



**In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya  
And  
The Hon'ble Mr. Justice Supratim Bhattacharya**

**F.M.A.T. No. 56 of 2026**

**+**

**CAN 1 of 2026**

**Sun Pharmaceutical Industries Limited**

**-Versus-**

**Emami Limited and Others**

|                          |   |                                                                                                                                                                                                                         |
|--------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the appellant        | : | Mr. Ratnanko Banerjee, Sr. Adv.,<br>Mr. Arunabha Deb,<br>Mr. Soumay Ray Chowdhury,<br>Ms. Ashika Daga,<br>Mr. Raunak Das Sharma,<br>Ms. Sanchali Bhowmik,<br>Ms. Sampurna Mukherjee,<br>Mr. Aditya Mukherjee, ... Advs. |
| For the respondent no. 1 | : | Mr. Ranjan Bachawat, Sr. Adv.,<br>Mr. Debnath Ghosh, Sr. Adv.,<br>Mr. Sarosij Dasgupta,<br>Mr. Biswaroop Mukherjee,<br>Mr. Soumyajit Mishra, ... Advs.                                                                  |
| Heard on                 | : | 17.02.2026, 18.02.2026, 07.04.2026,<br>01.07.2026, 22.07.2026 & 23.07.2026                                                                                                                                              |
| Reserved on              | : | 23.07.2026                                                                                                                                                                                                              |
| Judgment on              | : | 17.08.2026                                                                                                                                                                                                              |

**Sabyasachi Bhattacharyya, J.:-**

1. The present appeal has been preferred against an ad interim order of injunction restraining the appellants from displaying, playing, airing, telecasting in any manner the impugned video i.e. Annexure-J to the



(temporary injunction) application and from print, publication or in any other form any statement with regard to the product “Zandu Balm”, “Mentho Plus Balm” and “Zandu Ultra Power Balm” in any manner, in any language or in any media, including electronic media.

2. The order was passed in connection with a suit filed by the plaintiff/respondent no.1 for the following reliefs:

*“(a) A Decree for perpetual injunction restraining the defendants and/or their men, servants, agents, assigns and representatives from displaying and/or playing and/or airing and/or telecasting and/or displaying, in any manner whatsoever, the impugned video, the story board whereof is annexed as “Annexure J” to the plaint and/or any other videos, including any print publication, which purports to disparage and/or defame the plaintiff ‘Emami’ and/or its ayurvedic, health products and pain relieving preparations, commonly referred as “BALM” under the names “Zandu Balm”, “Mentho Plus Balm” and “Zandu Ultra Power Balm”, in any manner whatsoever;*

*(b) A Decree for perpetual injunction restraining the defendants and/or their men, servants, agents, assigns and representatives from telecasting or broadcasting or otherwise howsoever communicating to the public or publishing the impugned video or any part thereof, or any other advertisement of a similar nature in any language, or in any manner causing the impugned video or any part thereof or any other advertisement of a similar nature to be telecast or broadcast or communicated to the public or published, in any manner whatsoever;*

*(c) A Decree for perpetual injunction restraining the defendants, from disparaging or denigrating the plaintiff’s ayurvedic, health products and*



*pain relieving preparations, commonly referred as “BALM”, under the names “Zandu Balm”, “Mentho Plus Balm” and “Zandu Ultra Power Balm” manufactured and/or sold under the said names of the plaintiff’s business in any manner whatsoever;*

*(d) A Decree for perpetual injunction restraining the defendants from publishing and/or causing to be published and/or causing to remain on the websites/television channels/platforms of the defendants’, the defamatory statements and innuendo concerning the plaintiff, ‘Emami’, meant and/or understood to mean that what has been stated in paragraph no. 44 above or any similar statement whatsoever;*

*(e) A decree for perpetual injunction restraining the defendants from publishing defamatory statements and innuendo concerning the plaintiff ‘Emami’ or its ayurvedic, health products and pain relieving preparations, commonly referred as “BALM”, being those contained in the impugned video and/or advertisement and/or commercial and/or making publications of similar nature and/or allowing such statements to remain published, in any manner whatsoever;*

