'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 12TH DAY OF NOVEMBER 2026 / 21ST KARTHIKA, 1948

COML.A NO. 4 OF 2026

AGAINST THE ORDER DATED 20.08.2026 IN IA 1/2026 IN CS NO.1 OF 2026 OF ADDITIONAL DISTRICT COURT, THRISSUR

APPELLANT/RESPONDENTS 1 AND 2/DFENDANTS 1 AND 2

1 MRS. VINEETHA SURESH BABU
AGED 44 YEARS, SPOUSE OF SURESH BABU
2/236C MULAMKUNNATHUKAVU, TRICHUR CIRCLE, M.G. KAVU P.O, THRISSUR, KERALA, PIN - 680581

2 M/S AMEYA SWEETS
REPRESENTED BY ITS MANAGER MS. VINEETHA SURESH BABU, M.G. KAVU, MULAMKUNNATHUKAVU, THRISSUR, KERALA, PIN - 680581

BY ADVS.
SHRI.K.RADHAKRISHNAN NAIR
SRI.SAJEN THAMPAN
SMT. JINU SAMYUKTHA PADMAKUMAR
SMT.AYOONA P. M.
SHRI.ATHIL JAMAL
SMT.ASHMY LAL G.
SMT.SARIKA KRISHNA A.

RESPONDENTS/PETITIONERS AND 3RD RESPONDENT/PLAINTIFFS AND 3RD DEFENDANT

1 **DR. ROSE MARY WILSON**
AGED 63 YEARS
TRADING AS M/S. K. P. PATHROSE VAIDYAN'S KANDAMKULATHY VAIDYASALA, RESIDING AT KANDAMKULATHY HOUSE, KUZHUR P O, MALA, THRISSUR, AND HAVING BUSINESS OFFICE AT KUZHUR P.O. MALA, KAKKULISSERI VILLAGE, CHALAKUDI TALUK, MALA POLICE STATION, THRISSUR DISTRICT, KERALA., PIN - 680734

2 **M/S K.P. PATHROSE VAIDYAN'S KANDAMKULATHY VAIDYASALA PVT. LTD.,**
THRISSUR, KERALA, DOOR NO: 2/664, KUZHUR P.O, REPRESENTED BY ITS DIRECTOR MR. PATROUS WILSON, PIN - 680734

3 **M/S. LA FAIR STITCHING**
NSS SHOPPING COMPLEX, KAITHARAM SCHOOL PADI, NORTH PARAVUR, ERNAKULAM, REPRESENTED BY ITS MANAGER, PIN - 683519

BY ADVS.
SRI.P.ABRAHAM CHERIAN
SMT.NIMMY K. JOSEPH
SHRI.JOE JOSEPH
SHRI.JAISON S. ROZARIO
SHRI.ARAVIND VARGHESE
SMT.POOJA JOSE
SHRI.V.VARUN
SMT.HARITHA MOHAN
SHRI.AMAL JOHN SABU

THIS COMMERCIAL APPEAL HAVING COME UP FOR ADMISSION ON 12.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

(Dated this the 12th day of November, 2026)

Soumen Sen, C.J.

The suit has been filed by the plaintiffs praying, *inter alia*, for a permanent prohibitory injunction restraining the defendants from using the trade mark ELADI, ELADI THRILL and/or device mark given in Schedule B of the plaint or any other trade mark similar to the device marks of the plaintiffs given in Schedule A of the plaint, in relation to chewable tablet/candy and thereby infringing the trade mark registration and copyright of the plaintiff No.1 and passing off their chewable tablet/candy as and for that of the plaintiffs.

2. In the suit, an interlocutory application was filed in which, the impugned order was passed.

3. The learned Additional District Judge, after hearing the parties, was satisfied that a case has been made out for restraining the said defendants from using the said device mark as well as the trade name, has passed an interim order

and disposed of the application under Order XXXIX Rule 1 of CPC by restraining the defendants from passing off or infringing the registered trade mark of the respondents/ plaintiffs 'ELADI'; and from using the names 'ELADI' and 'ELADI THRILL' or using any other trade name and a trade mark as part of it, identical or deceptively similar to it, till the disposal of the suit.

4. This order is under challenge.

5. A brief summary of facts and circumstances leading to the filing of the suit are stated hereinafter.

6. Plaintiff No.1 is an ayurvedic doctor by profession and also carrying on business related to manufacture and sale of ayurvedic medicinal preparations under the name and style "M/s. K.P. Pathrose Vaidyan's Kandamkulathy Vaidyasala" (in short, 'Vaidyasala') since 1989. Plaintiff No.2 is a private limited company incorporated by plaintiff No.1 and her husband Mr. K.P. Wilson in the year 1995. The said company manages and runs ayurvedic hospital as well as

treatment centres and is also engaged in the manufacture and sale of ayurvedic medicinal preparations. Defendant No.1 is, *inter alia*, engaged in the business of manufacture and sale of chewable tablet/candy under the trademark ELADI/ELADI THRILL and a device mark closely similar to that of the plaintiffs. Defendant No.2 is a business entity managed by defendant No.1.

