was deceptively similar to the mark 'Cheri' used by the plaintiff as there was structural and phonetic similarity between the two.

26. As opposed to this, the defendant has relied upon judgement of this Court in the case of *Meher Distilleries Private Limited vs. SG Worldwide Inc. and another* (supra), to contend that there is a clear distinction between a house mark and a product mark. It is contended that when a consumer buys medicinal products, he/she asks for the medicine by its product name and not by the house mark or a trade name of the company manufacturing it. In the said judgement in the case of *Meher Distilleries Private Limited vs. SG Worldwide Inc. and another* (supra), this Court has referred to the distinct and independent uses of house marks and product marks. It is observed that the house mark represents the image of the enterprise from which the goods emanate and the product marks are

the means by which goods are identified and purchased in the market place (quoted from the book '*Law of Trade Marks*' by K. C. Kailasam and Ramu Vedaraman).

27. Even if the said observations are taken into consideration, it cannot be concluded that the use of a house mark/trade name would never amount to infringement, so long as the names of the products of the two rival entities are different. Since the house mark/trade name signifies the enterprise from which the goods emanate, once such an enterprise has registered its house mark/trade name and it has garnered goodwill over a period of time, it is clearly entitled to proceed against an entity, which uses the house mark/trade name, which is identical/deceptively similar to the house mark/trade name registered by the previous owner. The aforesaid judgement does not assist the case of the defendant.

28. The defendant also relied upon the judgements of the Supreme Court in the cases of *Astra Pharmaceuticals (P) Ltd. vs. Collector of Central Excise, Chandigarh* (**supra**) and *Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Private Limited and others* (**supra**). This Court is of the opinion that reliance placed by the defendant on the observations made in the said judgements about house marks/product marks/brand names, is out of context. It is to be noted that in the said cases, the Supreme Court was concerned with the evasion of excise duty in the context of Central Excises and Salt Act, 1944 as also Central Excise Tariff Act, 1985. It was in the context of the aforementioned statutes that the Supreme Court made observations about the difference between a house mark and product

mark or a brand name. In any case, the observations made in the said judgements do not support the contention of the defendant in the present case that the registered house marks/trade names of the plaintiff SUN/SUN PHARMA do not deserve protection under Sections 28 and 29 of the Trade Marks Act. Nothing in the said observations indicate that Sections 29(1), (2), (3) and (4) of the Trade Marks Act are not applicable to the present factual position. In any case, Section 29(5) of the Trade Marks Act squarely applies in the facts and circumstances of the present case.

29. In this context, this Court does not find any substance in reliance placed on behalf of defendant on the judgement of the Supreme Court in the case of *H. S. Vankani and others vs. State of Gujarat and others* (supra). The defendant relied upon the said judgement to contend that if plaintiff's interpretation of Section 29(5) of the Trade Marks Act was to be accepted, it would result in absurdity and palpable injustice. Having perused the relevant portion of the said judgement, this Court finds that there cannot be any quarrel with the said proposition. But, in the context of Section 29(5) of the Trade Marks Act, if the interpretation sought to be placed on behalf of the defendant is accepted, it may lead to absurdity, futility and palpable injustice. The defendant claims that the words 'uses such registered trade mark' necessarily mean that only if the registered trade mark is used as a trade name, infringement would occur. The defendant completely ignores the fact that the very same provision specifically states that infringement would occur, if the registered trade mark is used as part of the trade name.

30. Thus, this Court finds that the contention raised on behalf of the defendant that on the allegations made by the plaintiff, infringement is not made out under Section 29 of the Trade Marks Act, cannot be accepted. Nonetheless, for the plaintiff to succeed on the aforesaid issue No.1, by applying the well-established tests, it will have to be examined as to whether the defendant can be said to have infringed upon the registered trade marks/house marks of the plaintiff 'SUN'/ 'SUN PHARMA' by using the impugned house marks/trade names 'ABSUN' / 'ABSUN PHARMA'. The well-known test will have to be applied on the basis as to whether a person of average intelligence and imperfect recollection would be confused and thereby believe the goods and products of the defendant bearing the aforesaid impugned house marks/trade names, as being the goods and products of the plaintiff.

