Noviets Pharma & Ors vs Novartis Ag & Ors on 17 August, 2026

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Manmeet Pritam Singh Arora

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*     IN THE HIGH COURT OF DELHI AT NEW DELHI

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#     CNR No. DLHC010236412026

+     FAO(OS) (COMM) 143/2026 & CM APPL. 35368/2026

      NOVIETS PHARMA & ORS.
                   versus
      NOVARTIS AG & ORS.

Advocates who appeared in this case

For the Appellants             :       Mr. Davesh Vashishtha,
                                       Khulbe and Mr. Ashish,

For the Respondents            :       Mr. Hemant Singh, Ms.
                                       Ms. Pragya Jain, Ms. A
                                       Diksha, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

                                       JUDGMENT
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V. KAMESWAR RAO, J.

1. This appeal has been filed with the following prayers:

> "a) Allow the present Appeal directed against the Impugned Order dated 28.02.2026 passed by the Ld. Single Judge of this Hon'ble Court in C.S. (COMM) No. 218 of 2024 titled Novartis AG & Ors. Vs. Noviets Pharma & Ors.;
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> b) Set aside the Impugned Order dated 28.02.2026 passed by the Ld. Single Judge of this Hon'ble Court in C.S. (COMM) No.218 of 2024 titled Novartis AG & Ors. Vs. Noviets Pharma & Ors.;"

2. In effect, this appeal lays a challenge to the order of the learned Single Judge in IA 5655/2024 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ("CPC") in CS(COMM) 218/2014, wherein the respondents/plaintiffs have been granted a temporary injunction and the appellants/defendants have been injuncted from using the mark 'NOVIETS' as being deceptively similar to 'NOVARTIS'. The marks of the parties as per the impugned judgment can be seen as under:-

Mark of the respondents/plaintiffs	Mark of appellants/de
NOVARTIS	NOVIETS

3. The facts that are noted from the rec

respondents/plaintiffs claim themselves to be leader in the healthcare industry and specialise in innovation through research and development. The respondents have their presence in India since 1947 through their predecessor in interest. The respondent no.2 is the Indian subsidiary of the respondent no. 1 firm whereas the respondent no.3 has been incorporated in the year 1997 for the primary purpose of marketing its products in India. The respondents created and adopted the mark in 1996 and claimed continuous user since then. The long usage of the mark has gained substantial goodwill over the years. The details of the registration of the marks of the respondents are as under:-

Trade Mark	Registration Number	Date of Registration	
NOVARTIS	IRDI-3050272	28.04.2015	01, 16, 35,

4. The respondents/plaintiffs have also given the sales figures over the years pertaining to respondent no. 2 effective from 2007-08 to 2022-23 as under:-

YEAR	Net Sales Turnover (in INR millions)

2007-08	5,535
2008-09	5,995
2009-10	6,241
2010-11	7,086
2011-12	7,928
2012-13	8,465
2013-14	8,104
2014-15	8,122
2015-16	7,222
2016-17	5,836
2017-18	4,980
2018-19	4,322
2019-20	3,997
2020-21	3,565
2021-22	3,754
2022-23	3,672

5. The findings of the learned Single Judge can be summarised as under:-

5.1 The learned Single Judge in the impugned judgment, at the very outset, dealt with the issue of territorial jurisdiction since the appellants/defendants contended that no cause of action arose in Delhi as they themselves are dealing with pharmaceuticals and veterinary products in localised offline markets in Begusarai and Patna in Bihar. It was also their contention before the learned Single Judge that the online listing of the products of appellants is merely passive and informative without any enabling mechanism for commercial transactions whereas the respondents had contended

> before the learned Single Judge that this Court would have jurisdiction to entertain the suit as the appellants are carrying on business from within the jurisdiction of this Court through the website of 'IndiaMart' and on the page of the IndiaMart website, the contact details of the appellants shows 'Delhi' as their place of business. The learned Single Judge was satisfied that the nature and extent of the appellants' online activities were sufficient enough for this Court to entertain the suit.
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> 5.2 On the issue of deceptive similarity, the learned Single Judge had noted that the marks of the respondents have attained distinctive character and have become identifiers to enable the goods of the respondents to be distinguished from those of the other parties.

Goodwill has been established at a prima facie stage by the respondents through continuous and prolong usage of the mark 'Novartis'.