*(f) A Decree for perpetual injunction restraining the defendants from making or publishing or causing to be published any defamatory or false or incorrect statements of or concerning the plaintiff, ‘Emami’ in any manner whatsoever or from making the statements as contained in the impugned video and/or advertisement and/or commercial, the storyboard whereof is annexed as “Annexure J” to the plaint, or of a similar nature, in any manner whatsoever;*

*(g) A Decree for mandatory injunction directing the defendant no. 1 to forthwith issue/publish a corrigendum on their YouTube channel and the television channels/platforms of the respondent nos. 2 to 7 and other*



*platforms, tendering an unconditional apology to the plaintiff, Emami Ltd., and also apologizing to the Chairman and the Managing Director of the plaintiff company for publishing the impugned video and the innuendo contained therein;*

*(h) A Decree for mandatory injunction directing the defendants to forthwith issue/publish a corrigendum on their YouTube channel and other platforms, tendering an unconditional apology to the plaintiff, Emami Ltd., and its Board of Directors for publishing the impugned video and the innuendo contained therein;*

*(i) Decree for Mandatory injunction directing the defendants to forthwith cause the impugned video as described in paragraph nos. 16, 21, 22 and 23 to the plaint and in “Annexure J” thereto or any other publication concerning the plaintiff, Emami Ltd. to be removed from their respective websites/webpages/platforms forthwith;*

*(j) A Decree for delivery up and destruction of the master tape or like form, of the impugned video of the defendants and/or any copy thereof;*

*(k) An enquiry be made into the loss of business and reputation caused to the Plaintiff ‘Emami’ by the impugned video of the defendants, and upon such inquiry having been made, a decree be made awarding such sum as damages to the plaintiff;*

*(l) Receiver;*

*(m) Injunction;*

*(n) Attachment;*

*(o) Costs;*

*(p) Further or other reliefs.”*



3. Learned senior counsel for the defendant no.1/appellant argues that the suit is not maintainable before an ordinary civil court, since it pertains to a “commercial dispute” within the meaning of Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015 (hereinafter referred to as “the CC Act”).
4. It is contended that the plaintiff/respondent no.1, in support of its case, has relied on registrations under the Trade Marks Act, 1999 (for short, “the TM Act”), the Copyright Act, 1957 and the Designs Act, 2000. The disparagement alleged in the plaint, it is argued, is on the basis of the said intellectual property registrations. The valuation of the suit is Rs.50,00,00,000/-, thus, coming within the purview of “specified value”, as defined in the CC Act.
5. The language of Section 2(1)(c)(xvii) of the CC Act, it is submitted, is wide enough to encompass the reliefs sought in the suit. Learned senior counsel places particular stress on the expressions “arising out of” and “relating to” used in the said definition in respect of intellectual property rights comprised of registered and unregistered trademark, copyright, patent, design, etc. It is argued that for a dispute to come within the purview of the said definition, it must be relatable to intellectual property rights, not necessarily that the reliefs sought must be under the Intellectual Property Law statutes. In support of such contention, learned senior counsel relies on *T.V. Today Network Limited v. News Laundry Media Private Limited and Others*, reported at 2022 SCC OnLine Del 2233, and *Jatin Jain and Others v. Anuj Jain and Others*, reported at 2024 SCC OnLine Del 2076.



