2026:DHC:6466-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: *24.07.2026*
Judgment delivered on: *10.08.2026*
Judgment uploaded on: *11.08.2026*

\+ FAO(OS) (COMM) 177/2026 CM APPL. 45249/2026

EMAMI LIMITED .....Appellant

Through: Mr. Abhimanyu Bhandari, Sr. Adv. with Ms. Roohe Hina Dua, Ms. Shrutika Garg, Ms. Dhwani Arora and Mr. Harshit Khanduja, Advs.

versus

DABUR INDIA LIMITED .....Respondent

Through: Mr. Sandeep Sethi, Sr. Adv., with Ms. Kripa Pandit, Mr. Christopher Thomas, Mr. Krisna Gambhir, Ms Shreya Sethi and Mr. Anirudh Bakhru, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. This is an appeal filed under Order XLIII Rule 1(r) read with Section 104 Code of Civil Procedure, 1908 ('CPC') read with Section 13(1) of the Commercial Courts Act, 2015 ('Act of 2015') and Section 10 of Delhi High Court Act, 1966 assailing the order dated 19.06.2026 ['impugned order'] passed in I.A. No. 15761/2026 in CS(COMM) 532/2023 titled as Emami Limited v. Dabur India Limited whereby the learned Single Judge passed a conditional order, permitting the Respondent to dispose off the existing stock.

2. The Appellant is the plaintiff, and the Respondent is the defendant in the Commercial Suit.

FACTUAL MATRIX

3. The Appellant filed a suit against the Respondent for infringement of its registered Trade Marks, passing off, unfair trade practices and damages along with an application under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC bearing I.A. No. 14557/2023 seeking ad interim injunction against the Respondent.

4. Learned Single Judge, *vide* judgment dated 31.01.2026 ('judgment'), granted an interim injunction in favour of the Appellant, thereby restraining the Respondent from selling its product, namely, 'DABUR Cool King Thanda Tel', under the Trade Dress, '

' ('Respondent's infringing product'), or under any other trade dress deceptively similar to that of the Appellant, being '

' ('Appellant's Product'). The operative of the judgment reads as under:

> "28. Considering the submissions made by the Parties and the case laws relied upon by them, the Plaintiff is entitled to the relief of

injunction, and it is directed that the **<u>Defendant is restrained from selling</u>** the Defendant's Product, i.e., 'Cool King Thanda Tael' using the Trade Dress, ' 

' or any other deceptively similar Trade Dress to the Plaintiff's Trade Dress being  .

29. The Application stands disposed of with the aforesaid directions."

[Emphasis supplied]

5. The said judgment was assailed by the Respondent before the Division Bench in FAO(OS)(COMM)23/2026 ('Appeal'), titled as 'Dabur India Limited v. Emami Limited'. *Vide* judgment dated 22.05.2026 ('Division Bench Judgment'), the Division Bench dismissed the Appeal and upheld the judgment. The operative part of the Division Bench judgment reads as under:

"77. Our aforesaid conclusion is based on the finding that the trade dress encompassing the overall visual appearance of the product including the lay-out, colour scheme of the products of the appellant vis-à-vis those of the respondent, has been rightly injuncted because it is deceptively similar to the trade dress of the products of the respondent/plaintiff and there is every likelihood of misleading the consumers and constitutes passing off.

78. In view of our findings and analysis above, this appeal being devoid of merits is dismissed. **We uphold the impugned order**

> **passed by the learned Single Judge**. The pending application is also dismissed."
>
> [Emphasis supplied]

6. However, on 26.05.2026, subsequent to the aforesaid judgment of the Division Bench, the Respondent filed an application I.A. 15761/2026 under Section 151 CPC before learned Single Judge seeking permission to exhaust the existing stock of Respondent's infringing product.

