IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.26378 OF 2026

IN

COMMERCIAL IP SUIT NO. 286 OF 2026

WITH

LEAVE PETITION NO.256 OF 2026

Alkem Laboratories Ltd. …Applicant/ Plaintiff

Versus

Syngex Pharma Private Limited & Anr. …Respondents/ Defendants

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Mr. Mahesh Mahadgut a/w. Mr. Kaivalya Shetye i/b. Mr. Mahesh Mahadgut, for the Applicant/Plaintiff.

CORAM: MADHAV J. JAMDAR, J.
DATED : 29th OCTOBER 2026

P. C.:

LEAVE PETITION NO.256 OF 2026:

1. Mr. Mahadgut, learned Counsel appearing for the Petitioner/Plaintiff submits that the Defendants/Respondents have been served.

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2. Although the Respondents/Defendants have been served, none appears for the Respondents/Defendants. In fact, on the earlier date, learned Counsel appearing for Respondent No.1/Defendant No.1 took time for filing reply.

3. Thus, the contentions raised in the Leave Petition have remained uncontroverted.

4. Perused the plaint and the Leave Petition.

5. For the reasons set out in the Leave Petition, the same is allowed in terms of prayer clause (a).

6. Accordingly, the Leave Petition is disposed of.

INTERIM APPLICATION (L) NO.26378 OF 2026:

7. This is an action for infringement of trade mark and passing off. Leave under Clause XIV of the Letters Patent sought by Leave Petition No. 256 of 2026, has been granted by a separate order passed today. The Plaintiff accordingly seeks ad-interim reliefs both in

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respect of infringement of its registered trade mark and passing off.

8. As already noted although the Defendants have been served, none appears for the Defendants.

9. My attention is drawn to the averments made in the Plaint and the documents annexed thereto. It is submitted that the Plaintiff is a Company duly registered under the provisions of the Companies Act, 1956. Counsel submits that the Plaintiff is the Registered Proprietor of the trade mark 'GEMCAL' and 'GEMCAL family of marks', wherein the most prominent, leading and essential feature of such marks is the word 'GEMCAL'. It is submitted that in the year 2000, the Plaintiff Company adopted the said mark in relation to pharmaceutical, medicinal preparations and substances being good falling in Class 5. Plaintiff has disclosed 14 registered trademarks of 'GEMCAL' in paragraph 9 of the Plaint. Copies of the registration and renewal certificates are at Exhibits A-1 to A-14 to the

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Plaint. The earliest registration dates back to 17th April 2000. Mr. Mahadgut, learned Counsel further submits the Plaintiffs' products bearing the trade mark 'GEMCAL' are sold containing generic salt compositions 'Calcitriol' + 'Calcium Carbonate' + 'Zinc Sulfate'. The product 'GEMCAL' was launched in July 2000 which is primarily used to treat nutritional deficiencies, helps in absorption of calcium and bone strengthening, helps in proper growth and development of bones and helps in protein synthesis and the production of red and white blood cells. Product pack bearing 'GEMCAL' trademarks are at Exhibit B to the plaint.

10. Mr. Mahadgut, learned Counsel submits that the Plaintiff's Trademark 'GEMCAL' has come to be inexorably associated with the product of the Plaintiff and doctors, consumers and traders associate goods bearing the said trade mark and its series of trade marks exclusively with the Plaintiff alone and no one else. To demonstrate reputation and goodwill in its mark the Plaintiff has produced at Exhibit C to the

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Plaint Chartered Accountant's Certificate certifying annual sales turnover in respect of the goods sold under the said trade mark "GEMCAL". It is stated that plaintiff is also spending considerable amount of money towards promotion of its product. To demonstrate the promotional expenses, Plaintiff has produced at Exhibit D Chartered Accountant Certificate towards all its products including GEMCAL. It is stated that approximately 1.50% of the expenses can be attributed to 'GEMCAL'. My attention is drawn to Exhibit E being the promotional material and Exhibit F1-F51 being the invoices bearing the mark GEMCAL. At Page 175 is the 1st invoice of 'GEMCAL' dated 30th July 2000.