6. It is argued that the plaintiff/respondent no.1, through clever drafting, has attempted to escape from the rigours of the CC Act by trying to camouflage its case as a case for defamation which arises out of the common law of tort. The respondent no.1/plaintiff itself has referred to and has annexed several registrations obtained by it under various Intellectual Property Law statutes and has pleaded and relied on trademark, copyright and design registrations.
7. In Paragraph No.14 of the plaint, the categorical case made out is that use of the word “Balm”, the use of the bottle, colour combination, etc., in the offending advertisement refers to the plaintiff/respondent no.1 alone and no one else, which assertion is based on the intellectual property law registrations.
8. In Paragraph Nos.16 and 35 of the plaint, the plaintiff has asserted that the capped bottle shown in the impugned advertisement is that of the plaintiff, which is based on the design registrations obtained by it.
9. The plaintiff has also replicated the language of Section 29(8) of the TM Act in Paragraph No.29 of the plaint, without specifically referring to the Section.
10. It is submitted that the averments made in Paragraph No.56 of the plaint, to the effect that the plaintiff seeks leave under Order II Rule 2 of the Code of Civil Procedure (CPC), 1908 to sue separately for infringement of the plaintiff's trademark, copyright, design and for passing off, does not come to the rescue of the plaintiff as the same are contrary to the other pleadings in the plaint. It is reiterated that the language of Section 2(1)(c)(xvii) of the CC



Act is of widest import and not confined to reliefs which can be claimed under the Intellectual Property Law statutes.

11. It is submitted that the judgment rendered in *Hindustan Unilever Limited v. Emami Limited*, reported at 2018 SCC OnLine Cal 8882, relied on by the plaintiff/respondent no.1, has no application in the instant case as the same was passed prior to the coming into force of the CC Act and was dealing with Section 134 of the TM Act. The definition of “commercial dispute”, it is submitted, is much wider than infringements under the TM Act.
12. On merits, it is argued that there has been no disparagement whatsoever by the impugned advertisement. The plaintiff has suppressed the material fact that the plaintiff itself also has a “Roll-On Gel” under the brand “Zandu”, where similar claims have been made with regard to it being non-sticky and non-greasy, as would be evident from its web page, a copy of which is annexed in the stay application filed in connection with the present appeal. However, the said document was not before the learned Trial Judge, it is candidly submitted.
13. In the plaint, a case of direct disparagement has been sought to be made out. Thus, the arguments advanced by the plaintiff/respondent no.1 before this Court regarding generic disparagement are not supported by any pleadings to that effect.
14. Moreover, the impugned advertisement, it is argued, has no reference to the product of the plaintiff/respondent no.1 and does not connect to the said product. In *Emami Limited v. Dabur India Limited*, reported at 2025 SCC



*OnLine Cal 5487*, it has been held that the absence of any direct correlation between the bottle being shown in the disputed advertisement and that containing the product of the appellant therein would justify turning down the “recall value” argument of the said appellant.

15. Thus, it is submitted that the impugned order ought to be set aside.
16. Per contra, learned senior counsel appearing for the plaintiff/respondent no.1 argues that the suit is for ‘disparagement’, which is a false and injurious statement that discredits or detracts from the reputation of another’s property, product or business and not related to registrations of trademark, copyright or design. The history of the plaintiff’s business and registrations secured by it has been mentioned in the plaint only to elucidate the business carried on by the plaintiff and the statutory protections obtained by it, as well as the goodwill and reputation generated by the plaintiff pertaining to its business in relation to the product ‘Balm’. However, the said registrations do not form the basis of the reliefs claimed in the suit.
17. It is contended that at the stage of *ex parte* ad interim injunction, it is only the contents of the plaint which are to be looked into and have to be taken to be true and correct.
18. The plaintiff, it is submitted, is the market leader in Balms, having 57% market share therein. Thus, it is the plaintiff which is most affected by the impugned advertisement, which seeks to target the plaintiff maliciously and by way of subterfuge.