7. Learned Single Judge *vide* impugned order dated 19.06.2026, has passed a conditional order permitting the Respondent to dispose of its stock in a time-bound manner. The operative part of the impugned order setting out the conditions permitting the disposal of the existing stock reads as under:

> "12. Accordingly, in order to balance the equities between the Parties, and subject to strict compliance with the conditions set out hereinbelow:
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> i. The Defendant is granted time until 30.09.2026 to exhaust only the existing stock of the Defendant's Product, namely, 'DABUR Cool King Thanda Tel', under the  impugned Trade Dress, manufactured only till the date of the Judgement as per the quantity disclosed in the present Application.
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> ii. In the event any inventory of the existing stock of the Defendant's Product remains unsold as on 30.09.2026, the Defendant shall forthwith recall the same from all distributors, retailers, chemists, shopkeepers, e-commerce platforms and any other channels of sale or distribution, and such stock shall not be sold, offered for sale, distributed, advertised, or dealt with in any manner whatsoever. Any such remaining stock shall, thereafter, be either destroyed or

> donated to a charity, orphanage or jail as may be identified by the Plaintiff.
>
> iii. The Defendant shall not undertake any fresh manufacture of the Defendant's Product in compliance with the Judgement.
>
> iv. The Defendant shall maintain true and accurate accounts of the existing stock and shall furnish weekly disclosures of the remaining inventory and sales made therefrom to the Plaintiff.
>
> 13. The Defendant shall remain strictly bound by the aforesaid directions, as also by the undertakings furnished in the present Application.
>
> 14. Accordingly, the present Application stands disposed of in the above terms."

SUBMISSION ON BEHALF OF THE APPELLANT

8. Mr. Bhandari, learned counsel for the Appellant states that the Appellant had filed I.A. 16249/2026 under Order XXXIX Rule 2(A) CPC on 26.05.2026 in CS(COMM) 532/2023 against the Respondent for initiation of contempt proceedings for the violation of the interim injunction granted *vide* judgment dated 31.01.2026 as upheld and affirmed by the Division Bench Judgment dated 22.05.2026.

8.1. He states that it is after the filing of the said application, the Respondent filed I.A No. 15761/2026 seeking permission to exhaust its existing stock for the infringing products alleged to have been manufactured prior to the judgment dated 31.01.2026, which was allowed by the impugned order.

8.2. He states that Respondent has now filed another application[1] seeking modification of the impugned order dated 19.06.2026 for clarification of the directions issued by learned Single Judge at paragraph 12 (ii) thereof to state that the said obligation should be confined only to the unsold inventory remaining with the Respondent as on 30.09.2026 and Respondent would not be liable to recall the infringing products already sold to the Wholesalers and Retailers.

8.3. He states that I.A. 15761/2026 filed by the Respondent, was not maintainable before the learned Single Judge after the interim injunction granted vide judgment dated 31.01.2026, especially since the said judgment has merged into the Division Bench judgment dated 22.05.2026.

8.4. He states that Respondent has disclosed that it has in its possession 9,020 cartons comprising 24 bottles per carton. He states that the said goods were manufactured by the Respondent in 2024 and 2025 i.e., with full knowledge of the pending litigation of the suit and the Appellant's objections; therefore, there can be no equity in favour of the Respondent. He states that the I.A. No 15761/2026 filed by the Respondent seeking disposal of the existing stock is not bona fide and negates the effect of the interim injunction upheld by the Division Bench in favour of the Appellant.

8.5. He relies upon an invoice dated 25.05.2026 of a sale transacted on the e-commerce website of Amazon to contend that Respondent continues to sell the infringing product in violation of the interim injunction granted on

[1] Annexed as Annexure -16 along with the present appeal

31.01.2026. He also relies upon the screenshots[2] of continuing listing of the Respondent's infringing product on the E-commerce website of Big Basket.

8.6. He states that the application filed by the Respondent seeking modification of paragraph 12(ii) of the impugned order dated 19.06.2026, if granted, would set at naught the interim injunction upheld by the the Division Bench.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. In reply, Mr. Sethi, learned senior counsel appearing for the Respondent, states that the present appeal is not maintainable. He states that I.A. 15761/2026 was filed by the Respondent under Section 151 CPC and the relief granted by the learned Single Judge by the impugned order dated 19.06.2026 is in exercise of Section 151 CPC jurisdiction. He states that since Order XLIII Rule 1 CPC does not provide for any appeal against an order passed under Section 151 CPC, no appeal is maintainable under Section 13 of the Act of 2015. He relies upon the judgment of the Supreme Court in **Kandla Export Corporation and Another v. OCI Corporation and Another**[3], **Keshardeo Chamria v. Radha Kissen Chamria and Ors.**[4] and an order of the Division Bench of this Court in **VHB Life Sciences Inc. v. Merck Sharp & DOHME Corp.**[5].

