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

\# **CNR No. DLHC010316972013**

\+ RFA(OS) 138/2013

REDDY PHARMACEUTICALS .....Appellant

Through: Mr. Chander M. Lall and Mr. N. Hariharan, Sr. Advocates with Ms. Arushi Singh, Ms. Annanya Mehan, Mr. Prateek Bhalla, Ms. Manviya Arun, and Ms. Amrisha Kumari, Advocates.

versus

DR. REDDY'S LABORATORIES .....Respondent

Through: Ms. Swathi Sukumar, Sr. Advocate with Mr. Ranjan Narula, Mr. Shakti Priyan Nair and Mr. Parth Bajaj, Ms. Rishika Aggarwal and Mr. Ritik Raghuwanshi, Advocates.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

ORDER(ORAL)

% **14.08.2026**

OM PRAKASH SHUKLA, J.

REVIEW PET. 369/2026 and CM APPL. 54273/2026 (condonation of delay of 13 days in re-filing review petition)

1. The present review petition arises out of the common judgment dated 18.05.2026 passed by this Court in RFA(OS) 138/2013 and W.P.(C) 654/214.

2. RFA(OS) 138/2013 arose out of the judgment and decree dated 13.09.2013 passed by the learned Single Judge in CS(OS) 2194/2003, while W.P.(C) 654/214 assailed the order dated 29.10.20213 passed by the IPAB.

3. The suit, CS(OS) 2194/2003, was instituted by Dr. Reddy's Laboratories Ltd[1] against Reddy Pharmaceuticals Ltd.[2] in relation to the use of the expression "REDDY" in the pharmaceutical business.

4. DRL sought, *inter alia*, an injunction restraining RPL from passing off its goods under the said expression, apart from reliefs relating to infringement of copyright, rendition of accounts, damages and delivery up. The learned Single Judge, by judgment and decree dated 13.09.2013, granted a permanent injunction against RPL. Aggrieved by the said judgment and decree, RPL preferred RFA(OS) 138/2013.

5. During the pendency of the said proceedings, DRL had also instituted rectification proceedings before the IPAB seeking removal of RPLS's registered trade mark "REDDY". The IPAB, by order dated 29.10.2013, directed removal of the said mark from the Register of Trade Marks. RPL challenged the said order before this Court through W.P.(C) 654/214.

6. Since the validity of the registration of the mark "REDDY" had a bearing on the rights asserted by RPL in the passing off proceedings, this Court considered it appropriate to examine W.P.(C) 654/214 before proceeding with RFA(OS) 138/2013. The common judgment dated

[1] "DRL", hereinafter
[2] "RPL", hereinafter

18.05.2026 thereafter, dealt with both proceedings and dismissed the challenge to the IPAB order as well as the appeal arising out of the suit.

7. The present review petition has been filed by RPL seeking review of the said common judgment passed by this Court.

8. We have heard Mr. Chander M Lall, learned Senior Counsel for the appellant and Ms. Swathi Sukumar, learned Senior Counsel for the respondent.

9. Before adverting to rival submissions of learned Senior Counsel, it would be appropriate to set out, briefly, the manner in which we have arrived at our decision.

10. As to the writ petition, this Court examined the order of the IPAB with reference to Section 57 of the Trade Marks Act,1958[3]. We noted that, though the IPAB had not expressly referred to Sections 9 and 11 of the Act, its findings regarding confusion, false trade connection, dishonest adoption and absence of *bona fide* adoption substantially addressed the grounds contemplated under those provisions.

11. As to the appellants' contention that the IPAB had erroneously relied upon Section 158 of the Companies Act, 1956 was also considered. The Court held that, even assuming that reference to Section 158 was erroneous, the findings of the IPAB regarding confusion, false trade connection, dishonest adoption and absence of

[3] "the Act" hereinafter

bona fide proprietorship independently justified removal of the mark under the Act.

12. As the remaining submissions of the defendant involved disputed questions of fact and sought re-appreciation of evidence, the Court held that they could not be adjudicated in writ jurisdiction. The writ petition W.P.(C) 654/214 was accordingly dismissed.

13. Having upheld the order of the IPAB and thereby removed the statutory foundation on which the defendant sought to rely, this Court thereafter proceeded to consider the connected appeal on the basis of the common law principles governing passing off, prior use and goodwill.

14. The principle question before us in RFA(OS) 138/2013 was whether the learned Single Judge was justified in granting a permanent injunction against the use of the mark "REDDY" by DRL. This Court considered the dispute on the touchstone of the common law principles governing passing off, prior use and goodwill.

15. On the question of goodwill and reputation, the Court relied upon the documentary evidence, including newspaper publications, sales invoices and advertisement invoices, as also the admission of DW-1 acknowledging the plaintiff's reputation. The Court found that such admission remained unqualified and was corroborated by the contemporaneous documentary material on record.

16. This Court thereafter examined the defendant's plea that

"REDDY" was a common surname and that its adoption was *bona fide*.