31. A comparison of the two marks shows that the defendant is using the house marks/trade names 'ABSUN' / 'ABSUN PHARMA', wherein the registered house marks/trade names of the plaintiff 'SUN' / 'SUN PHARMA' are subsumed. Only the alphabets AB have been prefixed to the registered trade marks of the plaintiff. This Court is of the opinion that by merely prefixing the alphabets AB, it cannot be said that the marks of the defendant are distinct. As a matter of fact, this Court finds that the impugned marks being used by the defendant are very close to the registered trade marks/house marks of the plaintiff.

32. The defendant made an attempt to claim that the word ABSUN is a coined term, having no dictionary meaning and the

alphabets AB and SUN have been derived from the names of wife and son of the proprietor of the defendant, thereby claiming that such adoption is honest. This Court finds that the honesty of adoption is wholly irrelevant, as held by this Court in the case of *Charak Pharma Pvt. Ltd. vs. Glenmark Pharmaceuticals Ltd.* (**supra**), for the reason that the moment it is found that the impugned marks are infringing the registered marks of the plaintiff, the consequences must follow, without any reference to the alleged honest adoption of the same.

33. As noted hereinabove, in the cases of *Aglowmed Limited vs. Aglow Pharmaceuticals Private Limited* (**supra**) and *Indchemie Health Specialities Pvt. Ltd., Mumbai vs. Naxpar Labs Pvt. Ltd. and another* (**supra**), this Court held that a case of infringement was made out even in cases where certain alphabets were either added to or deleted from the registered trade mark in question. In such cases, where the Statute provides for infringement and a case of similarity or deceptive similarity is made out, the intention of the concerned party against whom the allegation of infringement is made, becomes irrelevant.

34. In any case, as per the law laid down by this Court in the cases of *Bal Pharma Ltd. vs. Centaur Laboratories Pvt. Ltd.* (**supra**), and *Cadila Pharmaceuticals Limited vs. Sami Khatib of Mumbai* (**supra**), it was the duty of the defendant to have examined the register to ascertain as to whether the mark, that it proposed to use, was close to any of the trade marks already registered with the Registry. The fact that the proprietor of the defendant did not care to undertake

any such exercise of search in the register of trade marks is evident from the answers given by the lone witness i.e. the proprietor of the defendant to question Nos.8 and 9 in cross-examination. He conceded that he neither conducted any search in the market prior to the year 2007 nor did he conduct any search in the register of trade marks before adopting the impugned marks 'ABSUN' / 'ABSUN PHARMA'. In response to question Nos.10 and 11 in cross-examination, the said witness of the defendant conceded that he was aware of the plaintiff company prior to the year 2007. As a matter of fact, it was stated that he became aware of the plaintiff company around the year 1995. This clearly demonstrates that the defendant was aware about the trade marks / house marks of the plaintiff 'SUN'/ 'SUN PHARMA' and despite being aware of the same, sometime in the year 2007, the defendant proceeded to adopt the impugned marks 'ABSUN' / 'ABSUN PHARMA'. In such a situation, it can be even construed that there was a measure of dishonesty on the part of the defendant in adopting the aforesaid impugned marks.

35. In a catena of judgments the Supreme Court and various High Courts, including this Court, have held that when the Court is considering the aspect of infringement in the context of medicinal and pharmaceutical preparations, it has to be all the more strict. This is for the reason that minor changes in the formulations of medicines and pharmaceutical preparations can have adverse effect on consumers / patients. If such a consumer ends up buying a product believing it to be that of the plaintiff while such a product is actually of the defendant, it may have a deleterious effect on such consumer. This Court is of the opinion that applying the tests in the context of

Section 29 of the Trade Marks Act to the facts of the present case, the plaintiff has indeed made out a case of infringement of its registered trade marks / house marks by the defendant, by using the impugned marks.

36. The defendant sought to wriggle out of the situation by claiming that its products were all exported to African countries and not a single product was sold in the domestic market. The said defence cannot come to the rescue of the defendant in the light of Section 56 of the Trade Marks Act. A plain reading of the said provision shows that application of a trade mark to goods in India, which are to be exported, amounts to use of such trade mark under the provisions of the said Act. In the case of *Cadila Pharmaceuticals Limited vs. Sami Khatib of Mumbai* (supra), this Court in the context of Section 56 of the Trade Marks Act held as follows:-