7. The Vaidyasala earned substantial reputation and goodwill for its authentic ayurvedic formulation derived from the family's traditional palm-leaf manuscripts. Due to the old age and ill health of K.P. Pathorse Vaidyan, the activity of the Vaidyasala gradually slowed down. Thereafter, in order to revive the business and to preserve the legacy built by the late K.P. Pathorse Vaidyan, plaintiff No.1, the daughter-in-law and a qualified ayurvedic physician, combined her professional knowledge and skill with the family's traditional formulations and established the business in the year 1989 as a sole proprietorship and carried on business under the

name and style of K.P. Pathrose Vaidyan's Kandamkulathy Vaidyasala.

8. The ayurvedic medicinal preparations of the plaintiffs are being sold in India and exported to various foreign countries like UAE, Australia, New Zealand, Kuwait and Russia. The plaintiffs over the past three decades have been conducting various activities connected with research, pursuant to which they either develop and/or manufacture the ayurvedic medicinal preparations which they market, export and/or sell. The niche of the plaintiffs lies in their research and development activities besides the consistency in manufacturing, marketing and/or selling quality products of the said ayurvedic medicinal preparations.

9. Plaintiff No.1 is the proprietor of well-known trademarks in relation to ayurvedic medicinal preparations developed, manufactured and sold by the plaintiffs. Plaintiff No.2 is a company promoted by plaintiff No.1 and the said plaintiff manufactures and sells various ayurvedic medicines

under the trademarks of which plaintiff No.1 is the proprietor with due permission of plaintiff No.1 with effect from 16th November, 2023.

10. ELADI chewable tablet/candy as well as lehyam for cough and cold, was originally introduced by K.P.Pathrose, the father-in-law of plaintiff No.1, in the year 1983 and revived in the year 1989. The ELADI chewable tablet and lehyam sold by the plaintiffs under the trademark 'ELADI' have been continuous and extensive for the past 37 years and have become entrenched in the mind of the public. The said products are of high quality and standard and have been duly certified since the time of their launch. The ELADI chewable tablet/candy of the respondents/plaintiffs is a proprietary medicine as defined under Section 3(h) of the Drugs and Cosmetics Act, 1940, being a unique formulation developed by the respondents/plaintiffs and licensed by the Drug Controller and comprises of Kurumulaku, Chukku Thippalli Sugar, Liquid Glucose, Jeerakam, Thaleesapatram,

Elakka, Nagappoovu, Perum Jeerakam, Omam, Iratty Madhuram. That the ELADI chewable table/candy of the plaintiffs are marketed and sold through more than 430 authorised distributors spread across all districts of Kerala and extending to major cities in Tamil Nadu, Karnataka, Andhra Pradesh, Telangana, Maharashtra, Gujarat, Madhya Pradesh, and the National Capital Region. Through an extensive and well-organized network, the plaintiffs' ELADI chewable tablet/candy for cough and cold are made available in virtually every medical store, department stores, pharmacy as well as supermarket in South India and are exported to international markets thereby establishing a strong and growing global presence. The ELADI chewable tablet/candy of the plaintiffs are so widely distributed that it is difficult to find any pharmacy, departmental store or supermarket in Kerala that does not display or sell the plaintiffs ELADI chewable tablet/candy. The plaintiffs' chewable tablet/candy under the trade mark ELADI for cough and cold is also sold

through plaintiff No.2's website www.kandamkulathy.com and through various e-commerce platforms namely www.flipkart.com/, https://www.amazon.in/, https://www.apollopharmacy.in/, etc. For these reasons, the ELADI chewable tablet/candy of the plaintiffs has become a household name and enjoys enduring consumer trust and goodwill.

11. The plaintiffs are also using a unique trade dress for the ELADI chewable tablet/candy with a color combination of yellow, green and red and a unique representation of the word "ELADI".

12. The trade dress is an original artistic work as defined under Section 2(C) of the Copyright Act, 1957, designed by Mr. K.P. Wilson at the instance of plaintiff No.1. Plaintiff No.1 is the owner of the copyright subsisting in the above artistic work and has the exclusive right to use or reproduce the features thereof in any material form.

13. The device mark with the word “ELADI” was registered on 20th May, 2014 with user date as 1st January 1989 and the word mark “ELADI” on 24th January, 2014 with user date 1st January, 1989, both in Class 5. The sales figure of “ELADI” chewable tablet/candy of the plaintiffs for the financial years 2002-2003 to 2025-2026 till December would be ₹66,70,61,308/-. The advertisement and promotion expenses incurred by the plaintiffs for its promotion for the aforesaid period would be ₹29,96,44,552/-. By reason of long extensive, exclusive and continuous use of the mark “ELADI” in respect of its products coupled with widespread voluminous sales, promotional activities and long presence, the chewable tablets/candy of the plaintiffs under the said marks have acquired enviable goodwill and impeccable trade reputation among the public and trade. The chewable tablets/candy for cough and cold under the said marks have thus attained widespread recognition across the country and

have come to be exclusively identified and associated with the plaintiffs among the public and trade circles.