5.3 The learned Single Judge came to a finding that the impugned marks are deceptively similar to the extent that they are visually and phonetically similar and target the same consumer base and the class of consumers is also similar. The impugned judgment notes that the appellants not only infringed the mark of the respondents but also tried to pass off their products as those of the respondents. The contention was that the mark 'Noviets' is being used as a trade name and not as a brand name and the same is being done in the capacity of a business identifier and not as a trademark of goods. The learned Single Judge did not agree with this submission, to be a valid defence against infringement or passing off. The same was also coupled with the fact that the appellants did not show any plausible reason as to how the appellants came up with the impugned mark.

5.4 The learned Single Judge also returned a finding of goodwill and reputation in favour of the respondents' mark as the respondent no.2 had depicted its revenue for financial year 2022-23 in India as Rs.3,67,20,00,000/-.

5.5 The defence, that the appellants were not aware of the marks of the respondents was not accepted by the learned Single Judge given the overwhelming goodwill of the respondents.

5.6 The learned Single Judge came to the conclusion that since the nature of goods are allied and cognate, there is a likelihood of confusion, which may occur in the minds of the consumers. While applying the test of the average consumer in the present case, the learned Single Judge came to the conclusion that a mere likelihood of confusion is enough to establish infringement of trademarks.

5.7 As per the impugned judgment, a mere replacing of the letters 'AR' with 'IE' and removing the letter 'I' from the mark of the respondents would not amount to a distinguishing feature enough to differentiate the goods of the parties.

5.8 The learned Single Judge came to the conclusion that the marks are deceptively similar as the colour combination, placement of features, phonetic and visual similarities have reduced any chances of the marks distinguishing each other. The learned Single Judge also noted that in case of pharmaceuticals products, a stricter approach ought to be adopted by Courts as the question of public interest is concerned.

5.9 The learned Single Judge noted that even an 'initial interest confusion' at a preliminary stage may divert the consumers' attention and even such transient confusion at the initial stage would be sufficient to meet the requirement of deceptive similarity under Section 29 of the Trade Marks Act, 1999 ("Act").

5.10 The learned Single Judge had also noted that the appellants have adopted the said mark to divert the revenue of the respondents and ride on the goodwill of the respondents. The same would result in the loss of reputation of the respondents.

5.11 A defence had been taken by the appellants before the learned Single Judge that the prefix 'NOV' is common and generic to the trade and is a derivative of the word 'NOVA' or 'NEW' and that the appellants have themselves applied for the registration of the impugned marks. The learned Single Judge came to the conclusion that it is not for the appellants to contend that the prefix is common to the trade as they themselves have applied for registration. Since the respondents command considerable good will, the mark cannot be held to be generic or descriptive to the trade.

5.12 The prefix 'NOV' forms a dominant feature of the impugned marks. The mark of the respondents being 'Novartis' which is in use since 1996 cannot be allowed to be diluted by a similar mark using the prefix 'NOV' in the mark 'Noviets'.

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SUBMISSIONS          ON        BEHALF   OF     THE       APPE
DEFENDANTS
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6. Mr. Davesh Vashishtha, learned counsel for the appellants would submit that the competing marks being, 'Novartis' and 'Noviets' are visually, phonetically, structurally and conceptually dissimilar. He contested the finding of the learned Single Judge in holding that the impugned marks are deceptively similar. The ground for taking such an argument by Mr. Vashishtha is couched on the reasoning that the marks have to be compared as a whole whereas the learned Single Judge has gone ahead and dissected both the marks. If the competing marks were to be viewed in their entirety and in a manner in which they are encountered in the ordinary course of trade, the same would be plainly distinguishable and capable of conveying the source. In this regard, he has drawn our attention to the judgments in the cases of Intas Pharmaceuticals Ltd. v. Sun Pharma Laboratories Ltd., 2026:DHC:4879-DB and Novartis AG v. Novadoz Pharmaceuticals LLC., No. 25cv849 (EP) (JRA) dated 17.03.2025

7. It is the case of the appellants as contended by Mr. Vashishtha that the competing marks differ on every material aspect. According to him, the mark of the respondents comprises a circular device with two stylised hands in blue and orange enclosing a prominent blue check mark together with the word 'Noviets'. Whereas, the mark of the respondents comprises of an abstract orange and blue device comprising two curved strokes forming an open circular design along with the word

'Novartis'. According to him, the devices are different in their shape, structure, artistic composition and overall visual impression. Even the words accompanying the device are different with the only common element being the prefix 'NOV'.