- 19.** The plaint has to be read in a holistic manner on the touchstone of the cause of action pleaded therein. Mere reference to the plaintiff's registered trademark and the details of registrations obtained by it, it is submitted, cannot convert a suit simpliciter for disparagement of the plaintiff's product (where any brand or any registered trademark is not *per se* pin-pointed), into a commercial dispute involving violation of intellectual property within the meaning of Section 2(1)(c)(xvii) of the CC Act, as the basic ingredient of Section 29(8) of the TM Act, that is, display of the registered trademark of the plaintiff, is absent.
- 20.** In Paragraph No.38 of the plaint, it is the specific case of the plaintiff that by way of airing and/or disseminating the impugned video, the defendant no.1/appellant has resorted to malicious falsehood and has made false and misleading claims in the advertisement.
- 21.** The impugned advertisement intends to mean and convey such claims by way of innuendo, which has been delineated in Paragraph No.44 of the plaint.
- 22.** A registered trademark is infringed only by any advertisement of that trademark, which is absent in the present case. Hence, Section 29(8) of the TM Act is not attracted.
- 23.** The expression "in relation to" in Section 2(1)(c)(xvii) of the CC Act has to be read in the context of the definition of "commercial disputes", as embodied in the categories enumerated in the said Section. The expression "means" is restrictive and exhaustive, as opposed to the expression "means and includes". For such proposition, learned senior counsel cites *Bharat Coop.*



*Bank (Mumbai) Ltd. v. Coop. Bank Employees Union*, reported at (2007) 4 SCC 685, *Everstrong Sales Private Limited v. Binod Kumar Mahipal and Others*, reported at (2025) 1 HCC (Cal) 687 and *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, reported at (2020) 15 SCC 585.

- 24.** The *lis* between the parties in the instant case is only for disparagement and denigration of the plaintiff's product "Balm" and hence cannot be termed as a dispute pertaining to any violation of intellectual property. Learned senior counsel cites *Hindustan Unilever Limited (supra)*<sup>1</sup> in this regard.
- 25.** In any event, it is argued that the plaintiff has duly disclosed that it is also manufacturing roll-on and that 'balm' and 'roll-on' are different products. The plaintiff, while advertising its roll-on, has merely puffed up its products but has never disparaged any other product.
- 26.** It is settled law that disparagement of a rival product, without specifying or identifying it, is objectionable even if there is no direct reference to the product of the plaintiff and only a reference is made to a class of products in its generic sense, in which circumstance, the plaintiff can maintain a suit for disparagement. Learned senior counsel cites *HUL v. Gujarat Co-operative Milk Marketing Federation Ltd.*, reported at 2017 (71) PTC 396 (Bom) in such context.
- 27.** Learned senior counsel for the plaintiff/respondent no.1 further contends that the impugned advertisement has an immense impact, since the YouTube channel of defendant no.1, at the time of dissemination of the

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<sup>1</sup> *Hindustan Unilever Limited v. Emami Limited*, reported at 2018 SCC OnLine Cal 8882



impugned video, had in excess of 8.58 Thousand subscribers. After coming across the same, the representatives of the plaintiff had contacted the representatives of the defendant no.1 and had requested the latter to cease-and-desist from publicizing the impugned video. However, the plaintiff noticed that after the meeting between the representatives of the parties, the defendant no.1 had escalated the dissemination of the impugned video between November, 2025 and December, 2025 by over 1968.97%.

**28.** Thus, it is argued that the learned Trial Judge was justified in passing the impugned order.

**29.** Upon hearing learned counsel for the parties, we find the following broad issues to fall for consideration in the appeal:

- (i) Whether the suit is barred under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015;
- (ii) Whether the plaintiff/respondent no.1 made out a *prima facie* case for grant of injunction.

**30.** The above issues are decided as follows:

(i) **Whether the suit is barred under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015**

**31.** Section 2(1)(c)(xvii) of the CC Act is set out below for the sake of convenience:

**“2. Definitions.—(1) In this Act, unless the context otherwise requires,—**

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(c) “commercial dispute” means a dispute arising out of—

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*(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;”*