> *"65. It is admitted that the appellant applies the impugned mark to the goods in India which are thereafter exported. The impugned mark has thus been applied to the appellant's goods within the meaning of section 56. Had the mark been applied in relation to goods to be sold within India, it would undoubtedly have constituted use of the trade mark in India. By virtue of section 56, the application in India of the trade mark, although to goods to be exported from India, is deemed to constitute use of the trade mark in relation to the said goods "for any purpose for which such use is material under the Trade Marks Act, 1999, or any other law". The plain language of section 56, therefore, constitutes the application in India of trade marks even to goods to be exported from India as use of the trade mark in relation to those goods for any purpose for which such use is material under the Act or any other law.*
>
> *66. The use of a trade mark is relevant for more than one reason. It is relevant to a party seeking to establish goodwill*

and reputation in a mark in an action for passing off. It is also relevant, even if it is not necessary, to establish the act of infringement or passing off.

67. There is little doubt that the use of a trade mark within section 56 can be relied upon to maintain an action for infringement.

Section 28 of the Act gives to the registered proprietor of the trade mark, the exclusive right to "use" the trade mark in relation to the goods or service in respect of which the trade mark is registered and to obtain relief in respect of infringement thereof in the manner provided by the Act.

Section 29 enumerates various circumstances that would constitute infringement of registered trade marks by the use thereof by a person who is not entitled to use the same. For instance, Section 29 of the Act provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of a permitted use, "uses" in the course of trade, a mark which is identical with or deceptively similar to the registered trade mark. Section 29(2) provides that a registered trade mark is infringed by a person who not being a registered proprietor or a person using by way of a permitted use, uses in the course of trade, a mark which because of the factors enumerated therein is likely to cause confusion on the part of the public or which is likely to have an association with the registered trade mark. Section 29(6)(c) expressly provides that for the purpose of section 29, a person uses a registered mark if he, inter-alia, imports or exports goods under the mark.

68. Thus section 56 would clearly apply to an action for infringement if the trade mark is applied in India to goods to be exported from India as the same is deemed to constitute use of a trade mark in relation to those goods for any purpose for which such use is material under the Act."

37. It is relevant to note that in the said judgement, this Court held that the position would not be any different in the case of passing off also, in the light of the concluding words in Section 56 'or any other

law'. Thus, the aforementioned defence taken by the defendant cannot be accepted and even if its products are exported, it cannot escape the liability of having infringed upon the registered trade marks / house marks of the plaintiff 'SUN'/ 'SUN PHARMA'.

38. The plea taken on behalf of the defendant at the fag end of the proceeding by seeking to tender aforesaid affidavit dated 2nd January 2026 about change of trading name of the defendant from ABSUN PHARMA to ABSUN REMEDIES, cannot be accepted. As a matter of fact, the said affidavit along with documents annexed therewith, was not taken on record. It is to be noted that these are original proceedings and after the entire process of pleadings, recording of evidence and arguments is over, the defendant cannot be permitted to file an affidavit to claim that the trading name is now changed from October 2025. This Court finds substance in reliance placed on behalf of the plaintiff on the judgment of this Court in the case of *R. R. Oomerbhoy Pvt. Ltd. vs. Court Receiver, High Court, Bombay & Ors.,* **2023 SCC OnLine Bom 718**, to oppose the said tactic adopted by the defendant. As a matter of fact, the aforesaid attempt on the part of the defendant fortifies the case of the plaintiff that the defendant made a dishonest attempt to come as close as possible to the registered trade marks/house marks of the plaintiff. In the said judgment, this Court remarked that honest men do not attempt to sail near the wind. In this regard, reliance placed on order of this Court in the case of *Pidilite Industries Limited vs. Raghunath Chemicals and Anr.,* (**Contempt Petition (L) No.30589 of 2021 in Suit No. 729 of 2015**), is also found to be justified. Therefore, the said plea taken at the very end of the trial on behalf of the defendant

cannot be accepted. Hence, issue No.1 is answered in favour of the plaintiff and against the defendant.

39. As to issue No.2 : This issue pertains to the question as to whether the defendant indulged in passing off its medicinal and pharmaceutical preparations as those of the plaintiff by using the impugned marks 'ABSUN' / 'ABSUN PHARMA'. As noted hereinabove, the three ingredients of passing off are goodwill, misrepresentation and resultant damages. The plaintiff has heavily relied upon documents exhibited during the course of trial including labels, packaging material and certificates issued by the Chartered Accountants regarding sales figures and expenses, to claim that it had garnered sufficient goodwill by the time the defendant started using the impugned marks. The documents relied upon by the plaintiff were attacked by the defendant, particularly the certificates issued by the Chartered Accountants, on the ground that the authors of the documents were not examined. According to the defendant, the examination of the lone witness of the plaintiff, who initially claimed to be its employee and subsequently its attorney, was not sufficient to prove such documents.