8. On the aspect of pronounciation of the impugned marks, Mr. Vashistha argued that the marks are phonetically distinct and produced different phonetical impressions, as the mark of the respondents is pronounced as NO-VAR-TIS whereas the mark of the appellant is pronounced as NO-VEE-ETS or NO-VYETS.

9. Mr. Vashishtha has also argued that the visual appearance of the marks is different and distinctive as the mark of the appellants comprises the orange and blue word mark with a circular device and a tagline which reads "Serving Health Better". On the other hand, the mark of the respondents is a blue mark with an abstract device. The above would show that the competing marks create entirely different impressions and cannot be stated to be similar, say for the common prefix being 'NOV'. Whereas, the suffix being 'ARTIS' and 'IETS' is dissimilar and capable of distinguishing the marks.

10. He has argued that the case of the appellant is that the entire case of the respondents proceeds on a dissection of a mark which is impermissible. The very necessity of dissecting the competing marks into separate syllables demonstrates that the alleged similarity is not discernible from the marks as a whole but is sought to be created artificially by fragmenting the marks.

11. He has argued that the aforesaid approach of dissecting the marks is contrary to the statutory scheme under the Act. In terms of Section 17(1) of the Act, the proprietor of a registered mark is conferred with the exclusive right to use the trademark whereas Section 17(2) clarifies that the registration of a trademark does not confer any exclusive right in respect of any part of the said mark, which is not separately registered or bereft of any independent protection. Similarly, Section 15 of the Act provides for a statutory mechanism for obtaining separate registration of a part of a trademark where independent exclusivity is intended to be claimed. According to Mr. Vashishtha, if the respondents intends to assert statutory monopoly over the prefix 'NOV', there is a separate mechanism under the Act for claiming such a registration.

12. Mr. Vashishtha stated that admittedly not having availed any recourse to the statutory mechanism, the respondents cannot now by way of present proceedings seek to secure the exclusivity over the prefix 'NOV', which neither forms the subject matter of an independent registration nor enjoys separate statutory protection. The respondents cannot be permitted to achieve indirectly what cannot be obtained through the statutory framework. If the plea of the respondents were to be accepted, it would impermissibly enlarge the scope of the respondents' registration and confer an unwarranted monopoly over a constituent element over a composite trademark. It is also his case that the respondents cannot now claim exclusivity over the composite mark just for the reason that it begins with the prefix 'NOV' nor can the finding of deceptive similarity be sustained solely on that basis once the marks are compared as a whole being complete and composite. The alleged similarity found upon a common prefix disappears and the rival marks create entirely different visual, structural, phonetic and commercial impressions. The settled position of law in this regard has been relied upon by Mr. Vashishtha in the case of Novartis AG

(supra) wherein it was held that even while considering the well known mark Novartis, the comparison of the competing marks is to be done in their entirety and not only on the basis of the prefix 'NOV'.

13. It is the case of the appellants as contended by Mr. Vashishtha that the reliance placed by the respondents on the judgment in the case of Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd, 2001 INSC 173 is misplaced since the Supreme Court did not lay down that every similarity between pharmaceutical marks must result in an injunction. On the contrary, the likelihood of confusion must be assessed on a consideration of the nature of the marks, degree of resemblance, the nature of goods, the class of purchasers and the mode of purchase among all other surrounding circumstances. The respondents ought not to be allowed to use the judgment in the case of Cadila Health Care Ltd. (supra) to seek an automatic injunction while ignoring the judgment of this Court in the case of Intas Pharmaceuticals Ltd. v. Sun Pharma Laboratories Ltd, 2026:DHC:4879- DB. The respondents further have proceeded on the assumption that the competing marks are encountered by an ordinary retail consumer whereas the factual position is to the contrary. The appellants use the mark 'Noviets' as their corporate and business identity whereas the pharmaceuticals products are identified and marked under their respective product brands. The appellants predominantly operate through specialised B2B trade channels comprising distributors, stockists, veterinary professionals and other informed intermediaries whereas the purchasing decisions are taken by persons exercising substantially higher degree of care and commercial judgment.

14. According to him, the above mentioned are not incidental facts but constitute material surrounding circumstances, which are required to be considered while assessing the likelihood of confusion. In this regard, he has placed reliance on AstraZeneca UK Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd, ILR (2001) 1 Delhi 874 to state that the assessment of deceptive similarity must necessarily account for the surrounding circumstances, the class of purchasers and the relevant trade channels. Even though reliance has been placed on Cadila Health Care Ltd. (supra) to argue that a stricter standard must be invariably applied in cases involving pharmaceutical trade mark as pharmacists and chemists are not always literate, the doctors' prescriptions are often illegible and therefore, confusion is inevitable. While relying upon the said judgment, the respondents have overlooked the test for determining deceptive similarity.