- 32.** The defendant no.1/appellant argues that the suit, as framed, comes within the purview of the aforesaid provision and, in view of the valuation of the suit being Rs.50,00,00,000/-, which is much above the specified value stipulated in the said Act, the dispute involved is a ‘commercial dispute’ and the suit ought to have been instituted before the Commercial Court having jurisdiction instead of an ordinary Civil Court.
- 33.** In *T.V. Today Network Limited (supra)*<sup>2</sup>, a learned Single Judge of the Delhi High Court held that the list of disputes featuring in Section 2(1)(c) of the CC Act is not exhaustive. However, at the same time, it was held that, to come within the purview of a ‘commercial dispute’, the source of the dispute must be one of the clauses mentioned in the said provision. The Court also observed that a narrow interpretation has to be lent to the Section, keeping in view the object and purpose of the statute. In Paragraph No.49 of the said report, the Court further held that the suit in the said case was not just for defamation, which would *certainly not constitute a commercial suit*”, but contained other reliefs too. It was also observed that the expression “arising out of” in the provision covers a situation where reliefs are so closely intertwined that the disparagement alleged was by the very use and portrayal of copyrighted content.

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<sup>2</sup> *T.V. Today Network Limited v. News Laundry Media Private Limited and Others*, reported at 2022 SCC OnLine Del 2233



- 34.** In *Jatin Jain (supra)*<sup>3</sup>, the Delhi High Court held that the dispute, to be a ‘commercial dispute’, needs to be only relatable to the partnership agreement (in the said case) and the relief need not be sought under the partnership agreement. In the said case, the claim was for recovery of money which was part of the sale proceeds of the partnership firm’s property. In such context, it was held that since a dispute arising out of partnership agreements is a commercial dispute under Section 2(1)(c)(xv) of the CC Act and was *relatable to* a partnership agreement, although no relief was sought *under* the partnership agreement, the suit was commercial in nature.
- 35.** Thus, it was not observed in the cited judgment, as sought to be portrayed by the appellant, that cause of action can be dissociated from relief and even if the former relates to a commercial dispute, although the relief is not under the partnership agreement which forms a commercial dispute, the suit was a commercial suit.
- 36.** Even otherwise, cause of action of a suit cannot be divorced from the reliefs claimed therein but is to be seen only in the context of the reliefs. Cause of action, it is well-settled, is a bundle of facts leading to the reliefs sought. Thus, the reliefs cannot be overlooked altogether in ascertaining whether a suit is of a commercial nature or not. In *Jatin Jain (supra)*<sup>4</sup>, the relief, although not sought directly under the partnership agreement, was relatable to such agreement, thus coming within the purview of a commercial dispute.

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<sup>3</sup> *Jatin Jain and Others v. Anuj Jain and Others*, reported at 2024 SCC OnLine Del 2076

<sup>4</sup> *Jatin Jain and Others v. Anuj Jain and Others*, reported at 2024 SCC OnLine Del 2076



- 37.** At the same time, in *T.V. Today Network Limited (supra)*<sup>5</sup>, it was categorically held that a narrow interpretation is to be lent to the provisions of the CC Act and that if a suit is for defamation simpliciter (in the commercial sense) it certainly would not constitute a commercial suit.
- 38.** On the other hand, in *Bharat Coop. Bank (Mumbai) Ltd. (supra)*<sup>6</sup>, the expression “means” was held to indicate that the provision was exhaustive and not inclusive. Although not rendered in the context of the CC Act, the said principle holds good in the present case as well, particularly in the light of the judgment passed in *Everstrong Sales Private Limited (supra)*<sup>7</sup>, where a learned Single Judge of this Court held that the items listed under Section 2(1)(c) are exhaustive in defining a commercial dispute. In *Ambalal Sarabhai Enterprises Limited (supra)*<sup>8</sup>, the Hon’ble Supreme Court also highlighted the fact that the object of the CC Act was speedy remedy, thus calling for a strict interpretation of the provisions of the said Act.
- 39.** Again, in *Hindustan Unilever Limited (supra)*<sup>9</sup>, it was held that a suit for disparagement simpliciter does not come within the purview of a commercial dispute, although stray references may have been made in the plaint to trademarks.