40. In this regard, one of the crucial aspects is that the present suit is a commercial suit and it was tried as such under the provisions applicable to commercial courts. The provisions of the CPC, as applicable to the commercial courts, specify procedure different from suits that come up for trial before ordinary courts. The record shows that after the plaintiff placed on record documents in support of its case, including the certificates issued by the Chartered Accountants, a

specific notice to admit documents was issued to the defendant through its advocate under Order XII, Rule 3 of the CPC. There was no response or reply to the same and in this backdrop, the documents stood admitted and they were also exhibited. The defendant also did not deny the certificates of the Chartered Accountants in the written statement. Order VIII, Rules 3 and 5 of the CPC, as applicable to commercial courts, mandate that there ought to be a specific admission and denial of pleadings and Order XI, Rule 4 of CPC, as applicable to commercial courts, specifies the manner in which documents are to be admitted or denied. The said provision requires parties to admit or deny, not merely the existence of the documents, but also correctness of contents of such documents. Despite an order dated 1st July 2019 passed by this Court, granting an opportunity to the defendant to file its statement of admission and denial along with the affidavit in support thereof, the same was never filed. Hence, all such documents exhibited on record stood admitted as regards their existence as well as their contents.

41. Apart from this, during cross-examination of the witness of the plaintiff, not a single question was put in respect of the certificates of the Chartered Accountants and even other documents relied upon by the plaintiff to prove its goodwill and reputation. This factual position is crucial while examining the contentions raised on behalf of the defendant by relying upon aforementioned judgements in the cases of *Om Prakash Berlia & Anr. vs. Unit Trust of India & Ors.* (**supra**), *Pukh Raj Bumb vs. Jagannath Atchut Naik & Ors.* (**supra**), *CFMA Asset Reconstruction Pvt. Ltd. vs. M/s. SAR Parivahan Pvt.*

Ltd. & Ors. (supra), *Brihan Karan Sugar Syndicate (P) Ltd. Vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*, (2024) 2 SCC 577. The judgements in the cases of *Om Prakash Berlia & Anr. vs. Unit Trust of India & Ors.* (supra), *Pukh Raj Bumb vs. Jagannath Atchut Naik & Ors.* (supra) and *CFMA Asset Reconstruction Pvt. Ltd. vs. M/s. SAR Parivahan Pvt. Ltd. & Ors.* (supra), all pertained to ordinary suits and not commercial suits placed for trial before commercial courts as per the provisions of the Commercial Courts Act, 2015 and the provisions of the CPC applicable to commercial courts. The principles applicable to commercial suits were not subject matter of consideration and hence, the said judgements can be of no assistance to the defendant. As regards judgement in the case of *Brihan Karan Sugar Syndicate (P) Ltd. Vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana* (supra), it was correctly brought to our notice on behalf of the plaintiff by producing the judgement of the District Court in the said case that the defendant had specifically denied the certificates issued by the Chartered Accountant and it had cross-examined the plaintiff on the said aspect of the matter. The observations made by the Supreme Court in paragraphs 14 to 16 of the said judgement, upon which much reliance is placed by the defendant, have to be read in the context of the stand taken by the defendant therein. As noted hereinabove, in the present case, the defendant failed to deny the existence and contents of the certificates issued by the Chartered Accountants. They were not even denied in express terms in the written statement as required in a commercial suit and there was no attempt made on the part of the defendant during cross-examination of the plaintiff's

witness to raise any cloud of doubt about the said documents as also other documents relied upon by the plaintiff for proving its goodwill.

42. Therefore, this Court finds that the plaintiff has sufficiently proved existence of its goodwill at the time when the defendant chose to use the impugned marks as its house marks / trade names.