15. It is his case that the Supreme Court has not held that a mere involvement of pharmaceutical products or the existing common features between competing marks would by itself justify a finding of deceptive similarity. He argued that the case of the respondents in this regard is misconceived as the Supreme Court had clearly held that the likelihood of confusion must be determined having regard to the nature of marks, the class of purchaser, the mode of purchase and all other surrounding circumstances. One of the main distinguishing features in this case is that the mark which has been used by the appellants being 'Noviets' is only being used as a corporate identity whereas the pharmaceuticals products are identified and marked under their own respective product brands through specialised trade channels comprising distributors, stockists, veterinary professional and other informed intermediaries. These factors would be enough to distinguish the present case on facts from that of Cadila Health Care Ltd. (supra).

16. Mr. Vashishtha has also argued that the impugned order proceeds on the erroneous application of the settled principles governing deceptive similarity. It is his argument that the learned Single Judge has arrived at a prima facie finding of infringement by placing undue significance to the common prefix 'NOV' while overlooking the settled principles governing comparison of composite trade marks as per the scheme embodied in Sections 15 and 17 of the Act. The material dissimilarity between the competing marks and the surrounding circumstances relevant for determining likelihood of confusion and therefore, consequently the finding of deceptive similarity is unsustainable both on facts and in law. It is also his case that the learned Single Judge ignored the principles laid down in the case of Intas Pharmaceuticals (supra). It is his case that for the forgoing reasons, the appeal be allowed.

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17. Mr. Hemant Singh, learned counsel for the respondents has stated that the mark 'Novartis' is a coined word, which is registered in more than 100 countries including in India since 1996, with registrations in various classes and in the present case, is a prior user of the mark. It is his argument that the appellants have not disputed the prior adoption and the statutory registrations of the mark by the respondents.

18. The trademark 'Novartis' and its distinctive logo has over the years acquired formidable goodwill and reputation internationally and also in India on the account of extensive and continuous commercial use over many decades. In this regard, Mr. Singh has pointed to the sales figures of the respondents' company over the years with its global annual sales for the year 2023 being USD 45,440 million and its annual sales in India for the same period being INR 3,672 million. In terms of the decisions in the cases of Satyam Infoway v. Sifynet, 2004 (28) PTC 556 (SC) and Eicher Good Earth v. Krishna Mehta, 2015 (63) PTC 444(Del), Mr. Singh stated that it is a well settled position of law that the volume of sales and promotional activity are recognised as indicative of goodwill reputation and distinctiveness. Since the appellants have not challenged the prior adoption of the mark by the respondents, they cannot now deny the immense goodwill that the respondents enjoy.

19. Mr. Singh has also argued that Novartis has been declared as a well- known trademark in India and has been recognised as well known in several WIPO and INDRP cases. He placed reliance on the reasoning given by the learned Single Judge in the impugned judgment that the appellants failed to disclose any plausible reason for adopting the coined expression being 'Noviets' and rightly inferred dishonest adoption. Even in the present appeal, the appellants have merely asserted that the competing marks are different but do not disclose the origin, derivation or rationale for adopting the term 'Noviets'. Since there is a complete lack of explanation regarding the adoption of a coined word, which so closely resembles the mark of the respondents, the plea of bonafide adoption by the appellants is substantially weakened.

20. Mr. Singh is of the opinion that the respondents' mark comprises three parts being, 'NOV', 'AR' and 'TIS' whereas the mark of the appellants also comprises three components 'NOV', 'IE' and 'TS'. The learned Single Judge, according to Mr. Singh, had correctly held that the appellants had not

only adopted a deceptively similar word mark but also adopted a logo, which closely resembles the respondents' logo inasmuch as the colour combination and placement of features. He has relied on the following judgments to support his case for testing the marks against the touchstone of deceptive similarity: -

> i. Amritdhara v. Satya Deo, AIR 1963 SC 449 ii. Corn Products v. Shangrila Food, 1959 SCC OnLine SC 11 iii. Ruston & Hornsby v. Zamindara Eng., (1969) 2 SCC 727 iv. Macleods v. Union of India, 2023 SCC OnLine Bom 408 (DB) v. Medley v. Alkem, 2002 SCC OnLine Bom 444 (DB) vi. Novartis v. Novaegis, CS(COMM) 86 of 2023

21. The judgment in the case of Cadila Health Care Ltd. (supra) had held that while deceptive similarity is being ascertained between two competing marks in the pharmaceuticals sector, a stricter approach may be adopted. In support of public interest, a lesser degree of proof showing confusing similarity in the case of trademark in respect of medicinal products against other non-medicinal products. It is his case that confusion between medical products may be life threatening and not merely inconvenient.