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<sup>5</sup> *T.V. Today Network Limited v. News Laundry Media Private Limited and Others*, reported at 2022 SCC OnLine Del 2233

<sup>6</sup> *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union*, reported at (2007) 4 SCC 685

<sup>7</sup> *Everstrong Sales Private Limited v. Binod Kumar Mahipal and Others*, reported at (2025) 1 HCC (Cal) 687

<sup>8</sup> *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, reported at (2020) 15 SCC 585

<sup>9</sup> *Hindustan Unilever Limited v. Emami Limited*, reported at 2018 SCC OnLine Cal 8882



- 40.** A conjoint reading of the principles laid down in the aforementioned judgments clearly shows that, in the context of a ‘commercial dispute’ as defined in Section 2(1)(c), the items listed under the different clauses of the said provision are to be construed as exhaustive or, at least, must comprise of the source of the dispute.
- 41.** Even proceeding in accordance with the aforesaid proposition, there are two phrases used in the said provision qualifying commercial disputes pertaining to intellectual property rights, as enumerated in Clause (xvii) of Section 2(1)(c), those being “arising out of” and “relating to”, which lend a wider perspective, even going by the letter of the statute. Thus, to be a “commercial dispute”, the dispute need not directly emanate from intellectual property rights pertaining to registered and unregistered trademarks, copyright, patent, design, etc. If the suit “relates to” the said items, any dispute “arising out of” those comes within the purview of a “commercial dispute”.
- 42.** It is trite law that at the stage of grant of *ex parte* ad interim injunction, the Court is only to look at the averments made in the plaint and temporary injunction application and the documents filed with, relied on, or referred to in the said pleadings.
- 43.** Thus, a meaningful reading of the plaint and the temporary injunction application as a whole is to be undertaken to decide the issue at hand.
- 44.** From the inception, the underlying refrain of the plaint and the injunction application filed by the plaintiff/respondent no.1 is that the goods of Ayurvedic, health products and pain-relieving preparations, commonly



referred to as “Balm”, of the plaintiff/respondent no.1 were disparaged/slandered by the offending advertisement. Although the plaint incidentally refers to the plaintiff having trademarks, copyrights and design registrations in respect of the products sold by it within the generic ambit of “Balm”, infringement of trademark has not been cited as the immediate trigger of the suit.

- 45.** There is a fundamental distinction between disparagement of a product and infringement/passing off of trademark and/or copyright. Whereas disparagement is the denigration of a product or brand, thereby maligning it, in case of infringement/passing off, instead of demeaning the same, the worth of the trademark or copyright is acknowledged and recognized by seeking to emulate it. As is often said, mimicry is the best form of appreciation.
- 46.** Thus, disparagement and infringement/passing off stand on diametrically opposite poles inasmuch as the infraction of legal rights of the victim is concerned.
- 47.** A question which arises then is whether a product/brand can be dissociated with the trademark. The resounding answer would be yes, since, for example in a case of passing off, the victim may not have a trademark but has been using the product since long and the product/brand has become inextricably associated with the user’s goodwill.
- 48.** In the relevant paragraphs of the plaint where the averments regard the plaintiff holding trademark/copyright registrations have been made, the



same has not been directly linked with the cause of action or reliefs claimed in the suit.

- 49.** Such references are merely incidental, to strengthen the plea of the plaintiff/respondent no.1 as to its rights in the concerned goods. Infringement of trademark or copyright, however, has not been alleged in any manner throughout the plaint. The bundle of facts leading to the cause of action as well as reliefs in the plaint exclusively revolve around disparagement of the plaintiff's goods and products, which is akin to defamation in case of an individual, being in the nature of an action in tort.
- 50.** The appellant relies on Section 29(8) of the TM Act, which is reproduced hereinbelow:

***“29. Infringement of registered trade marks.—***

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*(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.”*

- 51.** The essential pre-condition of the said provision to apply is that a trademark has to be infringed by any advertising of “*that trade mark*”. In the present case, the offending commercial does not refer to or show and/or even allude to any trademark or copyright of the plaintiff but merely seeks to refer to balms in general, alleging that they are ineffective, useless, stinking, sticky and embarrassing.