17. In this regard, the Court took into consideration the circumstances thereunder, wherein it looked into the circumstance and the contention that its adoption of "REDDY" was *bona fide* when it was engaged in distribution of APIs and that its subsequent expansion into the sale of pharmaceutical formulations could not retrospectively render the adoption dishonest.

18. The Court, however, examined the adoption in the context of the defendant's knowledge of DRL's business and reputation, the existing commercial relationship between the parties and the Agency Agreement dated 01.04.2003. The Court also took into consideration the defendant's subsequent use of "REDDY" in the same field of activity, its application for registration of the mark in Class 5 on a "proposed to be used" basis within 16 days of the Agency Agreement, its use of the Ameerpet address on its packaging and its failure to produce contemporaneous evidence of operations from the said address. On a cumulative consideration of these circumstances, the Court held that the defendant had failed to establish bona fide adoption and use and, consequently, was not entitled to the protection under Section 35. The Court thereafter observed that the adoption and use of "REDDY" were "tainted from the outset".

19. On a cumulative consideration of these circumstances, this Court held that the defendant had failed to establish *bona fide* adoption and use so as to attract the protection under Section 35. We consequently held that the adoption and use of the mark were tainted from the outset and that the subsequent use of the mark could not cure the absence of *bona fides*.

20. Having regard to the aforesaid findings, this Court concurred with the learned Single Judge that the DRL had made out a case for permanent injunction and accordingly dismissed RFA(OS) 138/2013.

21. DRL now seeks review of our decision.

22. Though this review petition runs into 162 pages, Mr. Chander M Lall, learned Senior Counsel for the Review Petitioner has advanced the following contentions as constituting, what according to him are errors apparent on the face of the record in the impugned judgment meriting relief:

(i) This Court has erroneously relied on the decision of the IPAB which is of no evidentiary value in passing off action. Mr. Lall has, in this context, drawn our attention to paras 4, 25, 27, 28, 29, 34 of the judgment under review.

(ii) Contrary to the law laid down by the Supreme Court in ***Brihan Karan Sugar Syndicate Pvt. Ltd. v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana***[4], this Court has returned a finding of goodwill and reputation of the plaintiff's mark merely on the ground of a contract executed by the appellant, which cannot constitute the basis for a finding of goodwill and reputation for the purposes of passing off action. In

[4] **(2024) 2 SCC 577**

this context, Mr. Lall has also drawn our attention to paras 107, 108, 109 of the judgment under review. He submits that para 109 refers to an invoice of the respondent of 1997 which is post adoption of the mark by the appellant in 1996. As such, he submits that the respondent cannot claim prior user. These errors submits Mr. Lall have resulted in the judgment under review wrongly distinguishing the judgment of the Supreme Court in ***Brihan Karan Sugar Syndicate Pvt. Ltd.*** in para 115.

(iii) The third error is in the reliance placed by this Court in para 65 of the judgment on an interim order passed by the learned Single Judge. Mr. Lall submits that an interim order cannot constitute the basis of a final decision in the appeal. Mr. Lall has, thereafter, drawn our attention to para 52 of the judgment under review. He submits that in para 52, we have wrongly invoked Sections 9 and 11 of the Trade Marks Act, 1999, which were never invoked by the IPAB even after noting that the IPAB has wrongly proceeded under Section 158. He submits that, inasmuch as Sections 9 and 11 have been invoked for the first time by this Division Bench, he has had no occasion to meet the point.

23. Ms. Sukumar, learned Senior Counsel for the respondent, on the other hand, submits that the contentions of Mr. Lall cannot, in any case, constitute a ground for review in view of the limited scope of review jurisdiction as enunciated by the Supreme Court in ***Malleeswari v. K.***

***Suguna and Anr*[5].**

24. Having heard Mr. Lall and perused the said decisions, we are unable to agree with him that a case for review of our order within the parameters of Order XLVII Rule 1 of the CPC is made out.

25. We may first deal with the submission that reliance was placed on the order of the IPAB while deciding the passing off action. The submission of Mr. Lall was on the premise that the findings of the IPAB was treated by us as evidence establishing the plaintiff's goodwill or reputation. This is not the basis on which the judgment proceeds. The writ petition challenging the order of the IPAB was considered first, and the order of IPAB was upheld on the finding that no error of law apparent on the face of the record was disclosed. This Court was of the view that the IPAB had properly applied the relevant legal principles and was right in removal of the mark from Register.

26. The Court thereafter proceeded to examine the appeal as against CS (OS) 2194/2003 independently on the principles governing passing off. The findings in the appeal were based on the material before the Court relating to the plaintiff's goodwill, reputation, prior use and the surrounding circumstances therein.

27. The reference to the IPAB proceedings in the judgment, therefore, cannot be construed as treating the IPAB's order as the only evidence of goodwill in the passing off action. The review petitioner

[5] **2025 SCC OnLine SC 1927**

may disagree with the manner in which the two proceedings have been dealt with, but such disagreement does not disclose an error apparent on the face of the record.