22. Mr. Singh has argued that the argument taken by the appellants that the prefix 'NOV' is common to the trade is untenable. The impugned judgment, he stated, rightly notes that the prefix 'NOV' is the dominant and essential feature. The argument that the prefix 'NOV' is generic or common to the trade was considered and rejected by the learned Single Judge. Further, he argued that since the appellants themselves have applied for the registration of the mark 'Noviets' for goods in class 5, being pharmaceuticals preparations, they should be stopped from raising the plea of publici juris. Such a mutually destructive plea is impermissible as the appellants cannot be allowed to approbate and reprobate. In this regard, he placed reliance on Procter & Gamble v. Anchor Health & Beauty care Pvt. Ltd. 2014 (59) PTC 421[Del][DB], Ishi Khosla v. Anil Aggarwal and Anr., 2007 (34) PTC 370 (Del.) and Automatic Electric Limited v. R.K. Dhawan & Anr., 1999 PTC (19) 81.

23. Apart from making an assertion that 'NOV' has become common to the trade and is publici juris, the appellants have not produced any evidence to show actual commercial use of any third party using the prefix 'NOV' in their trade name. A mere existence of entries on the register does not establish that the mark has become common to the trade nor does it dilute the distinctiveness acquired by the coined mark of the respondents through use over decades. He stated that since this plea of the appellants is unsubstantiated by any evidence, the same was directly rejected by the learned Single Judge. He has relied upon the judgment in the cases of Pankaj Goel v. Dabur India Ltd., 2008 (38) PTC 49 (Del.) (DB) and National Bell Co. v. Metal Goods Mfg. Co. Pvt. Ltd. & Anr, AIR 1971 SC

24. Mr. Singh has also vehemently contested the submission advanced by the appellants that the mark 'Noviets' is only being used as a trade name and not as a trade mark. He argued that stating that the mark 'Noviets' is not the trademark of the appellants does not act as a shield against infringement. According to him, the appellants have deliberately withheld its user affidavit dated 21.03.2018, which was filed before Registrar of Trade Marks while applying for registration of the mark 'Noviets' vide application no. 3785550 in class 5. The said application was opposed by

respondent no.1 vide opposition no.1074062 dated 20.11.2020. The appellants did not file any counter statement to the said opposition pursuant to which the trademark application being 3785550 was declared abandoned vide order dated 30.01.2023. In the said affidavit which was produced by the appellants along with the aforesaid trademark application was claimed, it had been claimed that the appellants had been using the mark 'Noviets' since 21.07.2017 and Mr. Singh stated that the same is placed on record. The argument that the term 'Noviets' is only a trade name and not a trademark for pharmaceutical products would also not hold good when examined against the test for passing off. Even Section 29(5) of the Act expressly recognises infringement where a registered trade mark is adopted as a part of a trade name in respect of the goods or services for which the mark is registered. It is an admitted case that the appellants are engaged in the business of pharmaceuticals and have adopted the mark 'Noviets', which is the dominant feature of the trading style in respect of the identical goods.

25. According to Mr. Singh, the appellants have adopted the mark 'Noviets' across all their business entities including Noviets Pharma, Noviets Veterinary Private Limited and Noviets Pharmaceuticals Private Limited. This would clearly demonstrate that Noviets is being used as a primary commercial identifier of the business of the appellants and not merely as an incidental corporate description. In support of his submissions, he has placed reliance on the judgment in the cases of Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65; Mankind Pharma Ltd. v. Chandra Mani Tiwari & Anr. 2024 SCC OnLine Del 5491; and Bloomberg finance v. Prafulla Saklecha, 2013 SCC OnLine Del 4159.