14. Defendant No.1 filed an application for the trademark “ELADI THRILL” in relation to medicated candy in Class 5 which was refused by the Registrar of Trademarks under Sections 9 and 11 of the Trade Marks Act, 1999 and the Registrar of Trademarks has also cited trademark of plaintiff No.1 in the examination report. Thereafter, defendant No.1 filed an application and obtained registration for the trademark “ELADI THRILL” in Class 30 under the Trademark No.2981494 with effect from 9th June, 2015 claiming user since 1st April, 2008 in relation to candy which in substance remains medicinal candy. Accordingly, on 27th March, 2026, the plaintiffs filed an application for rectification before the Registrar of Trademarks under Section 57 of the Trade Marks Act, 1999 and the said application is pending. The trademark “ELADI THRILL” and its device mark “ELADI THRILL Candy” are deceptively

similar to that of the plaintiffs. The word “THRILL” is written inconspicuously, rendering the dominant and audible prefix “ELADI” in a writing identical to that of the plaintiffs.

15. The appellants/defendants are also using the trade dress which is exclusively associated with the respondents/ plaintiffs, thereby infringing the copyright subsisting in the artistic level of the plaintiffs. The manufacture and sale of chewable tablets/candy by the defendants using trademark and trade dress identical and/or similar to that of the plaintiffs is causing confusion to the public.

16. The defendants adopted the impugned marks with ulterior motives to divert and encash upon the hard-earned reputation and goodwill garnered by the plaintiffs in and around the said marks over the past four decades. The identity of ingredients and the identical purpose of treating cough and cold establish a clear trade connection between the goods of the plaintiffs and the defendants, which makes confusion and deception among the public inevitable.

17. The 1st defendant in its counter affidavit has taken the following defence:

i) The defendants have never sold its candies with a trademark ELADI. The defendants are engaged in the business of manufacturing and marketing chewable candies and its registered proprietor of the trademark “ELADI THRILL”, registered at the Trademarks Registry, Chennai with effect from 9th June, 2015 claiming user thereof since 1st April, 2008. The chewable candies of the appellants is sold with the registered trademark “ELADI THRILL” only. The second plaintiff who has been incorporated only in the year 1995 and has obtained permission, if any, only from 16 November, 2023 to use the trademark of the first plaintiff and, therefore, cannot depose to or assert facts which are not within his personal knowledge.

ii) The first plaintiff is a non-user of the registered trademark and the second plaintiff has been manufacturing ayurvedic medicine using the trademark of the first plaintiff.

Thus, the second plaintiff has no right to claim any right arising from the same.

iii) The limitation which was imposed by the Registry at the time of granting registration for the mark "KANDAMKULATHY ELADI LEHYAM" bearing application number 728927, where it was specifically recorded that the registration of the descriptive expressions "ELADI" and "LEHYAM" was subject to association with Application No. 593035 and that no exclusive rights be claimed or granted in respect of the other matters appearing on the label. This limitation was deliberately suppressed both before the Registry as well as the Trial Court.

iv) The medicinal tablet of the 1st plaintiff is registered in Class 5, whereas the product of the defendants which is a candy is registered in Class 30.

v) Numerous products bearing the name "ELADI", including but not limited to Eladi Gutika, Eladi Bati, Eladi Keram, Eladi Oil, Eladi Tailam, Eladi Kera Tailam, Eladi

Choornam, Eladi Churnam, Eladi Cream, Asana Eladi Oil, Dinesa Eladi Coconut Oil, Eladi Coconut Oil Balm and various other ayurvedic preparations are manufactured and marketed by different entities across India in addition, "Eladi Plus" is a registered trademark in Class 5 of which trademark remains unchallenged by the plaintiffs till date.

vi) There exists no similarity whatsoever between the appellants' word mark 'ELADI THRILL' and the plaintiffs' device mark.

vii) The products of the appellants are confectionery goods, namely chewable candies and bear no resemblance in nature, character, purpose, composition or trade channels to the alleged medical products of the respondents/plaintiffs. The first plaintiff possesses only a registered trademark in accordance with the provisions of the Trade Marks Act, 1999, which has been subject to non use by the first plaintiff. The plaintiffs' attempt to extend such rights by claiming copyright protection over a trade dress and packaging does not satisfy

the requirements of an artistic work within the meaning of Section 2(c) of the Copyright Act, 1957.

viii) The trademarks of the first plaintiff are subject matter of pending rectification proceedings, namely TM Application No.14332640 pertaining to the word mark ELADI and TM Application No.14332701 pertaining to the mark Kandamkulathy ELADI Chewable tablet. The said rectification proceedings have been initiated, *inter alia,* on the ground that the word "ELADI" is *Publici Juris* and common to the trade, particularly, in the field of Ayurveda. The word "ELADI" is devoid of any inherent distinctiveness and is descriptive of the nature, composition and characteristics of the medicinal and pharmaceutical goods in respect of which the marks are registered.