9.1. On merits, he submits that approximately 9020 cartons holding 24 bottles each, of the infringing product, were manufactured on or before 31.01.2026, when the learned Single Judge passed the interim injunction

[2] At printed page no. 1385
[3] (2018) 14 SCC 715
[4] (1952) 2 SCC 329
[5] 2018: DHC: 6720-DB

against the Respondent. He states that thereafter Respondent has not manufactured or sold any product.

9.2. He further relied upon the pictorial representation of the Dabur Distribution Network to contend that the Respondent has privity of contract only with its Distributors. He states that Distributors sell the product to Wholesalers and the E-commerce platforms. He states that Wholesalers in turn sell it to Retailers, which consist of shops, chemists and stores. He states that Respondent has no privity of contract with the Wholesalers and Retailers. He states that therefore, once Respondent has sold its existing stock, through the Distributors to Wholesalers and Retailers, it can't recall the said stock and hence Respondent has filed an application seeking modification of the condition at paragraph 12(ii) of the impugned order dated 19.06.2026.

9.3. He states that, however, Respondent undertakes that it shall immediately stop the sale of its existing stock on E-commerce platforms such as Amazon, Big Basket, etc. so that the advertisement and visibility of the Respondent's infringing products on the Internet is erased. He states that Respondent will take appropriate steps to inform the E-commerce platforms to remove all listings.

9.4. He submits that however Respondent may be permitted to sell the existing stock of 9020 cartons as permitted by the learned Single Judge *vide* impugned order dated 19.06.2026, without insisting on compliance of paragraph 12(ii) of the said order to the extent it imposes an obligation on the Respondent to recall the unsold infringing products from Wholesalers and Retailers after 30.09.2026.

9.5. He submits that the impugned order dated 19.06.2026 passed by the learned Single Judge was within its jurisdiction as recorded at paragraph 9 of the said order. He states that the reasons recorded in the impugned order at paragraphs 7, 8, 10 and 11 justify the liberty granted to the Respondent to dispose of its existing stock. He relies upon a compilation of orders and judgments passed by the Supreme Court and High Court permitting disposal of stock by the injuncted party (i.e., defendant therein) within a reasonable period. The list of the said orders is as under:

(i) SLP (C) No(s) 20856-20867/2025 Vip Industries Limited v. Carlton Shoes Limited and Anr.
(ii) SLP (C) No(s) 16438/2026 Flipkart India Private Limited v. Marc Enterprises Private Limited
(iii) FAO(OS) (COMM) 88/2026 titled Mr. Akash Arora v. Reckitt and Coleman Overseas Hygiene Home Limited and Ors.
(iv) FAO(COMM) 94/2022 Alkem Laboratories Limited v. Ms. Laborate Pharmaceuticals India Limited and Anr.
(v) CS(COMM) 84/2025 Alkem Laboratories v. Prevego Healthcare and Research Private Limited
(vi) FAO(OS) 446/2014 Lupin Limited v. Sun Pharma Laboratories Limited
(vii) CS(COMM) 317/2026 Novo Nordisk vs Dr Reddy Laboratories Limited – Delhi High Court
(viii) CS(COMM) 622/2018 Sun Pharma Laboratories vs Ajanta Pharma – Delhi High Court
(ix) CS(COMM) 110/2019 Bata India Limited vs Chawla Boot House and Anr. – Delhi High Court
(x) CS(COMM) 684/2021 Dr. Reddy Laboratories Limited vs Sunlife Sciences Private Limited – Delhi High Court

9.6. He also clarifies that the Respondent has accepted the judgment dated 22.05.2026 passed by the Division Bench confirming the interim injunction granted by learned Single Judge vide judgment dated 31.01.2026, and is now only seeking to dispose of its existing stock manufactured before 31.01.2026.