26. Mr. Singh stated that the learned Single Judge had rightly declined to reject the plea of lack of territorial jurisdiction at the interlocutory stage. Mr. Singh has contended on behalf of the respondents that this Court has competent jurisdiction to entertain the present suit and appeal, since the appellants are carrying out the business through the IndiaMart website and the website shows their place of business to be in Delhi. According to him, the principle of dynamic effect and mere looming presence would confer jurisdiction on this Court. The appellants have challenged the finding of territorial jurisdiction on an erroneous basis that there was no final determination by the learned Single Judge on the question of territorial jurisdiction. Rather, the learned Single Judge had correctly held that at a preliminary stage, it could not be conclusively determined without evidence. The learned Single Judge had held that whether the listing on IndiaMart is sufficiently interactive to facilitate commercial transaction would be a mixed question of fact and law, which would have to be substantiated through evidence at trial. On the issue of jurisdiction, he stated that the same has to be examined on a demurrer by presuming that the pleadings made in the plaint are true and placed reliance on the following judgments:-

> i. Sun Pharmaceutical Industries Ltd v. Artura Pharmaceuticals P. Ltd., 2025 SCC OnLine Del 8642 ii. Kohinoor Seed v. Veda Seed, 2025 SCC OnLine Del 8728, iii. Sauss Home Products P. Ltd v. Reckitt Benckiser India P. Ltd., 2026 SCC OnLine Del 937 iv. Tata Sons Pvt. Ltd v. Hakunamatata Tata Founders & Ors., 2022 SCC OnLine Del 2968 v. Ravinder Singh v. Regoshin Healthcare P. Ltd & Ors., 2026 SCC OnLine Del 3716.

27. The appellants have also failed to demonstrate any infirmity in the impugned judgment and the learned Single Judge has correctly come to a finding that the mark of the respondents possesses sufficient goodwill and reputation. The adoption of the mark 'Noviets' by the appellants shows a case of prima facie misrepresentation, which would cause confusion in the minds of the general public.

28. Mr. Singh is of the opinion that the conduct of the appellants further goes to support the finding of the learned Single Judge on dishonest adoption. Once the respondents had issued a cease-and-desist notice dated 27.10.2020, the appellants did not respond to the same, which led to the present proceedings, after which, the appellants failed to file a counter- statement in the opposition proceedings, thus, resulting in the abandonment of their application for registration of the mark 'Noviets'. It was only after the notice dated 26.07.2022 was addressed to the appellants' trade mark agent to which a reply from the appellant no. 3 was received vide email dated 09.08.2022 merely asserting that the competing marks were different and disclosed registration of the device mark 'Noviets' in class 35.

29. Mr. Singh has stated that the impugned judgment also records the fact that the appellants have not shown any reason for adopting the impugned mark and has deemed the same to be a dishonest adoption. He stated that the impugned order is well reasoned and exercises judicial discretion based on pleadings, documents and settled principles governing passing off and infringement. The appellants have not shown any ground to warrant any interference with the impugned judgment. In this regard, he has placed reliance on the judgment in the case of Wander Ltd. v. Antox India Pvt. Ltd., 1990 (Supp) SCC 727 to argue that an Appellate Court ought not to interfere with an interlocutory order merely on the ground that another view is possible. Such interference can only be warranted in case the exercise of judicial powers is arbitrary, perverse or contrary to the settled principles of law. Similarly, he has placed reliance in the case of UTO Nederland B.V. & Anr. v. Tilaknagar Industries Ltd., AIR 2025 Bom 193 in support of his submissions. He prays that the present appeal be dismissed and the impugned judgment not be interfered with.

ANALYSIS AND CONCLUSION

30. Having heard the learned counsel for the parties and perused the record there is no dispute that the present appeal primarily arises from the impugned order passed by the learned Single Judge on the application under Order XXXIX Rules 1 & 2 of the CPC. In other words, the suit is still pending before the learned Single Judge.

31. Having said that, insofar as the plea of territorial jurisdiction of this Court to entertain the present suit of respondent is concerned, the learned Single Judge has applied the demurrer principle assuming the case pleaded by the respondent to be true. In any case, the appellants' IndiaMART listing showed Delhi as a place of business and their products were accessible to Delhi consumers, the learned Single Judge found prima facie territorial jurisdiction of the Courts at Delhi. In any case, the learned Single Judge held that whether the IndiaMART listing was merely passive or sufficiently interactive to facilitate transactions was a mixed question of law and fact requiring evidence and trial, and therefore, had entertained the suit. In other words, the issue of territorial jurisdiction shall be decided by the learned Single Judge after framing of issues in this regard.

32. On the merits of the challenge by the respondents that the impugned mark 'Noviets' is deceptively similar to the respondents' mark 'Novartis', the learned Single Judge has rejected the submission of the appellants that 'Noviets' was merely being used as a tradename and not a product mark and by holding that even the usage of the impugned mark 'Noviets' as trade name would be sufficient to defeat the respondents' claim for infringement/passing off.