18. The learned counsel appearing on behalf of the appellants has assailed the said judgment primarily on two grounds. Firstly, plaintiff No.2 being a permitted user is not entitled to sue for infringement under Section 53 of the Trade

Marks Act, 1999 and secondly, the word mark “ELADI” is common to the trade, descriptive and could not have been registered. The learned counsel has also submitted that plaintiff No.1 has discontinued her business and the same is presently being carried on by plaintiff No.2. Plaintiff No.2 is using the said mark recently in 2023 and being a permitted user, plaintiff No.2 could not have been maintained a suit as a co-plaintiff in a suit for infringement of the mark ELADI of which plaintiff No.1 has claimed to be the registered owner. Moreover, the goods and products of the appellants are sold under the trademark ELADI THRILL in a different class of business. The said mark is distinctive in character. The products sold under the said trademark are different from the products sold under the registered trademark of the plaintiff No.1.

19. We have heard the learned counsel for the appellants and the respondents, and perused the materials on record.

20. In any event, plaintiff No. 2 is a closely held family business of the Wilson family and, for all practical purposes, the business of plaintiff No.2 is that of plaintiff No.1 and/or the Wilson family.

21. The function of a trademark is to identify the source of manufacture of goods and distinguish the goods of one person from another. As was said by UPJOHN, J., "A man infringes the mark of another if he seizes upon some essential feature of the plaintiff's mark. That essential feature may be ascertained by the eye or by the ear in this sense, that goods bearing that mark may be likely to become known by a certain name....." (emphasis supplied). Furthermore, evidence is admissible to establish what is or has become an essential feature, but evidence is not essential if the Court feels satisfied on inspection in coming to the conclusion that some particular feature is a distinguishing feature of the

Mark allegedly infringed. (See ***Cluett Peabody & Co. Inc.* v. *McIntyre Hogg Marsh and Co. Ltd.***[1])

22. Trademark is an indication of origin. In the market, the chief value of the trademark is its power to stimulate sales. In law, the fundamental theory upon which the interest in the trademark is protected is that a trademark identifies the goods coming from a particular source, and that an infringing designation tends to divert customer from that source by falsely representing that other goods come from it. (See ***Ellora Industries* v. *Banarsi Das Goela and Others***[2]).

23. Section 2(m) of the Act gives an inclusive definition of "mark". "Mark" includes amongst others "word". Section 2(h) defines "deceptively similar". It states that a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that the other mark as to be likely to

1 1958 RPC 335 at 351
2 AIR 1980 Del 254

deceive or cause confusion. Under Section 29, a registered trademark is infringed, if -

> (a) the mark is identical and is used in respect of similar goods or services; or
>
> (b) the mark is similar to the registered trade mark and there is an identical or similarity of the goods or services covered by the trade mark; or
>
> (c) the trade mark is identical and is used in relation to identical goods or services;

24. On the first impression, it is obvious that there is every likelihood of deception or confusion by the user of the mark of the appellants.

25. It is now well-settled that the Court while considering likelihood of deception or confusion must make allowance for imperfect recollection. Until the removal of the trademark from the Register, there is presumption about the validity of the trademark. Deception can be caused even without the word as prefix or suffix. Every word can be a trademark. It is often said that an ordinary purchaser is not

gifted with the powers of observation of a Sherlock Holmes. The question of deception or confusion has to be approached from the point of view of an unwary purchaser. The marks must be looked at from the first impression of a person of average intelligence and imperfect recollection and must be compared as a whole, microscopic examination being impermissible. The statute does not require actual deception or confusion to found an action based on infringement. [See ***The Hearst Corporation v. Dalal Street Communications Ltd.***[3], ***Wockhardt Ltd. v. Aristo Pharmaceuticals Ltd.***[4] and ***ITC Ltd. v. Whole Leaf Tobacco Venture Pvt. Ltd. and Others***[5]]

26. In ***Hindustan Embroidery Mills Pvt. Ltd. v. K. Ravindra & Co***.[6], it was held as follows:

> *"It is not the practice to consider the validity of the registration of a trade mark on motion for interlocutory injunction taken out by the persons*

3 Cal LT 1995 (2) HC 346
4 1999 PTC (19) 210
5 AIR 2019 Calcutta 215
6 1974 (76) Bom LR 146

> *who has got the mark registered in his name. <u>While a mark remains on the register (even wrongly), it is not desirable that others should imitate it.</u>"*
>
> *(emphasis supplied)*

27. Similar is the observation in ***Walter Bushnell Pvt. Ltd.* v. *Miracle Life Sciences and Another***[7].

28. The appellants have contended that an application for rectification is pending. In ***Walter Bushnell Pvt. Ltd.*** (supra), it has been further held that unless the trademark challenged by the defendant is cancelled or rectified it is not the practice to infringe the same in an action for infringement of the trademark.

29. In ***Gold Star Co. Ltd.* v. *Gold Star Industries and Others***[8], it was held that "what would happen to the rectification proceedings nobody can predict. As of today, *prima facie* evidence establishes plaintiff's exclusive rights regarding the trade mark... Plaintiff cannot be deprived the fruit of registered trade mark nor can the defendant be

7 2014 (59) PTC 339 (Del)
8 1995 PTR 78

allowed to use the trade mark of the plaintiff for passing off its goods... If the defendants are allowed to use the trade mark of the plaintiff it would adversely affect the business of the plaintiff, internationally as well as in India".