11. It is stated that in or around the month of January, 2021, the Plaintiff discovered an application advertised in the Trademark Journal for registration of trade mark 'GEXCAL' of the Defendant No.1. My attention is drawn to the prosecution history of the Defendant No. 1's Trademark application which has been opposed by the Plaintiff. Mr. Mahadgut, learned Counsel submits that,

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the Defendant No. 1 has adopted the impugned mark by merely replacing the letter 'M' with letter 'X' which change is insignificant to the overall similarity between the rival marks. He further states that the rival marks bear a striking resemblance to each other, being virtually identical phonetically, structurally, and visually.

12. It is submitted that in the year 2018 Defendant No. 1 had earlier applied for registration of the impugned mark 'GEXCAL' under Application No. 3985129 on 27/10/2018 in Class 5 on a proposed to be used basis for the goods inter alia Pharmaceuticals, medical and veterinary preparations which was duly opposed by the Plaintiff upon advertisement in trade marks journal vide Notice of opposition dated 5th April, 2019. The Defendant No.1 did not contest the opposition then and the impugned mark was Abandoned as the Defendant No. 1 failed to file Counter Statement under Section 21(2) of the Trademark Act, 1999. Mr. Mahadgut, learned Counsel submits that the Defendants were well aware of the

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existence of the Plaintiff's mark since the year 2019 as the Plaintiff opposed the impugned mark and had constructive notice to cease the use of the impugned mark. Hence, the Defendant No. 1 ought to have ceased the use of the impugned mark. However, the Defendant No.1 went ahead and launched the impugned mark. It is stated that this can be only at Defendants own risk and peril.

13. Mr. Mahadgut, learned Counsel submits that the Defendant No. 1 has applied for one more registration of the impugned mark as 'SYNGEX'S GEXCAL' bearing Application No. 6744852 in Class 5 on 6th December, 2024 claiming user date since 27th October, 2018 which is currently at the stage of Formalities Check Pass. He submits that the Plaintiff's issued a Cease-and-Desist Notice dated 27th November 2025 to the Defendant No.1 bringing to its notice the Plaintiff's prior rights and calling upon it to cease use of the impugned mark. The Defendant No. 1 in the reply has contended that the rival marks are not structurally,

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phonetically and visually similar to each other, that the opposition proceedings are subjudice and yet the Plaintiff has escalated the matter by issuing legal notice through coercive correspondence, that the impugned mark has been adopted with a bonafide intention and has been in continuous use since 2018, that the impugned mark 'SYNGEX'S GEXCAL' should be considered as whole and should not be dissected being a composite mark.

14. Mr. Mahadgut, learned Counsel submits that the defences raised by Defendant No. 1 are devoid of merit, particularly having regard to the nature of the goods in question, namely, medicinal products. He submits that, in matters involving medicinal products, the consideration of public interest assumes paramount importance, as recognised by the Hon'ble Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*[1]

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1 (2001) 5 SCC 73

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15. I have heard the submissions in detail and perused the record. The rival marks are reproduced below:

Plaintiff's Mark	Defendant's Mark
GEMCAL	GEXCAL

16. *Prima facie* it appears that the Plaintiff is the registered proprietor of the trade mark "GEMCAL". In this Court's opinion, there is no doubt that the Defendants impugned trade mark 'GEXCAL' is deceptively similar to the Plaintiff's registered trade mark 'GEMCAL' phonetically so also structurally and visually. The rival products are both pharmaceutical preparations, and any confusion arising from the deceptive similarity between the competing marks may have serious consequences for unsuspecting consumers, particularly in view of the potential risks to public health. Furthermore it is the case of the Plaintiff that the impugned mark is one of deliberate and dishonest adoption of the Plaintiff's mark. The Defendants have not appeared and denied this contention. It is in these

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circumstances that in my view, a strong *prima facie* case of trade mark infringement for the grant of ad-interim reliefs is made out. The Plaintiff has also placed sufficient material on record to *prima facie* establish the reputation and goodwill associated with its mark, thereby substantiating its claim for passing off and its entitlement to the grant of ad-interim reliefs.