33. That apart, there is no denial to the fact that both the parties are involved in pharmaceutical products as the appellants herein are dealing in veterinary products. Therefore, learned Single Judge considered the competing goods and consumer base sufficiently similar to create a substantial risk of confusion. In fact, the finding of the learned Single Judge though, prima facie is that the appellants failed to provide a plausible explanation for how they arrived at the mark 'Noviets'. It appears that 'Noviets' has been coined given that respondents herein establish a reputation which prima facie shows adoption being dishonest and apparently an attempt to benefit from the goodwill possessed by the respondents herein.

34. That part, what we find is that what really weighed with the learned Single Judge was that the respondents have been able to demonstrate the substantial goodwill and reputation both as the usage of the mark 'Novartis' was with effect from 1996 and sales figures being the following:-

35. We also agree with the conclusion drawn by the learned Single Judge that pharmaceutical marks require the greater caution inasmuch as the Courts have emphasised that the confusion between medicines can have serious or even life-threatening consequences and such a proposition of law prima facie cannot be contested by the appellants in the facts of this case. Even the learned Single Judge has found a strong prima facie case describing the matter as one involving 'triple identity' - similar marks, identical product category and identical / similar trade channels. Keeping in view such a finding on the basis of the facts, the learned Single Judge held that the balance of convenience and risk of irreparable harm favoured respondents and according to him, has rightly granted injunction in favour of the respondents herein.

36. According to the learned counsel for the appellants, the respondents impermissibly dissect the marks into 'NOV-AR-TIS' and 'NOV-IE-TS', which is contrary to the settled rule of composite marks as they must be compared in their entirety. There is no dispute to the proposition of law as advanced by the learned counsel for the appellants, but what is important is that the said submission is primarily highlighting the fact that the mark NOV is the dominant feature of the mark. In any case, Section 17 of the Act protects the registered mark as a whole and limits exclusivity over individual components unless separately protected. The plea that NOV is generic to the trade and as such common to the trade would not really appeal to us, at least, in the facts of this case. More so, the usage was with effect from the year 1996 with sales figure in the year 2022-23 being 3672 Million INR and as such the Novartis is a reputed mark, at least in the pharmaceutical products.

37. The plea of the learned counsel for the appellants that there is no likelihood of confusion does not really appeal to us. This we say so because both the parties are involved in pharmaceutical products, viz the appellants dealing in veterinary pharmacy, surely prima facie it can be said that there would be confusion and deception between 'Novartis' and 'Noviets'.

38. The plea of the learned counsel for the appellants that 'Noviets' is used by the appellants as its the Corporate /Business entity, while their pharmaceutical products are being marketed under a separate trade/brand name and through B to B channels involving distributors, stockists, veterinary professionals and other informed intermediaries, who exercise greater care in purchasing decisions and as such, the impugned order could not have been passed by the learned Single Judge is not appealing. This plea is not really convincing to us in view of the detailed reasons given by the learned Single Judge and also the fact that the 'Novartis' has been declared as a well-known mark and is included in WIPO and INDRP proceedings.

39. Having said that, the scope of interference with an order passed under Order XXXIX Rules 1 & 2 of the CPC, is very limited. The Supreme Court in the case of Wander Limited (supra) held that the appellate Court will not interfere with the exercise of the discretion of the Court of first instance and substitute its own decision except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. In fact, the Supreme Court held that the Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage if would have come to a contrary conclusion.

40. In the facts of the case, we are of the view that the Single Judge has exercised the discretion properly and it is not the case where the settled principles of law have been ignored while granting the interim injunction.

41. Additionally, we may also refer to the judgment of this Court in Sona Mahindra Pvt Limited & Another v. Sona BLW Precision Forgings Limited & Others, 2023:DHC:2572-DB wherein on the aspect of preliminary injunction, the Court has held as under:-

"42. At the outset, we may highlight the position of law with respect to the powers of an appellate Court dealing with an appeal against a discretionary order. It is well settled that the appellate Court will not reassess the material on which the Court of first instance has decided to grant or refuse an interim protection. The locus classicus in this regard, is the judgment in Wander Limited (supra), wherein a three-judge Bench of the Supreme Court has held as under:-

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at

> the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721) "... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130]...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case...."