30. Similar was the view expressed by the Delhi High Court in the case of ***M/s. Avis International Ltd.*** **v.** ***Avi Footwear Industries and Another***[9]. The dicta laid down in the aforesaid decisions have been considered and followed in ***ITC Limited v. Green India Rice Millers and Exporters Private Limited and Others***[10]**.**

31. The registration of the device mark "ELADI", with the word "ELADI" prominently displayed in the said label mark, has clearly established, at this stage, that the plaintiffs have an undoubted right to use the device mark or the label mark prominently displaying the word "ELADI", which is identifiable with the plaintiffs and their products. The

---

9 AIR 1991 Del. 22

10 2017 SCC OnLine Cal 5859: AIR 2019 Cal 3

plaintiff No.1 having established that the said word is being used in relation to its products extensively since 1989, is entitled to protect its intellectual property rights in relation to the said word “ELADI” which had acquired a considerable goodwill in the market as would be evident from the documents disclosed in the petition. Once the plaintiffs have *prima facie* been able to establish that the said word is closely associated with and identifiable with their products, and that an unwary purchaser with imperfect recollection would consider the said mark “ELADI” to be that of the plaintiffs, they are entitled to an order of injunction, unless the appellants/defendants are able to establish and offer a plausible ground or reason for adopting the said mark “ELADI” at a much subsequent point of time, as the law would not allow an infringer to thrive on the goodwill of the plaintiffs. In fact, the appellants have failed to explain the adoption of the word “ELADI” in relation to its products. The word “ELADI” is much prominent and conspicuous in its

products as opposed to other words used as a label mark or word mark.

32. In ***Laxmikant V. Patel v. Chetanbhai Shah and Another***[11], the Hon'ble Supreme Court has observed as follows:

> *"10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit anyone to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it*

11 (2002) 3 SCC 65

results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury."

(emphasis supplied)

33. This dicta was followed in ***Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel & Ors.***[12]

34. A trademark is infringed if the essential features of the registered mark of an owner have been copied. A mark is said to be infringed by another trader if, even without using the whole of it, the latter uses one or more of its "essential features". If a word forming part of a mark has come in trade to be used to identify the goods of the owner of the mark, it is an infringement of the mark itself to use that word as the mark or part of the mark of another trader, for confusion is likely to result. (See ***Balsara Hygiene Products Ltd.* v. *Arun Chowdhury and Another***[13]).

---

12 (2006) 8 SCC 726: AIR 2006 SC 3304

13 2005 (30) PTC 272 (Cal)

35. It is no answer to a charge of infringement – as contrasted with a passing off action – that the defendant's mark, whilst including the plaintiff's mark, includes other marks too. Still less is it an answer that by something outside that actual mark, the defendant has distinguished his goods from those of the plaintiff by adding his own name (***Kerly's Law of Trade Mark and Trade Names***, Para 14.22).

36. However, in the instant case, it cannot be said that the respondent is able to establish any such distinguishing feature which would distinguish its goods from that of the plaintiffs. The trademark is the whole thing. When a word mark or a label mark or a get up is considered, the court would be required to consider the totality of the situation – the mark as a whole with due regard to the background provided by any other marks shown to be in use.

37. The Trade Mark law does not permit and protect a person who is trying to take the benefit of someone else's reputation with references to goods which may not be similar when it is established that the said mark has acquired some reputation. The appellants are competitors and trade rivals.

38. Even if we accept that the mark “ELADI” is a label mark, the word “ELADI” is an essential feature of the label which is covered by the registration. The distinctive feature of the label mark is the prominent display and predominant presence of the word “ELADI”. The word “ELADI” has been independently registered in favour of plaintiff No.1. When the word itself forms the essential feature of the mark, it can be a basis for an infringement action and more so when it deals with similar goods.

39. It has long been accepted that, if a word forming part of a mark has come in trade to use to identify the goods of the owner of the mark, it is an infringement of the mark

itself to use that word as the mark or part of the mark of another trader, for confusion is likely to result. It is sufficient to refer to the words of Lord Cranworth L.C., in ***Seixo v. Provezende***[14] 'If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market, may be as much a violation of the rights of that rival as the actual copy of his device'.

(emphasis supplied)

40. In ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***[15], while discussing the distinction between an action for passing off and action for infringement of trademark, the Hon'ble Supreme Court held as under:

---

14 (1866 LR 1 Ch. 192)

15 AIR 1965 Supreme Court 980

> *"28.....In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is in imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff."*

41. The likelihood of confusion or deception in such cases is not disproved by placing the two marks side by side and demonstrating how small is the chance of error in any customer who places his order for goods with both the marks clearly before him, for orders are not placed, or are often not placed, under such conditions. It is more useful to observe

that in most persons the eye is not an accurate recorder of visual detail, and that marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole.

42. A trademark need not be registered to be protected, in fact, passing off rights are superior to the rights conferred by registration. In this regard, reference may be made to ***S. Syed Mohideen v. P. Sulochana Bai***[16]**,** wherein it is stated at paragraphs 31 to 32 as follows:

> *"31.1 Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend &*

16 (2016) 2 SCC 683: (2016) 2 SCC (Civ) 201: 2015 SCC OnLine SC 1084

Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements : (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65]

31.2. The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former

user. That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off.