REJOINDER SUBMISSIONS BY THE APPELLANT

10. In response, Mr Bhandari, learned counsel for the Appellant, states that the submission of the Respondent that it does not have the wherewithal to recall the goods sold to the Wholesalers and Retailers is incorrect. He states that it is permissible for the Respondent and its Distributors to dispose of its stock by selling it to selected Retailers, with instructions that the unsold stock would be returned to the Respondent on 30.09.2026. He states that this is common to the industry of FMCG[6] products and in any event this method can be adopted by the Respondent for implementing the conditional leave granted by the learned Single Judge *vide* impugned order dated 19.06.2026. He states that, however, if the Respondent is permitted *not* to recall the unsold goods from its Wholesalers and Retailers after 30.09.2026, it will have the effect of the stock of the Respondent remaining available in the market indefinitely and set at naught the interim injunction granted in favour of the Appellant.

10.1. He states that in the compilation of orders relied upon by the Respondent, the Division Bench of this Court in **Mr Akash Arora v. Reckitt and Coleman Overseas Hygiene Home Limited and Ors**[7] at paragraph number 14 therein, the Court had directed the defendant therein to ensure that the unsold stock which remains with the Retailers is recalled. Similarly, in **Novo Nordisk v. Dr. Reddys Laboratories** (supra), the Court

[6] Fast-Moving Consumer Goods
[7] 2026:DHC:3282-DB

directed the defendant therein at paragraph number 8 therein, to file an undertaking that the existing stock will not be sold after expiry of 30 days.

10.2. He states that the letter and spirit of all the orders and judgments passed by the Supreme Court and High Court, as relied upon by the Respondent, is that the injuncted defendant therein will dispose of its existing stock within the time period granted. He states that it could not have been in the contemplation of the said Courts that the stock will remain available for sale in the market through the retailers.

FINDINGS AND DIRECTIONS

11. This Court has heard the learned counsel for the parties and perused the record.

(I) Maintainability of the appeal

12. We shall first address the issue of maintainability of this appeal under Section 13 of the Act of 2015. In our considered opinion, this appeal is maintainable under Order XLIII Rule 1(r) CPC, as the impugned order dated 19.06.2026 passed by the learned Single Judge effectively varies the injunction order and is therefore an exercise of its jurisdiction under Order XXXIX Rule 4 CPC.

13. The learned Single Judge, *vide* judgment dated 31.01.2026 at paragraph 28 (reproduced hereinabove) had expressly restrained the Respondent from selling its infringing products with immediate effect. However, by the impugned order dated 19.06.2026 passed in I.A. No. 15761/2026, the learned Single Judge has modified the said injunction and

granted limited permission to the Respondent to sell its infringing products until 30.09.2026. The impugned order dated 19.06.2026 therefore amounts to variation of the interim injunction judgment dated 31.01.2026 and is thus an exercise of jurisdiction by the learned Single Judge under Order XXXIX Rule 4 CPC.

14. Since an order passed by the learned Single Judge under XXXIX Rule 4 CPC is expressly appealable under XLIII Rule 1(r) CPC, the present appeal is maintainable.

(II) Jurisdiction of the learned Single Judge to entertain I.A. 15761/2026 filed in CS (COMM) 532/2023

15. The next question which arises for consideration is whether the learned Single Judge could have entertained I.A. 15761/2026 to modify the interim injunction granted *vide* judgment dated 31.01.2026, which has been upheld by the Division Bench *vide* judgment dated 22.05.2026.

16. The learned Single Judge, *vide* judgment dated 31.01.2026 absolutely restrained the Respondent from selling its infringing product, with immediate effect. The said judgment was assailed by the Respondent, and the Division Bench in FAO (OS) (COMM) 23/2026 upheld the absolute restraint *vide* judgment dated 22.05.2026. The learned Single Judge's judgment dated 31.01.2026 thus merged into the Division Bench's judgment dated 22.05.2026. The interim injunction, which operated to injunct the Respondent, from selling the infringing products was now the judgment of the Division Bench and not of the learned Single Judge. It was thus impermissible for the Respondent to sell the infringing products after the

confirmation of interim injunction by the Division Bench including disposal of the existing stock.