- 52.** The container which has been depicted in the advertisement is a generic one, having no special feature enabling it to be linked to any particular shape used by the plaintiff, even as per the photographs annexed with the plaint and the temporary injunction application.
- 53.** Hence, in the absence of the plaintiff's trademark itself featuring in the advertisement, Section 29(8) of the TM Act is not attracted at all. Thus, the plaint allegations in respect of the advertisement cannot be construed to constitute infringement of trademark from the said perspective either.
- 54.** Again, in Paragraph No.56 of the plaint, the plaintiff/respondent no.1 categorically seeks leave under Order II Rule 2 of the CPC to take appropriate steps in respect other claims against the defendants, for infringement of the plaintiff's trademark, copyright and design and for passing off, which are averred to be incapable of being conveniently adjudicated within the scope and ambit of the present suit. Thus, a clear line of distinction is drawn in the plaint between the cause of action and reliefs of the present suit and infringement of the trademark/copyright/design of the plaintiff and/or passing off.
- 55.** All the principal reliefs in the suit pertain to disparagement and/or defamation of the plaintiff's product and do not encompass within their ambit any alleged infringement of a trademark, copyright and/or design.
- 56.** Even taking into account the width of the definition of the term "commercial dispute" in Section 2(1)(c) of the CC Act imparted to it by use of the expressions "arising out of" and "relating to", it cannot be said that either the cause of action or the reliefs pleaded/claimed in the suit arise out of



intellectual property rights relating to registered and unregistered trademarks, copyright, patent or design of the plaintiff.

57. The denigration and disparagement of the plaintiff's products, as alleged in the plaint and injunction application, is agnostic of and unrelated to the registrations of trademark, copyright or design in the name of the plaintiff.
58. Hence, this issue is decided in the negative, holding that the dispute comprising the core of the suit is not a "commercial dispute" within the contemplation of Section 2(1)(c)(xvii) of the CC Act and, thus, the suit is maintainable before the ordinary Civil Court otherwise having jurisdiction.

**(ii) Whether the plaintiff/respondent no.1 made out a prima facie case for grant of injunction**

59. In *Emami Limited (supra)*<sup>10</sup>, it was held that in the absence of direct correlation between the bottle shown in the advertisement and the plaintiff's product, no recall value can be deduced.
60. From a bare perusal of the offending advertisement in the instant case, it is evident that the genre of pain-relievers coming under the broad category of "Balms" has been claimed in the said advertisement to be ineffective, useless, having a sticky consistency and also having a stinking quality.
61. Learned senior counsel for the plaintiff/respondent no.1 extensively argues on generic disparagement of all products coming under the purview of

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<sup>10</sup> *Emami Limited v. Dabur India Limited*, reported at 2025 SCC OnLine Cal 5487



“Balm” and alleges that such broad category of products has been denigrated in a generic sense by the offending commercial. However, despite a thorough scrutiny of the plaint, we fail to find any pleading as to generic disparagement. In *HUL (supra)*<sup>11</sup>, the premise of adjudication was an allegation of generic disparagement, which is completely missing in the plaint and the injunction application in the case at hand.

- 62.** Throughout the plaint, the allegation of the plaintiff is found to be premised on the claim that, on the strength of the plaintiff owning 57% of the market share in products coming under the category of “Balm”, any reference to the word “Balm” would naturally indicate a reference to the plaintiff directly, since the plaintiff is the pioneer and market leader of Ayurvedic health products and pain-relieving preparations known and identified as “Balm”. Paragraph No.11 of the plaint clearly alleges the word “Balm” to refer to the plaintiff directly and does not allege denigration of all products coming under the purview of “Balms”.
- 63.** Throughout the plaint, we find the allegation therein to be of disparagement of the plaintiff’s Ayurvedic health products and pain-relieving preparations which, according to the plaint, are commonly referred to as “Balm”. Thus, the term “Balm” has been claimed by the plaintiff to be synonymous with the products of the plaintiff. A reference to the said word, according to the plaint, directly relates to the plaintiff’s products. Hence, there is no generic element in the alleged disparagement, as per the plaint case itself.