32....it is also recognised principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act. The authorities of other common law jurisdictions like England more specifically Kerly's Law of Trade Marks and Trade Names, 14th Edn., Thomson, Sweet & Maxwell South Asian Edition recognises the principle that where trade mark action fails, passing off action may still succeed on the same evidence. This has been explained by the learned author by observing the following:

> *"15-033. A claimant may fail to make out a case of infringement of a trade mark for various reasons and may yet show that by imitating the mark claimed as a trade mark, or otherwise, the defendant has done what is calculated to pass off his goods as those of the claimant. A claim in 'passing off' has generally been added as a second string to actions for infringement, and has on occasion succeeded where the claim for infringement has failed."'*

(emphasis supplied)

43. The aforesaid enunciation of law is a clear answer to the objection raised as regards plaintiff No.2 as co-plaintiff under Section 53 of the Trade Marks Act, 1999. The argument that plaintiff No.2 is a permitted user is also not borne out from the record at this stage. The averments made in the plaints are considered to be true and correct. Moreover, the commonality of interest and the relationship between plaintiff No.1 and plaintiff No.2, which appears to be closely held company in which plaintiff No.1 is one of the shareholders are factors to be taken into consideration. The same has been dealt with in the impugned order in paragraph No.9 which is as under:

> *"9). The above petition is supported by an affidavit sworn by the Director of the 2nd plaintiff company M/s. K.P Pathrose Vaidyan's Kandamkulathy Vaidyasala Pvt. Ltd. that this company established in the year 1989 and doing business of chewable tablet in the name 'ELADI'. The 1st plaintiff is an Ayurvedic Doctor and the daughter of late K.P Pathrose Vaidyan. The 1st plaintiff is the wife of the Director of*

the 2nd plaintiff. Nothing legally preventing these both plaintiffs together seeking an injunction against the respondents 1 & 2 to restrain the usage of the trade-name 'ELADI/ELADI THRILL, therefore, this petition is maintainable."

44. It is not being contended that plaintiff No.2 could not have independently filed a suit for passing off. However, for the reasons we have already recorded, the plaintiffs have been able to demonstrate infringement of the mark in question. In the alternative, the imitation of the mark by the appellants being, *prima facie*, established by reason of the clear enunciation of law by ***Kerly on Trade Marks and Trade Names*** and approved in ***S. Syed Mohideen*** (supra), the impugned interim order should be sustained.

45. Insofar as the infringement and/or passing off action is concerned, the learned Additional District Judge has referred to Sections 34 and 27(2) of the Trade Marks Act, 1999 to extend the benefit of an order of injunction in favour of the plaintiffs. It is a trite principle of law that once the

plaintiffs are able to establish their prior use of the mark, such prior use will prevail even over a subsequently registered trade mark containing the same word or device and the registered proprietor of the said mark would not be entitled to an order of injunction against a person who had acquired interests in the said mark by reason of its prior long use. In the instant case, the plaintiffs, both by reason of prior use and subsequent registration, have been able to establish the paramount right and used the mark “ELADI” in respect of its products. Insofar as the argument that the said word is common to the trade, is also not acceptable because a word which may be common, may, by reason of its long and extensive use, become identifiable with the proprietor of the said mark and acquire a secondary meaning.

46. In the label mark, the word “ELADI” is prominent and conspicuous. The word “ELADI” as a word mark has also been registered with user since January 1989. In view of long, continuous and extensive use of the mark in their

products, the public is likely to associate the word with the goods and services of the plaintiffs. It is by reason of such long use, it has earned reputation and goodwill and acquired a secondary meaning, thereby acquiring a distinctiveness. The appellants have disclosed their turnover and expenses incurred for advertisement for the last 23 years. Admittedly, the mark "ELADI" of the plaintiffs was in use much prior to adoption of the mark "ELADI" by the appellants.

47. It is equally well settled that if a mark, by reason of its exclusive, continuous and extensive use, becomes distinctive, and such mark is applied to a class of goods which the proprietor of the mark does not deal with, consumers may always wonder as to whether the proprietor of the trademark has launched a new product. This is a matter of confusion and deception.

48. The much belated adoption and registration of the mark, may be in a different class, by the appellants, with the word "ELADI" being conspicuous all over, shall fall foul of the

aforesaid legal principles, as the appellants cannot rough ride over the goodwill acquired over a period of time and make quick money by unjust enrichment. In ***Kaviraj Pandit Durga Dutt Sharma*** (supra), the Hon'ble Supreme Court recognised that length of user will be a material factor for the mark to become distinctive. [See paragraph 16 of ***Kaviraj Pandit Durga Dutt Sharma*** (supra)]. The proof of acquired distinctiveness can overcome the objection that a mark is descriptive.