43. As regards misrepresentation, the findings rendered hereinabove, with regard to the attempt of the defendant to come close to the house marks of the plaintiff, hold good for rendering finding against the defendant. The judgements upon which the defendant has placed reliance on the aspect of passing off, including the judgements in the cases of *S. Syed Mohideen Vs. P. Sulochana Bai*, **(2016) 2 SCC 683** and *Reckitt & Colman Products Limited Vs. Borden*, **[1990] 1 WLR 491** and *Ageon Life Insurance Company Limited Vs. Aviva Life Insurance Company India Limited*, **2019 SCC OnLine Bom.1612**, when applied to the present case, demonstrate that the plaintiff has indeed made out a case of deception and confusion caused amongst the public by the use of the impugned marks by the defendant. Since the defendant also manufactures medicinal and pharmaceutical products, which are indeed the products of the plaintiff, in the light of the similarity between the marks and the nature of products sold by both parties, a case of misrepresentation on the part of the defendant is made out.

44. As regards damages, the evidence led by the plaintiff does not show specific figures of damages that the plaintiff suffered as a consequence of the actions of the defendant. Although, the plaintiff claimed damages of Rs.10 lakhs, in the cross-examination of the

plaintiff's sole witness, in response to specific question with regard to the said figure of damages, the witness merely stated that it was on approximate estimation. The witness further stated that a written statement of account or financial report could be submitted at appropriate time, as and when required. On a specific question as to why no documents had been produced regarding the same, the witness responded by stating that the documents would be produced when required at appropriate time. It is a matter of record that no such documents were produced. Therefore, this Court finds substance in the contention raised on behalf of the defendant that the plaintiff failed to produce specific documents and material to support the said figure towards damages of Rs.10 lakhs.

45. Nonetheless, the stand taken by the defendant that it was using the impugned marks and that it would continue to do so, coupled with the fact that the plaintiff as well as the defendant exported their products, does indicate that the actions of the defendant did cause damage to the plaintiff. Therefore, this Court finds that the plaintiff has made out a case for demonstrating that the defendant was seeking to pass off its medicinal and pharmaceutical preparations as those of the plaintiff. Hence, issue No.2 is answered in favour of the plaintiff and against the defendant.

46. At this stage, it would be relevant to consider the contention raised on behalf of the plaintiff that a decree for rendition of accounts could be passed in these circumstances against the defendant. In this regard, the plaintiff relied upon judgments of the Madras High Court in the cases of *Dart Industries Inc & Ors. vs.*

Techno Plastic Industries (supra) and *Shyam Investments & Anr. vs. Masti Health and Beauty Pvt. Ltd.,* 2020 SCC OnLine Mad 2326. But, a perusal of the said judgments shows that in the said cases, the Court had specifically framed an issue with regard to the entitlement of the plaintiff for rendition of accounts. In the present case, no such issue was framed. In the case of *Shyam Investments & Anr. vs. Masti Health and Beauty Pvt. Ltd.* (supra), the Court further found that the defendant, during the course of cross-examination, had conceded that and given specific figures about its turnover and other such aspects. Taking into account the said responses of the defendant's witness, in the said case, the Court thought it fit to grant a decree of rendition of accounts. In the present case, neither such an issue was framed nor was the witness for the defendant put any specific question in that regard. Therefore, the plaintiff's prayer for decree of rendition of accounts cannot be granted.

47. As to issue Nos.3 and 4 : These issues are answered in favour of the plaintiff and against the defendant in the light of the observations made hereinabove. It is to be noted that at the time of consideration of the notice of motion itself, the defendant made a statement before this Court that it had not used the impugned trade mark 'E-MIST' and that it did not intend to use the same. Even at the stage of final hearing, the same stand was repeated and the contest between the parties stood limited to the registered trade marks / house marks of the plaintiff 'SUN'/ 'SUN PHARMA' against the impugned marks of the defendant 'ABSUN' / 'ABSUN PHARMA'.

48. As to issue No.5 : The burden to prove this issue is on the

defendant as it has claimed that the trade mark 'SUN' is common to trade. This Court is of the opinion that the burden to prove the aforesaid aspect on the defendant is a heavy burden, required to be discharged by placing on record evidence to establish that marks of third parties, identical to the registered trade mark 'SUN' of the plaintiff, were in substantial and extensive use in India. The evidence and material on record shows that the defendant failed to lead any evidence in this regard. The defendant failed to place on record any evidence about such alleged substantial and extensive use by third parties. The defendant was also required to place on record data, including sales figures etc. of such third parties to demonstrate that the said mark had become generic in use, thereby indicating that it was common to trade and that the plaintiff could not claim any exclusivity in the mark.