17. The judicial hierarchy requires a subordinate court to give full effect to, and not pass any order inconsistent with, the determination of a superior Court.

In the present case, once the Division Bench, in exercise of its appellate jurisdiction, upheld the interim injunction granted in favour of the Appellant, the interim injunction judgment dated 31.01.2026 passed by the learned Single Judge stood merged into the judgment passed by the Division Bench. It is the judgment of the Division Bench which thereafter became operative and binds the parties, and can be enforced against the Respondent. Consequently, the Respondent's subsequent application seeking permission to dispose of its existing stock could not have been entertained by the learned Single Judge as the relief sought had the effect of modifying the injunction affirmed by the Division Bench. Any clarification, variation, or relaxation of the interim injunction judgment of the Division Bench was required to be sought by the parties from the Division Bench or Superior Court.

18. Learned Single Judge at paragraph 9 of the impugned order has recorded reasons for holding the application maintainable, which reads as under:

> "9. Further, grant of time after the passing of the Judgment would not amount to a review or modification of the Judgment. The directions contained in the Judgment have been upheld by the Division Bench in the DB Judgment. Although the Judgment has merged with the DB Judgment, this Court retains its inherent jurisdiction to consider the present Application, particularly since

the issue of grant of time to exhaust the existing stock was not considered in the Judgment, no such request having been made at that stage. Even at the time of passing of the DB Judgment, no such request was made by the Defendant. The request for grant of time to exhaust the existing stock manufactured up to the date of the Judgment has been made for the first time in the present Application pursuant to the DB Judgment. In these circumstances, the present Application is maintainable, and this Court has jurisdiction to consider the same."

19. We are unable to agree with the said reasoning.

20. The reasoning of the learned Single Judge that the issue of grant of time to exhaust the existing stock was not considered in the judgments dated 31.01.2026 and 22.05.2026 is not correct, as the said prayer was implicit in the determination of the injunction application being I.A. 14557/2023 filed under Order XXXIX Rule 1 and 2 CPC. Such a relief could have been granted by the learned Single Judge while passing the judgment dated 31.01.2026 itself while determining the issue of balance of convenience. Similarly, the said relief could have been granted by the Division Bench as well while deciding the appeal.

21. The application for disposing of the existing stock could have been made by the Respondent, before the learned Single Judge, even after passing of the injunction order dated 31.01.2026 but before filing the appeal, i.e., FAO(OS) (COMM) 23/2026.

However, once the appeal stands dismissed and the interim injunction granted by the learned Single Judge is affirmed and upheld by the Division Bench, the application for exhausting the existing stock could have thereafter been made only before the Division Bench due to the merger of the orders. Or, the Respondent ought to have sought liberty from the

Division Bench for filing such an application before the learned Single Judge. But, not otherwise.

22. If the reasoning of the learned Single Judge at paragraph 9 of the impugned order dated 19.06.2026 is accepted, it will lead to breach of judicial hierarchy. Exercise of any inherent power which leads to modification or variation of the orders of the Division Bench by the Single Judge is impermissible.

Also, there will be no finality to the interim injunction orders passed by the learned Single Judge at the interim stage, even though confirmed by the Division Bench until the final disposal of the suit. With each change of roster, the defendant will file successive applications for modification of interim orders which have attained finality.

Such an approach will lead to multiplicity of applications by the unsuccessful defendant, seeking to chip away on the injunction order, and further rounds of appeal as is evident from the facts of this case.

23. We therefore hold that I.A. No. 15761/2026 was not maintainable before the learned Single Judge as the judgment dated 31.01.2026 had merged into the judgment of the Division Bench dated 22.05.2026. This application could *not* have been entertained by the learned Single Judge under XXXIX Rule 4 CPC either as it is not based on any event subsequent to the Division Bench's judgement dated 22.05.2026.

24. The reason recorded by the learned Single Judge at paragraph 9 of the impugned order dated 19.06.2026 is hereby set aside.

Grant of conditional permission to the Respondent

25. In view of our aforesaid finding as regards the learned Single Judge's lack of jurisdiction to entertain I.A. 15761/2026, the impugned order dated 19.06.2026 is liable to be set aside.