49. Moreover, the plaintiffs have also become the registered proprietors of the said mark with user since January 1989. A registered trade mark proprietor is not expected to sue every infringer to save him. The Hon'ble Supreme Court in ***National Bell Co. and Another v. Metal Goods MFG. Co. (P) Ltd. and Another***[17] has held that a proprietor of a trade mark need not take action against infringement which do not cause prejudice to its

17 (1970) 3 SCC 665: AIR 1971 SC 898

distinctiveness. In ***Express Bottlers Services Private Ltd.*** **v. *Pepsico Inc. & Others***[18], it has been held as follows:

> *"....To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks.... The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence... Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point... The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers..."*
>
> (emphasis supplied)

---

18 1989 PTC 14; 1988 SCC OnLine Cal 62

50. As far as the argument of the appellants that the word "ELADI" is common to the trade and that variants of "ELADI" are available in the market, we find that the appellants have not been able to *prima facie* prove that the said 'infringers' had significant business turnover or they posed a threat to plaintiffs' distinctiveness.

51. In fact, in ***Dr. Reddy Laboratories* Limited v. *Reddy Pharmaceuticals Limited***[19], a learned Single Judge of the Delhi High Court has held as under:

> *"…the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of "Taj Hotel", the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name*

19 (2004) 29 PTC 435

starts harming their business interest and starts misleading and confusing their customers."

52. In fact, we are of the view that the respondents/ plaintiffs are not expected to "sue all small type infringers who may not be affecting respondents/plaintiffs business" [See ***Pankaj Goel v. Dabur India Ltd.***[20]] The aforesaid judgments are also considered in ***Pankaj Goel*** (supra).

53. In an action on the trademark, that is to say, in an infringement action, an injunction would issue as soon as it is proved that the defendant is improperly using the plaintiff's mark. (See ***Ruston & Hornsby Ltd. v. Zamindara Engineering Company Ltd***.[21])

54. When the plaintiffs have been able to establish that there has been wrongful and deceptive use of the said mark and the defendants having failed to offer any plausible explanation for the adoption of the said mark at a much subsequent period of time and the plaintiffs having

20 (2008) 38 PTC 49 (DB)

21 AIR 1970 SC 1649

established goodwill, misrepresentation and damage, the classical trinity, the interim order passed by the learned Additional District Judge does not call for any interference.

55. The duty of the Appellate Court in considering an appeal from an interim order was considered in ***Super Smelters Limited & Ors. v. SRMB Srijan Private Limited***[22]. It was held as under:

> *"42. It is well-settled that an appellate court would be extremely slow and cautious to interfere with the discretionary jurisdiction of the trial court with regard to the granting of an ad-interim order. The appeal court will not substitute its discretion unless the trial court has exercised jurisdiction arbitrarily, capriciously, perversely or in ignorance of settled principles of law regulating the grant or refusal of an ad-interim order of injunction. As observed in Cello Plast v. L.A. Opala R.G. Ltd. (2018 SCC OnLine Cal 2475) at paragraph 4:*
>
> > *"It is only when an ad interim order is passed completely without reasons or appears to be bad to the meanest mind in the sense that it*

22 2020 (81) PTC 101 [Cal] [DB] : 2019 SCC OnLine Cal 4888

is outlandish, that an Appellate Court should interfere in an intra-Court appeal"

56. On the facts narrated above, the view taken by the learned Additional District Judge is a possible and reasonable view, and we are not inclined to interfere with the exercise of such discretion.

57. The appeal fails and accordingly dismissed.

Sd/-
Soumen Sen,
Chief Justice

Sd/-

Syam Kumar V.M.,
Judge

ds/SSK/ms/krj

APPENDIX OF COML.A NO. 4 OF 2026

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE I.A. NO.:1 OF 2026 IN THE FILES OF C.S.NO.: 1 OF 2026 BEFORE THE III ADDL. DISTRICT AND SESSIONS JUDGE, THRISSUR DATED 02.04.2026**
Annexure A2	**TRUE COPY OF THE COUNTER IN I.A. NO.:1 OF 2026 IN THE FILES OF C.S.NO.: 1 OF 2026 BEFORE THE III ADDL. DISTRICT AND SESSIONS JUDGE, THRISSUR DATED 05.06.2026**
Annexure A3	**TRUE COPY OF THE DISCLAIMER ISSUED BY THE TRADEMARK REGISTRY DATED 18.08.2006 IN APPLICATION NUMBER 728927**
Annexure A4	**TRUE COPY OF THE REGISTRATION CERTIFICATE WORD MARK 'ELADI' OF THE 1ST RESPONDENT WITH REFERENCE NO. 1949529 DATED 24.01.2014**
Annexure A5	**TRUE COPY OF THE REGISTRATION CERTIFICATE OF 'KANDAMKULATHY ELADI CHEWABLE TABLET' OF THE 1ST RESPONDENT WITH REFERENCE NO. 1640400 DATED 20.05.2014**
Annexure A6	**TRUE COPY OF THE REGISTRATION CERTIFICATE OF 'ELADI THRILL' OF THE 1ST APPELLANT WITH REFERENCE NO. 2081524 DATED 09.06.2015**
ANNEXURE A28	**Indo-Pharma Pharmaceutical Works Ltd. vs. Citadel Fine Pharmaceuticals Ltd. - MANU/TN/1178/1998**
ANNEXURE A7	**M/s Kandamkulathi Ayurveda Vaidyasala (P) Ltd. vs. Regional Director and others - WP(C) No.:31973 of 2017**
ANNEXURE A8	**Ultratech Cement Limited and Anr. vs. Dalmia Cement Bharat Limited - NOTICE OF MOTION (L) NO. 141 OF 2014 IN SUIT NO. 42 OF 2014**
ANNEXURE A10	**Pernod Ricard India Private Limited vs. Karanveer Singh Chhabra - 2025 ICO 1983**
ANNEXURE A11	**Nandhini Deluxe vs. Karnataka Co-Operative Milk Producers Federation Limited - 2018 ICO 1272**

