

\$~33

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

+ CS(COMM) 553/2024 & I.A. Nos. 32621/2024, 32622/2024,
32623/2024 & 32624/2024

DR. REDDYS LABORATORIES LIMITEDPlaintiff

Through: Mr. Ranjan Narula with Mr. Shaki
Priyan Nair, Ms. Aishani Singh and
Ms. Shivangi Kohli, Advocates.

versus

REBANTA HEALTHCARE PVT LTD AND ANR.Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

%

09.07.2024

I.A. No. 32622/2024 (Exemption from filing clearer copies)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking an exemption from filing clear copies of the documents.
2. Exemption is granted, subject to all just exceptions.
3. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. No. 32623/2024 (Seeking leave to file additional documents)

5. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) of the CPC as applicable to Commercial suits under the

Commercial Courts Act, 2015, seeking liberty to file additional documents at the appropriate stage.

6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the present application is disposed of.

I.A. No. 32624/2024 (Exemption from instituting Pre-litigation Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) for exemption from instituting Pre-litigation Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382*, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*, exemption from attempting Pre-litigation Mediation, is granted.

10. Accordingly, the application stands disposed of.

CS (COMM) 553/2024

11. None appears for the defendants, despite advance service by the plaintiff.

12. Let the plaint be registered as suit.

13. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of

admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

14. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

15. List before the Joint Registrar (Judicial) for marking of exhibits on 13th August, 2024.

16. List before the Court on 13th November, 2024.

I.A. No. 32621/2024 (Application on behalf of the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking interim injunction)

17. The present suit has been filed for permanent injunction restraining violation and infringement of trademark, passing off, unfair trade competition, damages, rendition of accounts, dilution, delivery up etc.

18. Learned counsel appearing for the plaintiff submits that the present suit relates to the plaintiff's well-known registered trademark "REBAHEAL" and the illegal adoption and use by the defendants of identical and similar mark "REBAHEAL", though for a different ailment and a different composition. Thus, the present suit has been filed in order to protect the plaintiff's common law rights and statutory rights in the mark "REBAHEAL", which has been blatantly copied by the defendants for its "REBAHEAL" product.

19. It is submitted that the plaintiff's product has composition of "*Rebamipide*" which is used for treatment of peptic ulcers and mouth ulcers. On the other hand, the defendant's product has composition of "*Cissus Quadrangularis Linn & Moringa Oleifera Extract Tab*" which is used for treatment of pain, and helps in the regulation of menstruation and repair bone fractures. Thus, it is submitted that adoption of the identical mark "REBAHEAL" will result in disastrous consequence, if one is mistakenly dispensed/prescribed/taken, for other. Further, the defendant's use of similar trade mark is clearly to infringe the statutory rights of the plaintiff and impersonate them to pass off its medicinal/pharmaceutical products as those of the plaintiff. Thus, it is submitted that the defendants with clear intention to ride upon the goodwill and reputation of the plaintiff's well-known trademark, has mischievously adopted an identical trade mark "REBAHEAL".

20. It is submitted that the plaintiff adopted and coined the trade mark "REBAHEAL" and launched its product in the market on 26th June 2023 for treatment of peptic ulcers and mouth ulcers. The plaintiff's product under the mark REBAHEAL contains the salt '*Rebamipide*' as an active ingredient. The plaintiff is the registered proprietor of the trade mark REBAHEAL in Class 5, as per the following details:-

S.N	Trademark	Reg. No.	Reg. Date	Class	Status
1.	REBAHEAL	5795277	06/02/2023	5	Registered

21. It is submitted that the above-mentioned registered trademark confer on the plaintiff, the right to its exclusive use and to restrain use of any

identical or deceptively similar mark, by unauthorized persons.

22. It is submitted that the trade mark 'REBAHEAL' has been used by the plaintiff since June, 2023 and the said product is exclusively associated with the goods of the plaintiff. Consequently, the plaintiff has earned goodwill and reputation in the "REBAHEAL" mark, which acts as a unique identifier of its products. The use of a trademark identical with or similar to "REBAHEAL" by any other person, other than the plaintiff, will give rise to confusion. It is submitted that in all likelihood, it will lead to deception amongst the purchasing public, medical profession and the trade that such products are connected or otherwise related to the plaintiff. Thus, it is submitted that such confusion will not only impact the business of the plaintiff, but also consumers, who will mistakenly buy the products bearing a similar mark.

23. Learned counsel appearing for the plaintiff submits that on Google search, the only product which appears by the name of "REBAHEAL", is of the plaintiff. Therefore, the plaintiff's mark enjoys immense goodwill and reputation. The plaintiff's mark "REBAHEAL" is well-known among the relevant class of customers, doctors and other healthcare professional due to its extensive use, widespread availability, prescription and promotion. Thus, the same is exclusively associated with the plaintiff. The brand "REBAHEAL" of the plaintiff is marketed and sold all over the country through a vast chain of distributors, and is available at every chemist shop, resulting in widespread consumer and physician recognition.