17. Having regard to the fact that the rival products are pharmaceutical preparations, the principles laid down by the Hon'ble Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73*, assume particular significance. The Hon'ble Supreme Court has emphasised that the question of deceptive similarity in relation to medicinal products must be examined with greater care and caution, keeping in view the paramount consideration of public health and the potentially serious consequences of confusion in the minds of consumers. The degree of care ordinarily exercised by a consumer, the nature of the goods, and the consequences that may ensue from a

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mistaken purchase are all relevant considerations in determining the likelihood of confusion. Applying these principles to the facts of the present case, and having regard to the material placed on record by the Plaintiff, I am of the *prima facie* view that the likelihood of confusion between the rival marks cannot be disregarded. The potential consequences of such confusion, particularly in relation to pharmaceutical preparations, weigh in favour of protecting the interests of the public. This consideration, coupled with the Plaintiff's *prima facie* case and the material placed on record in support of its claim to goodwill and reputation, justifies the grant of ad-interim reliefs in favour of the Plaintiff. The balance of convenience is also in favour of the Plaintiff. Unless reliefs as prayed for are granted, the Plaintiffs are likely to suffer irreparable injury which cannot be compensated in terms of money.

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18. In light of the above, *prima facie* case has been made out for grant of ad-interim relief in terms of prayer clauses (a) and (b), which read as under :

> *"(a) That pending the hearing and final disposal of Suit, the Defendants by themselves, their Directors, employees, servants, dealers, franchisees, distributors, stockist, licensees, agents, sister concerns, wholesalers, retailers, representatives, affiliates, associates and/or assigns and all persons acting for and on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, selling, offering for sale, stocking, soliciting, exporting, displaying, advertising, marketing, promoting and/or in any manner whatsoever using directly or indirectly in relation to any pharmaceutical and/or medicinal preparation and/or such allied and cognate goods the trade mark 'GEXCAL' and/or using any other mark or word being identical with and/or deceptively similar to the Plaintiff's registered trade mark 'GEMCAL' so as to infringe the Plaintiff's registered trademark 'GEMCAL' and its family of marks bearing Nos. 918649, 2514312, 1662933, 6238322, 1449061, 1491200, 1751414, 1800251, 1688196, 2120869, 2514310, 1483557, 1911388 and 1751413or in any other manner whatsoever;*
>
> *(b) That pending the hearing and final disposal of Suit, the Defendants by*

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themselves, their Directors, employees, servants, dealers, franchisees, distributors, stockist, licensees, agents, sister concerns, wholesalers, retailers, representatives, affiliates, associates and/or assigns and all persons acting for and on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, selling, offering for sale, stocking, soliciting, exporting, displaying, advertising, marketing, promoting and/or in any manner whatsoever using directly or indirectly in relation to any pharmaceutical and/or medicinal preparation and/or such allied and cognate goods the trade mark 'GEXCAL' and/or using any other mark or word being identical with and/or deceptively similar to the Plaintiff's registered trade mark 'GEMCAL' so as to pass off the Defendants' goods / products as those of the Plaintiff's and/or to indicate any connection with the Plaintiff;"

19. The Defendants to file Affidavit-in-reply within 4 weeks from today. Rejoinder to be filed by the Plaintiff 2 weeks from the date of filing the reply.

20. Stand over to **17th December 2026** for further consideration.

21. Ad-interim relief granted to continue till next date.

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22. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

[MADHAV J. JAMDAR, J.]

SONALI MILIND PATIL

Digitally signed by SONALI MILIND PATIL
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