ANNEXURE A12	**Nestle India Limited vs. Mood Hospitality Private Limited - 2010 ICO 2185**
ANNEXURE A13	**S.B.L. Ltd. vs. The Himalaya Drug Co. - FAO (OS)301 of 1996**
ANNEXURE A14	**Shoban Salim Thakur vs. Chaitanya Arora and others - COMMERCIAL SUIT (L) NO. 18197 OF 2025 WITH LEAVE PETITION (L) NO.18257 OF 2025**
ANNEXURE A15	**Registrar of Trade Marks vs. Ashok Chandra Rakhit Limited - 1955 ICO 88**
ANNEXURE A17	**Lupin Limited vs. Johnson and Johnson - 2014 ICO 3467**
ANNEXURE A20	**Uniply Industries Limited vs. Unicorn Plywood Private Limited - 2001 ICO 319**
ANNEXURE A22	**Wander Limited and Another vs. Antox India Private Limited - 1990 ICO 369**
ANNEXURE A23	**Schering Corporation and Others. vs. Alkem Laboratories Ltd. - 2008 SCC OnLine Del 760**
ANNEXURE A24	**Reckitt and Colman of India Limited vs. Medicross Pharmaceuticals Private Limited - LNIND 1992 BOM 252**
ANNEXURE A25	**Aristo Pharmaceuticals Limited vs. Wockhardt Limited - 1999 ICO 805**
ANNEXURE A26	**Apex Laboratories Ltd. vs. Zuventus Health Care Ltd. - 2006 SCC OnLine Mad 1238**
ANNEXURE A19	**J.R. Kapoor vs. Micronix India - Appeal (civil) 2253 of 1994**
ANNEXURE A18	**F. Hoffmann La Roche and Company Limited vs. Geoffrey Manners and Company Private Limited - 1969 ICO 395**
ANNEXURE A9	**Sana Herbals Private Limited vs. Mohsin Dehlvi and Another - FAO (COMM) 77/2025**
ANNEXURE A21	**Regency Sanitary Ware Pvt. Ltd. Vs. Madhusudan Industries Ltd. - MANU/GJ/1186/2001**
ANNEXURE A16	**Cadila Health Care Limited vs. Cadila Pharmaceuticals Limited - 2001 ICO 237**
ANNEXURE A27	**Acme Pharmaceuticals vs. Torrent Pharmaceuticals Ltd. - 2010 SCC OnLine Guj 69**

RESPONDENT ANNEXURES

Annexure B1	**Wander Ltd. v. Antox India (P) Ltd.,**
Annexure B2	**Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra**
Annexure B3	**Gujarat Bottling Co. Ltd. v. Coca Cola Co.**
Annexure B4	**Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories**
Annexure B5	**Amritdhara Pharmacy v. Satya Deo Gupta**
Annexure B6	**Corn Products Refining Co. v. Shangrila Food Products Ltd.,**
Annexure B7	**Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.,**
Annexure B8	**FDC Limited Vs. Docsuggest Healthcare Services Pvt. Ltd. and Ors.**
Annexure B9	**Renaissance Hotel Holdings Inc. v. B. Vijaya Sai**
Annexure B10	**Rana Steels Vs. Ran India Steels Pvt. Ltd.**
Annexure B11	**Rajeev K.P. v. Unais K.K.,**
Annexure B12	**Khadi and Village Industries Commission v. Khadi Design Council of India**
Annexure B13	**Pankaj Goel v. Dabur India Ltd.,**
Annexure B14	**Godfrey Phillips India Ltd. v. Girnar Food and Beverages (P) Ltd.,**
Annexure B15	**Heinz Italia v. Dabur India Ltd.,**
Annexure B16	**Automatic Electric Ltd. v. R.K. Dhawan**
Annexure B17	**S. Syed Mohideen v. P. Sulochana Bai**
Annexure B18	**Laxmikant V. Patel v. Chetanbhai Shah**
Annexure B19	**Wockhardt Ltd. v. Torrent Pharmaceuticals Ltd.,**
Annexure B20	**Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia**
Annexure B21	**Taste Box v. JSF Holdings Pvt. Ltd.,**
Annexure B22	**ITC Limited Vs. Whole Leaf Tobacco Venture Pvt. Ltd. and Ors**
Annexure B23	**Sanjay Soya Pvt. Ltd. v. Narayani Trading Co.,**
Annexure B24	**Arun Krishnan M. v. Cure and Care Therapeutics,**