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<sup>11</sup> *HUL v. Gujarat Co-operative Milk Marketing Federation Ltd., reported at 2017 (71) PTC 396 (Bom)*



- 64.** Thus, the judgments cited by respondent no.1 in respect of generic disparagement do not apply in the present context at all.
- 65.** Seen from such perspective, we find that the offending commercial, screenshots of which are a part of the records, does not carry the name of the plaintiff's brand, nor can any unique shape/design/colour of the container, specifically relatable to the plaintiff's design registrations, be found therein. There is precious nothing to connect the product of the plaintiff with the advertisement. What is depicted in the advertisement is an attempt to look down upon pain-relieving products in the nature of balms. The expression 'Balm' is a generic term, referring more to the consistency and texture of a product than a particular species of products. The dictionary meaning of "Balm" is that it is a fragrant, oily or resinous substance obtained from trees or plants, used to heal, soothe or protect the skin in general; it may also be identified with pain-relieving products designed to reduce pain, treat cuts and bruises or soften dry areas.
- 66.** Thus, the reference to or denigration of balms in general in the advertisement-in-question does not have proximate connection with any of the plaintiff's products in any manner whatsoever.
- 67.** Hence, we are unable to agree with the conclusion arrived at by the learned Trial Judge that, merely due to the plaintiff/respondent no.1 holding 57% of share in the segment, it is to be presumed that the term "Balm" is inextricably and exclusively linked with the products of the plaintiff and none else.



- 68.** Hence, we do not find any *prima facie* case having been made out of disparagement or denigration of any product of the plaintiff in particular by the offending advertisement.
- 69.** Thus, this issue is decided against the plaintiff/respondent no.1 and in favour of the defendant no.1/appellant.

### **Conclusion**

- 70.** In view of the above findings, this court is of the view that the plaintiff/respondent no. 1 has failed to make out any *prima facie* case to go for trial, which is a *sine qua non* for grant of injunctions.
- 71.** In such view of the matter, the impugned order cannot be sustained.
- 72.** Accordingly, F.M.A.T. No.56 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 2 dated January 29, 2026 passed by the learned Civil Judge (Senior Division), Fourth Court at Alipore, District - South 24 Parganas in Title Suit No.129 of 2026.
- 73.** Consequentially, any subsequent order of extension of the impugned ad interim order, if passed, stands hereby recalled.
- 74.** We, however, make it clear that the observations made in this judgment are tentative in nature, arrived at only for the purpose of deciding the present appeal, arising from an *ex parte* ad interim injunction, and shall not have any binding effect at further stages of the injunction application or the suit pending in the Trial Court. The learned Trial Judge will be at liberty to decide the injunction application and the suit independently, without being unduly influenced by the above observations, in accordance with law.



- 75.** It is expected that in view of the pendency of the matter for quite some time, the learned Trial Judge shall dispose of the temporary injunction application as expeditiously as possible, preferably within 6 weeks from the date of communication of this order to the Trial Court or the date of filing of the written objection thereto by the defendant no.1/appellant, whichever is later. The defendant no.1/appellant shall file its written objection to the injunction application in the Trial Court at the earliest, latest within a fortnight from date, if not already filed.
- 76.** CAN 1 of 2026 is accordingly disposed of as well.
- 77.** There will be no order as to costs.
- 78.** Urgent certified copies of this judgment and order, if applied for, be supplied to the parties upon compliance of all formalities.

**(Sabyasachi Bhattacharyya, J.)**

I agree.

**(Supratim Bhattacharya, J.)**