24. It is submitted that the mark "REBAHEAL" being a coined word is inherently distinctive of the products and business of the plaintiff. Therefore, use of any identical or deceptively similar mark would be construed and

associated exclusively with the business of the plaintiff.

25. It is further submitted that the plaintiff has tremendous sales running into several crores of rupees for products sold under the mark “REBAHEAL” throughout India, since June 2023. The plaintiff’s mark “REBAHEAL” has been extensively promoted and distributed. As a result of such publicity and sales, the relevant section of the public recognizes and acknowledges the REBAHEAL mark, as belonging to the plaintiff.

26. It is submitted that the sales figures for the mark “REBAHEAL” for financial year 2023-2024, are as follows:-

Financial Year	Sales figures/turnover
2024 (April 23- March 24)	1,77,32,195
FY 25 YTD April 2024	2,78,521

27. It is submitted that plaintiff has obtained registration for the “REBAHEAL” trade mark and the registration clearly reflects and indicates that the plaintiff is the prior adopter and exclusive proprietor thereof. Thus, the relevant section of the public associate and relate to any products under the mark “REBAHEAL” or any other closely resembling marks, as that of the plaintiff. It is further submitted that plaintiff’s website receives millions of hits per week from all over the world. The plaintiff’s website contains wide-spread information about the plaintiff and its products. Further, several online pharmacies and pharmaceutical directories provide information about plaintiff’s product, under the mark “REBAHEAL”.

28. It is submitted that defendant no. 1 is a private limited company

which as per its website <https://www.rebantahealthcare.com/> appears to be engaged in the business marketing, manufacturing, supplying, exporting, trading and distribution company in the orthopaedic department throughout India, including Delhi. The defendant no. 1 as per the samples purchased, appears to be marketing, distributing, selling and supplying its pharmaceutical products under the impugned mark “REBAHEAL”.

29. Learned counsel appearing for the plaintiff submits that the plaintiff carried out trademark search and found no pending application or registration for the impugned mark “REBAHEAL” either in the name of defendant no. 1 or 2.

30. It is submitted that in the last week of June 2024, plaintiff’s representative came across the infringing activities of defendants of manufacturing, marketing and selling the medicinal products for treatment of pain, and regulation of menstruation and repair bone fractures under the mark “REBAHEAL”. It is, thus, submitted that the defendants in order to create deception have blatantly copied the plaintiff’s mark “REBAHEAL”, in its entirety to the plaintiff’s well known and registered mark “REBAHEAL”.

31. Learned counsel appearing for the plaintiff submits that defendant’s adoption of the mark “REBAHEAL” for its products, is dishonest and motivated, by a desire to usurp the vast reputation and goodwill, which is enjoyed by the plaintiff, not only in India, but throughout the world. The defendants’ unlawful adoption of the impugned mark is calculated to cause loss and injury to the plaintiff’s reputation and business and dilute the distinctiveness of its mark “REBAHEAL”.

32. Considering the aforesaid submissions, this Court is of the view that

the plaintiff has made out a *prima facie* case for grant of interim relief in its favour. The plaintiff is likely to suffer irreparable loss and injury to its goodwill and reputation, in case, relief is not granted in favour of the plaintiff. The balance of convenience also lies in favour of the plaintiff.

33. This Court also notes that rival marks REBAHEAL and REBAHEAL are visually and phonetically identical and there will be confusion and deception amongst the general public, doctors & chemists. Further, the rival products are meant to provide for different ailments and will lead to serious health implications, if, on account of confusion, wrong medicine is taken by the prospective patients.

34. Further, the class of consumers also directly, overlap. Both the parties use the name “REBAHEAL” for different purposes. Therefore, it will cause serious injury to the health of the people. General public would also believe the infringing product of the defendants, are same, as the name of the products are identical.

35. Considering the aforesaid, it is directed that defendants, their directors, affiliates, officers, servants, employees, dealers, agents, representatives, distributors and all other persons acting on behalf the defendants, are restrained from manufacturing, marketing, supplying, selling and offering for sale including online, advertising, directly or indirectly medicinal, ayurvedic and pharmaceutical preparations under the impugned trade mark “REBAHEAL” and/or any other mark deceptively similar to the plaintiff’s mark “REBAHEAL” or containing the mark “REBAHEAL” and/or in any manner whatsoever, as may be likely to cause confusion or deception amounting to infringement/passing off of the plaintiff’s trade mark registrations, as noted above.

36. Issue notice to the defendant by all permissible modes, upon filing of process fees, returnable on the next date of hearing.
37. Reply, if any, be filed within a period of four weeks from the date of service.
38. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.
39. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of 10 days from today.
40. List on 13th November, 2024.

MINI PUSHKARNA, J

JULY 9, 2024

c