49. Mere reference to a search report or claiming that other such marks are found on the register of trade marks does not satisfy the requirement of placing necessary evidence to prove such an assertion. It is at the stage of final hearing that the defendant has orally claimed that the said mark had become common to trade. In the absence of cogent, oral and documentary evidence being led on behalf of the plaintiff, it cannot be said that the defendant discharged its burden. Hence, the said issue is answered against the defendant and in favour of the plaintiff.

50. As to issue No.6 : The burden to prove this issue also is on the defendant as it is claimed that the plaintiff acquiesced to use of the impugned mark 'ABSUN'/ 'ABSUN PHARMA' by the defendant. It is

found that the defendant has merely stated at one place that the present case was that of acquiescence on the part of the plaintiff. As a matter of fact, in cross-examination, the sole witness of the defendant while responding to question Nos.28, 29 and 35 to 37 gave answers, which completely negated the case of the defendant on the allegation of acquiescence. In response to question Nos.28 and 29, the witness for the defendant conceded that there was no document on record to show that the plaintiff was aware about the existence of the defendant and its products prior to the third week of December 2012. In response to question No.35, when it was put to the witness that the plaintiff had not acquiesced to use of the impugned mark 'ABSUN'/ 'ABSUN PHARMA', the witness for the defendant responded by stating that he did not understand the question. Hence, in question No.36, the said witness was asked as to whether he understood the term 'acquiescence', to which he responded by saying that he did not know the meaning of the term. In response to question No.37 put to the said witness to the effect that the plaintiff was not aware about the defendant prior to third week of December 2012 and therefore, there was no question of the plaintiff taking action prior to the same, the said witness responded in the affirmative. The aforesaid responses in cross-examination by the sole witness for the defendant completely destroys its case with regard to acquiescence on the part of the plaintiff. Hence, the said issue is answered against the defendant and in favour of the plaintiff.

51. Submissions were advanced on behalf of the parties in respect of costs also. It is to be noted that this being a commercial suit, Section 35 of the CPC pertaining to costs, as applicable to

commercial courts needs to be taken into consideration. Under Section 35 of the CPC, the Court has a discretion to determine costs, while taking into consideration factors like fees and expenses, legal fees, etc. It is also stipulated that when an order for payment of costs is made, a general rule is that the unsuccessful party shall be ordered to pay costs to the successful party. The Court can deviate from the same, for reasons to be recorded in writing. Although the plaintiff has relied upon judgement of this Court in the case of *Sanjay Soya Private Limited vs. Narayani Trading Company* (supra) to claim an order of costs, it is to be noted that in the said judgement, a specific statement of costs was submitted. In the present case, the learned counsel for the plaintiff has simply stated that the approximate costs incurred by the plaintiff, including court fees, miscellaneous expenses etc. came to about Rs.27 lakhs. The Delhi High Court in the case of *Koninlijke Philips N.V. v. Amazestore*, 2019 SCC OnLine Del 8198, stipulated a general rule of awarding costs depending on the conduct of the defendant. It was stipulated therein that if the defendant was first-time innocent infringer, only an injunction could be granted. But, in the case of a first-time knowing infringer, injunction with partial costs could be granted and if the defendant was a repeated knowing infringer, costs along with compensatory costs or even aggravated damages could be granted.

52. In the light of the findings rendered hereinabove, this Court does not find the defendant to be an innocent infringer. In the light of the responses given to specific questions in cross-examination, the sole witness of the defendant conceded that he knew about the plaintiff's company since the year 1995. This Court has already

found that the plaintiff placed on record sufficient material to show its goodwill and that it had registration for its device mark from the year 1983 and its word marks since the year 2007. Sufficient material is on record to show that house marks / trade marks of the plaintiff were in the public domain much prior to the year 2007, when the defendant started using its impugned marks and that the defendant was very much aware about the plaintiff's mark.

53. Therefore, it can be said that the defendant is a first-time knowing infringer. Accordingly, apart from granting injunction against the defendant, this Court is inclined to award partial costs. In a recent judgement and order dated 8th December 2025 passed by a learned Single Judge in Commercial Suit No.110 of 2012, costs of Rs.10 lakhs were granted to the plaintiff. This Court is inclined to grant costs in a similar manner to the plaintiff.

54. As to issue No.7: In view of the above, the suit is decreed in terms of prayer clauses (a), (b), (c), (d) and (e).

55. The defendant shall pay costs of Rs.10 lakhs to the plaintiff.

MANISH PITALE, J.