26. However, Mr Bhandari, learned senior counsel appearing on behalf of the Appellant has contended that the Appellant has no objection if the Respondent disposes of its existing stock of 9020 cartons in strict compliance with the conditions enlisted at paragraph 12 of the impugned order dated 19.06.2026.

27. In addition, he submits that Respondent must take immediate steps to remove all listings of its infringing products and images from E-commerce platforms including Amazon, Big Basket, etc. He has, however, vehemently opposed the modifications sought by Respondent to the condition at paragraph no.12(ii) of the impugned order by way of the proposed application seeking modification.

28. As noted above, Mr. Sethi, learned senior counsel for the Respondent, submitted that Respondent will take immediate steps for removal of all listings of its infringing products from the E-commerce platforms. He also submitted that existing stock will not be disposed of through the E-commerce platform and will only be made available through physical shops of its Wholesalers and Retailers. The said statement of Respondent is taken on record and it is bound down to the same and order to act accordingly.

29. In view of the aforesaid submissions of the Appellant and the reasons recorded by the learned Single Judge in the impugned order at paragraph

nos. 7, 8, 10 and 11, for permitting disposal of existing stock, we do not propose to set aside the conditional permission given by the learned Single Judge at paragraph 12 of the impugned order. However, in view of our finding that such an order could have been granted, only, by the Division Bench in view of the merger of orders, we hold that the conditional permission granted by the learned Single Judge *vide* impugned order dated 19.06.2026 shall be deemed to have been granted by this Court. The Respondent is therefore permitted to dispose of its stock strictly in conformity with paragraph 12 and 13 of the impugned order dated 19.06.2026.

(III) Application for seeking modification of Impugned Order dated 19.06.2026

30. With respect to the application filed by the Respondent, before the learned Single Judge, seeking modification of the conditions imposed at paragraph 12 (ii) of the order dated 19.06.2026 we find no merit in the submissions of the Respondent for seeking the modification. If the contention of the Respondent is accepted that it is not responsible for the stock available with the retailers after 30.09.2026, then it certainly sets at naught the interim injunction granted by the learned Single Judge *vide* judgment dated 31.01.2026 as upheld by the Division Bench *vide* judgment dated 22.05.2026. The existing stock has been manufactured by the Respondent during the pendency of the suit at its own risk and peril, being conscious of the pendency of I.A. No. 14557/2023 and therefore it cannot claim any equities beyond a reasonable measure.

31. We are also of the considered opinion that no irreparable injury will be suffered by the Respondent; if it finds the directions at paragraph 12(ii) unworkable, it is at liberty to re-package its goods in a new trade dress distinct from the Appellant's trade dress and sell its products.

32. We find merit in the submission of the Appellant that the letter and spirit of the orders and judgment passed by the Supreme Court and this Court permitting disposal of existing stock by the injuncted defendant is on an understanding that the stock will thereafter not be available for sale in the market. We agree with the Appellant that the intent in permitting a defendant to dispose of its existing stock is only in a controlled environment and on the date of expiry of the period granted by the Court, all unsold stock must be recalled by the defendant. In any event, the grant of permission to an injuncted defendant to sell infringing products in a time bound product is a discretionary relief intended to reduce economic waste. Having found that the trade dress is infringing, the Court has the absolute discretion to not permit sale of the infringing products. The Respondent cannot claim this equitable relief as a matter of right. We are of the opinion, if the submissions of the Respondent are accepted, the effect of the injunction order will be negated and this fact outweighs any equity in favour of the Respondent who has been found to be dealing in an infringing trade dress.

33. In view of the aforesaid observations, we are of the considered opinion that application filed, seeking modification of the impugned order dated 19.06.2026, is without any merit, and cannot be entertained. The same is dismissed.

34. It is clarified that the Respondent will be entitled to exercise the conditional permission, only, if it can recall the unsold stock on 30.09.2026 or else the Respondent cannot act in furtherance of the conditional permission. It can then exercise the option of repackaging its goods.

35. With the aforesaid directions the present appeal is allowed. Pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

AUGUST 10, 2026/hp/aj