43. In fact, this view has been further propounded by the Apex Court in a veritable plethora of cases including K. Palaniswamy v. Shanmugam & Ors., Civil Appeal 1392/2023, Shyam Sel & Power Limited v. Shyam Steel Industries, (2023) 1 SCC 634, Narendra Hirawat & Co. v. Sholay Media Entertainment, (2022) 1 SCR 857 and Ambala Sarabhai Enterprises v. K.S. Infraspace LLP, (2020) 5 SCC 410 and by this Court in Shrivats Rathi and Anr. v. Anil Rathi and Ors., 2021 SCC OnLine Del 2.

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47. The learned Single Judge did hold that the respondents have concealed/suppressed the aforesaid two aspects. However, he also observed that concealment made by the plaintiff in every case would not result in an automatic dismissal of the plaint and/or application seeking interim relief. He held that the relief of injunction against infringement and passing off is granted not only to protect the proprietary rights of the plaintiff, but also to protect an ordinary unwary consumer who may be deceived due to adoption of a similar mark for similar goods by the defendant. On the aspect of concealment of correspondence exchanged between the respondents and the Trade Marks Registry, he also held that the same cannot be a reason to deny relief to the respondents or dismissing the suit.

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52. The aforesaid would reveal that the learned Single Judge did come to a conclusion that the concealment of disclaimer on the exclusive rights in the word 'SONA' was a vital fact to be disclosed by the respondents in the plaint, though it may not eventually influence the outcome of the suit/application seeking interim injunction.

53. We find that the learned Single Judge, by stating so, was also of the view that the concealment made by the plaintiff in every case would not result in automatic dismissal of the plaint or the application filed by the plaintiff seeking interim relief, as there is an element of public interest also to be protected.

54. On a detailed perusal of the impugned order, we find that the learned Single Judge while holding that there is concealment of material facts by the respondents, has also considered certain mitigating circumstances as mentioned in paragraphs 45 to 50, which we have already reproduced

above. The learned Single Judge in exercise of his judicial discretion concluded that for the acts of concealment, the respondents can be visited with exemplary costs rather than dismissing the suit/application.

55. That apart, we find that the learned Single Judge was of the view that keeping in view the earlier adoption of the word 'SONA' by the respondents, its extensive use by the respondents, and the likelihood of deception and confusion being caused in the mind of an unwary customer of continued association between the respondents and the appellants due to the adoption of the mark 'SONA' in the corporate name of the appellant No.1, the respondents were successful in demonstrating a prima facie case for grant of an interim injunction in their favour. The appellants have failed to demonstrate that the exercise of discretion by the learned Single Judge is perverse, capricious, arbitrary or illegal.

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57. We find ourselves in complete agreement with the conclusion of the learned Single Judge on the above issue as well.

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61. In view of the discussion above, we are of the view that there is basis for the learned Single Judge not to dislodge the respondents on the ground that there has been a concealment/suppression of facts by the respondents. We are also of the view that the learned Single Judge has exercised his discretion judiciously, in concluding that in the facts of the case, equities lie in favour of the respondents, and that the respondents have been able to make out a good prima facie case for the grant of interim protection, and in granting the ad-interim injunction in their favour and against the appellants. There being no perversity, arbitrariness or illegality in the exercise of discretion by the learned Single Judge, the impugned order warrants no interference. The other judgments on which reliance was placed by the learned senior counsel for the appellants are not required to be gone into as they were all considered by the learned Single Judge, and also in view of our above conclusion."

42. The judgments which are relied upon by the appellants in the cases of Cadila Health Care Ltd. (supra), AstraZeneca UK Ltd. (supra), Intas Pharmaceuticals Ltd. (supra) do not aid the case of the appellants as in the said judgments, the question involved was with regard to the name of the drugs wherein the trademark so derived was from the components comprising the main ingredients of the pharmaceutical preparations. Whereas, in the case at hand, the issue involves the names of the two pharmaceuticals companies of which, the name belonging to the respondent clearly has prior user. On the other hand, the appellants are subsequent users of the mark, without adequate explanation as to why such mark was adopted by the appellants.

43. In view of the above discussion, we are of the view that the impugned order passed by the learned Single Judge does not require any interference.

44. Accordingly, this appeal, being devoid of merits is dismissed. We uphold the impugned order passed by the learned Single Judge. The pending application is also dismissed.

45. Needless to state that our findings in the present order, are prima facie and the same shall be subject to final decision in the suit post trial. The learned Single Judge shall decide the suit without being influenced by any observation(s) made by us in this judgment.

V. KAMESWAR RAO, J MANMEET PRITAM SINGH ARORA, J AUGUST 17, 2026/rt