28. The second submission of Mr. Lall is that the finding of goodwill was based merely on the contractual agreement between the parties. We are unable to accept the submission. This submission overlooks the discussions in paragraphs 100 to 117 of the judgment. This Court noticed the admission of DW-1, which amounted to unequivocal acknowledgment of RPL's reputation and goodwill in the relevant trade. The Agency Agreement thereafter was considered not as the source of RPL's goodwill, but as a material corroborating the admission of DRL's own witness and demonstrating DRL's knowledge of RPL's area / line of business and market presence. Thus, this Court did not proceed on the footing that Agency Agreement, by itself established goodwill.

29. The Court then proceeded to rely upon the documents placed before it including newspaper publication, various sales invoices, advertisement invoices, review of RPL's company in *Business Line* among other evidence in arriving at its decisions. We also noted that the relevant documentary material had not been challenged by DRL in cross- examination.

30. The Court further considered the principle laid down in ***S. Syed Mohideen v. P. Sulochana Bai***[6] that long and extensive use, supported

[6] **(2016) 2 SCC 683**

by "plethora of evidences", can establish distinct reputation and goodwill.

31. We also dealt with the fact that documentary material was not CA- certified from paragraphs 114 to 116. We held that the law relating to passing off does not require goodwill to be established only through CA-certified records and that reputation and public association maybe established through a mosaic of evidence showing actual trade, promotion and public recognition.

32. It was in this context that the Court considered ***Brihan Karan Sugar Syndicate Pvt. Ltd*** *(supra)*. The Court did not disregard the principle laid down therein. Rather, it distinguished the said decision on facts, noting that in ***Brihan Karan Sugar Syndicate Pvt. Ltd*** *(supra)* the plaintiff had relied upon unproved CA-certified summaries, whereas, in the present case, RPL had placed before the Court primary and contemporaneous evidence of use, sales, advertising and market recognition, which had substantially remained unchallenged in cross-examination. The Court accordingly concluded, on a preponderance of evidence, that RPL had established goodwill.

33. The submission that the invoice of 1997 could not establish prior use because the defendant had adopted its mark in 1996 also does not disclose an error apparent on the face of the record. The judgment did not treat the 1997 invoice as the sole basis for determining prior use. The finding was arrived at after considering the evidence as a whole and after examining the plaintiff's goodwill, reputation and prior use in the context of the other material on record.

34. Mr. Lall next submits that this Court erred in relying upon the interim order dated 26.08.2004. The final findings in the judgment were not, however, founded upon the interim order. The final decision was rendered upon consideration of the evidence and the rival submissions in the appeal. No error apparent on the face of the record is made out merely by pointing to a reference to an earlier interim order.

35. The last submission concerns paragraph 52 of the judgment and the reference therein to Sections 9 and 11 of the Act. The submission of Mr. Lall is that these provisions had not been invoked by the IPAB and that we could not have thereby supplied a fresh basis for sustaining the order of IPAB.

36. We are unable to accept the submission. The judgment had expressly noticed the finding of the IPAB that it proceeded under Section 158 of the Companies Act, 1956. This Court was of the opinion that the IPAB's findings regarding confusion, false trade connection, dishonest adoption and absence of *bona fide* proprietorship independently justified removal of the mark from the Register. The Court further held that these considerations were relevant to the question whether the entry was wrongly made or continued to remain on the Register.

37. The Court had also referred to the statutory scheme under Section 57 of the Act and noted that the circumstances in which a mark may be said to be wrongly remaining on the Register have to be considered with reference to the grounds under Sections 9 and 11.

38. It is also significant that the judgment expressly held that the factual findings of the IPAB, based on its appreciation of evidence, could not be reopened in writ jurisdiction in absence of a manifest error of law. Thus, this Court found no such error and upheld the removal of the mark.

39. The submissions advanced by Mr. Lall thus seeks, in substance, reconsideration of findings already returned by this Court. Neither of these discussions made in above, to our mind, makes out a case for us to reconsider our judgment under review.

40. We, therefore, are of the opinion that no case for review of our judgment dated 18.05.2026 is made out.

41. The review petition is accordingly dismissed.

42. The clerical error in paragraph 201, whereby W.P.(C) 6461/2018 has been mentioned instead of W.P.(C) 654/2014, stands corrected. The said correction does not affect the judgment otherwise rendered by us.

43. Let a copy of this order be e-mailed forthwith to learned Counsel for the parties and uploaded on the website of this Court.

<u>CM APPL. 54339/2026 (u/s. 340 Cr. PC)</u>

44. This is an application under Section 340 of the Cr. PC which, to our mind, need not be taken by this Bench.

45. Accordingly, list this application before the concerned Bench, as per roster, subject to orders of Hon'ble Chief Justice on 9 September 2026.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

AUGUST 14, 2026/*gunn*